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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 16/8/2000

OA 111/95

Anoop Chand Saxena, JTO Group Exchange, Beawar.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communications, New Delhi.
- . Chairman, Telecom. & Secretary, D.O.T., New Delhi.
3. Chief GMT, Rajasthan Circle, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.K.S.Sharma

For the Respondents

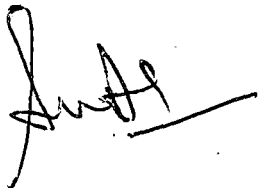
... Mr.Hemant Gupta, proxy
counsel for Mr.M.Rafiq

ORDER

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes following prayers;

- i) to quash and set aside the order dated 9.1.94, at Annexure A/4.
- ii) to direct the respondents to issue the order of promotion in TES Group-B in favour of the applicant w.e.f. 4.7.90, and
- iii) to direct the respondents to pay arrears of pay w.e.f. 4.7.90 with all consequential benefits.



2. Facts of the case in brief, as stated by the applicant, are that he was promoted in TES Group-B vide order dated 6.12.88 but this order of promotion was cancelled at the request of the applicant himself as he was unable to join the duties at Bombay. Thereafter, the applicant was promoted in TES Group-B on 24.5.91 but he was reverted back on the post of JTO vide order dated 9.1.94. It is stated that the applicant merely requested to forgo his promotion in December, 1988 for one year only and thereafter the applicant was due for promotion w.e.f. 4.7.90 but he was not promoted w.e.f. 4.7.90. Hence, the applicant filed a representation dated 30.5.91 but to no avail. It is further stated that juniors to the applicant have been promoted by ignoring the seniority of the applicant. It is also stated that there was no adverse ACR/material against the applicant and promotion of lateral advancement of JTO in the pay scale of Rs.2000-3500 was also given to the applicant w.e.f. 10.6.92 but the applicant was reverted vide order dated 9.1.94 without any rhyme and reason. It is stated that charge-sheet was issued to the applicant on 22.11.94, which cannot come in the way of promotion of the applicant. Therefore, the applicant filed this QA for the relief as mentioned above.

3. Reply was filed. It is admitted that the applicant was promoted as TES Group-B in the year 1988 by regular DPC but he requested to adjust him in Rajasthan. As such, his promotion was cancelled. The applicant was again promoted on 24.5.91, vide order at Annexure A/7, on temporary/ad hoc basis but reverted vide order dated 9.1.94 due to joining of regular incumbent against the said post. It is stated that the respondents never received representations of the applicant, at Annexures A/5 and A/6, as per their official

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record. It is also stated that vide order at Annexure A/3 promotion of the applicant granted to him vide order Annexure A/1 was cancelled. Thereby, the applicant lost the seniority and his junior was promoted earlier. Therefore, the applicant had no right to be considered for promotion w.e.f. 4.7.90. It is stated that the applicant was again considered by the DPC for promotion in TES Group-B for the vacancies of the year 1991-92 but the DPC assessed him "not yet fit". It is stated that after recommendations for first promotion by the DPC, the applicant earned adverse remarks in his ACR for the year 1987-88, which the DPC did not consider in the year 1988 at the time of consideration of promotion of TES Group-B. It is stated that case of the applicant against the vacancies of 1992-93 and 1993-94 is under active consideration and the result of the DPC will follow. Therefore, in view of the reply filed by the respondents, the respondents have stated that the applicant has no case and this OA is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is not disputed that the applicant was promoted as TES Group-B Officer vide order dated 6.12.88, which order was cancelled as the applicant did not want to join at Bombay and he thereby foregone the promotion. It is also an admitted fact that the applicant was given promotion of lateral advancement of JTO in the pay scale of Rs.2000-3500 w.e.f. 10.6.92 according to the rules and for refusal of promotion by the government servant the only embargo is that the fresh offer of promotion cannot be made to such employee for a period of one year from the date of such refusal. But by

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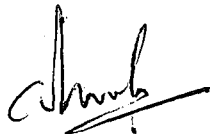
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forgoing the promotion, in such circumstances, the employee does not become junior. It is stated by the respondents that DPC had considered the candidature of the applicant for the vacancies of the year 1991-92 but he was assessed as "not yet fit" on the ground that he earned adverse ACR in the year 1987-88, which was not considered by the DPC who met in the year 1988. We have perused the proceedings of DPC dated 26.4.94 for consideration of promotion of TES Group-B for the vacancies of the year 1991-92. In the proceedings prepared by the DPC, against the name of the applicant it is mentioned that "not yet fit" but no reason whatsoever has been mentioned. In the reply reason is given that the applicant earned adverse ACR for the year 1987-88 which was not considered by the earlier DPC. In this connection, it is settled position of law that once a person is promoted on higher post, his all earlier adverse record is washed out and the same cannot be used against him in connection with further promotion. Moreover, no such evidence has been produced before us that earlier DPC has not considered the ACR of the applicant pertaining to the year 1987-88 as nothing has mentioned in the DPC proceedings clearly as to what was the basis before the DPC for assessing the applicant as "not yet fit". On the perusal of ACR written for the period from 1.4.88 to 3.9.88, over all assessment of the applicant was mentioned as 'satisfactory'. On perusal of ACR from 4.9.88 to 31.3.89, it shows that over all assessment of the applicant by the reporting officer was also satisfactory and the same was affirmed by the review officer. Therefore, we fail to understand as to what was the material before the DPC met on 26.4.94 to say that the applicant is not yet fit for promotion. In our considered view, the applicant was entitled to be considered fit for promotion for the vacancies.

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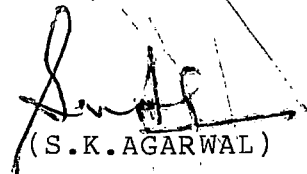
of the year 1991-92 and in view of above all we are of the opinion that the applicant is entitled to the relief sought for.

6. We, therefore, allow this OA and quash the order of reversion dated 9.1.94 and direct the respondents to constitute review DPC to consider the applicant for promotion in TES Group-B w.e.f. 4.7.90 and in case the applicant is found fit, he is entitled to arrears of pay and allowances accordingly. The whole exercise must be completed within a period of three months from the date of passing of this order. The applicant is also entitled to consequential benefits, if any, due to the promotion. No order as to costs.



(N.P. NAWANI)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)