

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 1167 OF 1999

ALLAHABAD THIS THE 7th DAY OF FEBRUARY, 2008

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J
HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

R.K. Mittal, Aged about 56 years, S/o late Raghu Nath Mittal alias Raghomal, R/o Adarsh Colony, Posted as Senior Postmaster, Ghaziabad.

.....Applicant

(By Advocate Shri A. Srivastava)

V E R S U S

1. Union of India through Secretary-cum-Director General, Department of Posts, Ministry of Communication, New Delhi.
2. The C.P.M.G., U.P. Circle, Lucknow.

.....Respondents

(By Advocate: Sri S. Singh)

O R D E R

BY SHAILENDRA PANDEY, MEMBER-A

Through this O.A., the applicant has challenged the order dated 23.7.1998 (issued by respondent no.1) in terms of to which certain promotions were made to the Junior Time Scale of the Indian Postal Services Group 'A' in which the petitioner has been superseded by his juniors.

2. The learned counsel for the applicant has contended that the applicant since the date of his appointment (he was appointed as Clerk on 16.11.1964, then promoted to the post of Inspector

after passing the relevant examination on 13.10.1972 and was then promoted to Group 'B' Postal Services on 4.12.1990 alongwith the 1990 batch) has been discharging his duties to the entire satisfaction of his superiors and has never given any occasion to the superiors to warrant their displeasure, nor has ever been communicated any adverse remarks or displeasure so far. Infact, he mentions, that the applicant was also given a chance to work in an officiating capacity in Group 'A' service from 1.5.1998 to 31.7.1998. He has, therefore, challenged the order dated 23.7.1998 as a result of which junior persons of the 1990 and 1991 batches have been given promotion to Group 'A' services ignoring the applicant. In this connection, the learned counsel for the applicant has also taken us through various orders regarding writing of Annual Confidential Reports by the Reporting Officer and review thereof by the Reviewing Officer. These orders interalia lay down that whenever an adverse remark is made against an Officer, the same needs to be communicated. He has also referred to judicial decisions that no action should be taken on the basis of un-communicated adverse remarks. He, therefore, contends that in the absence of any adverse entry having been communicated to him, the applicant has a reasonable, legitimate and genuine expectation that he should have been given promotion on the Post of Junior Time Scale. He has also referred to the judgment in the case of Charan Singh

Vs. Union of India and Others reported in 2000 (1) SLJ CAT 97 in which the officer concerned had Outstanding gradings for three years and the same were down-graded, and it was held to be incumbent upon the authority to communicate any adverse material down grading an officer as well as in the case of fall in Outstanding performance to the Officer. The applicant's counsel also contends that various judgments of the Apex Court lay down that any grading below the Bench mark has to be treated as adverse. He, therefore, contends that the order denying the promotion to the applicant is bad in law as the applicant has been denied promotion "without any due and proper scrutiny of all the materials' and without application of mind particularly when not even a word of adverse entry was ever communicated to the applicant during the relevant period."

3. The respondents' counsel has pointed out that the applicant in this case was not recommended for promotion to the Junior Time Scale Group 'A' of Indian Postal Services by a duly constituted DPC held in accordance with the Indian Postal Services Group 'A' Rules 1987. According to these Rules, promotion to the Junior Time Scale in the service is by 'selection on merit' from amongst officers regularly appointed to Postal Services Group 'B'. He has also emphasised that seniority is not the criterion, but infact it is selection on merit. He

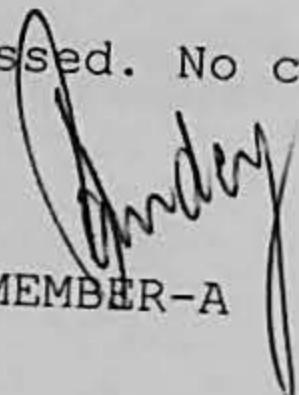


has also pointed that the Bench mark for promotion is 'Good' and those graded 'Outstanding' and 'Very Good' are placed above those graded as 'Good'. Further, the DPC held in June, 1998 by the Union Public Service Commission duly assessed the performance of the officers in the zone of consideration and recommended a select panel for promotion drawn up as per the relevant rules. The applicant was not placed in the select panel and as the promotion was by selection, he cannot claim the promotion on the basis of seniority alone. He has also mentioned that the applicant's contention that he was superseded does not mean that he was "under assessed".

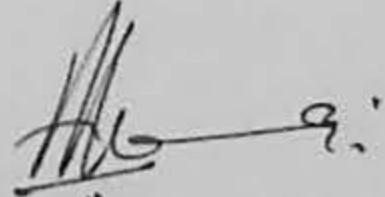
4. We have heard the learned counsel for the applicant and the respondents and have also gone through the pleadings on record and judicial pronouncements on the subject and we have also gone through the DPC proceedings in this case, which were produced to us by the Postal Department and are of the view that the legally constituted DPC in this case was held in conformity with the Rules, there was clear application of mind, and after consideration of all aspects and Bench mark in this case, the applicant was not recommended for promotion. It is now well settled that a legally constituted DPC enjoys full discretion to devise its own method and procedure for objective assessment of the suitability and merit of candidates and that

action of the DPC proceedings which have been conducted in accordance with the standing Government instructions and the Rules is not warranted. We, therefore, find no reason to interfere in this case. As regards the applicant's contention that no adverse remarks had been communicated to him, it is noted that the rules prescribe only communication of adverse remarks and not remarks that are otherwise not adverse e.g. average etc. The decision relied by the learned counsel for the applicant is not applicable to the facts of the case.

5. In view of the above, the O.A. fails and is dismissed. No costs.



MEMBER-A



MEMBER-J

GIRISH/-