

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.31582 of 2015

and

M.P.No.1 of 2015

1. Union of India
rep.by the Secretary
Railway Board
Raisina Road, New Delhi.
 2. The Financial Commissioner
Railway Board
Second Floor, Rail Bhavan
Raisina Road, New Delhi.
 3. The Director/Establishment
Railway Board
Raisina Road, New Delhi.
 4. The Financial Advisor & Chief
Accounts Officer, Southern Railway
Park Town, Chennai.
 5. The Under Secretary/Establishment (SPL)
Railway Board
Raisina Road, New Delhi.
- .. Petitioners

vs

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104.
 2. M.Chitharanjan
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records of the first respondent in O.A.No.588 of 2011 including the order dated 21.04.2014 and to quash the same.

For Petitioners : Mr.M.Vellaisamy
For Respondents : Mr.L.Chandrakumar for R2
R1- Tribunal

O R D E R

(Order of the Court was made by HULUVADI G.RAMESH,J.,)

The Union of India, representing the Southern Railways, being aggrieved by the order passed by the Central Administrative Tribunal, Chennai Bench dated 21.04.2014 in O.A.No.588 of 2011 is before this Court, seeking to quash the same.

2. The brief facts of the case runs as follows:

(i) The second respondent, viz., M.Chitharanjan, while working as a Research Assistant in the Regional Soil Testing Laboratory, Cuddapah qualified in the Civil Service Examinations, 1989 for appointment in Class I/Group A Central Services and consequent to the same, he was appointed as a Probationer in the Indian Railways Accounts Service vide order dated 21.01.1991. Even though he was entitled to promotion to the post of Junior Administrative Grade in the year 2000, he was promoted to the said post on ad hoc basis only in the year 2001. Further, he has not been considered for the Selection Grade during the year 2003. However, he was promoted to the post of Junior Administrative Grade only in the year 2004. His representations in this regard were rejected by orders dated 23.04.2009 and 16.04.2010 respectively stating that he was found unfit during the years 2000 and 2001 and no panel was formed during the years 2002 and 2003. Aggrieved by the said orders, the second respondent herein, filed an application before the Central Administrative Tribunal, Chennai Bench under Section 19 of the Administrative Tribunals Act, 1985 seeking ante-dating of his promotion to the post of Junior Administrative Grade in the year 2001 and Selection Grade in the year 2003 and consequently prayed for a direction to the respondents to promote him to the said posts along with his batch-mates with all consequential benefits.

(ii) The contention of the second respondent before the Tribunal was that when he was promoted on ad hoc basis to officiate in the post of Junior Administrative Grade with effect from 2001, which could take place subject to fulfilling all the

conditions required for substantive promotion, in terms of Rule 212 r/w Rule 209 of the Indian Railway Establishment Code, the denial of the Junior Administrative Grade with effect from 2001 and Selection Grade with effect from 2003 along with his batch-mates is unsustainable in law.

(iii) According to him, promotions are to be considered on the basis of past five years service records, i.e., ACRs for five preceding years, viz., in the case of the petitioner, during the years 1995-96 to 1999-2000. Accordingly, his case was considered for the said period and though he was given the grading "Average" for the years 1995-96 and 1996-97, the same was not communicated to him. Without there being a communication regarding the adverse remarks, he cannot be deprived of his regular promotions as is being given to his other batch mates. Such withholding of promotions or not considering the name of the second respondent for the post of Junior Administrative Grade in the year 2001 and the Selection Grade in the year 2003 on par with his other batch mates, is untenable in law.

(iv) The respondent-Railways by way of reply before the Tribunal had stated that the second respondent's case could not be considered due to the fact that he was found unfit for empanelment to said grade by DPC in the panel approved on 17.4.2000 and 7.5.2001. So also, he could not be promoted to Selection Grade with effect from 1.1.2003, since he lost his seniority with respect to his batch mates due to the fact that he was not promoted to Junior Administrative Grade in the year 2001. Thus, the Railways tried to justify their act in not considering the case of the second respondent for promotions to the post of Junior Administrative Grade in the year 2001 and to the Selection Grade in the year 2003 respectively. It was their further contention that even the gradings for the period 1995-96 and 1996-97 as against the second respondent were recorded as Average.

(v) A rejoinder was filed by the second respondent by contending that when he was promoted to the post of Junior Administrative Grade on ad hoc basis, denying him regular promotion is not tenable. In this regard, he also cited various judgments of the Apex Court on the issue.

(vi) The Tribunal after considering the facts and circumstances of the case and following the various judgments of the Apex Court cited by the second respondent allowed the application by him and also directed the respondents to promote the second respondent herein to the post of Junior Administrative Grade with effect from 2001 and to the Selection Grade post with effect from 2003 by convening a review DPC.

(vii) Aggrieved by such order, the Railways is before this Court.

3. We have heard the learned Standing Counsel representing the Railways and the learned counsel representing the second respondent and also perused the order passed by the Tribunal.

4. The very same contention raised before the Tribunal was reiterated before this Court on either side.

5. It is seen that in para No.10 of the order of the Tribunal, the learned Member has noted that the applicant's case was considered for promotion to the post of Junior Administrative Grade on ad hoc basis during the year 2001 for which ACRs of the period of five years have been taken into consideration i.e., from 1995-2000. The Tribunal further held that though it was recorded as "Average" for the years 1995-96 and 1996-97, such adverse remarks has not been communicated to the applicant. However, on the ground that his performance for the past two years was found unsatisfactory, he was found unfit and was not given promotion along with his batch mates. However, he was subsequently given promotion to the post of Junior Administrative Grade on ad hoc basis. The stand taken by the Railways, that the promotion on ad hoc basis is being done at Zonal level whereas the regular promotion is being done at Board level, has not been accepted by the Tribunal by holding that the applicant, holding the post of Junior Administrative Grade either on ad hoc basis or regular basis, has to discharge his duties assigned to the particular post.

6. The Tribunal also held that the case of the applicant should have been considered by the respondents for the vacancies for the pertaining to the year 2001 based on the past five years record of ACRs and he should have been empanelled for regular promotion during the year 2001 when his name was considered for Junior Administrative Grade. Though his name was not empanelled for promotion in the year 2001, yet the second respondent was given promotion on ad hoc basis, despite remarks for two years having been recorded as "Average". It is also seen that the applicant was promoted to the post of Junior Administrative Grade on substantive basis in the year 2004, in continuation of his officiating arrangement in the year 2001 without any break.

Accordingly, the Tribunal held that the disqualification suffered by the applicant on the ground of his remarks being recorded "average" and his name being not empanelled is erroneous and his name ought to have been considered for promotion for Junior Administrative Grade and thereafter he should have been regularly promoted as per the decision of the Apex Court reported in 2008(8) SCC 725 [Dev Dutt vs. Union of India and others].

7. Accordingly, the Tribunal concluded that it is not the fault of the applicant, but, rather failure on the part of the Department in not empanelling the name of the applicant for regular promotion although his case was considered for promotion on ad hoc basis and, therefore, order was passed for convening review DPC.

8. On a consideration of the entire factual matrix, we are in agreement with the conclusion arrived at by the Tribunal in this regard. The reply filed by the Railways is not convincing in view of the judgment of the Apex Court in Dev Dutt's case (supra), wherein the Apex Court has held as follows:

"17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways:

(i) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future;

(2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its up-gradation. Hence, non-communication of an entry is arbitrary and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution".

The position of law as enunciated by the Apex court has not been followed in the case of the second respondent and the Department has violated the principles of natural justice.

9. In the case on hand, the nature of direction issued by the Tribunal is positive. Had there been some substantive material before the Tribunal, then the Tribunal would have directed the second respondent herein to give representation to the Department for considering his name for promotion on par

with others to the post of Junior Administrative Grade in the year 2001 and to the Selection Grade in the year 2003. Having specifically noted that there is violation of principles of natural justice, inasmuch as the adverse remarks of average performance recorded for the years 1995-96 and 1996-97 having been not communicated to the second respondent herein and also reply has not been obtained from the second respondent, it depicts the improper exercise of the power by the Railways in not following the due procedure.

10. Accordingly, this Court is of the considered opinion that the order of the Tribunal, granting relief to the second respondent herein following the decisions of the Apex Court in Dev Dutt's case (supra) and Maneka Gandhi's case (1978 (1) SCC 248), for the fault of the Railways in violating the principles of natural justice in not communicating the adverse remarks to the second respondent herein, thereby rejecting his candidature for promotion to the post of Junior Administrative Grade and further promotion to selection grade, but, however, promoting the second respondent on ad hoc basis, is a blatant illegality and the order of the Tribunal in interfering with the same by directing the Railways to consider the case of the second respondent for promotion by convening a review DPC meeting and consider his case on priority basis in accordance with law requires, no interference at the hands of this Court.

11. Accordingly, this writ petition is disposed of with a direction to the petitioner-Railways to convene a review DPC meeting and consider the case of the second respondent as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104.

+1cc to Mr.V.S.Sureshkumar, Advocate sr.24029
+1cc to Mr.L.Chandrakumar, Advocate sr.23373

W.P.No.31582 of 2015

lrs (CO)
srg (11/05/2016)



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