

**CENTRAL ADMINISTRATIVE TRIBUNAL**

AHMEDABAD BENCH

**O.A. NO.**

440 of 1992.

**~~T.A. NO.~~**DATE OF DECISION 2-8-94Shri <sup>m.</sup> N.R.Nair PetitionerShri A.K.Chitnis Advocate for the Petitioner (s)

Versus

Union of India and ors. RespondentShri N.S.Shevde Advocate for the Respondent (s)**CORAM**

The Hon'ble Mr. K.Ramamoorthy : Member (A)

The Hon'ble ~~Mr.~~ Dr.R.K.Saxena : Member (J)**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

48

: 2 :

<sup>m.</sup>  
Shri/N.R.Nair,  
4, Jayendrapark,  
Co-operative Housing Society,  
Near 'D' Cabin,  
Sabarmati,  
AHMEDABAD - 380 019.

...Applicant.

(Advocate : Mr.A.K.Chitnis)

Versus

1. Union of India,  
Notice to be served on  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
2. General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
3. Divisional Railway Manager,  
Western Railway,  
Baroda Division,  
Pratapnagar,  
Baroda - 390 004.

...Respondents.

(Advocate : Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 440 OF 1994.

Date : 2-8-94

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The present application is against the denial to the present applicant of promotion to senior scale on the due date. The applicant was ultimately promoted on 30th November, 1993, and has also since retired from the Railways on 31.5.1994.

...3..

2. The applicant had joined the Railways in 1957 in Grade 'C' Service and after serving in this category, was included in the panel of Asstt. Personal Officer on 25th November, 1988. He was also promoted as A.P.O. (Headquarters) under order of 3rd May, 1989. In the Select List of 25th November, 1988, he was shown at Sr.No. 17. However, when the next promotion to the senior scale was given, one person Shri M.C. Jose listed below him was promoted on 25th March, 1992. Subsequently, the applicant, as stated earlier, was given the senior scale on 30th November, 1993. It is the claim of the applicant that he should have been given the senior scale in 1992 when Shri Jose was promoted.

3. The respondents have taken the plea that the Selection Committee which met for the purpose of drawing up of the promotion list had considered the case of applicant but had found him 'not fit' to be promoted while it found Shri Jose to be fit for promotion in accordance with the orders of the Railways Board. Thus, while the case of applicant was duly considered, the D.P.C. found Mr. Jose to be more deserving based on the C.Rs.

4. We had called for the proceedings of the D.P.C. We have also gone through the C.Rs. of the present applicant.

5. The post of the A.P.O. (Senior Scale) is a Class-II post and the Rules prescribed, for promotion provide the basis of "seniority subject to fitness". This is contained in the letter of Railway Board No. EGP/75/1/58 dated 27th February, 1968. The respondents have also agreed that the promotion is based on these guidelines. Railway Board have further indicated, vide its letter No. EGP/85/6 dated 1st March, 1990, that the Departmental Promotion Committee should categorise the officers on the basis of overall assessment of the reports and not merely on the basis of grading that might have been given in the individual C.Rs. It is further stipulated that merit for fitness should be not less than 'good'. On going through the proceedings of the D.P.C. we find that the D.P.C. has chosen to give extra weightage on the basis of the 'outstanding' C.Rs. obtained and on that ground, Mr. Jose was selected in preference to the applicant. D.P.C. itself recognised the fact that the present applicant has a C.R. which is not less than 'good'.

6. On the basis of actual content of the C.Rs. and, not merely on the basis of grading of fitness assigned therein as specifically stipulated by the Railway Board's letter dated 1.3.1990 which has been taken by the D.P.C. itself as basis, the case of the applicant for being considered 'not' fit does not arise. If a person is fit, seniority has to be the criterion and, therefore, the D.P.C. has erred in not considering the applicant fit for promotion when  
~~it~~

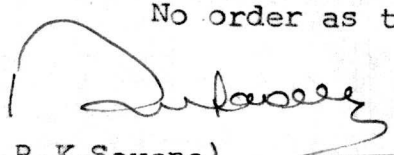
: 5 :

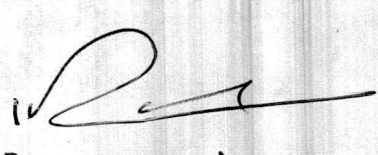
it has considered the person next below him as fit for promotion.

7. Under the circumstances, the impugned promotion order based on the meeting of the D.P.C. is quashed. The assessment made by the DPC in respect of the petitioner as 'not yet fit' is set aside and quashed. The respondents are directed to have a review D.P.C. convened to review the case of the petitioner in the light of the standards fixed for promotion to the Sr. scale of A.P.O. and pass necessary orders in accordance with the recommendations so made by the Review D.P.C. In case the D.P.C. now assesses the petitioner is fit for promotion, he should be entitled to all consequential benefits flowing from his promotion from the date his next junior was promoted as S.O. on the basis of the original D.P.C. proceedings of August, 1991. We further direct that the respondents shall complete the review D.P.C. without expedition and preferably within 12 weeks from the date of communicating of this order.

The O.A. is allowed as above.

No order as to costs.

  
(Dr. R. K. Saxena)  
Member (J)

  
(K. Ramamoorthy)  
Member (A)

ait.