

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

C.A. No. 736/92

Date of decision: 20.9.94

PRADEEP KUMAR & ORS

: Applicants.

VERSUS

UNION OF INDIA & ANR. : Respondents.

Mr. S. Kumar : Counsel for the applicants.

Mr. Manish Bhandari : Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Ms. Usha Sen, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Heard the learned counsel for the parties.

2. The learned counsel for the applicant submits that the selection should have been based only on the basis of the service records and seniority. He has invited our attention to Rule 212 of the Indian Railway Establishment Manual, Chapter II Section 'B' specifically which provides in clause (a) that ~~the~~ authority competent to fill the posts on the basis of the record of service and/or departmental tests, if necessary. Thus, there is a provision for departmental test and it is necessary for the respondents to decide whether they will like to promote the persons only on the basis of service records and/or they will conduct the departmental test. There is an option ~~that~~ ^{with} the respondents either to conduct the test or to promote the person only on the basis of the service record. ~~This option is to be exercised by the respondents whenever there is a necessity for holding a departmental test.~~ Two different modes have been provided and the respondents can adopt any mode whenever they deem fit, ~~further,~~ particularly when the applicants have appeared in the examination and they have been declared failed, they cannot agitate the matter. The second limb of the argument is that no speaking order has been passed ^{as} why they have been declared failed. This ground has not been mentioned

any-where in the O.A. The learned counsel for the applicant has invited our attention to para 11 and submitted that juniors have superseded the applicant. It is the case of supersession and is altogether different from the case of not passing a speaking order. It has not been mentioned in the O.A. that no speaking order has been passed.

3. The third limb of the argument is that the juniors have been allowed to appear in the examination. It is true that they were allowed. However, the mistake was detected and they were not promoted though they were declared successful.

4. In the facts and circumstances of the case, no case is made out with regard to discrimination and Articles 14 and 16 do not apply. The learned counsel for the applicant has cited before us the case of Virendra Kumar & Others Vs. Union of India & Ors, reported in AIR 1981 SC 1775. In this case, a large number of persons who have completed only two years of service, were promoted to the post of Chargeman Grade II. However, the cases of other persons were not at all considered. The Hon'ble Supreme Court held that there is no justification for such differential treatment. Once a policy is adopted, it must be adopted for all. All persons promoted in the instant case have undergone the departmental test. It is not a case that some persons have to pass departmental test and some persons be promoted on the basis of service records. So, Articles 14 and 16 do not apply. It is not necessary that always one mode should be adopted in perpetuating every mode which may be suitable in the facts and circumstances at a relevant time can be adopted, particularly, when there are two options. The only question which needs consideration is that at the time of the adoption of the mode, it will be adopted for all and there should not be any discrimination at a relevant time.

5. In the facts and circumstances of the case, we do not find force in the petition and the same is dismissed, with no order as to costs.

Usha

(USHA SEN)
Administrative Member

D.L. Mehta

(D.L. MEHTA)
Vice-Chairman