

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

THIS THE 9TH DAY OF February 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)

Original Application No. 216 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Suresh Chandra Pandey, son of late I. S. Pandey, Senior Section Engineer (Works) North Eastern Railway, Bareilly City.

.....Petitioner

V E R S U S

1. Union of India through General Manager, North East Railway, Gorakhpur.
2. Senior Divisional Engineer, (Coordination) North Eastern Railway, Izatnagar, Bareilly.
3. Senior Divisional Personnel Officer, North Eastern Railway, Izatnagar, Bareilly.
4. Mahesh Chandra son of not known, Presently posted as Section Engineer (Works) North Eastern Railway, Kannauj.

.....Respondents

Present for the Applicant: Sri A. S. Diwakar

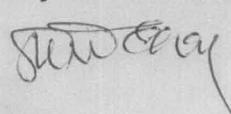
Present for the Respondents: Sri Anil Kumar

O R D E R

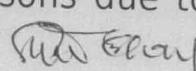
(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER (J))

Under challenge in this O.A. is the order dated 08th June, 2004/Annexure-II and 14th July, 2005/Annexure-V passed by the respondents. The brief facts of the case are as follows:-

2. Instant O.A. has been instituted for challenging the promotion under upgrading scheme which was to be granted to the senior most employees looking to the service record

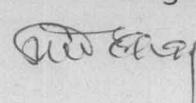


and judging the suitability. That the promotion was not allowed to the applicant although he was senior most employee. He made representation to the respondents for passing a reasoned and speaking order but the representation was decided by a cryptic and a non speaking order. That in the cadre of Junior Engineer (Works) in the Engineering Department at Izzatnagar Patna in the seniority list the name of the applicant was shown at serial no.2 whereas the name of Mr. Mahesh Chandra respondent no.4 was shown as serial no.6. Annexure A-1 is the copy of seniority list. That the applicant was appointed on 12th January, 1982 whereas Mahesh Chandra respondent no.4 was appointed on 29th November, 1991. Thereafter the applicant was promoted to the Junior Engineer (Works) on 7th January, 1987 whereas Mahesh Chandra was promoted on the post on 13th February, 1997. In all respect Mahesh Chandra was junior to the applicant. That certain up-gradations were made in accordance with up-gradation scheme dated 1st November, 2003 issued on 29th March, 2004 and in view of the scheme certain promotions were to be made by the modified selection process by considering the seniority, service record and confidential report. That Mahesh Chandra respondent no.4 was promoted ignoring the seniority of the applicant. The representation was made to the respondents. A query was also made in order to appraise the applicant for the reasons due to which he was ignored.

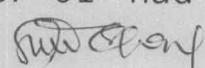


Despite several reminders, representation of the applicant was not decided, hence the O.A. no.351/2005 was filed and the OA was decided on 4th April,2005 and respondents were directed to decide the representation of the applicant dated 31st June 2004 within a period of two months by a reasoned and speaking order. The representation was decided and the operative portion was communicated to the applicant vide letter dated 14th July, 2005 by Divisional Railway Manager (P) Izzatnagar. Annexure-5 is the copy of the letter dated 14th July, 2005. And thereafter the complete order was communicated to the applicant. In the modified selection process seniority was the main criteria unless something is seriously adverse/against the employee in the service record. That the applicant has the unblemished record and has discharged services to the best satisfaction of his seniors. There is nothing adverse against him. In order to agitate his matter he approach^{ed} before the judicial forums and it may be possible that the respondents were aggrieved from him as the seniority of the applicant was ignored arbitrarily, illegally and preference was given to the Mahesh Chandra juniors to the applicants, and hence the O.A.

3. Respondents contested the case and filed counter reply. It has been admitted by the respondents that the applicant was posted as Junior Engineer Grade-I in the pay scale of ₹5500 - 9000/- in Engineering Department of



Izzatnagar Division. In terms of Para 4 of the Railway Board letter dated 6th January 2004 read with earlier letter dated 9th October, 2003 for one time exemption in Re-structuring of Cadre w.e.f. 1st November, 2003 these posts were to be filled by modified selection process on the basis of service records and confidential reports of the senior most employees without holding any written & viva-voce test. The service records and confidential reports of the applicant was scrutinized with other eligible staff by the duly constituted committee of three junior Administrative Officers for promotion under the restructuring scheme w.e.f. 1st November, 2003 for the post of Section Engineer(Works) in the scale of ₹6500-10500. And in the scrutiny applicant was not found suitable by the committee, and hence the next junior to the applicant was Mahesh Chandra and he was considered and approved by the committee. On the representation of the applicant in pursuance of the order passed in O.A. No.351 of 2005 was decided by a reasoned and speaking order on 14th July, 2005. It was specifically mentioned in the order that applicant's confidential report and service record were considered for the purpose of promotion and the same was not found suitable for promotion. It is a fact that the seniority list was published on 01st April, 2002 and the name of the applicant and Sri Mahesh Chandra is placed at Sl. No. 02 and 06 respectively. The employee at Sl. No. 01 had already retired and



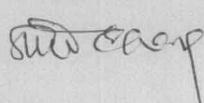
employees at Sl. 03, 04 and 05 had qualified for the post of Section Engineer (Works) before implementation of the restructuring w.e.f. 01st November, 2003 for the post of Section Engineer in the scale of ₹6,500-10,500/- and hence next junior Sri Mahesh Chandra was due for consideration and he was found suitable for promotion on the basis of service record and confidential report in accordance with the Railway Board's letter dated 6th January, 2004 and 9th October, 2003 for one time exemption under restructuring of cadre. These posts were filled up by modified selection process on the basis of service record and confidential report of the senior most employee without holding any written or viva-voce test. That applicant was not suitable on the basis of service record and confidential report hence he was not promoted rather junior to him was promoted. And the O.A. lacks merit and the same is liable to be dismissed.

4. We have heard Mr. A.S. Diwakar, Advocate for the applicant and Mr. Anil Kumar Advocate for the respondent nos.1 to 3 and perused the entire facts of the case. It is undisputed fact that applicant was senior to Sri Mahesh Chandra/respondent no.4 and it is also a fact that in view of Railway Board's letter no.PC-III/03/CRC/6 dated 6th January, 2004 read with letter dated 9th October, 2003 under restructuring of the cadre w.e.f. 1st November, 2003 the post were to be filled up by modified selection process on the

Subrata

basis of service record and confidential report of the senior most employee without holding any written or viva-voce test. It has been alleged by the applicant that as he was the senior most employee and having unblemished record and has discharged services to the best satisfaction of his seniors but he was not promoted by the respondents ignoring his seniority and service record and a junior person to the applicant was promoted.

5. It has been alleged by the respondents that according to the seniority list published on 01st April, 2002 the name of the applicant appeared at Sl. No.2 and the name of Sri Mahesh Chandra/Respondent No.4 appeared at Sl. No.6. Annexure-1 is the copy of the seniority list. And the same has been admitted by the respondents also. It has further been alleged by the respondents and not disputed by the applicant that the employee at Sl. No.01 namely Sri Harish Chandra Pandey had already retired and the employee at Sl. Nos. 03, 04 and 05 namely S. K. Tripathi, Upendra Nath Mishra and Ashok Kumar Sharma had qualified for the post of Section Engineer (Works) before implementation of the restructuring w.e.f. 01st November, 2003 for the post of Section Engineer in the scale of ₹6,500-10,500/- this fact has also not been disputed either by the applicant or by any other person, hence we are not required to decide that as to how these employee junior to the applicant had qualified for the post of



Section Engineer (Works) in the scale of ₹6,500-10,500/-.

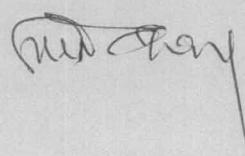
Before us it is not an issue to decide that as how these juniors were permitted to qualify for the post of Section Engineer before implementation of restructuring w.e.f. 01st November, 2003. It has been alleged that as the name of the applicant is placed at Sl. No2 of the seniority list and the name of Sri Mahesh Chandra was at Sl. No.6 and hence Sri Mahesh Chandra was junior to the applicant. According to the respondents also Mahesh Chandra was junior to the applicant. Sri Mahesh Chandra Joined respondent no.4 was appointed on 29th November, 1991 whereas, applicant had joined on 7th January, 1985 much earlier to the appointment of Mahesh Chandra. But as juniors in between applicant and Mahesh Chandra applicant had already qualified for promotion to the higher scale hence the next junior person was Mahesh Chandra/respondent no.4. It has been argued by the learned counsel for the respondents that under restructuring scheme selection was to be made according to the modified scheme and written test or viva-voce was not to be conducted but only screening of service records and confidential reports was to be conducted by a committee of three persons. Letter dated 6th January 2004 No.PC-III/05 RBE No.05/2004 is the modified scheme laid down by the Railway Board for making promotion under the restructuring scheme. It will be relevant to reproduce the relevant portion of this letter:-

Subdew

"The existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be, remains unchanged. However, for the purpose of implementation of these orders if an individual Railway servant becomes due for promotion on to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/or viva-voce test. Naturally under this procedure the categorization as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation".

6. From the above it appears that the post under restructuring of the Railway were to be filled up by the selection and the selection will be based only on service record and confidential reports without holding any written or viva-voce test. The committee was constituted in order to fill up the post by scrutinizing the service records as well as confidential reports of the candidates.

7. It has been alleged by the respondents that as the service records and confidential reports of the applicant were not satisfactory whereas the confidential reports and service records of the junior person namely Mahesh Chandra is satisfactory, hence he was promoted in view of the modified scheme as provided in Railway Board's letter. The respondents produced the service records as well as

A handwritten signature in black ink, appearing to read "Mahesh Chandra".

confidential reports of the applicant along with the proceedings of the selection committee. We have examined the service records of the applicant and from perusal of the service records of the applicant it appears that the service records of the applicant were not unblemished, adverse entries and censure entries were recorded against him. Charge sheet was also submitted against the applicant and moreover, the confidential reports were also examined by the committee and we have also perused confidential reports filed in the sealed cover by the respondent's advocate. The confidential report of 2002 was not available and in the year 2001 the applicant was rated as 'Average', in the confidential report of the year 2003 certain entries were reported against the applicant. Under these circumstances the entries of the year 2001 and 2003 were considered as 'Average' and as the confidential report of the year 2002 was not available hence it was considered as 'Good'. Under these circumstances at the time of consideration for promotion one entry was 'Good' and for the two years the entries were 'Average' and under these circumstances on the relevant date i.e. 2003 the applicant was not found suitable by the committee. The case of the respondents No.4/Mahesh Chandra was also considered and it was found that in the year 2001 and 2002 entries as 'Very Good' and in the year 2003 entry was recorded as 'Outstanding' hence in comparison to the applicant Mahesh Chandra was found most suitable and

M. Chandra

hence the order was passed for his promotion. We have stated above that in view of the Railway Board's circular letter the service record and confidential report of an employee was to be considered by the committee in order to promote the senior most employee under restructuring scheme of the railway and as the confidential report of the applicant was not upto the marks hence he was not promoted. No such letter has been produce before us that irrespective of the fact that 'Average' entries were recorded in the name of senior most employee but even then he must be given promotion ignoring 'Average' entries in view of the Railway Board's letter the confidential reports were to be examined and the confidential reports were the basis for giving promotion and as the service records as well as entries of the applicant were not upto the marks and hence he was not considered and not promoted rather the next junior namely Mahesh Chandra was approved for promotion. Under these circumstances there appears nothing abnormal for ignoring the seniority of the applicant. Learned counsel for the respondents also produce a letter of the Railway Board dated 23rd September, 1991 in this letter ^{it} ² has been provided that what should be ^{the} ² procedure for filling up selection and non-selection posts in Group 'C' cadre it will be appropriate to reproduce this letter "Board's letter of 15th October, 1976 only says that 'Average' is not adverse. It does not say that

SWEDEN

'Average' employee be promoted. Therefore, there should have been no confusion.'

As far as promotion of employees who have one good report and two average reports it is clear in para 2 of this office letter of 21st May, 1991 that only those employees whose last report is good and earlier two reports are average should be considered for promotion. It implies that an employee who during last 3 years has two reports as average and one as good and whose good report is not the latest one may not be considered for promotion.¹¹ Hence in this letter also it has been provided that an employee who has got two average entries shall also be considered for promotion. But it does not mean that irrespective of the fact that there were average entries even the senior person must be promoted. In the present case there were two average entries recorded in the confidential report of the applicant and entries of one year was not available hence it was presumed that it is good but even then in this letter of the Railway Board that an employee whose good report is not the latest one may not be considered for promotion. Hence we are of the opinion that there was sufficient ground for the respondents to ignore the seniority of the applicant as character role was not satisfactory and when his character role is not satisfactory then only service record and confidential report of next junior employee shall be considered and accordingly the case of

Sunday

Mahesh Chandra was considered by the committee and his service record were found satisfactory and he was approved by the committee for promotion it can not be said that some injustice has been done by the respondents but as the performance of the applicant was not satisfactory and as the confidential reports were not upto the mark hence rightly the applicant was not promoted.

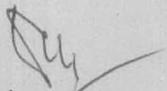
8. For the reasons mentioned above we are of the opinion that as the service records and confidential reports of the applicant was not satisfactory and upto the marks hence he was not considered for promotion and his next junior Mahesh Chandra was considered as most suitable in view of the service record and confidential reports hence he was approved for promotion and it can't be said that injustice had been committed against the applicant by the respondents.

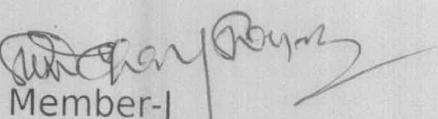
But it must be stated that the applicant has been ~~substituted~~ ^{superceded} forever but whenever there will be vacancy in the higher scale then he will be considered in view of the latest confidential reports and he will not ^{be} ~~ignored~~ permanently. The orders for promotion of Mahesh Chandra/Respondent No.4 are perfectly justified in accordance with Railway Board's letter. The O.A. lacks merits and the same is liable to be dismissed.

9. O.A. is dismissed. No order as to costs.

(Signature)

Let the Confidential report of the applicant may be returned to the learned counsel for the respondents.


Member-A


Member-J

/Dev/