

66

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.371 of 1996

DATE OF ORDER: 11th August, 1998

BETWEEN:

D.MURUGESHAN

.. APPLICANT

AND

1. Union of India represented by
the Chairman, Railway Board,
Ministry of Railways, Rail Bhavan,
New Delhi 110 001,
2. Union Public Service Commission,
represented by its Secretary,
New Delhi 110 001,
3. The General Manager,
South Central Railway,
Secunderabad 500 341.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.G.RAMACHANDRA RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, Member (Judl.)

JUDGMENT

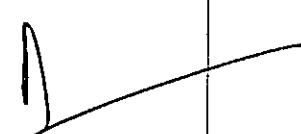
(ORDER PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.G.Ramachandra Rao, learned counsel for the applicant and Mr.W.Satyana Rayana for Mr.N.R.Devaraj, learned standing counsel for the respondents.

2. The short facts of this case are as follows:-

The applicant was initially appointed as Clerk on 19.10.56 in Secunderabad Division. He was promoted as

R



Assistant Personnel Officer in Group-B Gazetted post on 20.8.80 on ad hoc basis and was regularly promoted to Group-B as APO with effect from 13.3.81 after successful completion of in-service training given to him as best among failed SC candidates for a vacancy reserved for SCs in the selection of Assistant Personnel Officers. His case was considered for ad hoc promotion in the senior scale during June 1984 and August 1984 but he was not selected. The applicant submitted a representation and subsequently he was promoted to the senior scale with effect from 12.8.85. Though there is controversy in regard to the assessment of his fitness for senior scale during 1984, the same is not very relevant for ~~the~~ present issue as even the confidential reports that would have been considered for promotion to Gorup-B senior scale were not the confidential reports considered for promotion to the junior scale Group/A in the Indian Railways Personnel Service (IRPS for short). Hence that controversy need not be examined in this case.

3. If the Railways had ~~an~~ dearth of Group-A officers for promotion to the senior scale Group-A, eligible Group-B officers are promoted to senior scale on ad hoc basis pending posting of Group-A officers in the senior scale. The applicant was promoted to senior scale Group-B in view of the above on 12.8.85 even though he was not a junior scale Group-A officer by then.

4. The appointment to Group-A junior scale in IRPS is made to the extent of 50% of vacancies by direct recruitment through open competitive examination held by the UPSC and the rest of 50% by elevation of the Group-B

R

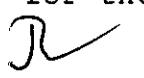
D

officers with at least 3 years of service in the Railway Ministry and the Personnel Departments on the Railways. The applicant had been promoted to junior scale as a promotee officer against 50% quota from Group-B service.

6. Promotion to Group-A junior scale is done through a selection conducted by the Departmental Promotion Committee convened by Union Public Service Commission. A member of the UPSC is the Chairman of the DPC. Representatives from the Railways to the extent of minimum of three representatives sit in the DPC along with the Member from UPSC nominated as Chairman.

7. The procedure for selection involves placing of officers/grades 'Outstanding' at the top, followed by 'Very Good' officers etc. ~~etc~~ maintaining their inter se seniority in the feeder category in each block.

8. It is stated that the applicant was considered for promotion to the Junior Scale Group-A service for the vacancies of South Central Railway for the year 1990-91 by DPC which met on various dates from 1st to 13th July, 1992. There were three vacancies against general quota and one vacancy for the SC quota for that year. But the applicant was not selected. Hence the applicant submitted a representation to promote him against the vacancies which had arisen for the year 1991 but that representation was rejected by the Railway Board by the letter No.E(GP)93/1/39 dated 1.3.95 (Annexure-XI at page 29 to the OA) stating that his case was not recommended for absorption into Indian Railway Personnel Service by the said DPC. It is also stated that in cases of selections which are based on merit, supersession is not an uncommon feature. The panel for the 1991 selection was issued by the Railway Board vide





notification No.E(GP) 91/1/59 dated 14.9.92 (Annexure-II at page 13 to the OA) and that notification took effect from 23.7.92.

9. The applicant was also considered for the Group-A Junior Scale in IRPS cadre by the DPC which met between 1st to 12th November 1993 for the vacancies pertaining to the year 1991-92. The applicant was found fit for the 1991-92 vacancies but his result was kept in a sealed cover. The Committee observed in the note in UPSC File NO.F.1/2(2)/93-AU.I that the DPC assessed the applicant as 'Very Good' for the year 1991-92 and recommended his case on that basis for inclusion in the panel for the year 1991-92 subject to his securing a clearance in the Vigilance Case pending against him and the competent authority furnishing the requisite Integrity Certificate in this regard. The applicant retired from service on 31.1.94. The applicant was reported to have been given the Integrity Certificate and on that basis he was promoted to the Junior Scale Group-A service by the order No.E(GP)93/1/59 dated 18.5.94 (Annexure-VII at page 20 to the OA) after his retirement. It is stated that his promotion to Junior Scale of IRPS will take effect from 25.11.93.

10. The applicant having aggrieved by not promoting him to the Group-A Junior Scale against the vacancies for the year 1990-91 has filed this OA praying for a direction to R-1 and R-2 herein to produce the relevant records of DPC held in July 1992 for appointment to Junior Scale in the Indian Railway Personnel Service and for a consequential direction to R-1 to appoint the applicant to the Junior Scale of IRPS with effect from 23.7.92 on par with his juniors with all attendant benefits.

R D

11. A reply has been filed in this OA. The sum and substance of the reply is that the applicant was not found suitable because of the grading given by the DPC for the vacancies for the year 1990-91 and hence his name did not find a place when his juniors were promoted with effect from 23.7.92. However, his case was considered for the vacancies of 1991-92 by the DPC which met in November 1993 and his name was recommended for promotion to the Junior Scale Group-A. However, that could not be implemented as a result of the DPC proceedings/kept in a sealed cover due to the pendency of a vigilance case and non issue of the integrity certificate. However, when the applicant's case was cleared, immediately thereafter his results were released and he was promoted by the notification dated 18.5.94 with effect from 25.11.93. Hence the applicant is not eligible for getting promotion with effect from 23.7.92 and his case is liable to be rejected.

12. The main contention of the applicant in this OA is that the DPC which met in November 1993 found him eligible for promotion to IRPS against the vacancies of 1991-92 whereas the DPC which met in July 1992 did not recommend his case for the vacancies of 1990-91. There were no valid reasons which prevented the DPC which met in July 1992 to reject his case when his case was recommended by the DPC immediately thereafter within a year by the DPC which met in November 1993. The confidential reports considered by both the committees are more or less same and on that basis the case of the applicant could not have been rejected by DPC which met in July 1992. He further adds that his record of service continued to be the same even

JL

prior to July 1992 and November 1993. The reasons that weighed the DPC which met in November 1993 to recommend his case for promotion should equally weigh when it had met in July 1992. Hence the applicant submits that his case was rejected erroneously for promotion against the vacancies which occurred for the year 1991-92 by the DPC which met in July 1992. Hence his case has to be reconsidered and he should be promoted on par with his juniors with effect from 23.7.92.

13. From the above details and the contentions raised by the applicant, the points to be seen are:

(i) Whether the DPC which met in July 1992 had considered his case in accordance with the rule and

(ii) Whether giving different gradings by the DPCs which met in July 1992 and November 1993 is in order.

14. To examine the above two issues, we called for the minutes of the DPC which met in July 1992 and November 1993 and also the Confidential Reports of the applicant from 1986 to 1993. Those records were produced and we perused those records.

15. The DPC which met in July 1992 comprises of the Chairman being one of the Members of the UPSC and 2 Executive Directors of the Railways. The character rolls of the senior most eligible officers were considered by the Committee and on the basis of the consideration of the character rolls, the committee gave grading to the officers who were considered for promotion to the Junior Scale of

D

J

IRPS. As stated earlier, there were 3 vacancies for General candidates and one vacancy for SC candidate in the year 1990-91.

16. The applicant who is an SC candidate was graded 'Good' by the Committee whereas four more officers who were juniors to him and whose names were considered by the Committee, were graded 'Very Good'. Hence the officers graded 'Very Good' superseded the applicant who was graded 'Good'. There was no irregularity in the consideration of the case of the applicant and the others by that Committee.

17. The next DPC had met in November 1993. This DPC consisted of a Member of the UPSC as the Chairman and four Executive Directors of the Railways. This Committee also considered the character rolls of the officers concerned and gave recommendations. For South Central Railway for the year 1991-92, there was only one vacancy and that too against General quota. The applicant who was senior most among the officers was considered fit by grading him as 'Very Good'. However, his promotion could not be released in view of the non-issue of the integrity certificate and to that effect a note was enclosed to the proceedings of the Committee in the UPSC file referred to above. The applicant was subsequently given the certificate and he was promoted by the notification dated 18.5.94. That promotion was effective from 25.11.93 even though by the time the notification was issued, the applicant had retired from service. The DPC which met in November 1993 also had performed the job as per the rules.

18. The only point for consideration is whether the grading given to the applicant as 'Good' by the DPC which

R

D

met in July 1992 is in order or not and whether any extraordinary event had taken place to change the grading as 'Good' given by the DPC which met in July 1992 to 'Very Good' by the next Committee which met in the month of November 1993. To examine the above, we perused the ACRs of the applicant for the concerned years.

19. The Supreme Court had held in the reported case in 1992(2) ATC SC 562 (National Institute of Mental Health and Neuro Sciences v. Dr.K.Kalyana Raman and others) that "the procedure fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. The selection committee consisted of experts in the subject for selection and they were men of high status and unquestionable impartiality. The court should be slow to interfere with their opinion".

20. In the reported case reported in 1997(1) SLR 153 (Anil Katiyar v. Union of India), the Supreme Court had held that "The court cannot sit in the judgment over the selection made by DPC unless the selection is vitiated by malafide or arbitrary. The Tribunal could not go into the question as to whether the appellant had been rightly graded in the ACRs".

21. In view of the above directions of the Supreme Court, though no corrections can be made to the grading given by the DPC, we perused the ACRs to see that the grading given by DPC is not far away from the materials available in character rolls to ensure that the DPC had

R

D

acted in accordance with the rules. It is made clear that we are not making any correction or observations on the grading given by the DPC.

22. From the perusal of the ACRs it is seen that the Committee which met in July 1992 considered the case of the applicant on the basis of the ACRs wherein the grading 'Good' and 'Average' were predominant. There was a remark in the ACR to the effect that the applicant had reached his limits. It is also stated that his initiative to go after the problems is just above the Average. On the basis of the above remarks, the Committee which met in July 1992 probably had graded him 'Good'. In the ACRs perused by the Committee which met in November 1993, the grading of 'Good' and 'Very Good' were equal and that might have probably made the Committee to come to the conclusion that the applicant has to be graded as 'Very Good'. We also find that the DPC which met in November 1993 had graded ~~as~~ another officer, who was graded 'Good' for the year 1991-92. But while considering for the vacancies against 1992-93 he was graded 'Very Good' for the year 1992-93. Hence it appears that an officer graded 'Good' by an earlier Committee can be graded 'Very Good' by a later Committee on the basis of the ACRs placed before that Committee and also due to the fact that there is slight difference in the ACRs placed before the two Committees.

23. Considering the above, it is to be held that the DPC had made recommendations and given the grading fairly and justifiably. There is no procedural irregularity also in the selection held. No malafide has been attributed to any of the DPC Members.

R *A*

In view of the above appreciation of this case, we find that the applicant has not made out a case to grant the relief as prayed for by him. Hence this application is liable only to be rejected and accordingly it is dismissed. No order as to costs.

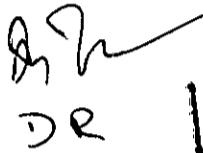

(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

11/8/98

DATED: 11th August, 1998


(R.RANGARAJAN)

MEMBER (ADMN.)


DR

vsn

Copy to:

1. The Chairman, Railway Board, Min. of Railways,
Rail Bhavan, New Delhi.
2. The Secretary, Union Public Service Commission, New Delhi.
3. The General Manager, South Central Railway, Secunderabad.
4. One copy to Mr. G. Ramachandra Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
6. One copy to D. R. (A), CAT, Hyderabad.
7. One duplicate copy.
14. Copy to All the Reporters, CAT, Hyd.

YLKR

10/8/98

(u)

II COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 11/8/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

C.A.NO. 371/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकारपाल
Central Administrative Tribunal
प्रेषण / DESPATCH

107 AUG 1998

हैदराबाद आयोगीट
HYDERABAD BENCH