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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.580/1993

Dt. of order: 22.9.1995

Raja Ram Rastogi

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.S.D.Sharma

: Counsel for the applicant

Mr.S.S.Hasan

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl)

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

Shri Raja Ram Rastogi has in this application under Sec.19 of the Administrative Tribunals Act, 1985 sought a declaration that the applicant is entitled to promotion to the post of Shop Superintendent (Luhar) w.e.f. 1.1.1993, with all consequential benefits. He has also prayed for quashing of order dated 5.8.1993 (Annx.A1) by which persons other than the applicant were promoted to the post of Shop Superintendent.

2. The facts of the applicant's case which are essential for disposal of this application are that he was promoted on ad hoc basis on the post of Junior Shop Superintendent scale Rs.2000-3200 (RP) vide order dated 19.8.1988 (Annx.A2). Thereafter vide order dated 12.10.1988 (Annx.A4) he was granted promotion to the post of Jr.Shop Superintendent on a provisional basis w.e.f. 31.8.1988. In the tentative seniority list for the post of Jr.Shop Superintendent (Annx.A5) the name of the applicant was at Sl.No.3. One of the two persons above the applicant was promoted and the other one retired from the service. Thereafter, the applicant's name stood at Sl.No.1 in the seniority list. One of the incumbents on the post of Shop Superintendent scale Rs.2375-3500 (RP) retired from service on 31.12.1992 and therefore, the applicant was entitled to be posted against the said post on the basis of his seniority.

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However, the post was down-graded to that of Jr.Shop Supdt. and the applicant was posted against this post in his own scale of pay vide order dated 19.1.1993 (Annx.A6). The applicant's representation against down-gradation of the post was of no avail.

3. Further, according to the applicant, in spite of his being seniormost in the post of Jr.Shop Supdt, respondent No.2, the Chief Works Manager, W.Fly, Kota Division, vide order dated 5.8.1993 (Annx.A1) promoted respondents Nos.3 and 4, who were junior to the applicant as Shop Supdt. scale Rs.2375-3500, after declaring the applicant to be unsuitable for promotion. The applicant's representation dated 12.8.1993 (Annx.A9) has not evoked a satisfactory response from the respondents, as seen from the respondents' reply dated 27.8.1993 (Annx.A10). There is no adverse entry in the service record of the applicant on the basis of which he could be denied promotion. For the year ending 31.3.1990, an adverse report was communicated to the applicant (Annx.A11), in which there were adverse entries against four columns. The adverse entries against two columns were expunged vide order dated 6.6.1991 and the expunged entries included the remarks "below average" (Annx.A12). No adverse report prior to or after the aforesaid report has been communicated to the applicant. Promotion to the post of Shop Superintendent is based on seniority cum suitability and it is a nonselection post. Denial of promotion to the applicant has been in violation of Articles 14 and 16 of the Constitution. The DFC is supposed to objectively apply its mind to the records of the candidate and also record reasons for declaring a person as unfit for promotion. There was however, no material to justify the conclusion that the applicant was unfit for promotion. Since the entry regarding the overall performance of the applicant

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and gradation which was earlier adverse for the year ending 31.3.1990 has been expunged; the remaining adverse entries which were not expunged lost their force. The applicant's claim is that the facts and circumstances of the case, he is entitled to the minimum scale of pay of Shop Superintendent w.e.f. 1.1.1993 and promotion to the said post from the said date.

4. The respondents in the reply have not denied that the post of Shop Superintendent was down-graded but have added that that was done in view of the controversy raised by another employee who claimed seniority over the applicant. Adverse remarks for the year ending 31.3.1990 in the ACP of the applicant were communicated to him and after taking into account his representation against these remarks, two of the adverse entries were expunged. However, adverse entries "lack of initiative and direction" and "lack of keenness, promptness and direction" were not expunged. Thus, there was basis for the competent authority to deny promotion to the applicant. The vacancy of Shop Supdt, arose as a result of restructuring effective from 1.3.1993. To fillup that vacancy, prior 3 years service records of the eligible candidates were considered by the Selection Committee, in accordance with the Railway Board's circular dated 10.6.1993 (Annx.F1). There were adverse entries in the ACP of the applicant for the year ending 31.3.1990 which still had not been expunged and these were of sufficient gravity to influence the assessment of the performance of the applicant so as to deny him promotion. A senior can be passed over for promotion if he has been declared unfit for the post in question.

5. During the arguments, the learned counsel for the applicant stated that once the adverse entry relating to overall assessment which was earlier treated as "below

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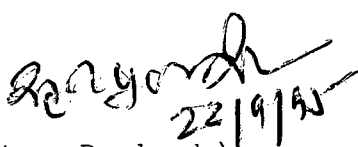
average" have been expunged, the applicant's performance could be considered as average. He drew our attention to Railway Board's instructions dated 18/20.10.1993, (not formally placed on record) according to which an employee who has been graded as average in the ACR should not be denied the benefit of restructuring only on account of his average report. He, therefore, claimed that the applicant was entitled to promotion once the aforesaid entry "below average" has been expunged. He also drew our attention to the impugned order Annx.A1 dated 5.8.1993, according to which two persons had been granted promotion on restructuring, one w.e.f. 1.3.1993 and the other with effect from immediate effect, i.e. presumably from the date of the order namely 5.8.1993. He stated that if the applicant was not eligible for promotion on the basis of the preceding 3 years records, w.e.f. 1.3.1993, he should be at least be granted promotion w.e.f. 5.8.1993, the date from which his junior was granted promotion, because in the 3 years preceding the date of order Annx.A1, there was no adverse entry in his ACR.

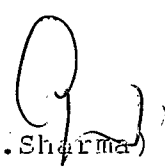
6. We have heard the learned counsel for the parties and have gone through the material on record as also the circular produced by the learned counsel for the applicant. The restructuring scheme came into effect on 1.3.1993 and in any case, therefore, the applicant's claim for promotion to the post of Shop Superintendent from 1.1.1993 is not justified. But we have to consider whether he is entitled to promotion to the post of Shop Superintendent scale Rs.2375-3500 w.e.f. 1.3.1993. The three completed years preceding the date effective from which promotion on restructuring was to be granted were the years ending on 31.3.1992, 31.3.1991 and 31.3.1990. Even after expunction of some of the adverse remarks in the ACR for the year 1989-90, two adverse remarks

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as mentioned above survived. Even though the remark "below average" may have been expunged, the other adverse remarks as reproduced above which survived could not possibly have been ignored by the DPC while judging the suitability of the applicant for promotion to the post of Shop Superintendent, even on the basis of upgradation. Therefore, in our view, the respondents were justified in denying promotion w.e.f. 1.3.1993 or the earlier date i.e. on 1.1.1993, from which he has claimed promotion as per the relief clause. The applicant's claim for promotion w.e.f. 5.8.1993 is also untenable. Two posts of Shop Superintendent have been filledup vide order Annx.A1. The persons appointed w.e.f. 1.3.1993 and from the date of passing of order dated 5.8.1993 were those who had been adjudged suitable by the Selection Committee, which had found the applicant unsuitable. Thus the two posts which became vacant got filledup. When there was no post to be filledup, there was no question of the applicant being granted promotion. Moreover, promotion to the applicant can be considered only after his performance has been reassessed on a fresh vacancy arising and if he is found suitable. In these circumstances, we find no merit in this application.

7. The application is, therefore, dismissed with no order as to costs.


(Ratan Prakash)
Member(Judl)


(O.P.Sharma)
Member(Adm.).