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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.389 of 1996

DATE OF ORDER: 17th *Feb* 1999

BETWEEN:

V.LAXMAIAH

.. APPLICANT

AND

1. The Railway Board,
Rail Bhawan, New Delhi,
represented by the Chairman,
2. The General Manager,
South Central Railway,
Secunderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. B.NALIN KUMAR

COUNSEL FOR THE RESPONDENTS: Mr.C.V.MALLA REDDY, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.B.Nalin KUMAR, learned counsel for the applicant and Mr.C.V.Malla Reddy, learned standing counsel for the respondents.

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2. The applicant in this OA was appointed as Assistant Permanent Way Inspector on 29.10.59. He was promoted subsequently to the higher grades and he was promoted as Assistant Engineer Class-II by the order NO.P(G)607/ENG., dated 3.5.80 (Annexure-2 at page 12 to the OA). It is seen that his case was considered for Group-A Junior Scale but he was not promoted to Group-A Service. His case was also considered in the year 1989, 1990 and 1992 and 1993 for promotion to the post of Divisional Engineer in Group-B Service on ad hoc basis against Group-A vacancy. Since a CBI case was pending followed by disciplinary case, the applicant was not promoted to Group 'B' senior scale in the selection proceedings of 1989, 1990 and 1992. He was promoted as Group-B senior scale on adhoc basis in the year 1993.

3. This OA is filed praying for a direction to the respondents to promote the applicant as Class-I officer with effect from the date his junior Mr.B.Nageswara Rao was promoted as Class-I officer with all consequential benefits.

4. A reply has been filed in this OA. Both the applicant and the respondents rely on the Memorandum of the Railway Board bearing No.E(D&A)92RG6-149(3), dated 21.1.93 (Annexure-6 at page 30 to the OA); Railway Board's Establishment Circular No.14/93, to sustain their case.

5. The promotion of the applicant upto the post of AEN Class-II is an admitted fact. A CBI case was filed



against the applicant before the Special Judge for CBI Cases at Visakhapatnam in the year 1989 for the irregularities committed by him during 1983-84 while he was working at Jaggayyapet. His junior Mr.Nageswara Rao was promoted to the senior scale on ad hoc basis as DEN in August 1989 as the prosecution case was pending against the applicant. The case of the applicant was considered by the Selection Committee which met on 2.8.89 to consider the empanelment of the applicant to Group-B Senior scale post but he was not considered suitable for promotion to senior scale during the pendency of CBI case though he had secured enough points from his last five ACRs for empanelment for Group-B senior scale post. That recommendation was accepted by the General Manager. It is clearly seen from the selection proceedings that the selection committee met for recommending only for empanelment for Group-B post which is accepted by the General Manager and not selection panel for Group-A post. The applicant was also considered for promotion to the senior scale Group-B by the selection committee which met on 20.7.90. For the same reasons as above, his case was passed over in 1990 also.

6. Similarly, the applicant was considered for selection to Group-B post senior scale by the Selection Committee which met on 28.7.92. By then, a major penalty charge sheet was initiated against him after the closure of the CBI case for certain lapses for violation of Rule 3(i), (ii) and (iii) of the Railway Servants (Conduct) Rules, 1966 i.e, lack of devotion to duty unbecoming of a Railway servant. As the charge sheet was pending, his case was passed over though he was senior most Group-B officer at



that time and was found fit for promotion as reflected in the last five years of ACRs.

7. The applicant was considered for ad hoc promotion to the senior scale and was recommended by the Committee on 12.1.93. Though a major penalty charge sheet was pending against him even at the time when the Committee met on 12.1.93, as his case was pending for more than two years due to prosecution/DAR cases, invoking the provisions of sealed cover procedure, it was observed that he was required to be considered for such promotion as his juniors had already been promoted. Hence his case was examined by the General Manager and it was decided by the General Manager to consider his case for adhoc promotion to the senior scale. It was also observed that his suitability for such adhoc promotion is required to be assessed by the Committee without taking into account the pending DAR case for the reasons stated. The Committee which met on 12.1.93 found him fit for adhoc promotion to the senior scale and hence he was promoted.

8. The promotion to the post of DEN Group-B on adhoc basis is in accordance with para 5.1 and 5.2 of the Railway Board's Circular dated 21.1.93 enclosed as Annexure-6 at page 30 to the OA.

9. Hence the applicant cannot have any grouse in not promoting him earlier on par with his junior Mr.Nageswara Rao when Mr.Nageswara Rao was promoted way back in the year 1989. The respondent authorities had acted diligently by promoting him on adhoc basis in the year 1993 in view of

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the instructions contained in the circular dated 21.1.93. It is to be held that the case of the applicant was favourably considered without rejecting the same, noting that his adhoc promotion would not affect/public interest as contained in that circular.

10. The applicant though exonerated in the CBI case, in the disciplinary proceedings he was punished with a minor penalty of stoppage of three sets of passes and all PTOs for 1996 on privilege account, by the order dated 8.12.95 (Annexure-10 at page 39 to the OA). In this context it is to be seen whether he is eligible for promotion to Group-A service.

11. The post of Junior Scale Group-A of IRSE is filled by promotion to the extent of 40% from Group-B officers of Civil Engineering Department. The case of the applicant was considered by the Union Public Service Commission held in April, October and December 1992 against the promotion quota vacancies of the recruitment year 1991 along with the other eligible officers. Since a major penalty charge sheet has been issued to the applicant on 7.5.91, the recommendation of the DPC in respect of the applicant was put in a sealed cover. A review DPC was also conducted against the promotion quota for the year 1991 in view of the judgement by the Jabalpur Bench of the C.A.T. in OA 865/93. The applicant figured in the revised zone of consideration for the regular 40% promotion quota vacancies of both the recruitment years i.e, 1990 and 1991. The review DPC also kept their recommendation in respect of the applicant in a sealed cover since DAR case pending against



him had not been finalised. A minor penalty order withholding of passes and PTOs was issued on 8.12.95. Hence in terms of the extant instructions, "in case of regular promotion from Group-B to Group-A if any penalty is imposed, the findings of the sealed cover shall not be acted upon and the case for promotion is to be considered by the next DPC in the normal course." It is seen from the sealed cover recommendations that while the applicant was recommended by the original DPC which met in December 1992 against a vacancy of the examination year 1990, the review DPC did not recommend to include his name in the panels of 1990 as well as 1991 for want of sufficient number of vacancies. The applicant was also considered by the DPC for promotion from Group-B to Group-A service and his case was recommended for the year 1992 with effect from 24.12.1992. This time also he could not be promoted since the penalty of stoppage of passes has been imposed on 8.12.95 on the applicant. Hence his case for induction to Group-A Junior Scale of IRSE in the second time also could not be considered as per the instructions relating to the sealed cover procedure.

12. The respondents have acted in terms of para 3.1 of the Railway Board's letter dated 21.1.93 as corrected vide letter No.E(D&A)92RG6-149(B), dated 22.10.93. Hence the non-promotion of the applicant to Group-A service is in accordance with the rules and cannot be challenged. His juniors, especially Mr.Nageswara Rao, was found fit for promotion to Group-A and hence he was promoted. We do not find any irregularity in his non promotion to Group-A service from the Group-B post.

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13. From the above analysis, it is evident that as the applicant has been imposed the punishment in the DAR case against him, he is not eligible for consequential benefits like retrospective adhoc promotion to the senior scale and induction to Group-A service of IRSE on par with his junior. The applicant thereafter had ~~xxxx~~/retired from service.

14. The applicant submits that the inquiry proceedings were prolonged ~~xx~~ and thereby he lost his chance for promotion even though the charge sheet was issued way back in the year 1991. If the applicant is aggrieved by the delay in finalising the pending charge sheet, he should have moved the judicial forum then and there itself to expedite the proceedings. It is not known whether the applicant had taken such action. It appears that the disciplinary applicant had taken no action to expedite ~~the~~/proceedings. At this juncture, this point cannot be considered as that had happened way back in 1991 and the proceedings were concluded in the year 1995 itself. Hence if there is delay in concluding the charge sheet proceedings, it cannot be a factor for granting him the relief.

15. The applicant made two main contentions while arguing this case. The first contention is that he had been promoted on adhoc basis to the senior scale in the scale of pay of Rs.3000-4500 with effect from 18.2.93 even though a disciplinary case was pending against him. As his scale of pay in the senior scale is higher than the scale of pay of the junior scale Group-A which is Rs.2200-4000,



he should be deemed to have been promoted to Group-A service on the basis of his scale of pay.

16. Whenever there is shortage of Group-A officers for being posted in the senior scale of Group-A, on the basis of one Group 'B' officer the recommendations of the selection committee, can be promoted on adhoc basis to the senior scale which is a Group-A post. Such adhoc promotion of the Group-B officer against Group-A senior scale post will not give him any right for regularly promoting him as Group-A officer. The Group-A promotions are made by the President of India as is evident from the Rule 209(A) of IREC - General Conditions of Service. This para reads as below:-

"Promotions to Railways Services, Group A

- (1) All substantive promotions to Railway Services Group 'A' shall be made by the President;

(2) xxxx xxxx xxxx xxxx"

17. As per rule 209(b) of IREC, appointment to the post in Group-A junior scale shall be made by selection on merit from amongst Group-B officers of the Department concerned and the Departmental Promotion Committee for this purpose shall consist of a representative of the Union Public Service Commission as Chairman and two representatives of the Ministry of Railways as Members. As per Rule 103(11) of IREC, the competent authority in relation to the exercise of any power under these rules is President or any authority to which such power is delegated in Appendix VI of those rules. In the present case the



applicant could not be promoted to Group-A service because of the minor penalty imposed on him. His non promotion is in accordance with the rules. Just because he was posted as Group-B senior scale officer which pay scale is higher than the junior scale Group-A, the applicant cannot demand as a right as having posted to Group-A service automatically without following the extant rules. The applicant has not produced any rule to show that Group-B senior scale being higher than Group-A junior scale post he should be deemed to have been promoted to Group-A service when he was posted to Group-B senior scale post on adhoc basis. Hence this contention has to be rejected.

18. The second contention of the applicant is that in terms of para 5.3 of the Railway Board's Letter dated 21.1.93 when the applicant was awarded only minor penalty, he is deemed to have been promoted regularly from an earlier date when adhoc promotion was given to him and even from a much earlier date. The applicant was promoted to Group-B senior scale on adhoc basis not in accordance with the Rules for promotion to Group-A junior scale but in accordance with the promotion of Group-B senior scale as approved by the General Manager. Hence this contention is also to be rejected as it is not in consonance with the Recruitment Rules for Group-A junior scale.

19. The applicant tries to advance his case on the ground that as he was promoted to Group-B senior scale on adhoc basis which was approved by the General Manager and as the General Manager is the competent authority to promote him to Group-A senior scale, he is deemed to have

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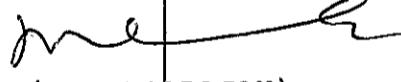
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been promoted to Group-A senior scale when he was posted on adhoc basis as Group-B senior scale officer by the General Manager. As per para 209(a) of IREC all substantive promotions of Railway Service Group-A shall be made by the President only and such powers of the President are not delegated to the General Manager as per Govt. of India (Transaction of Business) Rules. Hence the promotion to Group-B senior scale approved by the General Manager cannot be treated as equivalent to the approval for promotion to Group 'A' service. We have also seen the proceedings of the Selection Committee for promotion to Group-A senior scale for the years 1989, 1990, 1992 and 1993. In all these proceedings, it is clearly noted that the promotion is only to Group-B senior scale and that was approved by the General Manager. Hence even the records also did not sustain the contention of the applicant.

20. In view of what is stated above, we find no merit in this OA. Hence the OA is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

17.2.99


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED : 17th Feb. January, 1999

vsn

Copy to:

1. HDHNO
2. HHRD M(A)
3. HSSDP M(D)
- ~~4. D.R. (A)~~
- ~~5. SPARE~~

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE N. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHW.R:
MEMBER (J)

DATED: 17.2.99

ORDER/JUDGMENT

M.A./R.A/C.P.NO. —

IN

C.A.NO : 389/82

ADMITTED AND, INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

