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Date of Decision: 14.5.96.

OA 7/96

Baljeet Singh

... Applicant

Versus

Union of India and others

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. S.P. BISWAS, MEMBER (A)

For the Applicant

... Mr. B.N. Calla

For the Respondents

... —

O R D E R

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN



Applicant, Baljeet Singh, in this application under Section 19 of the Administrative Tribunals Act, 1985, has challenged the impugned order, at Ann.A-1 dated 30.8.95, by which his representation was rejected as also Ann.A-2 dated 30.6.95, by which respondent No.4, Shri Jagdish Prasad, was promoted to the post of Supervisor in the pay scale Rs.1400-40-1800-EB-50-2300 and posted at Bikaner.

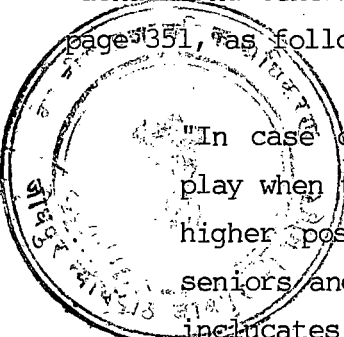
2. We have heard the learned counsel for the applicant and have carefully gone through the records of the case.

3. The contention of the applicant is that the denial of promotion to him from the post of Operator Telecommunication to the post of Supervisor is illegal. It is stated by him that he passed the Departmental Promotion Test on 2.4.82 vide communication at Ann.A-6, whereas respondent No.4 passed the said examination on 7.10.88 vide Ann.A-7 dated 7.10.88 and the applicant being senior to respondent No.4 ought to have been promoted to the post of Supervisor. It is also contended that deprivation from promotion was in clear breach of the provisions contained in Article 311(2) of the Constitution as he was not considered for promotion despite he being senior to the person who has been promoted. So far as the decision on the applicant's representation dated 11.8.95, pursuant to the directions of this Tribunal in OA 288/95, decided on 1.8.95, is concerned, we find that the same was taken on a consideration of all the relevant material. It is borne out by the record that promotions to the cadre of Supervisor Telecommunication are made by selection and not on the basis of seniority. It is also evident from Ann.A-1 dated 30.8.95 that a Departmental Promotion Committee for promotion to the cadre of Supervisor Telecommunication from amongst the cadre of Operator Telecommunication was held on 7.6.95 for filling up only one

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vacancy of Supervisor Telecommunication. As the relevant roster point was a ST point, which was being carried forward for the third year and there was no eligible ST candidate available, the reserved ST point was exchanged with a reserved SC point and the DPC had decided to fill up the vacancy by a SC candidate in terms of the administrative instructions of the Government of India in the Department of Personnel.

4. It is true that the DPC considered the applicant's case for promotion to the post of Supervisor alongwith respondent No.4, who was next junior to him and also belonged to Scheduled Caste category, and on a consideration of the relative merit and suitability/ability, the DPC found respondent No.4 fit for promotion. The DPC did not find the applicant fit for promotion after making a relative assessment of the merits of both the candidates. Reliance has been placed on (1995) 29 ATC 351, Sarat Kumar Dash and others v. Biswajit Patnaik and others, in which Hon'ble the Supreme Court of India observed, at page 351, as follows :-




"In case of merit-cum-suitability, seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a juniormost man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. Seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, seniority will play its due role and will be called in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then seniority has no role to play."

Once the DPC considered the case and did not find the applicant fit for promotion, this Tribunal cannot play the role which the DPC had to play. There is nothing on the record to establish that the decision of the DPC is tainted with malice or caprice.

5. For the reasons stated above, we do not find any substance in this application and the same is dismissed at the stage of admission.


(S.P. BISWAS)

MEMBER (A)


(GOPAL KRISHNA)

VICE CHAIRMAN

Copy of order dated 14-5-96
along with AT & Annexes
sent to R 172 R-4 By Rife
PST vide no 20840211
date 20/5/02

af
17-5-96

Copy Recd
A. S. P. S.
21-5-96

Part II and III destroyed
in my presence on 5/6/02
under the supervision of
section officer (J) as per
order dated 19/3/02

Section officer (Record)