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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 717 of 1987

R.G. Sant

.... Applicant

Versus

D.R.M. Railway and others

.... Respondents

CORAM:

Hon. Mr. K. Obayya, Member(A)

Hon. Mr. A.K. Sinha, Member(J)

(By Hon. Mr. K. Obayya, Member(A))

The applicant who has since retired from service of Railways on superannuation on 31.7.87 has filed this application seeking relief that the benefit of selection in the grade of Rs.700-900 be given to him w.e.f. 11.11.86 on the basis of his success in written test held on 1.3.86 with all consequential benefits, revised pension, gratuity &c. There is also prayer for promotion in the intermediary grade (455-700) w.e.f. 16.4.80.

2. The applicant entered service of the Railways in 1956, as Commercial Clerk (Rs.110-180) and was promoted to higher grades from time to time. According to the applicant he was promoted to the grade Rs.425-640 in 1976, and was called for selection to the post of Commercial Clerk (455-700) in 1980, and though successful this grade was not given to him. He made

representation in this regard, but no action was taken. He was subsequently promoted to higher grade Rs.550-750, in 1984; but his claim for the intermediate grade (Rs.455-700) remained unconceded. The applicant appeared for selection to the higher grade of Commercial Clerk/ Inspector (Rs.700-900) in 1986, and though successful he was not given the grade. The applicant assails his non promotion to the grades (455-700) and Rs.(700-900) on the due dates i.e. in 1980 and 1986, on the basis of his success at selection as arbitrary and in violation of Roster point and principles of natural justice.

3. The respondents have opposed the case and in the reply it is pointed out that the applicant did not qualify in the selection held in 1980 for promotion to the grade (Rs.455-700). He was however given this grade due to restructuring w.e.f 5.3.1984 and was further promoted to the higher grade 550-750, as he became entitled for the same. His case for promotion to the grade (Rs.455-700) was considered during the years 1981, 82 and 83 but as he was not found suitable hence the grade was not given. The respondents admit that the applicant was successful at selection test for Commercial Clerk/Inspector (Rs.700-900), results of which were declared on 29.6.87. There were 28 vacancies, 21 in general category, 5 for SCs, 2 for STs. But the appointment order could not be given in view of the stay order issued by Jabalpur High court against promotion of SC, ST candidates in excess of the reservation quota. There were already 12 SC employees in the grade against reservation of quota of 6. The respondents also admit that one R.R. Singh was junior to the applicant, and he was

given adhoc promotion as local arrangement to the grade (Rs.700-900). Though the position was reassessed at the level senior DCS, in view of the High Court's order, promotion was not given; respondents deny of any harassment and injustice to the applicant.

4. We have heard the counsel of parties. The applicant has claimed two grades i.e. one intermediate grade (Rs.455-700) w.e.f 16.4.80, and the higher grade of Rs.700-900, on the basis of his selection and empanelment declared on 29.6.89. So far as the first claim, is concerned in Para 14 of the counter, it is stated that the applicant appeared at selection held in 1981, 82 and 83, but was not successful, and was given promotion to that grade on 5.3.89, having been found suitable. As the applicant failed to qualify at selection, his claim for the grade ~~is~~ with effect from earlier date, has no force.

5. So far as the higher grade (Rs.700-900) is concerned, it is an admitted position that the applicant was successful ~~at~~ selection and he was also empanelled. But the promotion was not given due to stay order of the High Court. The applicant has claimed, if not on reservation basis, on seniority he was entitled to be promoted in preference to ~~the~~ ^{the} seniority position of the applicant over one R.R. Singh. / The said R.R. Singh is admitted ~~that~~ ^{to} That being the case, we do not see any reason why adhoc promotion to the grade (Rs.700-900) was not given to the applicant. The respondents have come up with a case that the matter was considered, but because

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of the stay order of the High Court promotion even on adhoc basis was not given. This contention cannot be accepted; for two reasons. Firstly the stay order was not for promotions of local and adhoc arrangements, the stay was only for regular promotions. Secondly where the applicant was entitled for promotion on the basis of seniority and not on reservation, he cannot be denied promotion. The applicant has since retired on 31.7.87 and in these circumstances, we are of the view that whatever benefits the applicant was entitled to on the basis of seniority he cannot be denied. Accordingly, we direct the respondents to consider promotion to the grade (Rs.700-900) for which he was duly entitled and empanelled, on adhoc basis from the date his immediate junior namely R.R. Singh was promoted. If there is nothing adverse as to result in denial of promotion on the basis of seniority the applicant should be promoted w.e.f. from the date of promotion of his junior the said *even on active basis*. R.R. Singh, The promotion will be on notional basis and will count for ~~retiral~~ benefits. The pension, gratuity and other retiral benefits should be recalculated and differential amount paid to the applicant. This process may be completed within three months from the date of communication of this order. The application is allowed in part as above. Parties to bear their own costs.

Anurag Singh
Member (S)

Rushayre
Member (A)

Dated: 19.4.1993

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