

(open court)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Dated, Allahabad, this 17th January, 2001

CORAM : Hon'ble Mr.S.Dayal, Member (A)  
Hon'ble Mr.Rafiq Uddin, Member (J)

M.A.180/01 in Original Application No.1258/95

S.P.Saxena aged about 49 years  
Son of Shri Munshi Lal Saxena  
resident of 67/3, Prem Nagar, Police Station  
Road, Jhanshi

.....Applicant

Counsel for the applicant : Shri R.K.Nigam

V E R S U S

1. Union of India through General Manager,  
Central Railway, Bombay VT
2. Controller of Stores, Central Railway,  
Bombay VT
3. Dy. Controller of Stores, Central Railway,  
Jhanshi

.....Respondents

Counsel for the respondent : Shri P.Mathur

O R D E R ( Open Court )

( Order by Hon'ble Mr.S.Dayal, AM)

This application has been filed for issuing direction to the Respondents to promote the applicant as Office Superintendent in the grade of Rs.1600-2660/- with effect from 22.1.1994 the date of which his juniors-counter-parts have been promoted.

The case of the applicant is that a scheme for restructuring selection was introduced by Railway Board vide letter dated 27.1.1993 (Annexure-A-1) and under that Scheme promotion to the post of Office Superintendent Grade II in the pay scale of Rs.1600-2660/-(Revised Pay Scale) in respect of the applicant was considered by a Departmental Promotion Committee (DPC). The Respondents have promoted juniors of the applicant namely Sarva Shri L.P.Dubey, M.A. Chaudhary, Manohar Upadhyaya, N.K.Paul

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and S.P.Upadhyaya. The applicant was not promoted in violation of the order of the Railway Board's order contained in letter dated 27.1.1993.

Arguments of Shri R.K.Nigam, Learned Counsel for applicant and Shri P.Mathur, Learned Counsel for respondents have been heard.

Learned Counsel for the applicant has relied upon an order of Division Bench of this Tribunal dated 2.11.2000 in O.A.No.1260/95 in claiming the relief in this O.A. In that order the applicant was dropped without assigning any reason. D.B. found that Railway Board had issued a clarification dated 8.10.1993 by which it was clarified that employees who are graded 'average' in C.R. should not be denied the benefits of restructuring only on account of their average reports.

Learned Counsel for the applicant has also stated that in C.R. for the year 1990-91, 1991-92 and 1992-93 no adverse remarks/report was communicated except the remarks Efficiency required to be improved. In the next year the previous entry was withdrawn vide Annexure-X to this O.A. and during 1992-93 he was graded as 'Excellent'. Since the promotion under Restructuring Scheme are required to be done on seniority-cum-fitness basis as per one time exception, Learned Counsel for the applicant contended that the applicant was thus eligible to be promoted and could not have been found unfit by the Departmental Promotion Committee (DPC) on the basis of required Annual Confidential Report (ACR). There is no punishment given to the applicant nor any departmental proceedings <sup>are pending</sup> against the applicant. Hence the applicant should have been promoted along with his juniors.



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Learned Counsel for the respondents has drawn attention to paragraph 10 of his Counter reply. It has been mentioned that the entries for the relevant period were duly communicated and the same were taken into account and it is only on the basis of the performance the applicant was not found fit. Learned Counsel for the respondents has produced copies of remarks communicated to the applicant for the year ending on 31.3.1992. The said order reads as follows :-

" Central railway  
Office of the  
DY COS JHS  
NO JHS CON 3 Pt.II.313  
Dt. 14.8.1992  
Shri S.P.Saxena  
Head Clerk

..

The following remarks recorded in the annual confidential report for the year ending 31.3.92 are communicated in the hope that you will try to effect an improvement in the direction indicated.

- (1) Tact and Temper - Below Average
- (2) Initiative and direction- Below Average  
require improvement
- (3) Reliability- Below Average

2. You are hereby informed that if you wish to make any representation against the above adverse remarks, it should be submitted to this office within a week of the receipt of this communication. If no representation is received within the stipulated time, it will be assumed that you have accepted the above adverse remarks recorded in your confidential report.

Sd/-  
DY COS JHS "

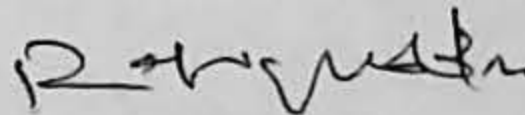
The applicant was thus not found fit on the basis of his performance.

We find that the adverse entries shown to us were withdrawn by letter dated 26.12.1992 placed as Annexure-A-10 to the O.A. There is no denial of this in paragraph 10 of the Counter Reply. Apart from we, therefore, find that there was no reason why the applicant could not

have been given the benefit of promotion under Restructuring scheme as his service record entitled him to be promoted on seniority-cum-fitness basis which was the criterion for selection under Restructuring scheme. The <sup>stated</sup> reasons for unsuitability of the applicant have been found to be non-existent. Therefore, direction as in the following paragraph ~~for issue~~ <sup>is given</sup>.

The Respondents are directed to promote the applicant with effect from the date his juniors have been promoted under Restructuring Scheme within the period of 2(two) months from the date of receipt of copy of this order. The applicant may be allowed benefits on notional basis because he was not in the post.

No order as to cost.

  
JM

  
AM

kkc