

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 784 of 97

Date of order : 20.6.2002

Present : Hon'ble Mr.L.R.K.Prasad, Administrative Member

Hon'ble Ms.Meera Chibber, Judicial Member

R. N. SARKAR

VS

UNION OF INDIA & ORS.

For the applicant : Mr.R.K.C.Thakur, counsel

For the respondents: Ms.U.Bhattacharyya, counsel

O R D E R

L.R.K.Prasad, A.M.

This application has been filed with the prayer to promote the applicant as PWI Grade I from 26.5.95 when his immediate junior P.K.Sarkar was promoted and his name be put above that of P.K. Sarkar. The further prayer of the applicant is that he be granted consequential benefits in terms of arrears of salary etc.

2. Through B.I.Y. S.C.selection, the applicant joined as PWI Gr.III on 26.8.75 while P.K.Sarkar joined on 1.3.76. Both were promoted as PWI Gr.II on restructuring u.e.f. 1.1.84 (Annexure A/1) in which the applicant is at Sl.No.59 and P.K.Sarkar at Sl.No.60. The main grievance of the applicant is that when a selection test for the post of PWI Gr.I was held sometime in 1994-95, the applicant was not invited to the said test inspite of the fact that he was senior to P.K.Sarkar who was called for the said test. On the basis of selection test, Sri Sarkar was promoted to the post of PWI Gr.I (now redesignated as S.E., PW) vide order dated 26.5.95 (Annexure A/4). It is alleged by the applicant that as some of his seniors were against him, he was not intentionally invited to the said selection test in 1994-95. Therefore he should be granted the necessary benefits in terms of promotion to the grade of PWI Gr.I along with arrears etc. ~~u.e.f.~~ the date when his junior P.K.Sarkar was promoted to the said post. Being aggrieved

By the action of the respondents, the applicant has filed the instant OA with the prayer as stated above.

3. While opposing the above applicant, the respondents have stated that since the paper lien of the applicant is being maintained by Division, the applicant cannot be promoted whereas P.K.Sarkar since his appointment has been working in Sealdah Division and as such he was promoted in turn before fixing up paper lien of the applicant. However, we find from para 11 of the reply filed on behalf of the respondents that as and when selection test is held for the post in question and if the applicant is found ~~eligible~~ ^{qualified}, benefits of promotion will be awarded on proforma basis to him in relation to his junior P.K.Sarkar. It is further stated that paper lien/has been maintained in the Division w.e.f. 1.1.84.

4. We have heard the ld. counsel for the parties and perused various documents on record. We are informed by the ld. counsel for the respondents that the competent authority has decided to hold continuation written test for the post of S.E., PW in the scale of Rs.6500-10,500/- (RsRP) on 5.12.99 vide their letter No.504 E/0/PTXX II(E)-12 dated 21.9.99. Three persons including the applicant were invited to appear in the said test. We are also informed by the ld. counsel for the respondents that the applicant did not appear in the said test on the ground that he has already filed the instant OA which is pending before this Tribunal and on the ground that first his correct seniority position be determined with reference to P.K.Sarkar in regard to which he has submitted a representation on 21.6.99. We are further informed, during the course of argument, by the ld. counsel for the respondents that the seniority position of the applicant in the grade of JE has already been determined.

5. After going through the records and submissions made on behalf of the parties, we find that it was due to the fault of the Administration that the applicant was not called for selection test in 1994-95 whereas his junior P.K.Sarkar was called for the said test.

P.K.Sarkar has already been promoted to the post of PWI Gr.I after he successfully qualified in the selection test. As it was due to the fault of the Administration that the applicant was not called for the selection test in 1994-95, we feel that an opportunity should be given to the applicant to appear in a fresh selection test for promotion to the post of PWI Gr.I and in the event of his being successful in the said selection test, he shall be entitled for his promotion to PWI Gr.I w.e.f. the date when his junior P.K.Sarkar was promoted. On passing the selection test, he shall also be entitled for payment of arrears of salary including counting annual increment and determining his seniority above his junior.

6. In view of the above facts and circumstances of the case the respondent concerned is directed to hold the selection test for the applicant for promotion to the post of PWI Gr.I within a period of 3 months from the date of communication of this order. If the applicant comes out successful in the said selection test he shall be entitled for his promotion as PWI Gr.I (now S.E.PW) from 26.5.95 when his immediate junior P.K.Sarkar was promoted and shall be entitled to all consequential benefits as mentioned above.

7. This OA stands disposed of in terms of the above order. *Order*
No order as to costs.

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