

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.257/94

Date of order: 20.11.1996

Puran Chand Malik, Head Clerk, Office of the Chief Works Manager, Wagon Repair Shop, Western Railway, Kota.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Chief Works Manager, Wagon Repair Shop, Western Railway, Kota.

...Respondents.

Mr.R.N.Mathur : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Puran Chand Malik has prayed that the respondents may be directed to give promotion to the applicant on the post of Chief Clerk in accordance with the Restructuring/upgradation scheme w.e.f. the date such promotion has been granted to persons junior to the applicant, with all consequential benefits. He has further prayed that the respondents may be directed that the average ACP of the applicant in the preceding 3 years service record may not be treated as average and on the ground of the average remark of the ACR promotion may not be denied to the applicant. There is still further prayer that the respondents may be directed to consider the case of the applicant for promotion on the post of Chief Clerk in pursuance of the notification Annx.A5 and while considering the name of the applicant, 'average' ACP may not be treated as adverse.

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2. The facts of the case as stated by the applicant are that he was promoted on the post of Head Clerk in the office of respondent No.2, the Chief Works Manager, Wagon Repair Shop, Western Railway, Kota in 1982 and he continues to hold the said post. The Railway Board took a policy decision to grant benefit of upgradation/restructuring to the employees of the Railways and in accordance with the said policy an order dated 6.5.1993 (Annx.A2) was issued by the Chief Workshop Manager, Kota, by which such promotion on upgradation/restructuring was granted on the post of Chief Clerk in scale Rs.1600-2660 to certain persons who were junior to the applicant. The applicant was not given the said promotion only on the ground that one of the ACRs of the applicant was 'average'. The applicant submitted an appeal dated 5.5.1993 (Annx.A3) against the aforesaid order. But respondent No.2, the Chief Works Manager, Kota rejected the appeal. Thereafter, the applicant submitted a representation to respondent No.1, the General Manager, Western Railway, Churchgate, Bombay, in this regard. However, both respondents Nos.1 and 2 rejected the appeal/representation submitted by the applicant, vide communication Annx.A1 dated 21.2.94. This communication however does not contain the decision taken by respondent No.1. The applicant has however quoted an order dated 9.2.94 issued by the General Manager, Western Railway, whereby amongst others the appeal submitted by the applicant against his nonpromotion as Chief Clerk, has been rejected. According to the applicant, respondent No.2 issued a notification on 26.5.94 proposing to hold a selection test for promotion on the post of Chief Clerk. The name of the applicant has been included in the said notification as an eligible candidate. The applicant's apprehension is that although he is at Sl.No.1 in the list of eligible candidates, yet while considering his name for promotion the 'average' ACP will stand in its way and on that ground promotion may be denied to him.

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The applicant's grievance is that he has been wrongly declared ineligible for promotion on the post of Chief Clerk on the ground that one of his ACPs is 'average'. Such ACP treated as adverse was never communicated to the applicant.

3. The respondents in their reply have denied that the benefit of upgradation was not given to the applicant only on the ground that his ACPs are average. According to them, the applicant was charge sheeted and was also penalised for certain mis-conduct and therefore, after taking into consideration the relevant ACPs as well as the service record, the competent authority did not recommend the name of the applicant for promotion under the restructuring/upgradation scheme. The applicant had erroneously submitted an appeal to the Chief Works Manager, Kota, against his nonpromotion. No such appeal lay to the Chief Works Manager because it was this authority which had approved the panel. Therefore, the applicant's appeal was sent to the higher authority i.e. the Chief Workshop Engineer, Churchgate, Bombay. The decision taken on the said appeal by the said Chief Workshop Engineer was communicated to the applicant but in the meantime the applicant had made a representation to the General Manager which was also decided by the General Manager on 9.2.94 treating it to be an appeal. However, even thereafter, the applicant preferred an appeal to the General Manager on 19.4.94 which is still pending before the General Manager.

4. With regard to the applicant's apprehension that he may be denied promotion again in pursuance of the notification issued on 26.5.94 for the post of Chief Clerk, the respondents have stated that the posts of Chief Clerk/Chief Time Keeper for which notification was issued on 26.5.94 are selection posts and the eligible candidates are required to pass such selection test for getting the benefit of promotion. The applicant who

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had been called to appear for such selection had failed to do so. Therefore, the applicant cannot have any grievance on this ground either. While considering an employee for promotion, his over all service record has to be seen and respondents have followed the instructions issued by the Railway Board, in this regard. The appeal of the applicant against his nonpromotion on upgradation/restructuring was rejected on an overall consideration of the service record of the applicant and his ACRs.

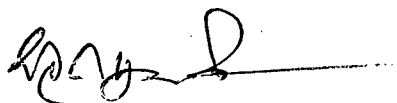
5. We have heard the learned counsel for the parties and have perused the record.

6. During the arguments, the learned counsel for the applicant stated that on an M.A.No.441/95 filed by the applicant, the Tribunal had ordered the production of certain records relevant to the case of the applicant regarding his promotion on the basis of upgradation/restructuring and these records were to be perused by the Tribunal to satisfy itself whether the applicant had been denied promotion on a proper basis. The relevant records were produced before us. The applicant's case was considered for promotion on the basis of upgradation to scale Rs.1600-2660 in April 1993 and we find that his name was not recommended for such promotion on upgradation as he had been considered as unsuitable for such promotion. The respondents have drawn attention to Annx.R1 which is a copy of the order dated 10.9.92 imposing penalty of reduction to three lower stages for a period of one year. Reasons have also been given in the said order why penalty has been imposed on the applicant. Vide order dated 7.1.93 passed by the Chief Works Engineer, Bombay, the penalty has been modified in such a manner that it will have effect only for 6 months as against one year specified in the original order imposing the penalty. Since a major penalty had been imposed on the applicant which was

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current on the date with effect from which promotion on upgradation/restructuring was to be granted i.e. 1.3.93, we do not find anything irregular or improper in the respondents' action in denying promotion to the applicant. As regards apprehension regarding denial of promotion in pursuance of the notification issued on 26.5.94, the applicant himself did not participate in the process of selection and therefore, naturally he could not have been considered for promotion.

7. In the circumstances, we find no merit in this application. It is, therefore, dismissed. No order as to costs.



(Ratan Prakash)
Judicial Member.



(O.P.Sharma)
Administrative Member.