

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

* * *

Allahabad : Dated this 1st day of ~~November~~ ^{December} 1998

Original Application No.492 of 1995

District : Buxar

CORAM :-

Hon'ble Mr. S.K. Agrawal, J.M.

S.N. Pathak S/o Sudama Pathak
R/o Bharkhat P.O. Raghunathpur
Distt-Buxar

(By Sri SK Dey/SK Misra, Advocates)

. Applicant

Versus

1. Union of India
Through General Manager,
Eastern Railway,
17 Netajee Subhas Road,
Calcutta.
2. The Senior D.P.O. Eastern Railway,
Mughalsarai, District Varanasi.

(By Sri A.K. Gaur, Advocate)

. Respondents

O R D E R

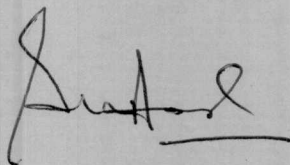
By Hon'ble Mr. S.K. Agrawal, J.M.

In this OA filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant makes a prayer to direct the respondents to consider the applicant for promotion as Head TTE in the pay scale of Rs. 1400-2300 (RPS) from the date of his employment or from the date of vacancy and to direct the respondents to make payment of leave salary of 83 days.

2. In brief the facts of the case as stated by the applicant is that the applicant entered in Railway Service on 9-3-1957 and he was retired as

TTE in the scale of pay Rs. 1200-2040 (RPS) on 30-11-1992. It is stated by the applicant that his next promotion is Head TTE in the scale of Rs. 1400-2300 (RPS), which is a non-selection post and promotion is made on the basis of seniority-cum-suitability. It is further stated by the applicant that the vacancy for the post of Head TTE came into existence in January, 1992 and after assessment of existing and anticipated vacancies, a suitability test was held and a panel was prepared and approved vide order dated 25-8-1992, in which the name of the applicant was shown at Serial No. 29, but in spite of the existence of vacancy to the post of Head TTE, the applicant was not promoted to the post of Head TTE and he was retired on 30-11-1992. The applicant made representations but nothing was done and the applicant made representations again and again but nothing was done. It is stated that the applicant was not promoted arbitrarily and illegally in spite of his empanelment and existence of vacancies. It is, therefore, requested that necessary directions be given to the respondents as sought for.

3. A counter was filed by the respondents. In the counter reply it was admitted that to fill up 24 existing vacancies of Head TTE in the scale of Rs. 1400-2300 (RPS) and 11 anticipated vacancies, action was initiated on 11-3-1992 and accordingly the panel was approved on 25-8-1992 and the name of the petitioner was figured at Serial No. 29 as per his seniority. It is stated that only 24 vacancies

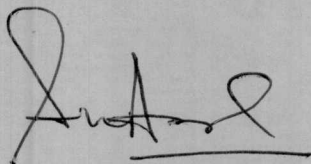


existed and there was no scope to promote the applicant against the anticipated vacancies as retirement took place only on 1-12-1992 after the retirement of the applicant. It is denied that action of the respondents in not considering the applicant for promotion was in no way arbitrary and illegal and it was emphasised that the applicant retired from Railway Service after superannuation on 30-11-1992 and which vacancy occurred on 1-12-1992. Therefore, the question of giving promotion to the applicant against an anticipated vacancy did not arise at all. Therefore, in view of the submissions made in the counter reply, the respondents have prayed to dismiss this Original Application with costs.

4. A rejoinder affidavit was also filed reiterating the facts stated in the Original Application.

5. Heard learned lawyer for the applicant and perused the written submission filed by learned counsel for the respondents as well as perused the whole record carefully.

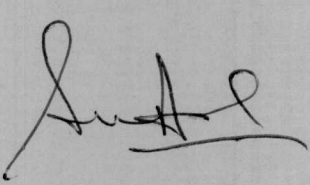
6. Learned lawyer for the applicant submitted that the applicant arbitrarily and illegally was not considered for promotion till he was retired on 30-11-1992 inspite of his empanelment and existence of vacancies. Learned lawyer for the applicant also submitted that the applicant was not paid leave salary of 83 days, whereas he should have been paid leave salary of 240 days in place of 157 days. This argument has also been objected by the learned counsel for the respondents, who submitted that the applicant was only having 157 days earned leave to his credit for which he has already been paid.



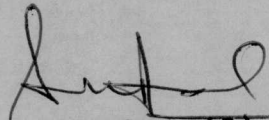
7. On the other hand learned counsel for the respondents has submitted that after empanelment of the applicant in the panel, the first vacancy occurred on 1-12-1992 after retirement of the applicant. Therefore, it was not possible to promote the applicant and, therefore, there was no arbitrariness or illegality in not promoting the applicant on the date of empanelment.

8. I gave thoughtful consideration to the rival contentions of both the parties.

9. Admittedly, to fill up 24 existing vacancies and 11 anticipated vacancies a process of selection was initiated and a panel was prepared to fill up 24 existing and 11 anticipated vacancies of Head TTE on 25-8-1992. It is also admitted that the name of the applicant was placed at Serial No.29 in the panel. On the perusal of the pleadings of the parties, it appears that the first vacancy occurred due to the retirement on 1-12-1992 whereas the applicant was already retired on 30-11-1992. Therefore, the applicant has no case for consideration of his promotion either on the date of empanelment or on the date of existence of vacancies. No arbitrariness, illegality or malafide could be established against the respondents in this case.

10. As regards earned leave to the applicant, on the perusal of the pleadings of the parties, it appears that the applicant was having only 157 days earned leave to his credit and not 240 days earned leave for which the applicant has already been paid leave salary of Rs. 14,94 1/-.


11. Therefore, this Original application is without any merit and is dismissed as such with no order as to costs.


Member (J) 1/12/98

Dube/