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CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT AT NAGPUR

T.R. (N) 217/87 (W.P. 1229/81)

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member

Hon'ble Mr. P.S.Chaudhuri, Administrative Member

R. S. KASHYAP

VS

UNION OF INDIA & ORS

For the applicant : Mr. S.V.Gole, counsel

For the respondents: Mr. P.N.Chandurkar, counsel

Heard on : 20.3.91 : Judgement on : 22.3.91

J U D G E M E N T

A.P.Bhattacharya, J.M.:

Applicant, Shri R.S.Kashyap, filed a writ application in the Nagpur Bench of the Bombay High Court against the General Manager, Central Railway and five others, which, by operation of Sec. 29 of the Administrative Tribunals Act, 1985, came to this Tribunal, by way of transfer, for disposal.

2. The applicant held the post of Driver, Gr. C, till 1966 in the Nagpur Division of Central Railway. In 1967, he was promoted to the post of Driver, Gr. B. In 1977, he was further promoted to the post of Driver, Gr. A. The applicant contends that in the seniority list in Nagpur Division of Drivers, Gr. A his position was recorded against serial No. 14. The respondents 4, 5 and 6 are juniors to him and their position was shown at serial Nos 18, 20 and 15 in the said seniority list, ^{respectively}. The applicant felt aggrieved as the said respondents were posted as Special Grade Drivers in denial of his rightful claim. He refers to Railway Board's letter, dated 11.5.79, wherein it is stated that Special Grade Driver should be taken strictly on the basis of seniority of Drivers-Gr. A. The

U applicant being senior to the said respondents, was entitled to get the post of Special Grade Driver before them. He made several representations challenging the said appointments of the persons junior to him which yielded no result. In filing the application, he has prayed for issuing direction on the respondents 1 to 3 so that they may consider his promotion as Special Grade Driver.

3. The application has been contested by respondents 1 to 3. It is the main contention of these respondents that promotion from the post of Driver-Gr. A to the post of Driver-A (Special) was used to be made on the basis of seniority-cum-suitability. At the relevant time, the applicant's case was duly considered by the appropriate authority and he was not found suitable for promotion to the post of Driver-Gr.A(Special).

4. While arguing this case, Mr. S.V.Gole, learned counsel at appearing for the applicant has submitted that as the relevant time, the applicant was senior to private respondents, he should have been promoted to the post of Driver-A(Special), and in not doing that the concerned railway authorities had violated the provisions of para 212 of the Indian Railway Establishment Manual (IREM). On a consideration of the materials on record and the relevant circulars and the railway files produced by the side of the railway respondents, we have every reason not to accept the contention of Mr. Gole. It is established that the post of Driver-Gr.A(Special) was created in 1975. From that year till 1978, the post of Driver-Gr.A(Special) was made a non-selection post. In 1978 that was made a selection post. In 1982, that post was again converted to a non-selection post. Now, let us see whether in not giving promotion to the applicant to the post of Driver-A(Special) the railway respondents had violated the provision of para 212 of I.R.E.M.

5. Under para 212 of the said Manual non-selection posts are to be filled by promotion of seniormost railway servant,

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suitability, whether of an individual or a group of railway servants, being determined by the authority competent to fill the post on the basis of records of service and/or departmental tests, if necessary. A senior employee may be passed over only if he/she has been declared unfit for holding the post in question. The declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the railway servant is being considered. So, from the language of this para, all what we get is that merely on the basis of seniority, a railway servant cannot be promoted to the post of Driver-Gr. A(Special). Seniority vis_a-vis suitability has got to be considered before granting such promotion. It is undisputed that the duty of a Driver-Gr. A (Special) is more responsible than that of driver-Gr. A as he has to handle super-fast and important trains. So, before granting such promotion, ^{to} a railway servant, the competent authority should determine his suitability and consult his records of service.

6. As per the applicant's case, he was promoted to the post of Driver-Gr. A in 1977. It is the admitted position that the private respondents were junior to the applicant as Driver-Gr. A at the relevant time. It is also admitted that they were promoted to the post of Driver-Gr. A(Special) in denial of the applicant's claim. Now the question is whether the railway respondents were justified in promoting the private respondents to such post and in not promoting the applicant to the said post of Driver-A(Spl.)

7. The relevant year when the applicant desired to ~~get~~ get promotion to the post of Driver-Gr. A(Spl.) was 1977. From the railway files produced before us we find that before giving promotions to certain persons to the post of Driver-Gr. A(Special), in 1977, the cases of the applicant ^{was} ~~was~~ considered along with private respondents and others. We get from the file that after consideration of his case, the applicant was found unfit along with respondent No. 6. Respondent Nos. ^{was empanelled} 4/ and ^{respondent No.} 5 though found fit

~~was~~ were not empanelled. In 1978, also, such consideration was made and the applicant along with respondent No. 6 was found unfit. Respondent No. 5 was found fit and was empanelled. By an order dated 22.8.78, the post of Driver-Gr.A (Special) was converted into a selection post. From the railway file, we get that on a consideration made on 16.4.79, the applicant was found unfit on the ground that he had previously suffered penalties for safety violation which was thought as a serious impediment to promotion as a Driver-Gr. A(Special). We have already mentioned that a Driver-Gr-A(Special) has to handle superfast and important trains. In the consideration made on 16.4.79, respondent No. 6 was promoted to the post of Driver, Gr. A(Special). We have no doubt about the competence of the authority by which the matter was considered as it was done by Divisional Mechanical Engineer (Power), Nagpur. From the railway file, we further get that on 15.2.80, the matter of promotion to the post of Driver-Gr.A(Spl) was taken up for consideration by the Sr. Divisional Mechanical Engineer(Power), Nagpur and the applicant was again found unsuitable. All such considerations were made well in advance recording the reasons for suitability or unsuitability of the concerned railway servants. In 1982, the said post was again converted from selection to non-selection. On 28.7.82, the applicant's case was duly considered but he refused to appear before the competent authority on the ground of pendency of the writ application in the Nagpur Bench of the Bombay High Court. At that time, consideration was made not on the basis of a written test but simply on the basis of viva-voce test and ^{on} a perusal of the records of service. Considering the aforesaid, we have no hesitation to conclude that both at the stages when the post of Driver-Gr. A(Special) was a non-selection post and was thereafter converted to a selection post and was again converted to a non-selection post, the railway respondents had done ^{no} ~~any~~ wrong in not giving promotion to the applicant to the said post.

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8. On behalf of the applicant much has been argued because of the cancellation of the panels of 1977 and 1978 . The reasons for such cancellation has been satisfactorily explained by the side of the railway respondents. It is their contention that as while preparing the panels, only seniority and not the suitability of the candidates was taken into consideration, the panels of those years were cancelled. When the suitability of the candidates falling within the zone of consideration was decided to be considered, such panels were cancelled and after consideration of such suitability, new panels were prepared. We do not find any illegality or irregularity in such action of the railway respondents.

9. Mr. Gole has argued on behalf of the applicant that the railway respondents should have disclosed all the aforesaid by giving reply to the several representations made by the applicant. We find from the railway files that an interim reply to the representation made by the applicant was given on 18.4.80 to the effect that his case was under consideration. On 28.5.80, the final reply was given that as he was not found suitable he could not be promoted to the post of Driver-Gr. A(Special). So, it is not a case where the railway respondents had not made a disclosure of the action taken by them.

10. Before parting with this case, we must observe that the applicant's present claim has become infructuous as he had retired from service in 1984. Admittedly, he is not a pension optee. In the event of his success in this case, he would have got his DCRG and leave salary enhanced to some extent. As and when the applicant has failed to establish his claim, we do not find that he can get any relief as claimed by him in this application.

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11. In view of our findings made above, the case fails. Accordingly, we dismiss this application making, however, no order as to costs.

P. S. Chaudhuri
(P.S. CHAUDHURI)
MEMBER (A)
22.3.91 22/3/91

A. P. Bhattacharya
22.3.91
(A.P. BHATTACHARYA)
MEMBER (J)
22.3.91