

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 29/11/2002

O.A. No. 621/2001.

Chand Mal Jain son of Late Shri Bhanwar Lal Jain aged about 59 years, resident of A-182, Malviya Nagar, Jaipur presently working as Assistant Post Master, (HSG-II) Shastri Nagar, Head Post Office, Jaipur.

... APPLICANT.

v e r s u s

1. Union of India through its Secretary, Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi 110001.
2. Chief Post Master General Rajasthan Circle, Jaipur 302007.
3. Director Postal Services, Jaipur Region, Jaipur 302007.
4. Shri Ashok Kumar Rajawat, Assistant Post Master Jaipur G.P.O., Jaipur -302001.

... RESPONDENTS.

Mr. C. B. Sharma counsel for the applicant.
Mr. P. C. Sharma Proxy Counsel for
Mr. Sanjay Pareek counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)

By order dated 19.12.2001 (Annexure A-1), promotion orders in respect of HSG-II (APM's) to the pay scale of Rs.6500-10500 were issued. In these orders, name of the applicant does not appear though his juniors have been ordered to be promoted. He has challenged this order by filing this OA and has made a prayer that the respondents may be directed to allow the applicant promotion into the cadre of H.S.G-I in the scale of Rs.6500-10500 by interpolating his name at serial no. 38 in memo dated 19.12.2001 and that he be allowed all benefits at par with his juniors.

2. The case of the applicant, briefly stated is that 10% posts of HSG-II were upgraded to that HSG-I by order dated 30.03.2001. According to him, the promotion to the cadre of HSG-I was on the basis of seniority but the respondents did not consider his candidature and promoted certain junior persons like respondent No.4. vide impugned order dated 19.12.2001 (Annexure A-1). It has been stated that the respondents were required to consider the claims of the eligible employees on the basis of service records and seniority. Nothing adverse has ever been communicated to the applicant and thus there was no reason for denying him promotion, yet juniors have been promoted. The applicant has superannuated on 31.07.2002.

3. In reply, the respondents have stated that the applicant was duly considered by the DPC. The vacancies of HSG-I are required to be filled by by method of selection and the selection was on merits with due consideration to seniority. DPC had duly considered his case but due to unsatisfactory records of service as reflected in the ACR for the last 5 years, the applicant could not find place in the select panel. The applicant was rated as average whereas his juniors, who were having satisfactory records of service, were found fit for promotion to HSG-I. Respondents contended that all the officials, who could not be placed in the select panel, were advised of the same by the letter dated 11.01.2002 (Annexure R-3).

4. A rejoinder to the reply has also been filed by the applicant.

5. The main ground canvassed by the learned counsel for the applicant is that this promotion was consequent to upgradation of the post. In such a situation, learned counsel asserted that the promotions should have been strictly by seniority unless a person was declared unfit. He argued that in such matters of upgradation strict rules of selection do not apply. The applicant has also brought on record the Recruitment Rules which have been filed alongwith Annexure A-4. Learned counsel for the respondents reiterated the stand of the respondents as in the reply.

6. We have given our anxious consideration to the rival contentions. No doubts these vacancies have arisen by virtue of upgradation of the posts from HSG-II to HSG-I. The order of upgradation dated 30.03.2001 is available as Annexure A-2. This itself makes it clear that " the mode of recruitment for the upgraded posts will be by the method of selection as prescribed in the Recruitment Rules for the HSG-I Posts for the concerned Unit". The recruitment Rules merely say

that it is a selection post. Learned counsel for the applicant took a plea that the method of selection is only by way of Seniority-cum-fitness and not on the basis of Merit-cum-seniority. He emphasized that seniority should have been given predominant consideration in this promotion process. To buttress his arguments he placed reliance on judgement of Hon'ble the Supreme Court in the case of UOI & Ors. vs. Lt. Gen. Rajendra Singh Kadyan and Another 2000 SCC (L&S) 797. His plea was that since nothing adverse had been communicated to the applicant in his ACRs, there should have been no ground to ignore him as this selection process does not involve assessment of comparative seniority by the DPC but only fitness of the individual had to be seen. We find from the case cited by the learned counsel that it does not support the case of the applicant. In fact insistence of the applicant that his promotion should have been only on the basis of seniority-cum-fitness stands refuted from this case itself. It has been observed by the Apex Court that wherever fitness is stipulated as the basis of selection, it is considered as a non selection post to be filled up on the basis of seniority subject to rejection of the unfit. Obviously applicant's plea has no basis that HSG post should have been filled on the seniority-cum-fitness. These are admittedly the selection posts. The method of filling up of selection posts is either by seniority-cum-merit or by merit-cum-suitability giving due regard to seniority. Of course, in this cadre there is no requirement of assessment of comparative merit. We do not see any basis for the applicant to contend that he has been assessed on the basis of comparative merit. The respondents have made it clear that he has been rated only as average and only those with rating as good and above have been placed in the select panel. Regarding the plea of the applicant that no adverse remarks were communicated to him and thus he could not have been ignored, we find no substance as under the rules even an average grading in the ACR is not required to be communicated. This does not automatically mean that the person graded as average in ACRs or by the DPC would be entitled to promotion. The DPC has considered the case of the applicant and he has been graded as average. It is not for this Tribunal to substitute our own findings with that of the DPC.

7. In the case of Jagathigowda C.N. and Others v. Chairman, Cauvery Gramina Bank and Others Swamy's CL Digest 1996/2, 465, Hon'ble the Supreme Court had observed as under :-

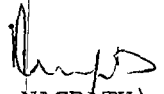
"It is settled proposition of law that even while making promotions on the basis of seniority-cum-merit the totality of the service record of the officer concerned has to be taken into

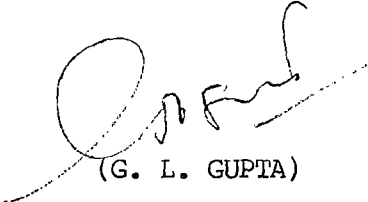
consideration. The performance appraisal forms are maintained primarily for the purpose that the same are taken into consideration when the person concerned is considered for promotion to the higher rank. The High Court, with respect was not justified in holding that the performance appraisal could not be taken into consideration by the Director's Committee while considering the officer for promotion to the higher rank."

The case of H.P. Chakraborty vs. Union of India and Others, Swamy's CL Digest 1996/2, 478, in OA No. 329/95, decided on 12.03.1996, it was held by the Calcutta Bench that " When the DPC has fully followed the Government's guidelines and had independently assessed a candidate's fitness for promotion, there cannot be any interference".

8. For aspiring for promotion one has to prove one's ability to hold the post in the higher grade. If the applicant has been consistently rated only as average from year to year and the DPC also grades him as average, he cannot make any grievance if he is not considered suitable. We see no merit in this case.

9. This OA is dismissed. No costs.


(A. P. NAGRATH)
MEMBER (A)


(G. L. GUPTA)
(VICE CHAIRMAN)