

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI -5.

O.A. NO. 8 of 1994
T.A. NO. .

DATE OF DECISION 25.8.1994

Shri P.C. Biswas

PETITIONER(S)

Shri R. Dutta

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Others

RESPONDENT (S)

Shri B.K. Sharma, Railway Advocate

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

1. Whether Reposters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether the Judgment is to be circulated to the other Benches?

yes

No

Judgment delivered by Hon'ble Vice-Chairman. *M.G. Chaudhary*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.8 of 1994

Date of decision: This the 25th day of August 1994.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Pramatha Chandra Biswas
Divisional Commercial Manager,
N.F. Railway, Bongaigaon.

.... Applicant

By Advocate Shri R. Dutta

-versus-

1. The Union of India, represented by
the General Manager, N.F. Railway,
Maligaon, Guwahati

2. The General Manager, N.F. Railway,
Maligaon, Guwahati

3. The Chief Commercial Manager,
N.F. Railway, Maligaon, Guwahati

4. The Chief Personnel Officer,
N.F. Railway, Maligaon, Guwahati.

.... Respondents

By Advocate Shri B.K. Sharma, Railway Counsel.

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ORDER

CHAUDHARI.J. V.C.

The applicant is now Divisional Commercial Manager,
N.F. Railway. At the material time he was holding the post
of Assistant Commercial Superintendent, since redesignated
as Assistant Commercial Manager. There is no dispute on
the point that he was originally appointed as Assistant
Station Master way back in the year 1957 and in due course

well

having undergone necessary training he was promoted, firstly, to the post of Commercial Inspector then to the post of Chief Commercial Inspector and thereafter to the post of Assistant Commercial Superintendent on 11.11.1986.

2. While he was holding the post of Assistant Commercial Superintendent (Assistant Commercial Manager now) he became due for being considered for promotion in April 1993. However, the Departmental Promotion Committee(DPC) constituted by the General Manager, respondent No.2, for recommending the names of Assistant Commercial Managers for promotion to the post of Senior Commercial Manager in Senior Scale, which held its meeting in April 1993 selected two persons junior to the applicant, namely Shri S.C. Sen and Shri P. Sashidharan and they were promoted as Senior Commercial Manager on 26.4.1993 and in the month of August 1993, ^{respectively}, whereas the applicant was not promoted.

3. It is the contention of the applicant that the DPC had not at all considered his name for selection perhaps on the ground that there was some vigilence investigation pending against him and therefore, it had no occasion to go into the question of his suitability. He also contends in that respect that in the month of November the DPC had found him suitable for promotion and was promoted in the month of November 1993 and, therefore, had his case been considered by the DPC in April 1993 he had every chance of being selected. His grievance is that his name not having been considered for selection in the aforesaid circumstances that has resulted in two of his juniors becoming senior in the promoted grade and he has also to suffer monetary loss and more importantly he will loose an amount of Rs.50/- per

month.....



month in his pension which would be a permanent loss to the applicant.

4. It is submitted by Mr R. Dutta that the non-consideration of the applicant for selection for promotion by DPC in April 1993 and his belated promotion putting him to loss of prestige and reduced pension is wholly unjustified and illegal.

5. Although the respondents were given time to file their written statement ever since 18.3.1994 none is filed till today. Indeed on 18.1.1994 the respondents were directed to be issued notice for admission of the matter. Mr B.K. Sharma, the learned counsel for the respondents, even today applied for further extension of time for filing the written statement. In view of strong opposition by Mr R. Dutta, the learned counsel for the applicant, for any further extension we declined adjournment and heard the submissions of Mr B.K. Sharma. It may be stated here that Mr R. Dutta submitted that as the applicant is due to retire on 30.11.1994 and as his pension papers are to be submitted in September 1994 he was opposed to further grant of time for filing the written statement.

6. On the basis of his instructions which Mr B.K. Sharma had received earlier from the respondents he tried to submit that perhaps in April 1993, the integrity certificate in respect of the applicant had been withheld and, therefore, possibly the Select Committee had not considered his name. We do not think that even assuming that such contention was raised by filing a written statement that would have been of much assistance to the

respondents....



respondents. We do not think it necessary to pursue that question.

7. Thus there is hardly any ground seen to justify the non-inclusion of the applicant in the select list of 1993 since he was eligible to be considered. If his name was not considered on the ground of alleged pendency of vigilence investigation or enquiry that would not be correct as it is a settled position that mere investigation in a vigilence case would not be a bar to consider promotion and where as chargesheet is framed then 'sealed cover procedure' is to be adopted. It not having been shown that in April 1993 such was the position with regard to the applicant that could not come in the way of the DPC to consider the suitability of the applicant in April 1993 for promotion. If on the other hand the name of the applicant had been considered and he was found suitable having regard to his gradation on the basis of his ACRs, there is nothing pointed out by the respondents that for any valid reason or on merits he was found less suitable for promotion than his two juniors. Looked at from any angle it does appear to us that the denial of ~~promotion~~ ^{promotion} permission to the applicant on 24.6.1993 on the date on which Shri Sen was promoted and deprived ^{my} him of the advantage of seniority and fixation of pension in due course on that basis, was wholly unjustified and wrong.

8. Now the question is what relief can be granted to the applicant. In that connection it would be useful to refer to the decision of the Supreme Court in Union Public Service Commission -vs- Hiranyalal Dev and others, reported in AIR 1988 SC 1069. In that case the C.A.T., Guwahati (this Bench) in case No.225 of 1986(T) had after holding

that....



that the Selection Committee had committed an error in taking into account the adverse remarks made against the respondent (in that case) during a particular period which remarks had not been communicated to him till the date of selection and which adverse remarks were subsequently set aside by the State Government the non-selection of respondent No.1 was bad in law. On that view of the matter the Tribunal held that respondent No.1 should be deemed to have been included in the impugned select list, at least, in the place in the order of his seniority and appointed to the Indian Police Service on the date on which his immediate junior was appointed. The Tribunal also directed that the respondent No.1 be appointed to the IPS with effect from the date on which his junior had been appointed and allow the benefits on that basis. The matter was carried in appeal and the Supreme Court was pleased to hold that the Tribunal had no authority to pass the order of the nature of which it was passed. It was held that the proper order for the Tribunal to pass under the circumstances was to direct the Selection Committee to reconsider the merits of the respondent. It was observed that the jurisdiction to make the selection is vested in the Selection Committee and the Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as 'outstanding', 'very good', 'good' etc. and that this function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules. It was observed that the Tribunal could not have....

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have, therefore, played the role which the Selection Committee had to play and that the Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee. Their Lordships of the Supreme Court, therefore, substituted the ^{Tribunal} order passed by this ~~court~~ by an order directing that the Selection Committee shall reconsider the impugned select list prepared in 1993 as if it was deciding the matter on the date of the selection on the footing and consider the question as to whether the respondent in that case would have been appointed or respondent No.11 would have been appointed on the basis of the categorization to which each of them is entitled and pass appropriate orders in the light of the decision taken on that point.

9. The facts of the instant case are almost similar. In our view the erroneous decision of the Select Committee in that case taking into account the adverse remarks which should not have been taken into account, which meant that his case was not considered in accordance with the rules and the position that the applicant was not considered at all stand similarly. Hence in the light of the judgment of the Supreme Court, we are inclined to make similar directions in the instant case.

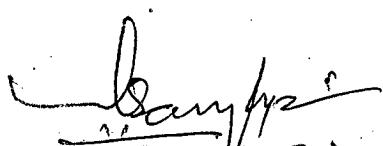
10. In the result it is directed that the respondents shall constitute a Review DPC within one month from the date of receipt of the copy of this order, ~~but not later than 30th April 1994~~ to reconsider the select list prepared in April 1993 and on the basis of the categorization to which the applicant and the two junior officers who have been promoted on the basis of the select list of 1993,

namely....

[Signature]

✓ namely Shri S.C. Sen and Shri P. Sashidharan ^{and decide} as to whether the applicant was entitled to be selected for promotion and pass appropriate orders in the light of the decision taken on the point by it. In the event of the Review DPC taking the decision that the applicant was entitled to be promoted on the basis of the select list prepared in April 1993, the respondents shall give effect to the same in a suitable manner. The Review DPC shall reconsider the matter as if it was deciding the matter on the date of the ~~meeting of~~ ^{held} selection by the Select Committee in April 1993.

11. This decision will not be construed to affect adversely in any manner the promotion of the applicant effected in November 1993 even if the Review DPC ~~findings~~ ^{does not} ~~may not have found him to be eligible in the select list of~~ ^{for promotion} prepared in April 1993, even after the review.


(G. L. SANGLYINE)

Member (A)


(M. G. CHAUDHARI)
Vice-Chairman

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