

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 11/7/201

OA 177/1999

Shiv Mohan Singh son of Shri Phool Singh aged 60 years, resident of Plot No. 190, Subhash Colony, Shastri Nagar, Jaipur. Office: Senior Divisional Mechanical Engineer, Railway Divisional Office, Jaipur Division, Jaipur.

... Applicant

Versus

1. Union of India through the General Manager, Establishment, Head Office, Western Railway, Chruchgate, Mumbai.
2. Senior Divisional Mechanical Engineer (Establishment), Railway Divisional Office, Jaipur Division, Jaipur.

... Respondents.

Mr. R.B. Kulshrestha } Counsel for the applicant.
Mr. B.K. Kulshrestha
Mr. R.G. Gupta, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE))

The applicant in this OA retired from service on 31.7.1997. On the same day, an order (Annexure A-1) was issued promoting 15 officials to grade 2000-3200 on ad-hoc basis. The applicant is aggrieved that his juniors have been promoted while he has not been considered. He has also sought directions to the respondents to promote him on the post of Chief Train Examiner from the year 1993-94 or from the date of the vacancy in the cadre. It is stated by the applicant that denial of promotion was discriminatory and in violation of Article 14 of the Constitution. It has been submitted that vacancies have occurred from the year 1993-94 but the applicant was not promoted though he was entitled to get his promotion in the year 1993-94.

2. The respondents have taken preliminary objection to this application on the ground of limitation. It has been stated that impugned order is dated 31.7.1997 and this application has been filed in April, 1999 and thus the same is hit by limitation.

3. On the facts of the case, the respondents have submitted that the post of Chief Train Examiner is to be filled up by process of selection but due to administrative compulsion, Department had issued promotion order only on ad-hoc basis. It is only a coincidence that such impugned order was issued on the day, the applicant had retired. Such an ~~and~~ ad-hoc promotion does not give any right to ~~the~~ any of the persons promoted and right accrue only after regular selection. The respondents' plea is there is nothing arbitrary in their action and applicant has no cause of action. The process of selection was initiated vide a letter dated 7.4.1997 when the notification was issued and the applicant's name was also included amongst eligible candidates. However, till the date of superannuation of the applicant, the process could not start. The respondents contend that there are no rules to give retrospective promotion from the date any vacancy arises and promotion has to be made through process of selection which had not taken place while applicant was still in service.

4. Heard the learned counsel for the parties. The learned counsel for the applicant submitted written arguments in addition to the oral submissions. We have perused the entire record including written arguments submitted by the learned counsel for the applicant. In the submissions, there is reiteration of the points made in the OA and the emphasis is that despite vacancies being available and despite representations made by the applicant, he was not promoted and 13 persons, juniors to the applicant, have been promoted on 31.7.1997 ignoring the genuine and legitimate claim of the applicant. Provisions of Para 216 of Indian Railway Establishment Manual Vol. I (IREM) have been quoted to stress that ad-hoc promotion are to be normally avoided and if they have to be ordered, then only ~~for~~ the seniormost suitable staff should be promoted on ad-hoc basis. As a rule, junior could not be promoted ignoring ~~for~~ his seniors.

5. In service law, it is well established that every employee has a right to be considered for promotion but not a right to be promoted. In the functioning of the Departments, it is for the Administration to decide as to when the vacancies in a particular grade are required to be filled up. There is no rule which stipulates that an employee is entitled to be promoted from the date of occurrence of vacancy. It is an accepted fact that, it is not always possible to fill up the vacancy on the date it occurs. There are various reasons which prevent holding of selections in time, though one may hope that delays are avoided and selections conducted and completed well before the vacancies arise. But then there are vagaries of administrative functioning which have come to be accepted, as quite often the circumstances are beyond the control of administrative functionaries. In view of this, plea of the applicant that he should have been promoted from the year 1993-94 is not sustainable in law.

6. It is an admitted fact in this case that orders were issued to promote 15 officials to the grade 2000-3200 on 31.7.1997, the date when the applicant retired on super-annuation. This list included 13 persons junior to the applicant. This was only an ad-hoc promotion and applicant cannot claim any right to be promoted specially when it was the last day of the service. Ad-hoc promotion is under compulsion of the Department to meet administrative

requirement and are not ordered for the purpose of giving any monetary or statys benefit to any individuals. It is an expectation in vain that a person retired should be promoted on that date itself when such promotion order would be of no consequence to the department. The person retiring is not in a position to provide any service to the department and the very purpose of ad-hoc arrangement would get defeated. Of course, if it were a case of regular promotion, and senior employee's name appears in the panel of successful candidates then the right of promotion would definitely accrue to such a senior persons, if the orders of promotion are issued on the very day of his retirement. Promotion of the juniors would protect his right. But in the case of ad-hoc promotion, the context is totally different and ad-hoc promotions especially under the circumstances, as of the instant case, do not creat any enforceable right.

7. Even on limitation, this application fails. The cause of action arose on 31.7.1997 and the applicant claims to have represented on 19.8.1997 followed ~~any~~ by another representation dated 25.11.1998. Under the service rules, the representation against ad-hoc promotion has not been provided as a remedy and the cause of action arose in this case only on 31.7.1997. This application has been filed in April, 1999 and this is hit by limitation. On this ground also, application is liable to be dismissed.

8. Therefore, we dismiss this application as having no merits and also barred by limitation. No order as to costs.

Chips
(A.P. NAGRATH)
MEMBER (A)

S. Agarwal
(S.K. AGARWAL)
MEMBER (J)

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