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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL-ALLAHABAD BENCH, ALLAHABAD.

O.A. NO. 286 of 1987

On Prakash Misra..... Applicant.

Versus

The Union of India & others..... Respondents.

Hon'ble Mr. K. Gbayya - A.M.
Hon'ble Mr. S.N. Prasad - J.M.

(By Hon'ble Mr. K. Gbayya - A.M.)

The applicant who is a supervisor, Military Farms Meerut Cantonment under the Ministry of Defence has prayed for assignment of seniority on the post of Supervisor deeming his promotion to that post w.e.f. January, 1974 or 1981 by setting-aside orders dated 26.2.86 and 5.11.86 (Annexure A-11 and A-13) rejecting his representations for fixation of seniority from due date.

2. The facts which are not in dispute are that the applicant entered service in the Military Farms as Sub-Assistant on 4.2.1963 on which post he was confirmed in due course. After passing the prescribed departmental examination courses, he was promoted as Assistant Supervisor in 1968, and Supervisor in 1985.

3. It is contended by the applicant, that though he became eligible for promotion to the post of Supervisor in 1968, after passing the departmental intermediate course and nothing adverse was noticed in his work or conduct, the promotion being on seniority consideration, he was overlooked and 17 of his Juniors were promoted. He has also contended that in all 110 persons have superceded him. The applicant represented to the department pointing out injustice meted out to him on 19.9.85 and 2.4.86 but these representations were rejected by the impugned orders dated 26.2.86 and 5.11.86 (Annexure A-11 & A-13). The applicant alleges that the action of the respondents in denying him promotion and seniority from due date, is arbitrary and illegal and that the ixm criteria and guide-lines issued by the department for considering promotions were not followed, and that he is entitled for seniority on the

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post of Supervisor w.e.f. 1974.

4. The respondents have contested the case by filing a reply. They have pointed out that appointment to the post of Supervisor was either by direct recruitment or by promotion. The applicant did not appear for the U.P.S.C. examination for direct recruitment and as such his case was considered for promotion as per rules. It is also stated that the case of the applicant was considered by the D.P.C. in April, 1984 but due to low grading he could not be promoted. Promotion to the post of Supervisor is on the basis of merit and not seniority, among the eligible candidates. The applicant however was included in the revised panel approved on 13.12.84 against a reserved vacancy and promoted on 16.2.85 after reserved vacancy was got dereserved. It is also stated that Juniors who are qualified and eligible for consideration, with higher grading in merit, supersede their seniors who are graded low, and seniority in such circumstances is inconsequential. Their contention is that D.P.C. proceedings, selections and promotions were made strictly in accordance with rules, and there is nothing arbitrary or illegal about them.

5. We have heard the learned counsel for the parties. The main thrust of the argument of the learned counsel for the applicant was that the applicant was senior and his promotion was to be made on the basis of seniority and the applicant's record being satisfactory, he ^{not} could have been by-passed for promotion on the due date when he had acquired qualifications and had passed departmental course. The action of the respondents in denying promotion to the applicant on the due date was arbitrary and as such the impugned orders cannot be sustained. The learned counsel for the respondents asserted that promotion was to be made by selection and that in accordance with the rules, the eligible candidates have to be graded according to their merit on the basis A.C.B.S., as such candidates graded as 'out standing'

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'Very Good' will rank above those graded as 'Good'. The post of Supervisor is a selection post, seniority is not the sole criteria which is and that it is merit, / the clinching factor in selections. Both the counsels referred to the promotion rules and also instructions issued from time to time and ~~interim committee~~ criteria to be followed by D.P.C. in making the selections. In Para - 6 (XVII) of the claim petition reference is made to the criteria to be followed by the D.P.C. and the criteria is to the effect that a person to be placed in the panel should be qualified and that he should have passed departmental examination and he should be included in the eligibility list and the A.C.R.S. for the last few years should be good with no adverse entry and due consideration should be given to the seniority and that there should be no departmental proceedings pending against an employee or that the employee should not be under the punishment period at the relevant time when the D.P.C. meets. The applicant has also relied on instructions dated 21.3.84 (Annexure-6) regarding the criteria for promotion of Military Farm Staff. These instructions are to the effect that the promotion should be given after fulfillment of the criteria laid down in appendix -A attached this instructions and appendix refers to one year A.C.R.S. /cattle yard and one year cultivation for the promotion to the post of ~~Asst.~~ Supervisor. The counsel for the respondents made mention of the Army Head Quarters letter dated 28.11.70 on the procedure to be ~~also~~ followed by D.P.C. Para 5 of the Counter contains the main points which mention that for promotion by selection A.C.R.S. of the eligible candidates have to be seen for five years and they should be graded as 'out-standing' 'Good and 'Very Good'. We have carefully considered these submissions. The point for decision is whether promotion to the post of Supervisor was on the basis of seniority or by selection on assessment of merit. The fact that the applicant is senior to most of the promoted candidates and also that he was superseded by juniors is not denied by the respondents. The

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respondents' case is that the applicant was graded lower in merit by the D.P.C. and his juniors who were graded higher, were promoted earlier. The respondents have also brought to our notice that the relevant rules notified by the department in 1978, copy of which is marked as C.A.-1. These rules are in supercession of 1971 Rules. In these rules it is clearly indicated that the post of Supervisor (Farms) ~~which~~ is selection post. This being the case, we do not see any merits in the contention of the learned counsel for the applicant that the applicant was entitled for promotion on the basis of seniority. It is a settled principle that where appointment or promotion to a post is by-process of selection and not seniority, juniors who have merit can supercede the seniors. In State Bank of India and others Versus Mohd. Mynuddin (AIR 1987) Supreme Court -1889. The Supreme Court held that :

" Whenever promotion ~~is~~ to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors ~~will~~ are promoted."

Denial of promotion in such circumstances will not vitiate the selection.

6. Further submission of the learned counsel for the applicant was that the applicant was communicated an adverse entry for the year 1981 and because of the said entry he was not given promotion. But the learned counsel for the respondents denied that the adverse entry was taken into consideration by the D.P.C.. According to him the entry was ignored and it was also expunged. It would appear that the applicant had made a representation against the adverse remark and the same was expunged by order dated 1.1.83. In fact the applicant had also moved the High Court of Judicature at Allahabad in a Writ Petition praying that he be promoted since the adverse remarks were expunged. The applicant represented ~~the~~ to the department for due seniority on 22.4.85. By letter dated 26.2.86 (Annexure 11) he was informed that adverse remark for

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the year 1981 was not taken into account while finalising the D.P.C. selections held during 1982 onwards and that the applicant could not be promoted because of low grading. Further the applicant was considered and included in the panel 1984. This would mean that A.C.R.S. of last 4 to 5 years would have been considered. If adverse entry was considered the applicant would not have made the selections. The fact that he was included in the panel in the year 1984, clearly confirms the contentions of the respondents that adverse remarks which were expunged later was in no way considered by the D.P.C. at the relevant time. The counsel of both the parties referred to the law on the point of selections. We have considered the contentions. It is well settled that the Tribunals or Courts cannot interfere in selections made by the selection committees. In Dalpat Abasaheb Solunke Vs.- B.S. Mahajan (AIR 1990 Supreme Court - 435) The Supreme Court held that -

"It is not the function of the Court to hear appeals over the decisions of the Selection Committees." and that the decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides occurred in the selection etc."

In U.P.S.C. Vs.- Hiranya Lal Dev and others (A.I.R. 1988 S.C. 1069) the Supreme Court has held that "Even in cases where un-communicated adverse remarks were considered by the selection committee, the Tribunal cannot direct for inclusion of the name of the affected Officer. In this case also it was reiterated that if the promotions were made irregularly, the court or Tribunal can direct the State Government to consider their cases on merits. We have also gone through the impugned order dated 5.11.86 (Annexure 13) which gives detailed reasons as to why the applicant's case for higher seniority or earlier promotion

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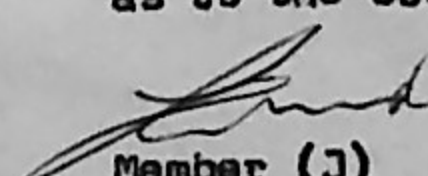
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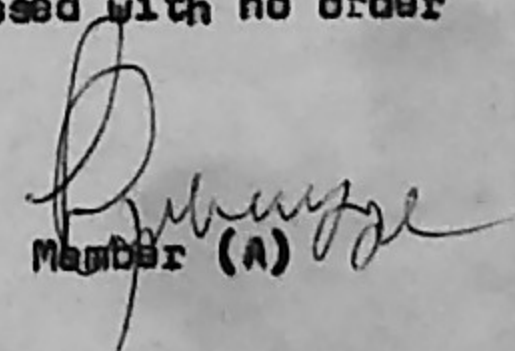
was rejected. We are satisfied that the applicant was superseded for valid reasons. It is also on record that his promotion was in reserved vacancy subject to de-reservation.

7. Having regard to the facts and circumstances of the case and also legal propositions laid down by Supreme Court, the Tribunal has limited jurisdiction to interfere in matters of selections made by duly constituted selection committees. The applicants' sole claim for seniority and promotion with effect from 1974 or 1981 is on the basis of seniority. But promotion to the post of Supervisor was not on the basis of seniority, but on the basis of merit. He was superseded by juniors who were graded superior to the applicant. In these circumstances, we do not see any ground to interfere in the selections or promotions to the post of Supervisors which are assailed by the applicants and the communications sent to the applicant by the impugned order are based on proper reasoning and factual position.

8. We consider that no case is made out to establish illegality, irregularity or malafidies in the selections made by D.P.C. and the applicant's Supersession was on valid grounds of low ranking. The applicant was informed by the department as to the grounds on which he was not entitled for seniority reckoning his promotion to the post of Supervisor w.e.f. 1974 or 1981.

9. For the reasons, discussed above, the application is liable to fail and accordingly it is dismissed with no order as to the costs.


Member (J)


Member (A)

Dated: 26th May 1992.

(DPS)