

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 124 of 97

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

Hon'ble Mr. B.P. Singh, Administrative Member.

Sri Sunil Kumar Chowdhury

- v e r s u s -

1. Union of India, service through the General Manager, Chittaranjan Locomotive Works, P.O. Chittaranjan, Dist. Burdwan.
2. Chief Personnel Officer, Chittaranjan Locomotive Works, P.O. Chittaranjan, Dist. Burdwan.
3. Sri A.K. Chakraborty, Gr.-B Officer, in Junior scale working as AEN(I) in the Chittaranjan Locomotive Works, P.O. Chittaranjan, Dist. Burdwan.
4. Sri A.K. Mondal, working as AEN(PR) in the Chittaranjan Locomotive Works, P.O. Chittaranjan, Dist. Burdwan.

...Respondents.

For the applicant : Mr. P.C. Das, counsel.

For the respondents : Mr. P.K. Arora, counsel.

Heard on 7.1.2000 ~~✓ 12.1.2000~~ *ds*

Order on 9-2-2000

O R D E R

B.P. Singh, AM

The applicant Shri Sunil Kumar Chowdhury being aggrieved by his supersession by the juniors in promotion has prayed for the following reliefs in this O.A.

"8. a) Direct upon the respondents to give promotion to the applicant in the senior scale post of DEN (Con) by restructuring to its policy position with effect from 29.4.96.

b) Direct upon the respondents to transfer your applicant from the present post i.e. Assistant Estate Officer to his parent post i.e. Civil Engineering Department with suitable post.

c) Direct upon the respondents to pay your applicant the consequential promotional benefits with arrears accordingly.

d) Direct upon the respondents to quash and set aside the impugned order dated 31.1.97 passed by the Chief Personnel Officer, Chittaranjan Locomotive Works, Chittaranjan."

2. The fact of the case is as follows:-

The applicant was initially appointed in 1962 as AIOW through Railway Service Commission, Calcutta and was posted in Civil Engineering Department of Chittaranjan Locomotive Works (C.L.W.). The applicant was promoted to the post of IOW Gr.I in the year 1984. The applicant was further promoted to the post of AEN in Gr.B service w.e.f. 22.12.86. After the promotion as AEN, a seniority list of Gr.B officers of the Civil Engineering Deptt. was issued on 29.8/8.9.91 by respondents which is enclosed to the O.A. without assigning any number. In the said seniority list, the applicant was placed at sl. No.3 while respondent No.3 was placed at sl. No.5 and respondent No.4 was placed at sl. No.6. Thus the applicant was senior to respondent Nos. 3 & 4 in the seniority list. The applicant further submits that the Ministry of Railways has framed the rules for promotion of Gr.B officers in Junior scale to Senior scale and modified the same from time to time. According to the latest guidelines circulated by the Railway Board in their letter dated 2.1.1992 vide Annexure-A/1 provision has been made for officiating promotion of Gr.B officers to Senior Scale on adhoc basis. The rules provide that in cases where the prescribed condition of service of three years has not been fulfilled by the Officers, such officers should be considered for adhoc promotion to Sr. scale against the existing or future vacancies on fulfilling service conditions. According to these instructions since the applicant has already rendered more than three years of service exactly more than 10 years of service of junior scale of Gr. B, he was entitled to be promoted to the post of senior scale by virtue of his service rendered in the junior scale in reference to direction issued vide Annexure-A/1. The applicant was transferred from Engineering Department and posted as AEO under the Deputy General Manager vide order dated 19.4.94 vide Annexure-B. By this order the applicant was directed to hand over the charge of AEN as per Annexures-'B' & 'C'. The applicant

complied with the order and took charge of AEO (Assistant Estate Officer) w.e.f. 2.5.94 which was intimated to all concerned vide Annexure-C/1. The applicant further submits that according to the Railway Board notification dated 20.7.92 the applicant was not eligible for being selected on the post of A.E.O. according to the recruitment rules. But he was transferred and posted on the post of AEO illegally violating the railway rules to deprive the applicant from getting his promotion in senior scale in his parent cadre. The applicant started representing before respondent Railway authorities about this and recalling for his transfer to parent cadre of Civil Engineering Department. The last representation made by the applicant is enclosed at Annexure-E. Inspite of many representations, the applicant was not replied to by the respondents. The applicant was also not promoted to the Sr. scale even on adhoc basis nor he was transferred to his parent cadre from the post of AEO where he was posted violating the recruitment rules of Railway Board for the post of AEO. The applicant expressed his apprehension in his representation regarding discharge of duties and responsibilities of the post of A.E.O. The respondents did not pay any heed to his representations etc. The applicant further submits that a post became available in AEN cadre but he was not transferred and posted on the post whereas another officer Shri A.K. Mondal was posted vide order dated 29.4.96 vide Annexure-F. The applicant further submits that on the basis of his seniority as well as having put in more than ten years of service in Junior scale of Gr.B service he was entitled to be promoted against the Senior Scale post of DEN (Con) which had been created vide office order dated 29.4.96 (Annexure-F). But the same was not done. Instead the respondent Sri A.K. Mondal was posted against the downgraded post of Sr. scale vide office order dated 29.4.96 (Annexure-F). This act of the respondents was whimsical, arbitrary, discriminatory and violative of the railway rules. This action on the part of the respondents was also violative of principles of natural justice. The applicant further drew the attention of the respondents through his Advocate vide letter dated 2.12.96 (Annexure-G) about the above facts. The applicant further

submits that respondent No.2 vide his letter dated 31.1.97 (Annexure-H) restored the downgraded post of DEN(Con) and promoted Sri A.K. Mondal, respondent No. 3 on adhoc basis who was junior to the applicant. By this order the respondent No.2 deprived the applicant of due promotion. The applicant was not transferred and posted on the post of AEN vis-a-vis his juniors the respondent Nos. 3 & 4. The applicant submits that he was senior to respondent Nos. 3 and 4 and has already rendered more than ten years of service in junior scale of AEN, he was entitled to be promoted to the post of senior scale by virtue of his service in the junior scale. But his name was overlooked by the respondents illegally, arbitrarily and whimsically. The respondents also failed to act according to the direction of the Railway Board dated 2.1.92 (Annexure-A/1). The act of the respondents is motivated and intentional and a proof of colourable exercise of power. Being aggrieved by the above action of the respondents, the applicant filed this O.A. praying for the reliefs as stated above.

3. We have heard Id. counsel Mr. P.C. Das, appearing for the petitioner and Mr. P.K. Arora, Id. counsel for the respondents. We have also gone through the reply as well as written arguments on behalf of the applicant. The respondents have also produced the departmental records and documents which have also been gone through by us.

4. Id. counsel Mr. Das appearing for the applicant reiterated the facts stated above and submitted that the applicant is aggrieved by non-promotion on the post of DEN (Con) for which he fulfilled the prescribed conditions. The applicant was senior as Gr.'B' officer to respondent Nos. 3 and 4. But inspite of his seniority and having put in more than the minimum prescribed years of service in Gr.B, his claim for promotion has been overlooked and he has been superseded by his junior respondent No.3. Even the request of the applicant for transfer from the post of AEO to the post in his parent cadre has not been considered. He was transferred and posted as A.E.O. against the recruitment rules for the post of A.E.O. When he made representation

for his repatriation to the parent cadre his request was overlooked and instead his junior respondent No.4 was transferred and posted on the vacant post in the parent cadre. The non-promotion of the applicant and ~~non-~~ transfer to the post in parent cadre are proof of arbitrary action and unreasonable discrimination in violation of Arts. 14 and 16 of the Constitution. The respondents deprived the applicant from his due promotion and transfer and posting on a post in the parent cadre. This action of the respondents is arbitrary, unreasonable, discriminatory and malafide. The claim for promotion of the applicant was overlooked and his juniors respondent Nos. 3 and 4 were given undue benefits. The Id. counsel submitted that on the basis of the seniority and having put in more than minimum prescribed service in Gr.B as well as the provisions of instruction dated 2.1.92 (Annexure-A/1), injustice has been done to the applicant which requires to be set right as per the prayer made in the O.A.

5. Id. counsel for the respondents submitted that the applicant was not entitled to any relief as prayed for by him. He submitted that the applicant was awarded recorded warning in a vigilance case while he was working as AEN in November 1996 and this was one of the grounds as to why he was not considered for adhoc promotion in 1997. Regarding Railway Board letter dated 2.1.92 (Annexure-A/1) the Id. counsel submitted that it is not a fact that any person who has served in junior scale Gr.B service for three years or more should be promoted to the Sr. scale. The instructions provide for consideration of Gr.'B' officers who have rendered service of three years or more for adhoc promotion against the existing or future vacancies. There is a definite procedure for consideration of such adhoc promotion and Gr.B officers are promoted to Sr. scale only if they are declared suitable for such promotion by the Departmental Promotion Committee. The Id. counsel further submits that although the applicant was entitled to be promoted to the post of senior scale by virtue of his service rendered in Gr.B service he could not be promoted since he was not declared suitable. Regarding transfer on the post of AEO the Id. counsel submitted that the transfer to the

post of AEO was not arbitrary and illegal violating the railway rules with the object to deprive the applicant from getting promotion in senior scale in his parent cadre. His transfer to the post of AEO had no bearing with his promotion to the senior scale. He would be promoted in senior scale only when he will be declared suitable for such promotion by the DPC. Regarding his promotion to senior scale post of ~~DEN~~ (Con). Ld. counsel has submitted that the applicant was not found suitable for such promotion by the competent authority. Therefore, he could not be transferred from the post of A.E.O. Regarding down gradation of post of Sr. scale to class-II, the Ld. counsel has submitted that the same was done by the competent authority in administrative interest. The Ld. counsel has further denied violation of the principles of natural justice and discrimination against the applicant for his non-promotion. He has submitted that the applicant was not promoted as he was not found fit for promotion by the competent authority. Therefore, the Ld. counsel submits that all allegations in this respect are baseless and, therefore, they are denied. The junior to the applicant viz. Shri A.K. Chakraborty, respondent No.3 was found suitable for promotion to senior scale post and was promoted and posted as DEN (Con) (R/1) and, therefore, there is no question of depriving the applicant from promotion as the applicant was not found suitable for such promotion. Ld. counsel has further submitted that the respondent No.4 has not been promoted to senior scale as such there is no point of any grievance of the applicant against respondent No.4. Regarding the submission of the applicant about the deprivation and intentional withholding of his promotion by the respondents when he was having good CRs, Ld. counsel has submitted that it is not a fact that there is no adverse CR or disciplinary/vigilance case pending against the applicant. Actually, the applicant was not considered fit for promotion on the basis of adverse ACRs for the years 1995-96 and 1996-97. There was a vigilance case pending against him in 1996. However, as informed by the Deputy C.V.O. vide his letter dated 25.1.97 no SP/vigilance case is pending at present against the applicant. This fact will be duly considered at the time of next opportunity for promotion. In view of the above submissions the Ld. counsel for the

respondents submitted that the application is mis-placed and the same should be disallowed.

6. Ld. counsel for the applicant has also submitted rejoinder to the reply in which he has submitted that the reply of the respondents is not straight forward and the denials made by them are not supported by proof. He has submitted that no chargesheet has been issued to the applicant so far. Regarding the recorded warning in A.C.R. of the applicant, the Ld. counsel submitted that the applicant should have been given an opportunity to explain before the same was recorded. As far as known to the applicant no enquiry was conducted before recording the warning in the A.C.R. The Ld. counsel further submitted that in reference to Railway Board letter dated 2.1.92 (Annexure-A/1) the applicant should have been considered for adhoc promotion in senior scale as soon as he rendered three years or more service and, therefore, he has submitted that the respondents be directed to produce the proceedings of the D.P.C., if at all the same took place from 1990-95, to prove the fact that the applicant was not found/declared suitable for promotion to the Sr. scale. The Ld. counsel has reiterated malafide intention and favouritism on the part of the respondents. He has also questioned the posting of the applicant as AEO and submitted that the respondents should be called upon to prove whether the post of AEO is a cadre post of Civil Engineering Department. The Ld. counsel reiterated that the applicant was posted as AEO to favour someone and to deprive the applicant from his legitimate rights. The administrative reasons stated by the respondents for not transferring the applicant to parent cadre has also been questioned by the Ld. counsel. Regarding the non-promotion on adhoc basis of the applicant to the post of DEN, the Ld. counsel has further submitted that the concerned document be directed to be produced by the respondents and same should be looked into by the Tribunal. Regarding the adverse entry in the C.Rs, Ld. counsel has submitted that the same have not been communicated to the applicant so far and unless they are communicated they are of no consequence. He has also questioned the motivated action on the part of the respondents. Regarding pendency of vigilance case

he has challenged the pendency of the case on 23.8.96 and non pendency of the case on 25.1.97 and that too, without any enquiry. He, therefore, submitted that the applicant was falsely implicated with some hypothetical vigilance case with ulterior motive to deprive him of his due promotion. There was mere contemplation of vigilance case and contemplation of a case is no bar for promotion as per guidelines enclosed as R/A-2. The Id. counsel has further submitted written arguments on behalf of the applicant in which he has drawn our attention to the confidential communication annexed as Annexure-A. The Id. counsel has also produced this communication while the case was being heard. Since it was the confidential document which the applicant was not supposed to be in possession of the same was not taken note of at the time of hearing. However, the Id. counsel has produced the same with his written brief and he has cited various decisions of the courts to accept the same in the interest of justice. He has drawn our attention to ATR 1986 CAT (PB16) Shri P. Banerjee Vs. Union of India and Ors. in which it was held that unpublished public record or document cannot be withheld from parties likely to be affected by its decision, when disclosure of such unpublished official records would advance interest of public servants. He has also cited the case of Bharat Singh Vs. Union of India reported in ATR 1987(1) CAT 621 which deals with the promotion withheld due to pendency of departmental proceedings which was later on dropped. These cases do not appear to apply in the facts and circumstances of the present O.A. Id. counsel has produced the confidential letter dated 1.2.95 which reads as under:-

" Sub:- Adhoc promotion to Sr. scale in Civil Engg. Department.

Consequent on screening held on 31.1.95, the following officer has been found suitable for ad-hoc promotion to Sr. scale subject to DAR/Vigilance clearance.

1. Shri S.K. Choudhury, A.E.O.

The ad-hoc promotion of the above officer is subject to reversion at any time.

This has the approval of General Manager."

The perusal of the above order makes it clear that the suitability for adhoc promotion is dependent on DAR/VIG. clearance against the applicant. As already submitted by the Id. counsel for the respondents, the case of the applicant was considered in 1997. The applicant was not considered fit on the basis of entries in A.C.Rs for 1995-96 and 1996-97. In addition to those adverse ACRs a vigilance case was also pending as per confidential letter dated 1.2.95 quoted above. It makes clear that the performance of the applicant upto 1994-95 (upto 1.2.1995) could have been considered at the time of his suitability for adhoc promotion. The ACRs of 1995-96 and 1996-97 and the pendency of vigilance case are subsequent events which have affected the consideration of the applicant for promotion.

7. We have also seen the ACR file produced before us and we have gone into the remarks made therein. The applicant has been found not fit for promotion as per entry in his ACRs during 1995-96 and 1996-97. We have also been shown the proceedings of the DPC held in April 1996, September 1996, January 1997 and August 1997 for promotion to Gr.B officers to Sr. scale on adhoc basis in the Civil Engineering Department. The full facts about all the eligible candidates have been put up before the Committee with relevant details and the same have been duly considered by the Committee and the committee took a decision by which the applicant was not found fit for promotion and, his junior viz. respondent No.3 was found fit for promotion and was approved for promotion from Junior Scale to Sr. scale. Thus the case of the applicant alongwith juniors was duly considered by the Committee and decision was taken by the committee on the basis of the ACRs and other information produced before the committee.

8. On the basis of the above, we find that the applicant was senior in Gr.B cadre to respondent Nos. 3 and 4. Out of these three, respondent No.3 has been promoted on adhoc basis in Senior Time Scale. The respondent No.4 has not been promoted to Senior scale. The applicant was senior to respondent No.3 according to the seniority list. When the vacancy in senior scale arose he was duly considered alongwith his juniors.

According to the records produced before us the applicant was not found fit for promotion. Therefore, he was superseded by his junior viz. respondent No.3. The supersession is based on the records and facts produced before us. There does not appear to be any irregularity or violation of principle of natural justice in this case. The applicant could not be promoted to Sr. scale inspite of the fact that he was senior and had put in more than minimum prescribed years of service because he was not found fit for promotion on the basis of entry in his ACRs by the Promotion Committee. In view of this, we do not find any justification to interfere in the same and we, therefore, disallow this application without passing any order as to costs.

B.P. Singh
(B.P. Singh) 02/2020
Member (A)

AKS
AKS 1/21/2020
(D. Purkayastha)
Member (J)

a.k.c.