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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 1599 of 1986

Dudhnath Harijan        . . . .        Petitioner

Versus

Divisional Personnel Officer,  
N.E.R. and Another        . . . .        Respondents.

Hon.S.Zaheer Hasan, V.C.  
Hon. Ajay Johri, A.M.

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

Civil Misc. Writ No. 2423 of 1982

Dudhnath Harijan Versus Divisional Personnel Officer, N.E.Railway and Another has been received on transfer from the Hon'ble High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985. The petitioner's case is that a written examination was held on 18.5.80 for departmental candidates for promotion from class IV to class III category. The petitioner had appeared in this examination and according to him had qualified. The petitioner was however denied his due promotion as he was unable to satisfy the whims of superior officers who were dealing with the matter and about 30 persons who obtained even less marks and were junior to him were appointed on promotion to class III category. According to the petitioner the



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respondents have not published the entire result nor given any reason why he was not being promoted. The petitioner has further said that when he raised hue and cry and insisted that he may also be promoted his salary from the month of August, 1981 was stopped. The petitioner has further stated that according to the Rules of promotion the candidates who qualify in the selection are to be promoted on the basis of seniority. The petitioner belongs to the Scheduled Caste community and therefore should have been further protected in terms of the Rules laid down in the Brochure on reservation. But he has not been considered even on that basis. Therefore he feels arbitrarily discriminated and has made a prayer for issue of a writ of mandamas, order or direction in the nature of mandamas directing the respondents to promote him to class III grade and pay him salary from August, 1981 onwards.

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2. The respondents' case is that the petitioner did not apply against a notice inviting applications from willing candidates who had completed 3 years of service, these restrictions of 3 years not applying to Scheduled Castes. These applications were to be received by 15.8.1979 according to the notification issued on 12.7.79. Since the petitioner did not apply in time he was not entitled for consideration for promotion to class III. On the date of the examination he gave



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a declaration that in case his application is found to be in time then he will be considered for selection otherwise he will not be considered for promotion. A written test was held on 18.5.80. Though he was not called for the written test, on his request <sup>by and</sup> ~~an~~ undertaking he was allowed to appear conditionally and though he had passed the written test he was not called for the interview because it was found that the petitioner alongwith 3 others had not applied in time as notified and thus their candidature was not acceptable and the declaration given by them that they had applied in time was not found to be correct. Others who <sup>by we-</sup> ~~are~~ selected had applied in time and qualified. The results of successful candidates were published on 17.11.1980. The respondents have further averred that the petitioner has been absconding from duty <sup>by from</sup> ~~on~~ 1.8.1981 and has been dealt with according to the rules. According to the respondents it is not a question of promotion of Scheduled Caste candidates which has been denied to him but his promotion has not been possible because he did not apply in time. It is not a question that he being a Scheduled Caste candidate had failed and therefore he had to be given a training and a trial promotion.

3. We have heard the learned counsel for both parties. The petitioner had put in an



34/ application requesting for summoning of certain documents and referring<sup>31</sup> to the Annexure-I of the Rejoinder Affidavit given by him where he has submitted a certificate, issued by the then Station Master Sagarpali, Ballia the Station <sup>31</sup>~~Master~~ where he was working, in regard to the submission of his application in time. The documents that he had requested to be summoned were the original receipt register maintained in the D.R.M.'s office and the entire bunch of applications which included the petitioner<sup>y</sup> and of other three applicants to determine whether the petitioner had applied in time or not. The learned counsel for the respondents had submitted a copy of a note received by him from the D.R.M.'s office dated 31.3.1987 saying that the register in which the applications were registered was not available as all such old records have been destroyed and therefore the records required could not be produced.

4. It has been admitted by the respondents that the plaintiff had passed the written test but he was not called for the interview because<sup>31</sup> <sup>it was found that</sup> his application was not submitted in time. The certificate given by the Station Master sometime in 1980 which has been placed as Annexure-RAI says that though the application from the petitioner was received by the Station Master's office 15 to 20 days prior to 15.8.79, it was handed over to the



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petitioner for submission in the concerned office. The petitioner has not been able to produce any documents to support that he had submitted the application to the D.R.M.'s office before 15.8.1979. Since the application was given to him the onus of proving that the application was given by him in time lay squarely on the shoulders of the petitioner, which he has sadly failed to prove. It is not a <sup>34</sup> singular ~~similar~~ case where only the petitioner was treated differently. According to the facts of the case there were three more applications of persons who were <sup>allowed to 34</sup> similarly ~~appeared~~ in the test and whose applications <sup>was 34</sup> also detected to have been received late and who were not called for the interview. It will <sup>34</sup> ~~therefore~~ <sup>also</sup> be difficult to place reliance on the point raised by the petitioner in his petition that since he was unable to satisfy the whims of superior officers who were dealing with the matter their being a racket in the Department in the matter of promotion, his case went by default. The petitioner was given the application after due recommendations, <sup>34</sup> if it was so <sup>34</sup> ~~made~~ <sup>given</sup> as certified by the Station Master for depositing it in the concerned office. He failed to take proper precautions and ensure its delivery within the due date and therefore it is the petitioner who is responsible for the ultimate result of his not having been called for interview and <sup>34</sup> ~~selected~~ <sup>not having been</sup> for promotion to class III. We therefore do not find any force in the contentions raised by the



petitioner and his learned counsel.

5. The petitioner has prayed that a direction may be issued promoting him to class III. In AIR 1974 SC 460 State of Mysore Versus C.R.Seshadri and Others on the subject of promotion to the next grade not being a matter of right the Hon'ble Supreme Court had observed as follows :

" In our constitutional scheme, a broad three-fold division exists. The power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the Executive. The court may issue directions but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles...."

In the petitioner's case we do not find that there has been any bad order which needs demolition or which needs reconsideration on correct principles.

6. In the result the petition No.C.M. No.2423 of 1982 is dismissed. Parties will bear their own costs.

V.C.

A.M.

Dated the 27<sup>th</sup> May, 1987

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