

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 27 day of February, 1996
Original Application No. 1244 of 1992

District : Gorakhpur

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Sh. A.P. Singh, S/o Sh. Shio Narain Singh
Working as GSTE/N.E. Aly,
Gorakhpur,
R/o Railway Colony,
Gorakhpur.

(Sri D.P. Singh, Advocate)

..... Applicant

Versus

1. Union of India,
through Secretary, Railway Board,
Rail Bhawan,
New Delhi.
2. Chairman Railway Board,
Rail Bhawan,
New Delhi.
3. General Manager,
N.E. Aly.
Gorakhpur.

(Sri Lalji Sinha, Advocate)

..... Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

The applicant in this case is aggrieved by his supersession in the matter of promotion to the grade of Rs. 7300-7600/- by his juniors. He has, therefore, filed this OA seeking a direction to the respondents to promote him to the aforesaid grade from the date his juniors were promoted with all consequential benefits. It has been further prayed that the respondents be directed to consider his case for promotion in the aforesaid grade against the next few vacancies without taking into consideration the

the entries in the ACR for the year 1989 and any other entries uncommunicated.

2. The applicant was successful in the Engineering Services Examination held in 1960 and he joined in the Central Railway in the junior scale on 20-7-1961 as ASTE. On 27-7-1965 he was promoted as DSTE and thereafter to the post of ^{deputy} ~~Divisional~~ CST¹ on 9-5-1975. He was sent to Iraq on deputation and during his deputation he was also promoted to the senior administrated grade on 1-1-1986. On his return, he was posted as CSOE in in the Eastern Railway. By a DO letter dated 13-4-1989 (Annexure-A-1) he was communicated certain entries in the ACR and he was advised to effect significant improvement in his performance. The applicant immediately made a representation to the the Member (Electrical), Railway Board against such remarks but he did not receive any reply. Meanwhile, his promotion to the grade of Rs.7300-7600 had become due but in supersession of his claim, Sri KN Jain, who was junior to the applicant was promoted. The applicant submitted representation against his supersession. Thereafter, on coming to know that further promotions to the aforesaid grade were going to be made, he met the Member (Electrical), Railway Board and also the Member (Staff). He was advised by the latter that he should make representation which he made. However, no reply was received to the same. In 1991, another person junior to him viz. Sri ~~Shiv Kumar~~ ^{Raj} was promoted and thereafter Sri J.G. ~~Kale~~ junior to the applicant was also promoted, ignoring the claim of the applicant. The applicant has challenged such supersession on

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the ground that his performance has always been of a high order, therefore, ignoring his claim for promotion to the grade of Rs.7300-7600 is arbitrary, malafide and violation of Articles 14 and 16 of the Constitution of India.

3. The respondents have filed a counter reply in which it has been stated that the posts in the scale of Rs.7300-7600 are pivotal posts in the Railway hierarchy. The officers on these posts are responsible for smooth and efficient functioning of their department and for decision making in their areas. These posts are, therefore, filled on the basis of a positive act of selection by persons of proven merit and ability, who constitute a high level selection committee. This committee comprises Chairman Railway Board, Secretary Department of Personnel and Training and the Member of the Railway Board. The applicant was duly considered for promotion to the grade of Rs.7300-7600 in 1990-91, 1991-92 and 1992-

93. However, he was not selected on the basis of his performance as reflected in his service record. It has been ^{admitted} ~~assumed~~ that mere absence of adverse entry is not a guarantee for appointment to the promotion post as selections are made on the basis of comparative merits.

4. The applicant filed a rejoinder affidavit to this counter reply in which he has denied that his non selection for promotion was on the basis of his performance reflected in the ^{service} ~~dossier~~ records. He has ^{claimed} ~~challenged~~ that the post of CSTE of S.E. Railway on which the applicant was working

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and was allowed to continue is no less important than the post of Rs.7300-7600 of any other Railway. As he performed well on that post, there is no reason why he should not be considered fit for promotion to the higher grade of Rs.7300-7600.

5. We have heared the learned counsel for both the parties and have carefully perused the record.

6. The posts in the grade of Rs.7300-7600 are admittedly selection posts. For such posts merit was overriding seniority. It is, however, only among the persons of equal merits that seniority was prevailing. It is settled position of law that no employee has a right to promotion. He has only a right to be considered for promotion. Admittedly, in this case the applicant was considered for promotion. Therefore, there is no violation of his rights but the question, however, is whether his exclusion from the panel of selection is whether arbitrary or capricious. We are aware of the settled position of law that the tribunals/courts cannot constitute themselves into a selection committee. In their limited jurisdiction, they can only see whether there has been any arbitrariness in the process of selection. We, therefore, obtained the records of the D.P.C. proceedings as well ACR Dossiers of the applicant. We have satisfied ourselves from the perusal of the records that the juniors who were promoted in supersession of the applicant were of higher merits on the basis of their performance as reflected in the ACRs than the applicant. That being so, such persons, even being junior to the applicant, have been rightly selected in supersession of

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the claim of the applicant, ~~even though such persons~~
~~are junior to the applicant.~~

7. As we find no arbitrariness in the procedure for selection or in the assessment of the performance of the applicant in comparative terms, the application must fail. The application is accordingly dismissed leaving ~~behind~~ the parties to bear their own costs.

J. Murray
Member (J)

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Member (A)

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