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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 84/91

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198

DATE OF DECISION 24.4.1991

Shri A.I. Kathawala Petitioner

Mr. S. Natarajan Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Mr. A.L. Kasturey Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, Vice Chairman.

The Hon'ble Mr. M.Y. Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

[Signature]

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION NO.84/91.

Shri A.I. Kathawala

.. Applicant.

V/s.

Union of India & Others.

.. Respondents.

Coram : Hon'ble Shri Justice U.C. Srivastava, Vice
Chairman.
Hon'ble Shri M.Y. Priolkar, Member(A),

Appearances:

Mr.S. Natarajan, Advocate
for the applicant.

Mr.A.L. Kasturey, Advocate
for the Respondents.

ORAL JUDGMENT :

DATED : 24.4.1991.

! PER: Hon'ble Shri M.Y. Priolkar, Member(A) !

The grievance of the applicant in this case is that he has not been included in the select list of promotion to the post of Head Telephone Operator published on 5.11.1990. The applicant is working as Head Telephone Operator on adhoc basis since 4.10.1987. Admittedly, some of the officials included in the select list are junior to the applicant, but the applicant has not been informed of the reasons for his supersession.



2. The respondents in their written reply have stated that the applicant was considered for promotion during this selection but he was not considered suitable for regular promotion as Head Telephone Operator based on his service record and confidential reports. They have also produced before us today a copy of certain confidential instructions dtd. 10.10.1990 issued by someone signing "for General Manager" according to which for non selection posts, the persons to be considered as fit for promotion should have atleast 2 CR's good out of 3 including the last one. We have perused the confidential reports of the applicant for last 3 years which confirms the statement of the respondents, that the applicant has been graded as "average" during 1989-90 and 1987-88 and categorised as "good" for the year 1988-89.

3. The learned counsel for the applicant, however, argued that under Rule 212 of the Indian Railway Establishment Manual, non selection posts have to be filled by the promotion of the senior most suitable railway servant, suitability being determined by the competent authority to fill the post on the basis of record of service and/or a departmental test^{as} may be considered necessary. The rule also lays down that a senior employee may be passed over only if he has been declared unfit for holding the post.

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It is also stipulated that the declaration of unfitness should ordinarily be made some time before the promotion of the railway servant is considered. According to sub-rule (b) of Rule 212, whenever a senior railway servant is passed over in filling a non-selection post by promotion, the authority making the promotion shall record briefly the reasons for such supersession.

4. After perusing the record, it appears to us that these mandatory requirements in Rule 212 have not been observed in this case. Firstly, the confidential instructions stated to have been issued on behalf of the General Manager prescribing that at least 2 out of previous 3 CR's should be "good" are not in conformity with the requirement that the senior employee should be passed over only when he is specifically declared unfit for holding the post. The confidential reports which we have perused do not indicate that the applicant has been found unfit for promotion or regularisation in the higher post in any of these three years. These reports are in fact for the higher post which he is holding on adhoc basis and not in the lower post from which he is to be promoted to the higher post. Secondly, the respondents have not brought any record to show that the declaration of unfitness was at least recorded in the

concerned file by the competent authority. In any case, the rules specifically provide that such declaration should have been made prior to the consideration of the railway employees concerned for promotion, and, admittedly, this has not been done in this case.

5. The learned counsel for the applicant has also referred to the Judgment dtd. 29.8.1989 of Ahmedabad Bench of this Tribunal in the case of John Chacko Padical V/s. Union of India & Others (1991) 15 ATC 370 in which the Tribunal has held based on Rule 212 referred to above, that un-suitability for promotion having been communicated to the superseded candidate only at the time of his junior's promotion and not earlier, the supersession was vitiated. We are in respectful agreement with this view held by our Ahmedabad Bench.

6. On the basis of the foregoing discussion, we are of the view that the applicant is entitled to a declaration that he has been illegally superseded for the post of Head Telephone Operator. He is liable to be included in the panel dated 5.12.1990 and promoted to that post from the date his junior was promoted on the basis of the panel dtd. 5.11.1990. Respondents are directed to award from such date all service benefits of that post. This order may be implemented within

a period of 4 months from the date of receipt of
a copy of this order. There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(U.C. SRIVASTAVA)
VICE CHAIRMAN.