

(0

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.146 of 2009
Surendra Sutar Applicant
Vs
UOI & Ors. Respondents

Order dated: 23-06-2011 (Oral)

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....

Undisputedly, on 29.12.1999, the Applicant joined the post of Junior Accounts Assistant in the South Central Railway. He came, on his own request, on inter railway transfer and joined in the ECoRly in the post of JAA on 02-11-2001. Applicant along with others preferred appeal pointing out anomaly in the matter of fixation of their inter se seniority in the ECoRly. The appeal of the applicant was considered and placement of the applicant in the gradation list was altered by showing him above some of the persons who were earlier shown senior to him vide Annexure-A/1. Thereafter, cases of all eligible JAAs were taken up for consideration for promotion to the post of Accounts Assistant and the Applicant was promoted to the post of Accounts Assistant grade vide order under Annexure-A/3 dated 19.5.2005. By making representation it was contended by the applicant that he should have been promoted against one of the available AA vacancies

(L)

U

w.e.f. 02-11-2004. Respondents considered the representation of the Applicant but rejected on the ground that the available vacancies were for SC & ST and the applicant belongs to UR community. Being aggrieved, the Applicant has approached this Tribunal in the present OA seeking direction to the Respondents to ante date his date of promotion from 19.05.2005 to 02-11-2004 with all consequential service and financial benefits retrospectively.

2. In the counter filed by the Respondents, besides reiterating the fact that the available vacancies were meant for SC&ST and the applicant being an UR community employee was rightly not given promotion to the post of AA, it was the stand of the Respondents that completion of three years as JAA is one of the eligible criteria for promotion from JAA to AA. But mere completion of three years service does not confer any right on the employee to claim promotion with effect from the date of completion of three years as promotion to AA grade is dependent on various other factors like availability of vacancy, service seniority, CR and approval of the competent authority. Accordingly, Respondents have opposed the contention of the Applicant and have prayed for dismissal of this OA.

3. By filing reply to the counter, the Applicant has pointed out that against 54 sanctioned strength Accounts Assistant

12

categories of posts, as on 31.10.2004, 51 persons were in the roll. As such, there were three vacancies lying vacant as on 31.10.2004. In addition to three vacancies, three additional posts were sanctioned w.e.f. 1.7.2004 of which one post was for SC community and two posts were for UR community and as the applicant, as per his seniority position in the grade of JAA, was coming within the zone of consideration against the two vacancies, his case ought to have been considered for promotion.

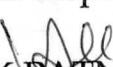
4. Learned Counsel appearing for the Respondents sought some time to obtain instruction on the rejoinder filed by the Applicant. But we do not consider it necessary to grant any further time for this purpose as materials available on record was sufficient for taking a decision in the matter. Hence, we have heard learned counsel for both sides and perused the materials placed on record.

5. We are in agreement with the Learned Counsel appearing for the Respondents that law is well settled in a plethora of judicial pronouncements that one cannot claim promotion merely because vacancy is available and he is eligible to hold the post. Such filling up of the vacancy is within the domain of the authority to decide. It is not the case of the Applicant that anybody junior to him has been promoted to the post of AA earlier. The

13
Applicant could have been prejudiced had any body junior to him in the JAA been promoted to AA earlier ignoring his case. Another important aspect of the matter which needs judicial notice is that the applicant seeks antedating his date of promotion to 02-11-2004 but he failed to make the employees, who are likely to be affected in case his prayer is allowed, as party to this OA. However, since the vacancy position in the grade of AA is in dispute, we leave this matter to the competent authority to verify the vacancy position and then consider the applicant, if he is otherwise eligible for promotion from the date when the vacancy was available. However, in that process it must be ensured that if any existing employee is going to be affected the order of promotion will be issued only after proper notice to them. It is also made clear that in the event of any antedated promotion no back wages shall be allowed to the applicant except usual service benefits.

6. In any event the Respondents should communicate the decision to the applicant in a well reasoned order within a period of 120 days from the date of receipt of copy of this order.

7. With the above observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)