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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 26.10.94.

OA 767/92  
(OA 64/90)

KANHIYALAL R ... APPLICANT.

V/s.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI SHIV KUMAR.

For the Respondents ... SHRI MANISH BHANDARI.

PER HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

Applicant Kanhiyalal R has prayed in this application u/s 19 of the Administrative Tribunals Act, 1985, that the impugned order dated 12.10.89 (Annexure A-1) in so far as it relates to the applicant's having not been considered suitable for promotion to the post of Junior Foreman be declared illegal and set aside and the respondents be directed to consider his case for promotion to the said post w.e.f. 1.1.84.

2. We have heard the learned counsel for the parties and have perused the records.

3. The applicant is presently holding the post of Diesel Senior Chargeman. The next higher post is that of Junior Foreman, as per the channel of promotion, and since the post of Junior Foreman is a selection post, promotions to this post are granted on the basis of merit-cum-suitability. It is stated by the applicant that there was an upgradation under <sup>the</sup> restructuring scheme in the Railway and, according to the modified selection method, promotions were to be based on the scrutiny of records. It is contended that while considering the promotion against upgraded post w.e.f. 1.1.84 the confidential records for three years preceding 1.1.84 should have been taken into account, the last ACR being for the year <sup>as</sup> ending <sup>also</sup> on 31.3.84. It is <sup>also</sup> contended that the applicant was within

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the zone of consideration and was eligible for promotion to the post of Junior Foreman (Diesel) w.e.f. 1.1.84 but promotion was wrongfully denied to him in spite of the fact that he was not communicated any adverse entry in his ACR. He made several representations regarding his grievance but they yielded no favourable result. The action of the respondents in not granting promotion to him is not sustainable as the same is arbitrary and illegal. On the contrary, the respondents have pleaded that the applicant's record was considered by the competent authority and on the basis of the confidential rolls of the relevant three years, the applicant was not found suitable for holding the upgraded post of Junior Foreman (D) scale Rs.3000-3200. It is also stated by the respondents that an adverse entries have been communicated to the applicant for the year ending <sup>as on</sup> 31.3.84 vide Annexure R-1 dated 22.7.86 and as per his record he was not adjudged suitable to the said post w.e.f. 1.1.84.


4. There is nothing on the record to show that there was anything adverse in the service records of the applicant during three years preceding 1.1.84 to de-bar him for promotion to the post of Junior Foreman (D). The adverse entries communicated to the applicant relate to the period after 1.1.84. No communication of any adverse entries in the Annual Confidential Reports for the three years immediately preceding 1.1.84 have been sent to the applicant.

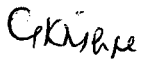
5. In these circumstances, we direct the respondents to reconsider the applicant's case for promotion to the post of Junior Foreman (D) w.e.f. 1.1.84 by taking into account his ACRs for the three years immediately preceding 1.1.84 and after excluding from consideration the adverse entries communicated vide Annexure R-1 dated 22.7.86, if these had been taken into <sup>CPK/14</sup> account earlier. This exercise should be done by the respondents

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within a period of three months from the date of receipt of a copy of this order.

6. The OA is allowed accordingly, with no order as to costs.

  
( O.P. SHARMA )  
MEMBER (A)

  
( GOPAL KRISHNA )  
MEMBER (J)