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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.574 of 1994.

Allahabad this the 19th day of May 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj Gen KK Srivastava, A.M.

R.C. Tripathi
s/o Shri Ram Sanehi Tripathi
aged about 38 years,
r/o Railway Quarter No.C-5, Jamuniabagh,
Kanpur.

.....Applicant.

(By Advocate: Sri S.S. Sharma)

Versus.

1. The Union of India
owned and represented
by Northern Railway, notice
to be served upon the General Manager,
Northern Railway, Baroda House
New Delhi.
2. The Chief Administrative Officer/Construction,
Northern Railway, Kashmere Gate,
Delhi-6.
3. The Divisional Railway Manager,
Northern Railway
Allahabad.
4. The Dy. Chief Engineer/ Construction,
Northern Railway,
Kanpur.

.....Respondents.

(By Advocate : Sri P Mathur)

O R D E R

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed that respondents may be directed to amend the panel dated 05.05.1993 (Annexure A-1) for I.O.W. Gr.1 and place the name of the applicant at Sl. No.14-A below Sri M.P. Singh and above Sri Rajendra Pal at Sl. No.14 and 15 respectively.

2. The facts of the case are that the applicant was appointed as Apprentice Inspector of Works Grade III in Northern Railway through Railway Service Commission,



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Allahabad on 07.03.1980. With effect from 13.03.1988, the applicant was posted as Inspector of Works Grade 1 on completion of successful training. The applicant was granted proforma promotion from 30.5.86 and in due course got promoted as Inspector of Works Grade-2 on 21.01.1988. The applicant filed representation that he should have been given promotion w.e.f 13.05.1986. He had also claimed for his proper placing in the seniority list. The representation of the applicant was allowed. He was placed in the seniority list at Sl. No.12-A below Sri M.P. Singh and above Sri Rajendra Pal by order dated 11.01.1991. Thus, up-to this stage, there is not dispute. Respondents initiated steps for promotion to the Inspector of Works Grade 1 on 17.08.1990 but as the name of the applicant was not in the seniority list he was not considered for promotion. ^{and} His name was included by order dated 10.01.1991, hence he was allowed to appear in the selection held in the year 1996. The applicant passed written examination but he could not become successful in Viva-voce. Consequently the applicant appeared in second attempt, initiated by notification dated 21.04.2002 in which he passed the written examination as well as Viva Voce and was included in the panel of successful candidates for promotion as Inspector of Works Grade-1. The grievance of the applicant is that he was not given chance to appear in the first selection because of administrative failure of respondents. He was entitled for seniority ^{on basis} of the same selection, in which the participation was denied to him.

3. Learned counsel for the applicant ^{has} submitted ^{after} that second attempt, applicant ought to have been



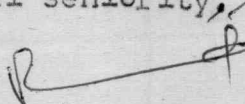
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included in the panel, even though he was ^{not a} successful in the Viva voce. For this purpose, he has placed reliance on the Railway Board Circular No.831-E/63-2-XI. dated 19.03.1976. It is submitted that the Railway Board directed that the ^{employees} ~~applicant~~ ^{were} who ~~was~~ serving on ad-hoc basis on the post for which selection took place,

^{a/} ~~he~~ should not be declared unsuitable in the interview on account of satisfactory service. In the present case, it is not disputed that the applicant was granted ad-hoc promotion of Inspector of Works Grade-1 w.e.f. 1.6.1988. Thus, in 1996 ^{when} the selection took place, ^{he} had served ^{on} that grade for 8 years. The submission of the learned counsel for the applicant is that applicant ought to have been included in the panel in view of the above circular which has been approved by Hon'ble Supreme Court in case of Sri R.C. Srivastava Vs. Union of India, S.L.P. (C) No.9866 of 1993.

4. The learned counsel for the applicant has further submitted that as the applicant has ultimately been included in the panel, he is entitled for being restored his original seniority, ^{as} ~~he was~~ ^{not} given chance to appear in the first selection, which he could not avail on account of administrative failure.

5. Sri P Mathur, learned counsel for the respondents, on the other hand, has submitted that the applicant is not entitled for the benefit of circular dated 19.03.1976 as he was given ad-hoc promotion to serve as Inspector of Works Grade-I in construction division and benefit could ~~not~~ ^{only} be availed in open line. It is further submitted that applicant ^{could be} ~~is not~~ entitled for restoration of original seniority, ^{as} ~~had~~ ^{he} been successful

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in the selection but ~~ultimately~~ ^{98 u} he failed in the earlier selection. ^uHe is not entitled for restoration of the original seniority on the basis of second selection held in 2002.

6. We have carefully considered their submissions made by learned counsel for the parties. Some of the crucial facts are necessary for determination of this controversy. The facts are that applicant was serving as Inspector of Works Grade-2 in Construction Division and he was entitled for participation in the first selection which was initiated in 1990. He was deprived of chance on account of administrative failure. ^uVide order dated 10.01.1991, ^uHe was restored his actual seniority and then he was given chance to appear in the subsequent selection which was held in 1996. In this selection applicant could only pass written examination. However, he could not be successful in Viva Voce. Consequently his name ^uhad not been included in the panel. He again appeared in the selection held in 2002 in which he was successful in both written test and viva voce and his name was included in the panel dated 24.04.2002, a copy of which has been placed before us by Sri P Mathur, learned counsel for the respondents. ^uIt is admitted that ^uhe could not be allowed to participate ^uin the first selection held in 1990. The legal position is well settled that the employee cannot be allowed to suffer on account of administrative failure on the part of respondents. ^uIt is not denied. ^uThe stand taken by the respondents that as the applicant has failed to qualify in the second selection which took place immediately after the selection in question, he is not entitled for the original seniority.

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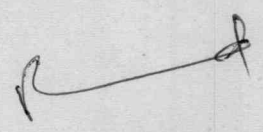
7. It is submitted that applicant could be successful only in 2002 and he is entitled for the seniority in the panel of that order. It is also submitted that the benefit of Circular dated 19.03.1976 cannot be allowed to applicant to appear in the selection as he got ad hoc chance to serve as Inspector of Works Grade-1 in the Construction Division.

8. We have carefully considered the circular dated 19.03.1976. It does not create any discrimination between ad-hoc chance ^{given} in open line or in Construction Division. From the language used, it appears that it is applicable and covers ad-hoc promotion on both sides. Paragraph 2.2 of the circular is being reproduced below:

"2.2 Panels should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad-hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment".

9. From the aforesaid intention of the Railway Board it is very clear that it applied to adhoc promotion on both sides. It is undisputed that the applicant was got ad-hoc promoted w.e.f. 1.6.1988 and in 1996 when the selection took place ^{he} ~~he~~ has served on ad-hoc basis for 8 years. In view of aforesaid submission the applicant was not entitled for the benefit.

10. It is not the case of respondents that the applicant's work was dissatisfactory while serving as Inspector of Work Grade 1 on ad-hoc basis. Hon'ble Supreme Court in case of Sri R.C. Srivastava Versus Union of India and another considered this circular and held as under:



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".....It is not the case of the respondents that the work of the appellant on the post of Law Assistant on ad hoc basis was not satisfactory. It must, therefore, be held that the applicant was entitled to the benefit of the direction contained in the Circular dated March 19, 1976. Applying the said Circular, it must be concluded that the appellant was wrongly denied selection on the basis of the marks given to him in the viva voce test.....".

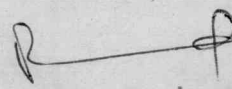
The judgment of the Hon'ble Supreme Court is squarely applicable in the present case. In the circumstance, in our opinion, the applicant is not entitled for relief.

11. If the case is considered from another angle ^{or} ~~then~~ ^{they} also applicant is ~~not~~ ^{not} entitled for the relief. He was denied chance to appear in the first selection in 1990 on account of administrative failure of respondents. To compensate him, ^{or} They cannot provide exactly similar ^{or} circumstances in which his colleague succeeded in selection. For this reason, if the applicant succeeded in second chance then also he should be entitled for the benefit of original seniority. It is not open to the respondents to say that the applicant will not be given seniority for late selection ^{which was} on account of their ^{own} action. It can not be said ^{any} with certainty that he could not be ~~un~~ ^{un} successful in the first selection. Thus, in both ways ^{or} the applicant is entitled for the relief.

11. For the reasons stated above, the O.A. is allowed. The respondents are ~~directed~~ to give applicant same seniority for which he would have been entitled, ^{had} he been selected in the selection held in 1990, he shall also be entitled ^{for} all consequential benefits which may have been given to his juniors. However, he will not be entitled for any arrears. This order shall be complied with within 3 months from the date, a copy of the order is filed before competent authority.

No order as to costs.


Member-A.


Vice Chairman