

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 505 of 1999

this the 22nd day of March 2004.

HON'BLE MRS. JUSTICE S.R. SINGH, VICE CHAIRMAN
HON'BLE MR. D.R. TIWARI, MEMBER(A)

Aparapar Singh, aged about 43 years, S/o Sri Sewa Singh,
presently posted as Senior Divisional Mechanical Engineer,
Northern Railway, Allahabad.

Applicant.

By Advocate : Sri S. Agarwal.

Versus.

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The General Manager/General Manager(P), Northern Railway, Baroda House, New Delhi.

Respondents.

By Advocate : Sri P. Mathur.

O R D E R

PER JUSTICE S.R. SINGH, V.C.

The applicant, who is a Member of Indian Railway Service (Mechanical Engineering), is aggrieved by order dated 26.3.1999 (Annexure A-1) passed on his representation regarding promotion to Senior Administrative Grade (in short S.A.G.). The impugned order reads as under :

"
NO. 727 E/897/Eia/L

Headquarters Office
Baroda House, New Delhi

Dt: 26.3.1999

Shri P Aparapar Singh,
Sr. DME/N.Rly,
Allahabad.

Sub. : Aparapar Singh, Selection Grade/IRSME/
N.Rly-Request for promotion to SA Grade

Ref. : your's letter No: Misc/P/I/APA/98 dated
24.11.1998.

RSW

In reference to your letter representation No. Misc/P/I/APA/98 dated 24.11.98 on the above subject. Railway Board have informed that your claims for empanelment to SA Grade were considered in the SAG/ IRSME panel approved on 10.11.1998, you were, however not selected on the basis of your performance."

2. The matter had earlier come up before this Bench on 15.1.2004 and after hearing the counsel for the parties, ~~was~~ the following order ~~was~~ ~~were~~ passed :

"---- The applicant entered the service of respondents as a Member of Indian Railway Service (Mechanical Engineering Branch) as a result of examination held by Union Public Service Commission in the year 1978. He joined the post on 26.12.1979 as probationer after completion of two years training. The applicant joined duties as Assistant Mechanical Engineer in the year 1981. In 1983, he was promoted to Senior Scale. It appears that by order dated 9.7.1986 of the Criminal Court, the applicant was convicted and sentenced to undergo imprisonment as a result whereof he was suspended and ultimately relying upon the findings of the Criminal Court, the applicant was removed from service vide order dated 10.3.88 without holding any enquiry. The criminal appeal, however, came to be allowed by Hon'ble Punjab & Haryana High Court vide order dated 7.8.1992 whereafter the applicant preferred an appeal for recall of the order of removal and for reinstatement in service. The applicant was re-instated in service with all consequential benefits. The applicant was posted as Divisional Mechanical Engineer (power) Jodhpur, by order dated 19.8.97 on which post he joined his duties on 28.8.97. Subsequently, vide order dated 11.9.1998, the applicant was promoted to Junior Administrative Grade with a stipulation that after one month from the date of joining, he would get selection grade (a non-functional grade). The said order was received by the applicant on 16.10.1998 and he joined the post of Dy. Chief Mechanical Engineer in Junior Administrative grade on 28.10.98. Since reinstatement of the applicant was made with all consequential benefits, it was decided by order dated 5.12.1997 that full pay and allowances for the period of suspension from 24.10.1986 and 10.3.88 (the date of his removal) and also for the period from the date of his reinstatement would be granted to the applicant and the period from 24.10.1986 till the date of reinstatement would be treated as period spent on duty for all purposes.

2. The applicant is, however, aggrieved by denial of promotion to Senior Administrative Grade to which grade his juniors came to be promoted in pursuance to the panel approved on 10.11.1998. In the counter affidavit, it has been alleged that though the applicant was considered alongwith other eligible candidates, but he was not selected on the basis of his performance as has been mentioned in para 3(iii) of Ministry of Railway's letter dated 26.9.89. It has been submitted by Sri S. Agarwal, learned counsel appearing for the applicant that there was no valid material on the basis of which the performance of the applicant could have been appreciated by the relevant DPC for promotion to the post of SAG/IR SME. The applicant, it is not disputed, was not in service from 24.10.1986 to 27.8.1997 and had no occasion to show his performance. The question that arises for consideration is as to what was the

material before the DPC on the basis of which the performance of applicant was appreciated.

3. We are of the view that it would be necessary in the interest of justice to have a glance over the record and the material, if any, on which the performance of applicant and other eligible candidates was adjudged. Sri P. Mathur is accordingly directed to produce the record of the relevant DPC on the next date for perusal of the Tribunal.

List as part heard on 22.3.2004."

3. Sri P. Mathur, learned counsel for the respondents has produced the minutes of the DPC held on 28.10.98. ^{the case of the applicant was deferred} perusal of the minutes of the Board would indicate that since the applicant had been removed from service in March'88 and he was reinstated in July'97, with the result that at the time of Board's meeting, the applicant had earned only one ACR for the year ending March'98, which was available for consideration before the Board. The Board, therefore, decided that Sri Aparapar Singh should earn atleast one more report for being considered for empanelment to SAG." In the DPC held on 1.6.2000, the applicant was selected for promotion to SAG on the basis of three consistently 'Very Good' ACRs earned by him after he was reinstated in service. The report, according to the Selection Board met the Bench mark for promotion to SAG. The applicant was accordingly recommended for empanelment to SAG.

4. The grievance of the applicant is that ~~the~~ the language in which the impugned order has been passed, is suggestive of the fact that the applicant was not found suitable for promotion, whereas, according to the minutes of the DPC held on 22.10.98, the case of the applicant was practically ~~deffered~~ so as to enable him to earn atleast one more report for being considered for empanelment as SAG.

5. Sri Sudhir Agarwal, learned counsel appearing for the applicant submits that the expression "you were, however, not selected on the basis of your performance" used in the impugned order dated 26.3.1999 is suggestive

Ref:

of the fact that on the basis of his performance, the applicant was not selected, which in other words may be tantamount to rejection. Admittedly, the applicant was reinstated in Senior Time Scale on 28.8.97 pursuant to the order dated 9.8.97 and he was promoted to J.A.G. vide order dated 11.9.98 to which post he joined on 28.10.97. As per the stipulation contained in the order dated 11.9.98, the applicant was given promotion to a non-functional grade on expiration of a period one month and since the applicant had been deferred in the DPC held on 22.10.98, therefore, he was entitled to be re-considered for promotion to SAG by a review DPC with due date. Therefore, the impugned order is to be read accordingly.

6. We accordingly dispose of this O.A. with a direction that incase the applicant prefers a representation for promotion to SAG with due date, the same shall be considered in accordance with law and in the manner in which a deferred candidate is considered. The impugned order dated 26.3.99 shall not come in the way of the applicant being considered by review DPC for empanelment as SAG w.e.f. the due date. Parties are directed to bear their own costs.

Dinesh
MEMBER (A)

Ranjan
VICE CHAIRMAN

GIRISH/-