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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.751 of 1986 (T)

(O.S. No.570 of 1983)

Vidya Prasad Plaintiff

Versus

Union of India & Another..... Defendants

Hon. Ajay Johri, A.M.

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

(By Hon. Ajay Johri, A.M.)

Vidya Prasad, the plaintiff, retired as a Carriage Foreman on the Jhansi Division of Central Railway on 1.9.82. He has filed this petition (Suit No. 570 of 1983 received on transfer from the Court of Munsif(I) Jhansi) on being aggrieved by his non promotion as Carriage Supdt, a non selection post in his avenue of promotion, for which he was due on 17.5.1980. He has prayed for his promotion with effect from this date with consequential benefits on his retirement.

2. Defendants case is that the promotion to the non selection post of Carriage Supdt. has to be on the basis of seniority ^{cum} and suitability and the plaintiff was not found suitable for promotion while the plaintiff has termed his supersession as malicious, mala fide and prejudicial due to grudge of the DME(C&W) who nursed ill will against him on account of a pamphlet published by a labour union.

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3. We have heard the learned counsel for both sides. The main points pressed before us were that the unsuitability should have been declared in sufficient time before the promotion became due in accordance with para 212 of the Indian Railway Establishment Manual, Confidential Report having also been toned down due to the alleged pamphlet against the DME(C&W), the plaintiff's name being erroneously associated with its issue, resulted in his being superseded.

4. To appreciate and understand the scope and range of contentions raised before us, we feel it will be appropriate to first look into the relevant provisions of the rules and instructions connected with these issues. Para 212 of Indian Railway Establishment Manual reads :-

" (a) Non-selection posts will be filled by promotion of the seniormost suitable railway servant, suitability, whether of an individual or a group of railway servants, being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests, if necessary. A senior employee may be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered.

(b) When, in filling a non selection post, a senior railway servant is passed over, the authority making the promotion shall record briefly the reason for such supersession.

(c) "

5. The defendants have strongly denied the position that the plaintiff had anything to do with the

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alleged pamphlets. Their plea is that he was not found suitable and had he been suitable, he would have been promoted. The performance of the plaintiff for the year 1979 was 'poor'. The suitability or otherwise is only determined when the occasion for promotion arises. It has not been the case of the plaintiff that the 'Adverse' Confidential Report of 1979 was conveyed to him in a delayed manner and therefore he was in dark about his performance. He has also not pleaded anything about the unsuitability of the 'Adverse' remarks recorded against his performance. He was, ^{3/5 receipt of file 3/3} in ~~empty~~ to his representations against the adverse remarks, replied by the administration on 10.7.80. It is not ~~against~~ the plaintiff's case that his representation was rejected belatedly or that there was any mala fide in the rejection of the same. We are therefore not convinced that there was any malice or prejudice in the minds of the senior officers who were responsible for judging his performance during the relevant period when he was not considered suitable for promotion.

6. In AIR 1979 S.C. 1622 Gurdial Singh Versus State of Punjab in para 17 the Hon'ble Supreme Court had observed as follows :-

" The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. "

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There has been no infirmity in the link of causation as the representation made by the plaintiff against the adverse remarks ^W has been considered and he has been advised of this consideration. We cannot therefore accept the pleading that the plaintiff was suitable for promotion and he was denied the same illegally.

7. Promotion to the post of Carriage Supdt. is made from amongst the Carriage Foremen on the basis of seniority-cum-suitability that is seniority subject to the fitness of the candidates to discharge the duties of the post from amongst persons eligible for promotion. The defendants have considered the case of the plaintiff while considering the eligible persons for filling up of the post of Carriage Supdt. It cannot therefore be said that the promotions have been irregularly made. Promotion is also a matter of administrative discretion that is the authority responsible is well within its right to decide whether a particular incumbent is suitable for the post or not. It cannot be construed as a punishment. It will be a punishment only if by an order a person is debarred for promotion for certain period and because a Govt. servant has not been considered for promotion he cannot complain in a court of law that any right of his has been infringed or that he has been denied equality of opportunity. This is ³ _{not} a fit case in which we should interfere.

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8. In the result we find that the plaintiff has no case and therefore his petition (Suit No.570 of 1983) is liable to be dismissed. The suit is accordingly dismissed. There are no orders as to costs.

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Dated the 8th Jan., 1986

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