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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENC H:
AT HYDERABAD.

O.A.No.847/1993.

Date: 7-10-1993

Between:

P. Tharabai .. Applicant

Vs.

1. The Divisional Railway Manager (Personnel), S.C.Rly, Secunderabad (BG) Division, Secunderabad.
2. The Sr.Divisional Commercial Manager, Secunderabad (BG) Division, S.C.Railway, Sec'bad.
3. The General Manager, Rail Nilayam, Sec'bad.
4. Smt. K.A.Johnson
5. P. Mahadev
6. M.P.Deena Dayalan Respondents

APPEARANCE:

For the applicant : Sri G.V.Subba Rao, Advocate

For the respondents : Sri J.R.Gopala Rao, SC for Rly.

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (ADMN.)

JUDGMENT

I as per Hon'ble Sri P.T.Thiruvengadam, Member (A) I

The applicant was appointed as a Clerk on 14.11.1957 and after promotions she was functioning as Head Clerk with effect from 1.8.1984. She was promoted as Office Superintendent Grade-II in the scale of Rs.1600-2660

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on adhoc basis with effect from 9.8.1988 in which capacity she was working till 23.5.1993, but for the period from 9.1.1990 to 2.3.1990 when she stood reverted. Railway Board had issued instructions restructuring various cadres including the Ministerial cadres and the restructuring was effective from 1.3.1993. For the purpose of implementation of the restructuring orders, all vacancies existing on 1.3.1993 including the additional vacancies which arose due to restructuring were filled by the modified process of selection procedure which comprised only the scrutiny of service records and confidential reports without holding any written and/or viva-voce test. Secunderabad Division of South Central Railway accordingly issued promotion orders for four Head Clerks promoting them to the post of Office Superintendent Grade-II vide letter dt. 24.5.1993 bearing No.CP/121/P-6/Admn/Comm1/OS.Gr.II while reverting the applicant herein to the post of Head Clerk. The case of the applicant is that all the four Head Clerks who were promoted are junior to her and hence this O.A. has been filed with a prayer for quashing the order dt. 24.5.1993 bearing No.CP/121/P-6/Admn/Comm1/OS Gr.II issued by the Divisional Railway Manager, Personnel Branch, Secunderabad and for treating the applicant as in continuance of service as Office Superintendent Grade-II from the date of reversion with all consequential benefits.

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2. The main arguments advanced by the learned counsel for the applicant are -

- (a) no adverse remark was ever communicated to the applicant during her entire adhoc service as Office Superintendent Grade-II;
- (b) the applicant had qualified in the written test and was called for ~~viva~~-voce test for filling up the posts of Office Superintendent Grade-II and the selection process was abandoned with the receipt of instructions regarding cadre restructuring, and
- (c) applicant had continued on adhoc basis for five years and at no stage her performance was found to be not upto the mark.

3. It is the case of the respondents administration that the applicant had been promoted on adhoc basis without any prescriptive right for seniority or for continuance in the said post and with the condition that the adhoc arrangement would be terminated when regularly selected candidates ^{got} posted. The applicant had claimed that she had been functioning continuously for ^{the} period of five years. But even in the year 1989 one year after the adhoc promotion, the Senior Divisional Commercial Superintendent found that the applicant was not suitable to hold the higher post as her performance notes and draft letters properly. It was proposed to withdraw the officiating arrangement. In pursuance of the same and to make substantive arrangements in the cadre of Office Superintendent Gr.II the adhoc promotion of the applicant was terminated on 9.1.1990. She was, however, again promoted on adhoc basis on 2.3.1990 on her giving an undertaking to discharge her duties carefully.

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4. As regards the contention that she had passed the written examination ~~which~~ which was held before the receipt of instructions regarding cadre restructuring, it is submitted by the administration that the applicant did not secure the minimum qualifying marks in the written examination; but she was called for the *visa-voce* test by adding notional seniority marks as per the extant instructions. In any case the selection process had to be abandoned in view of the modified selection procedure as per the instructions of Railway Board. It is submitted on behalf of respondents administration that in the light of the modified ~~instructions~~ had considered the service record of the applicant including ^{his} overall performance, but was found not satisfactory and hence applicant could not be offered promotion.

5. It was again contended by the ~~learned~~ counsel for the applicant that in the modified procedure ~~based~~ on record of service and confidential reports, overlooking the applicant who had not been given any adverse remarks at any stage is unfair. To have a proper appreciation of the case, we called for the proceedings relating to the selection. The committee had taken into account the guidelines of Railway Board in their letter No.E (NG I) 92-CR 3 dt. 1.3.1993 wherein it has been clarified that the 'Average' grading given in the Confidential Report by itself does not draw the inference that the individual is unfit for promotion. It is for the Departmental Promotion Committee (DPC) to categorise the officers as 'fit' or 'not yet fit' for promotion on the basis of overall assessment of record of service of an individual.

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6. Department of Personnel & Training, Government of India, vide O.M.F.No.22011/5/86-Estt.(D) dt. 10.3.89 issued instructions regarding Procedure to be observed by the Departmental Promotion Committee and 3 of the said O.M. are as under:-

"2.1.4. Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as an adverse remark in respect of an Officer, at the same time, it cannot be regarded as complimentary to the Officer, as "Average" performance should be regarded as routine and undistinguished, it is only performance that is above average and performance that is really noteworthy which should entitle an Officer to recognition and suitable rewards in the matter of promotion.

3. Non-Selection Method:

Where the promotions are to be made on 'non-selection' basis according to [redacted] Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorise the officers as 'fit' or (not yet fit) for promotion on the basis of assessment of their record of service. While considering an Officer 'fit', guidelines in para-2.1.4 should be borne in mind. The officers [redacted] as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made. "

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From the DPC proceedings, we note that the committee had laid down certain internal guidelines and the applicant could not come up to the internal bench mark.

7. We felt it necessary to call for the notes and letters put up by the applicant in the last 2-3 years in order to better appreciate her day-to-day performance.

----- as well as the confidential rolls including the proceedings of D.P.C. we do not find any reason to set aside the impugned order.

8. Number of citations were relied upon by the learned counsel for the applicant in support of the case of the applicant, as under:

(i) 1985(3) SLR 126 Gujarat High Court had held that it would not be proper to record remarks like "not fit" without any foundation. Adverse remarks should be based on the performance of his duties, overall general character, conduct in the charge of his duties vis-a-vis his subordinate officers, and the quality of performance.

This citation is not relevant to this case since there is no column in the Confidential Rolls regarding 'Fitness for promotion' and it is left to the DPC to come to its conclusions.

(ii) 1986(1) SLR 103 Gujarat High Court had laid down ^{the} principle for promotion by seniority-cum-merit, the seniority should prevail in the absence of a clear finding that the persons concerned are positively unfit to be promoted and the seniority cannot be ignored on the basis of vague remarks.

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To

1. The Divisional Railway Manager, (Personnel)
S.C.Railway, Secunderabad(BG) Division,
Secunderabad.
2. The Sr.Divisional Commercial Manager,
Secunderabad (BG) Division,
S.C.Rly, Secunderabad.
3. The General Manager, S.C.Rly. Railnilayam, Secunderabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.S.K.Gopala Rao, SC for Krys. CAT.Hyd.
6. One copy to Library, CAT Hyd.
7. One spare copy.

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In the case of the applicant, her capacity for putting up the notes, draft letters etc. had been commented upon and we have to satisfy ourselves about these remarks by calling for various records pertaining to her day-to-day functioning. We do not think the denial of promotion to the applicant is based on vague remarks.

(iii) [ATL 1987 (2) 363] CAT, Principal Bench, New Delhi held that representation against adverse remarks must be considered carefully and no impression should be given that the authority concerned did not apply its mind to such a representation.

(iv) [ATR 1987 (2) 510] CAT, Chandigarh Bench had held that recording of adverse remarks without giving any particular of the alleged remarks cannot be sustained.

(v) [AIR 1979 SC 1622] Supreme Court held that non-consideration of explanation offered by Government servant against adverse report in the confidential roll is not justified. Adverse report in the C.R. cannot be acted upon unless it is communicated to the person concerned so that he will have an opportunity to explain the circumstances leading to the report.

The citations (iii) to (v) referred to above have no relevance to this case.

9. In the circumstances, the O.A. is liable to be dismissed and accordingly dismissed without costs.

P.T.Thiruvengadam

(P.T.Thiruvengadam)
Member (Admn.)

V.Neeladri Rao
(V.Neeladri Rao)
Vice-Chairman

Dated 7 Oct., 1993.

Grh.

Deputy Regd.
S/1993

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM: M(A)

Dated: 7 - 10 - 1993.

ORDER/JUDGMENT:

M.A./R.A./C.A. No.

in

C.A. No. 847/93.

T.A. No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions.

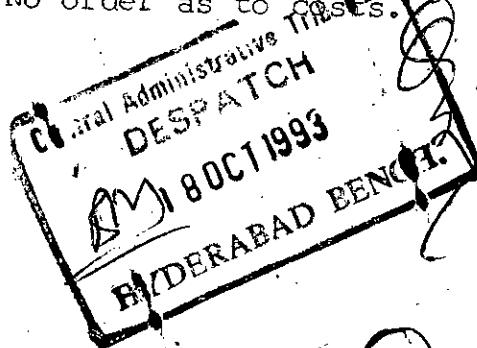
Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.



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