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Order dated 8.7.2004

This Original Application has been filed by the applicant, Shri N.L.S.V.B.K.Rao, working as Confidential Assistant under the Deputy Chief Operation Manager (SMC), S.E. Railway with a grievance that he is entitled to be promoted as Senior Stenographer with effect from 29.2.1996, on which date his junior was so promoted and that he also should be given consequential benefits on his promotion.

We have heard the learned counsel of both the sides and perused the materials placed on record.

The case of the applicant is that after the recruitment made by the Railway Recruitment Board, Bhubaneswar, he was initially allotted to Waltair Division where he was working as Junior Stenographer and subsequently to the grade of Senior Stenographer, when he applied for mutual transfer to Khurda Division. His request having been accepted he was mutually exchanged with one Smt. V. Bijaya Sesa in the year December, 2000 (Annexure-A/4). The grievance of the applicant is that on his posting to Khurda Division, he found to his surprise that one Shri S.J. Jesua (Res. No. 6) who was junior to him in the select list prepared by the Railway Recruitment Board, Bhubaneswar had already been promoted to Sr. Stenographer grade. He, therefore, represented to the Respondents to grant him promotion as Shri Jesua, who was junior to him had been granted promotion. His representation having not been considered favourably, the applicant has approached this Tribunal for redressal of his grievance.

The Respondents-Railways by filing a detailed counter have opposed the prayer of the applicant. They have

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submitted that the applicant's position in the seniority list was correctly determined with reference to the seniority position of Res.No.4, who was holding the post of Junior Stenographer on substantive basis. They have further submitted that in this case by 12.12.2000, i.e., the date on which the order transferring the applicant to Khurda Division was issued, Res. No.4 was holding the substantive post of Junior Stenographer and as such the applicant was also assigned the seniority position in the grade of Junior Stenographer and by that time Res. No.6 had already been promoted to Senior Stenographer having passed the suitability test. They have further disclosed in their counter that whereas Res. No.6 had cleared the suitability test, Res. Nos. 4 and 5 including seven others to appear who were called/for suitability test vide letter No.P/3/Sr.Steno,1998 dated 13.7.98 (which was scheduled to be held on 23.7.1998) did not appear in the test. They even did not appear in the supplementary test which was held on 3.8.1999 also. In the circumstances, they have submitted that as Res. No.4 had not cleared the suitability test, the question of his promotion to the next higher grade did not arise and as Res.No.4 was never promoted to the grade of Sr.Stenographer, the claim of the applicant that he should be assigned the position in the grade of Senior Stenographer above the position of Res. No.6 does not hold any water and accordingly, the O.A. is liable to be rejected.

The learned counsel for the applicant repeatedly submitted that Res. No.4 and 5 were never called upon to

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appear in the test. By referring to Annexure-A/11, he further submitted that although by that letter Res. 5 was given promotion to the post of Senior Stenographer declaring him fit for the post, in fact no suitability test had taken place in that regard. However, as the learned counsel could not produce any material before us to show that no such suitability test was held in the year 2000 in which Res. No.5 was ^{found} shown suitable, we are not inclined to rely on the submission made by him.

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the counsel
both side
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At the end while adjudicating the issue which boils down to the fact whether the applicant whose seniority position in the Khurda Division has been fixed on the basis of seniority position of Res. No.4 has been correctly determined or not, from the facts of the case as placed before us, we are of the firm opinion that Res. No.4 having not cleared the suitability test was not promoted as Senior Stenographer and therefore, the prayer of the applicant to promote him as Sr. Stenographer with effect from 29.2.1996 appears to be vague and without any merit.

In the result, the O.A. fails. No costs.

VICE-CHAIRMAN 873

MEMBER (JUDICIAL)