

111
5

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.132 of 1986.

Date of decision : July 15, 1987.

A.Venkat Rao

...

Applicant.

Versus

Union of India and others ...

Respondents.

For Applicant : M/s.C.A.Rao, C.M.K.Murty &
C.V.Murty, Advocates.

For Respondents : Mr.Ashok Mohanty, Advocate.

C O R A M :

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MR.S.D.PRASAD, MEMBER (ADMINISTRATIVE)

-
1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ?
 2. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
-

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, Annexure-3 promoting the Respondent No.3 to the post of Permanent Weigh Inspector, Grade II is under challenge.

2. Shortly stated, the case of the applicant is that he was appointed as Gangman in the Openline in 1953 and in the year 1960 he was appointed as a Mate. On 1.12.1962 the applicant was appointed as Permanent ^{Way} ~~Weigh~~ Mistry and he was confirmed as such on 1.4.1977 in the Construction line. On 15.10.1977 the applicant was promoted to the post of Permanent ^{ay} ~~Weigh~~ Inspector Grade III and some time thereafter he was transferred to Cuttack in the same official status and joined the Regirdering project. According to the applicant, Respondent No.3 was appointed as Permanent ^{ay} ~~Weigh~~ Inspector, Grade III in the year 1982. The competent authority vide Annexure-3 dated 4.6.1986 ordered promotion of Respondent No.3 to the post of Permanent ^{ay} ~~Weigh~~ Inspector, Grade II on ad hoc basis. Being aggrieved by this order of promotion the applicant has invoked the jurisdiction of this Bench for interference.

3. In paragraph 1 of the counter the Respondents state " That, the averments made in para 1 of the application are fact on record and not disputed. " In paragraph 1 of the application the applicant states his different appointments on different dates which are not disputed. In paragraph 3 of the application the applicant has stated that Respondent No.3 was appointed to Permanent ~~Weigh~~ Inspector, Grade III in the year 1982. This fact has not been denied in the counter; yet it is

maintained on behalf of the Respondents that the promotion order given under Annexure-3 is only on ad hoc basis specifically stating therein that this would not confer any right over Respondent No.3 to claim seniority over others who would be determined seniors to Respondent No.3 and Respondent No.3 would also have no claim for the post on permanent basis.

4. We have heard Mr.C.V.Murty, learned counsel for the applicant and Mr.Ashok Mohanty, learned counsel for the Railway Administration. The fact that the applicant is senior to Respondent No.3 is sufficiently borne out from the facts stated in the application accompanied by an affidavit and therefore, it was not rightly disputed at the Bar. True it is, that the promotion given to Respondent no.3 is purely on ad hoc basis. But even if it is on ad hoc basis we find no justifiable reason as to why an officer admittedly senior to the other should not be given the opportunity of a promotional post. In this connection, we would like to notice the provisions contained in Para 320 of the Indian Railway Establishment Manual which runs thus :

" 320. Seniority on promotion to non-selection posts.-

- (a) Promotion to non-selection posts shall be on the basis of seniority-cum-suitability, suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination or a trade test as considered necessary and the record of service. The only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the seniormost suitable railway servant to officiate in a short term vacancy not exceeding two months as a rule and four months in any case. This will, however, not give the railway servant any

advantage not otherwise due to him. A railway servant, once promoted against a vacancy, which is non-fortuitous, should be considered as senior in that grade to all others who are subsequently promoted. The suitability of a railway servant for promotion should be judged on the date of the vacancy in the higher grade, or as close to it as possible.

xx xx xx ."

In view of the above quoted provision we have no doubt in our mind that the Railway Ministry or Railway Board do not want any junior to even avail the promotional post on a stop gap basis or on ad hoc basis, except that where public exigencies require such action to be taken and even if such action has been taken the matter should be finalised within two months and never later than four months. Mr. Ashok Mohanty, learned counsel appearing for the Railway Administration submitted before us that the applicant having worked in the Bridge Regirdering project and Respondent No.3 having worked in the Construction line there are two channels open for promotion and therefore, the applicant cannot claim promotion in preference to Respondent No.3. The aforesaid argument of learned counsel for the Railway Administration is based on no evidence before us. We were anxious to see if any Rules are there to the above effect. We are sure that if there would have been any rule to the above effect and if the contention of Mr. Mohanty would be correct then it would have certainly found place in the counter. Such facts not having found place in the counter we feel that Mr. Mohanty with his usual eagerness wants to support the impugned order some how or other. In the absence of any such fact having been mentioned in the

VII 9

counter we are not prepared to accept the aforesaid contention of Mr. Mohanty. Having found that the applicant is definitely senior to Respondent No. 3, the post in question should have gone to the applicant even on ad hoc basis and therefore we would direct that the applicant being admittedly senior to Respondent No. 3, the post in question be given to the applicant on ad hoc basis within three weeks from the date of receipt of a copy of this judgment and the competent authorities should consider the cases of all the officers coming within the consideration zone regarding their suitability for promotion to the post in question and the matter should be finalised within four months from the date of receipt of a copy of this judgment. Since we cannot allow the impugned order to be sustained, it is hereby quashed.

5th Thus, this application stands allowed leaving the parties to bear their own costs.

S.D. PRASAD, MEMBER (ADMINISTRATIVE),

.....
Member (Judicial)

I agree.



S. D. Prasad 15.7.87
.....
Member (Admn.)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 15, 1987/S. Sarangi.