

In The Central Administrative Tribunal
Calcutta Bench

OA 837 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. S. Biswas, Administrative Member

Shri B.N. Chatterjee, alias Biswa Nath Chatterjee, son of late Shib Nath Chatterjee, aged about 55 years, working in the post of permanent Way Inspector, Grade-II, under the Sr. Divisional Engineer, Eastern Railway, Sealdah Division, residing at 42, Ramlal Agarwal Lane, Calcutta-50.

..... Applicant

- Versus -

- 1) Union of India, through the Chairman, Railway Board, Rail Bhavan, New Delhi.
- 2) General Manager, E.Railway having its office at 17, N.S. Road, Calcutta-1.
- 3) Chief Personnel Officer, E.Railway, 17, N.S. Road, Calcutta-1.
- 4) Chief Engineer, E.Railway, Fairley Place, Cal-1.
- 5) Divn. Railway Manager, E.Rly., Sealdah Divn., Cal.
- 6) Sr. Divn. Engineer, Sealdah Division, Sealdah,
- 7) Sri D.K. Se, Divn. Engineer-I, Sealdah Divn., E.Rly., Sealdah.
- 8) Assistant Engineer-II, E.Rly., Sealdah Division.
- 9) Sr. Divn., Personnel Officer, E.Rly., Sealdah Divn.

... Respondents.

- 10) Sri S.K. Chakraborty, PWI, Gr.I under Sr. Divn. Engineer, Sealdah Division, Sealdah.
- 11) Sri P.C. Sikdar, Sr. Divn. Engineer, Sealdah Division, Sealdah.
- 12) Sri N.C. Bhattacharjee, Sr. Divn. Engg. Sealdah.
- 13) Sri T.K. Biswas, Sr. Divn. Engg., Sealdah.

.... Pvt. Respondents

For the Applicant : Mr. S.R. Kar, Counsel

For the Respondents: Mr. P.K. Arora, Counsel

Heard on : 07-03-2001

Date of Order : 07-03-2001

O R D E R

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D. PURKAYASTHA, JM

The question for decision in this case is whether the applicant was denied promotion under the modified procedure of selection while his junior persons were promoted to the post of PWI Gr.I in the scale of Rs.2000-3200/-. According to the applicant, the method of selection has been modified in respect of filling up vacancies under the Scheme of Restructuring of certain Group 'C' & 'D' posts vide letter dated 27-1-1993 (Annexure-A/3 to the application). By that modified selection method, the selection will be based only on scrutiny of service records and confidential reports without holding any written and or viva-voce test under the Scheme of Re-structuring. According to the applicant, his junior persons, namely, Shri S.K. Chakraborty, Shri P.C. Sikdar, Shri N.C. Bhattacharjee and Shri T.K. Biswas were promoted; but his case was not considered. According to his seniority, he is entitled to get the benefit of Scheme of Re-structuring by way of promotion as given to the aforesaid private respondents. But respondents acted arbitrarily and illegally denying his promotion. So, he has been seriously prejudiced.

2. Respondents filed reply to the O.A. denying the claim of the applicant. It is admitted by the respondents that the rank of the applicant is at fourth position in the list of seniority. But he was found unsuitable by the Selection Board. So, he is not entitled to get the benefit of promotion on the basis of the recommendation of the Selection Committee. So, application is devoid of merit and liable to be dismissed.

3. Ld. Counsel Mr. Arora on behalf of the respondents produced records of selection and Annual Confidential Reports.

4. We find that the first selection took place on 18-6-1993 for filling up of the post under modified method of selection as stated above. We find that applicant was found unsuitable on the basis of the remarks in Annual Confidential Reports. We find that

such adverse remarks as required to be improved has not been communicated to the applicant. So, DPC should not have relied upon uncommunicated remarks in the ACR of the applicant. We find no record, as produced by the respondents before us, to show that adverse remarks as mentioned above had been at all communicated to the applicant. Moreover, we find that second DPC took place on 20-3-1994. At that time applicant's case was not placed before the said Committee. Even if we accept the respondents' contentions that applicant was not found suitable by the Selection Committee on 18-6-1993 yet he is entitled to be considered again on the basis of seniority when another selection took place on 20-3-94. It is noted by us that Shri S.K. Chakraborty, Shri P.C. Sikdar, Shri N.C. Bhattacharjee and Shri T.K. Biswas were admittedly junior to the applicant when the applicant was found unsuitable for promotion by the Selection Committee which took place on 18-6-93. We have gone through the order bearing No.457/PWI/E-12 dated 18-3-94 issued by the Senior Divisional Personnel Officer (Annexure-A/4 to the application). It is noted by us that applicant was denied the benefit of promotion when his juniors were given promotion provisionally as PWI Gr.I against the available vacancies w.e.f. 1-3-1993. From the record we are satisfied that respondents acted arbitrarily denying the benefit of promotion under the Scheme vide order dated 18-3-94 promoting four juniors as PWI Gr.I on the basis of second DPC which took place on 28-3-94. So, in view of the aforesaid circumstances, we direct the respondents to consider the case of the applicant by holding review DPC, held under modified method of selection for the post of PWI Gr.I and the adverse ACR remarks should be over-looked which has not been communicated to the applicant. With this observation, we allow the application with a direction upon the respondents to take all steps within three months from the date of communication of this order and if applicant is found suitable, then all consequential benefits should be granted to him as per Rules. No costs.

S. Biswas
(S. Biswas)
Member (A)

(D. Purkayastha)
Member (J)