

(6) AB

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No. 649 of 1986

Hira Lal Shankhwar applicant.

versus

Union of India, through General
Manager, N.Railway New Delhi
and others. Respondents.

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

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

(Delivered by Hon'ble D.S.Misra)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 against the order dated 7.2.85 of the Dy. Chief Mechanical Engineer, Garbage and wagon Shop Alambag Lucknow giving promotion to the persons junior to the applicant and denying promotion to the applicant. The application is also against an order dated 30.12.1985 making adverse entry in the character roll of the applicant.

2. The case of the applicant is that he has been working as Assistant Superintendent in the grade of Rs.550-750 in the office of Deputy Chief Mechanical Engineer (w) Northern Railway Garbage and wagon Shops Alambag Lucknow (respondent no.3), since 22.11.1981; that he officiated as Office Superintendent Grade 700-900 from 21.2.1983 to 21.1.1984 and from 21.5.1984 to 22.6.84; that in the seniority list prepared according to roster register, the

13
Raj
X

13

-2-

applicant was placed at sl.no.13 in the common list of personal and non-personal (annexure 1); that in the year 1984 in the process of reconstructing two additional posts of Office Superintendent were created making a total of 4 posts in the office of the applicant; that the name of the applicant was proposed for giving promotion on regular basis on the post of Office Superintendent by the then A.P.O. Sri Ram Swaroop, which was approved by the then Deputy Chief Mechanical Engineer, Alambagh, Lucknow on the basis of his seniority cum merit (annexure 2); that Sri Ram Swaroop was transferred from Lucknow and his successor ^{who} Sri Balram Gupta was misled and misguided by some persons junior to the applicant, got an adverse entry made in the character roll of the applicant which was communicated by the letter dated 13.9.1985 and received by the applicant on 18.9.1985 (copy annexure 3); that on 3.1.1986, the applicant received an official communication dated 30.12.1985 wherein it was noted that the applicant was not fit for promotion for his slack working (copy annexure -4); that the above mentioned entry was in violation of the Railway Board's circular dated 14.3.86 (copy annexure 5); that Sri Balram Gupta, A.P.O., obtained the approval of Deputy Chief Mechanical Engineer for promotion of Sri Rizvi and Sri R.C.Tripathi, to the post of Office Superintendent, but the case of the applicant who was senior to the above mentioned two persons was ignored. The applicant

bl

made representation to the General Manager, N. Railway, regarding his non-promotion on 15.2.85 (copy annexure 6) and another representation dated 28.1.1986 regarding adverse entry in his Character roll (copy annexure 7) and he also sent a reminder on 13.8.86 (copy annexure 7-A) without getting any reply. The applicant has prayed the quashing of the orders dated 7.2.85 and 30.12.1985 and issuing direction to the respondents to give promotion to the applicant w.e.f. 1.6.1982.

3. In the reply filed on behalf of the respondents, it is stated that the applicant's working had not been satisfactory since the very beginning and he has been repeatedly warned about his inefficient working; that the seniority list filed by the applicant (annexure 1 to the petition) is not a genuine document and no such seniority list had been issued by the administration; that the recommendation of the then A.P.O. (Sri Ram Swaroop) for promotion of the petitioner, which was approved by the Dy. Chief Mechanical Engineer was not given effect to; that the case of the petitioner for promotion to the post of Office Superintendent was considered by the Works Manager (C) who gave the following remarks :

1

"C.R. has been seen. All cleared for promotion except S/Sri Hira Lal, PP-3, Sri Ram Pal PP-4, Sri A.B. Abbasi PP-7. Further adjournments to be put up."

that the name of Sri R.C. Tripathi (respondent no.4) was proposed in place of Hira Lal

H

applicant for promotion to the Post of Office Superintendent; that the aforesaid was brought to the notice of Dy.C.M.E. before obtaining his approval by the then Asstt. Personnel Officer Sri Ram Swaroop; that it was subsequently pointed out by the then Asstt. Personnel Officer, who took charge in-place of Sri Ram Swaroop that the proposal of the then Asstt. Personnel Officer which was approved by the Dy.C.M.E. was against the rules; that Sri Balram Gupta, who succeeded Sri Ram Swaroop as A.P.O. pointed that the proposal for the promotion of the applicant as Office Superintendent was contrary to the circulars of Railway Board as his C.R. for the period 1.4.1983 to 31.3.1984 was adverse and as such was not to be considered for promotion for the post of Office Superintendent; that Sri Balram Gupta took over as Asstt. Personnel Officer on 31.12.1984 and there was no occasion for him to get the adverse entries of the applicant manœuvred as alleged by the applicant; that the letter of the Railway Board filed as annexure-5 to the writ petition is dated 5.3.86 and it does not affect the entries made prior to this date; that the applicant was not promoted as he was not found fit for promotion due to adverse entry in his C.R.; that ~~the~~ Sri SHH Rizvi and Sri Tripathi, who were junior to the applicant were found fit for promotion by the competent authority; that the applicant made representation on 31st Aug.84 against his entries of Confidential Report for the year ending 31.3.84 and the decision of the competent authority rejecting

BL

APR 1986

(10)

-5-

his representation was communicated to him vide confidential letter dated 2.2.85; that the applicant made another representation with regard to his promotion on 7.2.85 with retrospective effect from 1.1.84 and this representation was also decided by the competent authority and the decision was communicated to him. The representation of the petitioner dated 28.1.86 against his adverse confidential report for the period 31.3.85 was also disposed of vide letter dated 1.12.1986; that representation dated 13.8.86 of the applicant was with regard to the vacancy which fell vacant on 1.6.86 on the retirement of Sri S.H.H.Rizvi and has no relevance of the promotion to the respondent nos. 4 and 5; that the respondent was informed vide letter dated 11.12.1986 that he has been found not fit for promotion (copy annexure 2); that the applicant never made any representation for promotion in the year 1982 and the case for his promotion was considered in the year 1985-86 and he was not found fit for promotion in view of ____ adverse confidential reports; that the claim of the applicant with regard to the vacancy which occurred in the year 1982 is highly belated and barred by time and the applicant was not found eligible for promotion in the year 1982 and that the applicant is not entitled to any relief and the same is liable to be dismissed.

be

4. A rejoinder affidavit was filed on behalf of the applicant, in which the points raised in the claim petition were reiterated and it is further stated that the noting of Sri Ram Swaroop and the approval given by the Dy. Chief Mechanical Engineer was in accordance with the rule, according to which good entries of 4 years Character Roll out of last 5 years were very good and therefore, the applicant was entitled for promotion.

5. A supplementary reply was filed on behalf of the respondents nos. 1, 2, and 3 in which it is stated that the proposal of Sri Ram Swaroop, the then A.P.O. for promoting the applicant was based on the misinterpretation of para 3 of the General Manager, N.Railway's confidential circular dated 18.12.1984 (copy annexure SCA 1); that para 3 of the above mentioned circular relates to filling up of 57 posts as a result of reconstructing whereas the petitioner's case was for promotion to the Non Selection Posts, and therefore these provisions were not applicable to the applicant's case; that the General Manager, N.Railway vide his letter dated 1.12.1985 has clarified that the instructions issued vide letter dated 14.12.84 will apply only to selection posts (copy annexure III); that the post of Office Superintendent is a non selection post as laid down in G.M's circular dated 15.5.75 (copy annexure 4)); that for promotion of non gazetted staff to non selection post, C.R. for the last 3 years

b/

12

-7-

are examined and they are promoted if two out of 3 C.R.s. are considered fit for promotion (copy annexure 5). The respondents also filed copy of confidential letter dated 22.8.78 on the subject of promotion of staff to nonselection post (copy S.C.A. 6).

6. We have heard learned counsel for the applicant and carefully perused the documents on record. The short point for consideration in this case is — whether the applicant was entitled for promotion w.e.f. 1.1.84. The petitioner has based his claim mainly on the basis of note recorded by the then A.P.O. Sri Ram Swaroop. The copy of the note (at annexure 2 of the petition) has not been certified by any authorised person, but its content has not been contested by the respondents. In para 1 of this note it is stated:

"In terms of para 3 of G.M.(P) confidential letter No. 381/o/Ig dated 12/84 so far as modified selection for filling up the selection, grade post as a result of restructuring are concerned. It has been decided that C.P.s for the last 3 years should be gone into and that out of them 2 including last CR should be good.

2. If however the last C.R. is not good then out of last 5 years 4 should be good to promote a man against the selection grade post. According to above instruction the confidential reports of the following staff for last 4 years is 79-80, 80-81, 81-82, 82-83 have been perused and found fit.

1. Sri Hira Lal ASEII
2. " Ram Pal ASE
3. " A.B.Aliasi HC rolling stock."

be

It has been pointed out by the respondents that the post against which the promotion of the applicant was being considered was a non-selection post and the entries for the last 3 years should have been taken into account as it was a non-selection post; that above mentioned note of Sri Ram Swaroop has misinterpreted the instructions contained in the confidential circular letter dated 14.12.1984 which has laid down the criteria for filling up a selection grade post as a result of restructuring. This note, though approved by the Deputy Chief Mechanical Engineer, was not implemented as the successor to Sri Ram Swaroop APO was able to discover the mischief contained in the above quoted note of his predecessor. The applicant has failed to produce any evidence in support of his claim that the post against which promotion is a selection post. The applicant has also not contested the allegations made by the respondents that the posts against which the applicant was considered for promotion w.e.f. 1.1.84 are non selection post. The applicant has also not contested the allegation of the respondents that there were adverse entries in the C.R. dossier of the applicant for the years ending 31.3.84 and 31.3.1985. These remarks were also communicated to the applicant and his representation against these adverse remarks were rejected under intimation to the applicant. The case of the applicant for promotion was considered sometime in December, 84 and he was not considered fit

AS
DA

(19)

-9-

on account of the adverse remarks for the year ending 31.3.84 which is said to be the relevant period for promotion to the post of office Superintendent. This has not been contested by the applicant.

We have considered the matter in all respects and we are of the opinion that there is no merit in the case of the applicant. The application is dismissed without any order as to costs.

ABM

A.M.

Sub-arcane
4/12/87

J.M.

JS. 4.12.1987