

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, ALLAHABAD

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Registration O.A. NO. 1069 of 1987

Rama Shankar Jain ... Applicant

vs

Union of India and ors ... Respondents

Hon' Mr P.S.Habeeb Mohd, A.M.

Hon' Mr J.P. Sharma, J.M.

MOHAMED

(By Hon' Mr P.S.H. Mohd, A.M.)

Shri Rama Shankar Jain working as a Head Clerk in Loco Foreman Office, Northern Railway, Tundla, has filed ^{his} application under section 19 of the Administrative Tribunals' Act, 1985, challenging the order dated 19.6.85 (Annexure-'A') passed by the respondent no.2 i.e. Divisional Railway Manager, N.R. , Allahabad, promoting certain Head Clerks to the grade of Assistant Superintendent as a result of restructuring of group 'C' and 'D' Clerical Cadre, in which the name of the applicant finds no place, and has prayed for quashing the orders contained in Annexure-'A' dated 19.6.85 and also for further orders contained in Annexure 'C' dated 9.9.87 in which the representation of the applicant against his supersession for promotion to the grade of Assistant Superintendent was rejected intimating him also that his juniors were found suitable. He has further prayed for issue of directions to the respondents to modify the selection list to include his name at Sl.No. 19, and to give him consequential benefits w.e.f. 1-1-84. The grounds stated by the applicant in support of his case are that the seniority was never disturbed till his promotion to the post of Head Clerk, he having been appointed as a Junior Clerk on 16.11.54 and being promoted as Senior Clerk

Clerk from 1.1.1979. He worked as Senior Clerk in various Sections up to 25.2.83. He joined as Head Clerk in the scale of Rs.425- 700 in the Office of C.W.S. Tundla. Consequent on restructuring of posts in Group 'C' and 'D' clerical cadre of Mechanical Branch, a panel for promoting Head Clerks as Assistant Superintendents was prepared on 19.6.85, but the name of the applicant was dropped from the panel whereas his juniors S/Shri R.R. Talwar and S.K. Pandey were included in the panel for promotion to the grade of Assistant Supdt. He has not impleaded S/Shri R.R. Talwar and S.K. Pandey as a party in this application. The appeal filed by him against his supersession was rejected by the orders of the respondents vide Annexure 'C' referred to above; being aggrieved by his non inclusion in the panel and consequent non promotion and supersession, the applicant has filed the present application before the Tribunal.

2. In their reply the respondents stated that the Railway Board issued orders of restructuring of Group 'C' and 'D' posts of Clerical Cadre in Mechanical Branch to which the applicant belongs. As per the directions of the Railway Board, the posts arising out of the said re-structuring have to be filled on the basis of modified selection on the basis of service records and the said benefits were to be given w.e.f. 1.1.84. The Selection Board considered the cases of employees in accordance with the directions of the Railway Board and the petitioner was not found suitable and his juniors were found suitable. His representation was also rejected by a speaking order. As regards the averments made by the applicant that his record of service was unblemished and satisfactory, it is stated that as per the entries in his service record,

his services were not unblemished and in a large number of times, he has been awarded punishments. There has been no violation of any rules in considering the case of the applicant or in the rejection of his representation for promotion.

3. The learned counsel for the applicant stated that his services were satisfactory and no adverse remarks have been communicated to him after his promotion as Head Clerk and before the orders were issued superseding him and promoting two of his juniors. The learned counsel for the applicant stated that there has been a non application of mind in considering the case of the applicant and ensuing the impugned orders.

4. The learned counsel for the respondents on the other hand said that there has been no violation of rules and procedure in superseding the applicant for the post of Assistant Superintendent. His service record and ACRs were also produced for our perusal. // We have gone through all the documents including rejoinder filed by the applicant and perused also the service record and ACRs of the applicant. The orders of restructuring No. PC-III/84/UPG/9 dated 16.11.84 states as follows:

51. The existing classification of the posts covered by these restructuring orders, as "Selection" and "Non-Selection" as the case may be, remains unchanged. However for the purpose of implementation of these orders, if an individual railway servant becomes due for promotion to only one grade above, the grade of the post held by him, at present on a regular basis, and such higher grade post is classified as "Selection" post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records without holding any written and/or viva voce test. Under this procedure, the categorisation 'outstanding' will not exist."

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5. It was not disputed that it was a case of selection and in such a case the record should be seen, but no written test or viva-voce tests are held; in any case, the categorisation of 'outstanding' would not exist. Hence it is clear, that it was not an 'outstanding' service record or ACRs which are required in the case of appointment on the post of Assistant Superintendent. Of-course the ACRs show that there is a mixed record. The entries from the period from 1-4-85 to 31-3-86 were seen in which grading has been shown as 'poor'. In any case, the promotions were to be given effect from 1-1-84 as per the circular of the Railway Board, hence, this particular entry for the years 1985-86 cannot be taken into account. The only other entry produced is for the year, 1983 up to 21-7-83. Though the Reviewing Officer's entry shows that he has seen his work for 11 months only and he has pronounced him for 'not fit for promotion'. The ACRs for the period between 1983 and 1-4-1985 and 1-1-87 or for any subsequent period has not been produced. The D.P.C. proceedings also do not indicate clearly the dates up to which the ACRs were ^{considered} produced at the time of the selection. One point admitted by the learned counsel for the respondents was that he has no information whether the adverse remarks were communicated to the applicant and he was given opportunity to improve his performance. In the circumstances it cannot be said that there has been proper application of mind in accordance with the restructuring circular to the case of the applicant. We do not find that he has made out the case for granting relief at least in part. The respondents are directed to hold the meeting of D.P.C. and consider the applicant for the post of Assistant Superintendent with effect from 1-1-1984 and give him the consequential service benefits. But, he will not be entitled to the back-wages for the period for which he has not actually worked on the post of Assistant Superintendent. The applicant is nearing

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in his retirement; the respondents are directed to ~~discuss~~^{direct} implement the orders in accordance with the above discussion, within a period of two months from the date of receipt of a copy of this order. There will be no order as to costs.

J. M. S.

MEMBER JUDICIAL

P. H.
11/5/1990

MEMBER ADMINISTRATIVE

(SNS)

May 11th, 1990

Allahabad.