

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

ORIGINAL APPLICATION NO.203/00056/2017

Jabalpur, this Tuesday, the 9th day of July, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

P.K.Sharaf S/o Shri Ram Gopal Sharaf, aged about 45 years, Working as ADEE/TRD/MDGR/SECR, R/o Qtr No.271/1,Near Kali Badi Mandir Railway Colony, Manendragarh,Korea Distt-Korea (C.G.)-497442
- APPLICANT

(By Advocate –Shobhit Koshta)

Versus

1. Deleted.
2. General Manager, South East Central Railway, New GM Building, Bilaspur, Chhattisgarh-495004.
3. Divisional Personnel Officer, Divisional Office, Personnel Branch, South East Central Railway, Bilaspur Chhattisgarh - **RESPONDENTS**

(By Advocate – Shri R.N.Pusty)

(Date of reserving the order:04.12.2018)

ORDER

By Navin Tandon, AM-

The applicant is aggrieved by his non-promotion to Senior Scale.

2. The brief facts of the case as submitted by the applicant are as follows:-

2.1 While he was working in South East Central Railway (for short 'SECR') he was empanelled to Group 'B' post of AEE/AXEE against 30% LDCE of Electrical department vide order dated 09.03.2005 (Annexure A-1).

2.2 Subsequently, he was found fit for promotion to Senior Scale and empanelled at serial No.2 in the panel published vide OM No.01.12.2015 (Annexure A-3). In pursuance of the recommendations and empanelment, he was waiting for the orders of appointment. The candidate placed at serial no.1 was promoted vide order dated 30.12.2015 (Annexure A-4), while the candidates placed at serial Nos.3 and 5 were granted senior scale vide order dated 29.04.2016 (Annexure A-6).

2.3 In the meantime, he was served with a charge sheet vide memo dated 03.02.2016 (Annexure R-7).

2.4 He submitted a representation dated 25.03.2016 (Annexure A-5) that on the date of DPC he was free from any disciplinary proceedings and, therefore, recommendations have been made by the DPC for his promotion to the Senior Scale. Even on 01.12.2015 when the panel was published there was no proceeding pending against him.

3. The applicant has, therefore, claimed for following reliefs in this Original Application:-

“(8.1) That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicant.

(8.2) That, the learned Tribunal may kindly be pleased direct the respondents to consider the case of the petitioner for grant of promotion to the Senior Scale at par with his Juniors.

(8.3) Cost of the Original Application be awarded.

(8.4) Any other relief which the learned Tribunal deems fit and proper may be awarded”.

4. The respondents on the other hand have submitted as under:-

4.1 The DPC was conducted in the month of December, 2015 for promotion to Senior Scale post of Electrical department and suitability result (found “Fit” for promotion) was issued vide CPO’s OM dated 01.12.2015(Annexure R-4) wherein five candidates were found suitable for promotion to Senior Scale, including the applicant, subject to availability of vacancies and officers concerned are being free from DAR/SPE/Vigilance cases and not undergoing any punishment.

4.2 Subsequently, the competent authority decided to promote only one officer to Senior Scale. The note sheet dated 04.12.2015 where this decision was taken is attached as Annexure R-5

4.3 The applicant has been served with a major penalty charge sheet vide memo dated 03.02.2016 (Annexure R-7). Hence, he has not been promoted to Senior Scale post in terms of Railway Board’s RBE No. 14/1993 dated 21.01.1993 (Annexure R-8).

4.4 Another major penalty charge sheet was served to the applicant vide memo dated 09.06.2016.

5. Heard learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. Learned counsel for the applicant argued that no disciplinary proceedings were pending against him either when DPC was held or when panel was declared (01.12.2015) or when the first person on the panel was promoted (30.12.2015). As is clear from notings in Annexure R-5, there were four vacancies when the note was put up on 04.12.2015. The applicant being second on turn should also have been promoted on 30.12.2015.

6.1 He placed reliance on the judgement of Hon'ble Supreme Court in the matters of **Maj.General H.M.Singh VSM Vs. Union of India and another**, (2014) 3 SCC 370, as well as on **G.Sundaresan Pillai Vs. Union of India and others**, 2012 SCC On Line CAT 3679.

7. Learned counsel for the respondents highlighted the rule position that when the applicant was considered for promotion, there was a charge-sheet pending against him and, therefore, he can not be promoted.

FINDINGS

8. It is undisputed fact that the applicant was considered for promotion to Senior Scale and was found fit for the same. Accordingly, the panel was declared on 01.12.2015 (Annexure A-3).

9. It was explained by learned counsel for the respondents that decision making process for promotion to Senior Scale is the notings attached as Annexure R-5. While there were more than one vacancies in

Senior Scale, the Chief Electrical Engineer has explained his constraints in providing relievers and therefore decided to promote only one officer to Senior Scale in December,2015. Accordingly, promotion order for the officer whose name appeared at Sl.No.1 of the panel was issued on 30.12.2015 (Annexure A-4).

10. It is the responsibility of the respondents to run the organisation in an efficient manner with the resources of manpower available to them. They can not be faulted in deciding to postpone the promotion of other officers on the panel by a few weeks/months even though the vacancies exist. The interest of the department has to be above the interest of the individual. And in any case, neither the life of the panel was not going to end soon, nor were candidates on the panel going to retire soon.

11. The applicant in Para 5.1 of OA has averred as under:-

“(5.1) That, in service jurisprudence the date on which the Departmental Promotion Committee judges fitness of the candidates for promotion to the higher post/Higher Scale is the crucial date and any subsequent event does not preclude the candidate from being promoted and thus the act of the respondents in considering the subsequent event i.e. issuance of a charge sheet on 03.02.2016 is de hors the settled position of law.”

12. RBE No.14/1993 dated 21.01.1993 (Annexure R-8) deals with procedure and guidelines to be followed while making promotion from Group ‘B’ to Group ‘A’ and within Group ‘A’ of Railway Officers

against whom disciplinary/Court proceedings are pending. Paragraphs 2 & 6 of the said circular clearly stipulates as under:-

“(2). Cases of Govt. (sic – Govt. servants) to whom Sealed Cover Procedure will be applicable – At the time of consideration of the cases of Government servants for empanelment, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;***
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;***
- (iii) Government servants in respect of whom prosecution for a criminal charges is pending.***

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(6). Sealed Cover applicable to officers coming under cloud before promotion – A Government Servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a Sealed Cover by the Departmental Promotion Committee. He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.

(emphasis supplied)

13. It is clear from the above that if a charge sheet is issued before actual promotion, the case would be considered as if his case has been placed in sealed cover. Having examined RBE No.14/1993, we are of the considered view that the respondents have not committed any illegality or

irregularity in not promoting the applicant to Senior Scale after issuance of charge sheet.

14. The cases of **Maj.General H.M.Singh** (supra) and **G.Sunderasan Pillai** (supra) cited by the learned counsel for the applicant do not come to the rescue as both these citations are for instances where there was delay in conducting DPC and the employee had superannuated or were on extension after reaching the age of superannuation. Clearly, the facts of the present case are not the same as the cases cited. The instant case is of non-granting of promotion due to issue of charge sheet subsequent to the DPC.

15. Having considered all aspects of the matter we do not find any merit in the instant Original Application and the same is accordingly dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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