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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO. 399 OF 1986

S.N.Sahu

Applicant.

Vs.

Union of India, through General
Manager Central Railway, Bombay and
two others.

Respondents.

Hon'ble D.S.Misra-A.M.

Hon'ble G.S.Sharma-J.M.

(Delivered by Hon'ble D.S.Misra-A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 against the refusal of respondents to promote the applicant on the post of Asstt. Electrical Foreman w.e.from 25.2.82 and Electrical Foreman w.e.from 1.1.84.

2.The applicant's case is that he was appointed as Chargeman Grade-C under the respondents on 17.2.73; that he was promoted as Chargeman Grade-A on 12.11.1976; that he was further promoted to the post of Asstt.Electrical Foreman Grade Rs.700-900 on 22.2.82 and was posted at Itarsi; that for domestic reasons the applicant refused on 24.2.82 his promotion at Itarsi; that one Sri S.N.Bahal who was promoted as Asstt.Electrical Foreman at Jhansi was promoted as Electrical Foreman at Itarsi on 15.12.81, but he also refused promotion as EF at Itarsi on 23.12.81; that Sri S.N.Bahal was promoted as E.F. at Jhansi on 25.2.1982 and there was a clear vacancy on the post of Asstt.Electrical Foreman at Jhansi but the applicant was not promoted and one Saraju Prasad was promoted as Asstt.Electrical Foreman at Jhansi; that on 20.4.83 another vacancy of Asstt. Electrical Foreman occurred on the deputation of Sri S.K.Baraunia, but the applicant was not considered and one Sri B.K.Sharma was promoted as AEF on 9.5.83; that there was upgradation of posts w.e.from 1.1.84 and ~~several~~ junior persons ~~were~~ promoted as AEF, but the applicant was not promoted; that the applicant has been promoted on officiating basis w.e.from 8.11.1985. The applicant has prayed for issue of an order directing the opp.parties to promote the applicant to the

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post of Asstt. Electrical Foreman w.e. from 25.2.82 and Electrical Foreman w.e. from 1.1.1984 and to fix his pay accordingly and to pay the same to the applicant.

3. In the reply, filed ^{15/2} on behalf of the respondents, it is stated that the promotion of Sri Bahal as Electrical Foreman at Jhansi, in spite of his refusal for promotion at Itarsi given on 23.12.1981, was through an oversight; that on 24.2.83 when Sri Saraju Pd. was promoted as Asstt. Electrical Foreman at Jhansi, the applicant had not completed one year from the date of his refusal for promotion; that ^{15/2} on 2.5.83 when Sri B.K. Sharma was promoted as Asstt. Electrical Foreman at Jhansi, the applicant could not be promoted due to adverse confidential report; that the applicant was due for promotion as Asstt. Electrical Foreman w.e. from 1.1.1984 as a result of restructuring of cadre, but he was not promoted because as per record maintained in the H.Q.'s office it was mentioned therein that he had already been promoted and posted at Itarsi vide office order dated 11.2.82 that for promotion to the post of Electrical Foreman (Grade Rs. 840-1040) the applicant along with others was considered for promotion in the selection held in November, 84, but he was not found suitable for placement on panel due to petitioner's confidential report; that the applicant was not entitled ^{15/2} to the relief prayed for.

4. In the rejoinder-affidavit, filed by the applicant it is stated that if there was no bar for Sri S.N. Bahal for being promoted ^{15/2} within one year of his refusal, the applicant is also ~~entitled~~ to be promoted as Asstt. Electrical Foreman on the same principle and that he should have been promoted w.e. from 25.2.82 when the vacancy of Asstt. Electrical Foreman ^{15/2} occurred at Jhansi due to the promotion of Sri S.N. Bahal as Electrical Foreman; that there were no adverse confidential reports and none was ever communicated to the applicant who was not given any opportunity of furnishing any explanation and the allegations made in the reply of the respondents should not be relied upon; that the applicant can not be made to suffer due to the mistake of the railway administration for maintaining wrong records; that the applicant was entitled for promotion w.e. from 23.2.83 and if not from that date at least with effect from 1.1.84 after the expiry of a period ^{15/2} of one year from the date of his refusal of promotion.

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5. We have heard learned counsel for the parties and have also perused the record. Learned counsel for the applicant contended that the respondents had given a discriminatory treatment to the applicant insofar as in similar circumstance Sri S.N. Bahal was given a promotion at Jhansi, itself, within less than one year of his refusing promotion at Itarsi. The respondents have conceded this allegation and have tried to explain it by saying that this was due to oversight. Learned counsel for the applicant also brought to our notice that when a second vacancy became available on 20.4.83 and a period of one year had passed since the refusal of the applicant, he was again not promoted and his junior Sri B.K. Sharma was promoted. The respondents have merely stated that this was due to some adverse confidential report against the applicant. The respondents have not cared to file either adverse report or the confidential report dossier of the applicant to justify their refusal of promotion of the applicant. The contention of the applicant in the rejoinder affidavit, that no adverse report was communicated to him, has not been contested by the respondents. We are, therefore, unable to accept the contention of the respondents that the refusal of promotion of the applicant in the vacancy occurring on 20.4.83 was due to any adverse report. The contention of the respondents that the applicant was not considered for promotion w.e. from 1.4.84 on the basis of wrong entry in the records of the railway administration that the applicant had been promoted in the year 1982. We are of the opinion that the contention of the respondents for their refusal to promote the applicant as Asstt. Electrical Foreman Jhansi w.e. from 20.4.83 is not sustainable and the applicant is entitled to be given the promotion w.e. from that date. So far as the promotion of the applicant to the post of Electrical Foreman Grade Rs. 840-1040 w.e.f. 1.1.84 is concerned, we have considered the contention of the respondents that in the selection held in November, 84, the applicant was not found suitable for placement on panel due to adverse confidential report. The respondents have again not filed any details of the procedure for selection to the post of Electrical Foreman and have not even cared to indicate whether this was a selection post or non-selection post. In the absence of any documentary evidence and the confidential report

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dossier of the applicant, the contention of the respondents is not sustainable. We are of the opinion that the applicant was entitled for promotion as Electrical Foreman from the date of his juniors in the cadre of Chargemen Grade-A.

The application is allowed accordingly without any order as to costs..

A.M. 26.8.87

J.M. 26/8/87

JS/16.8.87.