

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1163 of 1995

Allahabad this the 16th day of November, 2000

Hon'ble Mr.Justice R.R.K. Trivedi, V.C.
Hon'ble Mr.S. Dayal, Member (A)

N.L. Gupta, S/o Mr.D.N. Prasad, Working as Chief
Health Inspector, Grade II, N.E. Railway, Varanasi.

Applicant

By Advocate Shri Sanjay Kumar Om

Versus

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. The Chief Personnel Officer, N.E. Railway, Gorakhpur.
3. The Divisional Medical Officer(Health), N.E. Railway, Gorakhpur.
4. The Chief Medical Superintendent, N.E. Railway, Varanasi.
5. Sri B.K. Pandey, S/o Not Known, working as Chief Health Inspector Grade II, N.E. Railway, Bareilly City.
6. Sri L.M. Chatterji, S/o Not known, Working as Chief Health Inspector Grade II, N.E. Railway, Sonepur.

Respondents

By Advocate Shri V.K. Geel

O R D E R (Oral)

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

By this application under Section 19
of the Administrative Tribunals Act, 1985, the
applicant has prayed that the order dated 29.8.95

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may be quashed and a direction may be given to the respondents to promote the petitioner as Chief Health Inspector Grade II as well as Chief Health Inspector Grade I, with the seniority above to respondents no.5 and 6.

2. From the submissions made and material available on record, it appears that in 1988, various posts of Health Inspectors were decentralised. The applicant and respondents no. 5 and 6 were serving as Health Inspector Grade I. On account of decentralisation, Health Inspector^{Grade I} ^{Were} given right to exercise option for the place of posting in view of letter of General Manager dated 06/11-4-1989, copy of which has been filed as annexure-4. The respondents no.5 and 6 exercised options, accordingly they were posted in Izzat Nagar division and Sonepur division respectively. The applicant did not exercise option and he continued in Varanasi division. The respondents no.5 and 6 on account of their transfer to different divisions, were promoted earlier. The respondent no.5 was promoted in Izzat Nagar division on 10.8.1990, whereas respondent no.6 was promoted in Sonepur division on 09.8.1990. The applicant could not be promoted as Chief Health Inspector Grade II, as at Varanasi there was no post. Learned counsel for the applicant has submitted that two posts of Chief Health Inspector Grade II were transferred from Varanasi division to Izzat Nagar division, one of such post was brought back to Varanasi on

07.9.90 and then applicant was promoted on 08.9.90. By impugned order dated 29.8.1995, the respondents no.5 and 6 have further been promoted to Chief Health Inspector Grade I/In in the grade of Rs.2000-3200, whereas applicant has been transferred from Varanasi division to Sonepur division on account of vacancy, caused by promotion of respondent no.6. Aggrieved by this order, the applicant has approached this Tribunal.

3. Learned counsel for the applicant has submitted that as there was no post at Varanasi, the applicant could not be promoted. Two posts were transferred to Izzat Nagar and the respondent no.5 was promoted on one of such posts. The applicant was promoted immediately the post became available after re-transfer of the post from Izzat Nagar to Varanasi. It is submitted that the applicant was not responsible in any manner for this action and late promotion to him, was on account of in-action of the respondents. It is also submitted that the applicant was admittedly senior to respondents no.5 and 6 by more than nine years. The seniority was maintained upto 1988 when decentralisation took place. However, it is submitted that even if the promotion was given to respondents no.5 and 6 on account of their posting in different divisions, when they are being considered at the zonal level for promotion

as Chief Health Inspector Grade I, original seniority should have been maintained. The reliance has been placed on Judgment of Hon'ble Supreme Court in the case of Om Prakash Sharma Vs. Union of India and Others A.I.R. 1985 S.C. 1276. It may be noted here that option called for from the employees in the present case, was with regard to the place of posting. It has nothing to do with the right, affecting service. It is only on account of the particular circumstances in ^{the} a division, that respondents no.5 and 6 got promotion earlier. In our opinion, a decision is required from the departmental authorities. The applicant has already represented before the respondent no.2 - General Manager(Personnel), N.E. Railway, Gorakhpur, who is competent authority to decide this question.

4. Under the aforesaid circumstances, we dispose of this O.A. with a direction to General Manager(Personnel), N.E. Railway, Gorakhpur to decide the representation dated 08.9.95 of the applicant by a reasoned order after hearing the applicant and respondents no.5 and 6, within a period of 4 months from the date of copy of this order is filed. We further make it clear that if a policy decision is required to be taken, in such matter, it shall be open to General Manager to refer the matter to Railway Board for appropriate decision. We further provide that

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in order to avoid delay, it shall be open to
the applicant to file a fresh copy of the
representation alongwith copy of the order.
There will be no order as to costs.

Member (A)

Vice Chairman

/M.M./

Misc. App. 3101/01 in OA 1163/95

1-8-2001

OA No. 1163/95

Hon'ble Mr. S. Dayal, AM

Hon'ble Mr. Rafiq Uddin, JM

OIR

M.A 3101 in OA 1163/95
has been filed by Sri
P. Mathur Adv.

The same is submitted
for orders on 01/8/01.

~~Non max fax xx xx app kis anxx~~ Sri S.K.
Pandey, brief holder of Sri Sanjay Kumar
Om for the applicant and Sri Lalji Sinha,
brief holder of Sri P. Mathur for the
Respondents. Misc. Application No. 3101
of 2001 has been filed for grant of
further time for two months to comply
with the order given by the Tribunal.

This application was filed on 30.7.2001.
No objection to this application has
been filed by the learned counsel for
the applicant. We, therefore, allow
time till 15th September, 2001 to
comply with the order.


J.M.


A.M.

Nath/2cs.