

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, INDORE

O.A.NO.952/1997

Tuesday, this the 18th day of February, 03

Hon'ble Shri Justice N.N. Singh, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Omnaarain Sharma
S/o Premnarain Sharma
Station Road
Ratlam

(Shri A.N. Bhatt, Advocate)

..Applicant

Versus

Union of India & Others
Represented by

1. General Manager, Western Railway,
Churchgate, Mumbai
2. Divisional Rail Manager,
W. Railway, Ratlam

(By S/Shri Y.I. Mehta, Senior Advocate with H.Y.Mehta)

..Respondents

ORDER (ORAL)


Shri Govindan S. Tampi:

Heard both the learned counsel

2. The applicant in this case, who was working as Traction Foreman in the Western Railway, Ratlam, was at Sl.No.74 of the seniority list published on 1.6.1992. Though he was due for promotion to the post of Traction Foreman against the upgraded post from 1.3.1993, he has been

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ignored and three of his juniors had been promoted by order dated 25.2.1994. His application against this injustice has not been responded to. Evidently, he had been shown as unfit for promotion without any reason for the same. In terms of rules governing promotion of subordinate staff for non-selection post, generally, promotion shall be ordered in the order of seniority and a senior person would be passed over only if he has been declared as unfit and this unfitness should have been made sometime previous to the consideration for promotion. In this case, it is found that he had been communicated the adverse entries on 19.4.1994 pertaining to 1990-91 and 1991-92. These reports have been communicated two years after he was ignored for promotion, which would show the patent illegality of the respondents' action. His representation against the adverse entries had not been replied in time. Adverse entries are recorded in the ACR for the purpose of advising the person concerned to improve his performance and not to destroy his career. This principle had not been adopted by the respondents. The three ACRs, which should have been considered for grant of this upgraded post, were of 1990-91 and 1991-92, which were not adverse character as far as the applicant was concerned. The adverse entries, which were of a later period, could not have been used to deny him his promotion, as has been done by the respondents. The applicant also referred to a few judicial pronouncements in support of his plea that action taken by the DPC on the basis of un-communicated adverse entries was irregular and illegal. Shri Bhatt, learned counsel for applicant



very forcefully argued his case and stated that Tribunal should interfere in the matter and do him justice.

3. In the reply filed on behalf of the respondents and duly reiterated by Shri Y.I. Mehta, Senior Advocate, it is pointed out that vacancies arising on the basis restructuring of Groups 'C' and 'D' employees introduced w.e.f. 1.3.1993 were to be filled up only on scrutiny of service records. The applicant was not found fit for promotion as his service records and CR were below the bench mark. As the post concerned was a technical one and required a wholesome skill, the applicant was denied to his promotion. In a selection post, the respondents would have to consider the best persons for holding any given post and could not have, therefore, considered the case of the applicant as he had indifferent record of service, including adverse entries. The respondents also pointed out that the applicant had been duly communicated the adverse entries who had represented against the same and do not deny that there has been some delay in the above communication. This, however, did not vitiate the proceedings of the screening committee, as alleged by the learned counsel for the applicant.

4. We have carefully considered the matter and we find that the applicant, though was placed above in the seniority list, suffered in the screening committee, which did not find him fit for promotion to the grade of Senior Traction Foreman on account of indifferent service records. He is found to have been awarded adverse entries in two out of three



relevant years, which were under consideration by the DPC. In spite of the fact that there has been a delay in the communication of the adverse entries, the fact remains that the applicant's poor track record had caused him the promotion. It is true that the ACR for the period 1991-92 had been communicated much later and the said ACR could not have been considered by the DPC. The same does not come to the assistance of the applicant as his performance appraisal had been of a lower category. The action of the respondents in this connection could not be called in question.

5. The OA, in the above circumstances, fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

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(N.N. Singh)
Vice Chairman (J)

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