

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA 541/2003

DATE OF ORDER: 13.2.2004

R.P. Meena son of Shri S.L. Meena, I.R.T.S., Assistant Operations Manager (Training) Zonal Training Centre, Udaipur (Rajasthan), V I Po. Dhigawara, Tehsil Rajgarh (Alwar), Raj.

.... Applicant

VERSUS

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, Railway Mantralaya, New Delhi.
2. General Manager, North Western Railway, Jaipur.
3. General Manager, Central Railway, Mumbai.

.... Respondents

Applicant present in person.

Mr. Shailesh Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. J.K. KAUSHIK

Shri R.P. Meena has filed this OA u/s 19 of the Administrative Tribunal's Act primarily for the relief that the respondents may be directed to consider and promote the applicant to Senior Time scale with reference to as on and w.e.f. 10.9.2000, with all consequential benefits of pay, perks and status with arrears thereof, and also the interest may be allowed at appropriate rate.

2. The material facts of the case are that the applicant was appointed as Probationer in the Indian Railway Traffic Service on 5.9.1994 and he belongs to the batch of 1992 Civil Services

Examination. After successful completion of the training, he came to be posted as Assistant Commercial Manager (Goods) at Bhusawal vide order dated 12.3.1996. He also was confirmed on the said post. As per the channel of promotion from Junior scale, the promotion is to be given to the Senior scale in ~~accord~~ ^{to the} order of seniority subject to rejection of unfit ~~officers~~ ^{officers}, ordinarily ~~having~~ ^{not less than four years of service in the junior scale.}

3. The further facts of the case are that the applicant completed four years of service on 5.9.1998 and became entitled for the promotion to the Senior scale w.e.f. 5.9.1998. One Shri Varinder Kumar who is his batchmate and immediately below in the seniority list ~~too~~ ^{that} of the applicant was promoted by order dated 17.9.1998 in the senior scale. The said Varinder Kumar was promoted by the DFC held on 10.9.1998. However, the name of the applicant was kept under the sealed cover on account of issuance of a charge-sheet i.e. SF-V on dated 7.9.1998. There was abnormal delay in finalisation of the disciplinary case and the applicant had to approach to the Hon'ble CAT, Jabalpur Bench for seeking direction to complete the proceedings within a stipulated time.

4. It has been further averred that the disciplinary proceedings were not completed within two years from the date of DPC by which the case of the applicant was kept under the sealed cover and his case was not reviewed in accordance with the Railway Board's Circular No. REE 14 of 1993. The penalty of reduction of one stage below was imposed on dated 14.11.2000 for one year which came to be reduced to ~~censure~~ ^{in appeal} vide order dated 31.1.2002.

5. Certain details have been given regarding the said disciplinary case. The applicant continued to make representation

for reviewing his case for consideration for promotion on ad-hoc basis to the Sr. Scale but the same proved futile. He was also issued with another charge-sheet for major penalty vide Memo dated 31.7.2001 and the same is pending for finalisation. The representations were made to the authorities but ~~kk~~ his case has been not considered; rather it has been turned down vide order dated 6.1.2003. The OA has been filed on diverse grounds which we shall discuss at a latter part of this order.

6. The respondents have resisted the claim of the applicant and have filed counter reply. It has been averred that the case of the applicant has been considered in accordance with the Railway Board Circular dated 21.1.1993 for ad-hoc promotion on 21.1.2004 and the result of which has been kept in sealed cover as major penalty case is ~~p~~ still pending against the applicant. Certain other details have been given regarding the disciplinary case which is going on against the applicant. The grounds have generally denied.

7. We have heard the applicant who has appeared in person and the learned counsel for the respondents in detail and have earnestly considered the pleadings of the records of this case.

8. The applicant has reiterated his pleadings and has submitted that he has been harassed in multiple ways in as much as, as per the rules in force his case ought to have been considered at least for ad-hoc promotion for Sr. Scale as early as 10.9.2000 despite the disciplinary case pending against him but the same has not been considered even till date. He strived hard initially for opening of the sealed cover but subsequently he got persuaded that the second disciplinary case is pending that too started before finalisation of the earlier case which culminated into penalty of censure, he abandoned the



same. Thus the applicant has further endeavoured to ~~make~~ ^{to} us travel through Para No. 5 of the Railway Circular No. 14 of 1993 at Page No. 51 of the Paper Book and has submitted that his case has been neglected and he has been made to suffer to for none of his fault. He is, therefore, entitled to the relief, which has been claimed in the OA.

9. On the contrary, the learned counsel for the respondents with full force at his command has strongly opposed the contentions of the applicant and has submitted that the case of the applicant for ad-hoc promotion has been duly considered but the same is kept under sealed cover on 21.1.2004 and he has invited our attention to Para No. 4.6 of the reply to this effect. The learned counsel for the respondents has also submitted that since the disciplinary case is still pending against the applicant, ~~that too~~ case started much earlier to the finalisation of the earlier case, the sealed cover cannot be got opened till finalisation of this instant disciplinary case. Thus the OA is misconceived and deserves to be dismissed. He has also raised preliminary objection and submitted that it is ^{the} specific case of the applicant that Shri Varinder Kumar is said to be junior to the applicant and the applicant is asking the promotion from the date of said junior but he has not been impleaded as party respondent. He has submitted that the OA also deserves to be dismissed on account of non-joinder of necessary party.

10. We have considered the rival contentions raised on behalf of both the parties. At the outset, we will dispose of the preliminary objection raised by the respondents regarding impleading of Shri Varinder Kumar, who is the junior to the applicant. Firstly, the applicant is claiming only consideration of ad-hoc promotion and secondly, consideration of promotion is a

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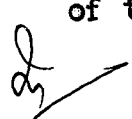
a fundamental right. It is not a case of supersession that the applicant is claiming. As a matter of fact, none of the junior of the applicant can be said to be affected since the person who in the panel below the applicant would be promoted only on provisional basis, so long the case of the applicant is kept under sealed cover. We are not impressed with the submission of the learned counsel for the respondents and the preliminary objection stand over-ruled.

11. Now adverting to the merit of the case. The question that remain to be adjudicated upon in this case is cut-short and we are required to answer only the question as to whether the case of the applicant for ad-hoc promotion is required to be considered to the post of Sr. Scale and whether the same was considered as per rules. As far as the first issue is concerned, there is no quarrel on this from the side of the respondents and the Para 5 of the Railway Board Circular dated 21.1.1993 specifically provides for the following:-

"5. In spite of the six monthly review referred to in Para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant are not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation, the appointing authority may review the case of the Govt. servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against the public interest.
- b) Whether the charges are grave enough to warrant continued denial of promotion.
- c) Whether there is no likelihood of the case coming to a conclusion in the near future.
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law is not directly or indirectly attributable to the Govt. servant concerned.
- e) Whether there is any likelihood of misuse of official position which the Govt. Servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.



5.1 In case the appointing authority comes to a conclusion that it would not be against the public-interest to allow ad-hoc promotion to the Govt. Servant, his case should be placed before the next DPC held in the normal course after the expiry of two years period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him."

12. Perusal of the aforesaid reveals that review is required to be carried out of the disciplinary proceedings after every six months and in case the disciplinary case is ^{not} finalised within a period of two years, the Appointing Authority is required to consider the case of the individual for promotion on ad-hoc basis and for this purpose, the departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

13. As regards the next question, as to whether the case of the applicant was considered for ad-hoc promotion in the light of the aforesaid rules, the respondents in their reply in Para 4.6 have stated as under:-

"It is submitted that the case of the applicant has been reviewed by the competent authority to consider the desirability of giving him ad-hoc promotion to senior scale and DPC has been conducted on 21.1.2004, the result of which has been kept in sealed cover as as major penalty D.A.R. case is still pending against the applicant."

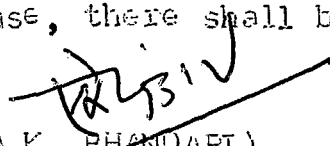
The perusal of the aforesaid would reveal that the Competent authority though belatedly has considered the case of the applicant for giving ad-hoc promotion to the Senior scale but the result has been kept under sealed cover. There is no provision that when the case is considered for ad-hoc promotion, the sealed cover procedure is required to be used. It is not the intention of the Railway Board while issuing the

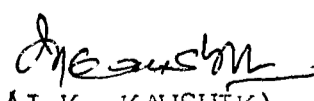
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^ circular L dated 21.1.1993. The standard of the ad-hoc promotion is quite distinct from that of the regular promotion in as much as the assessment is to be done on the basis of the totality of the individual's records of service without taking into account the pending disciplinary case in case of ad-hoc promotion but in case of regular promotion, the normal norms laid down for the promotion are required to be followed. We are not satisfied with the averments and contentions made on behalf of the respondents as regards keeping the case of the applicant in sealed cover, If they have considered the same for ad-hoc promotion, there was no question of using any such sealed cover and the course of action adopted by the respondents is arbitrary and contrary to the rules in force (supra). The OA has ^{therefore} ample force. L

W4. The applicant in the course of arguments has also drawn out attention to one of the judgement of a co-ordinate Bench of the Tribunal at Jodhpur in Sunil Joshi vs. Union of India & Ors. in OA No. 379/97 dated 25.6.1998 wherein the similar controversy was examined but that was in respect of Non-Gazetted Govt. Servant i.e. Group 'C' and Group 'D' Govt. employees but similar issue was involved and direction was given for consideration of the applicant therein for ad-hoc promotion in accordance with the provisions/procedure laid down in Para 5.1 of the Railway Board circular. The same squarely covered the controversy involved in the instant case.

15. The upshot of the aforesaid discussion is that the OA deserves to be accepted in part. The same is accordingly allowed. The respondents are directed to ^{act} upon the proceedings of the DFC dated 21.1.2004 and consider him for ad-hoc promotion ^{to the Sr. Scale} within a period of two months from the date of receipt of a copy of this order. In the facts & circumstances of the case, there shall be no order as to costs.


(A.K. BHANDARI)
MEMBER (A)


(J.K. KAUSHIK)
MEMBER (J)