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WPCT 71 of 2008
Jayanta Kumar Mitra
– *Versus* –
Union of India & Others

Ms. Debapriya Mitra
... for the Petitioner.

Mr. Dayashankar Mishra
... for the UoI/Respondents.

The present writ petition has been preferred challenging the judgment dated 18th January, 2008 passed by the learned Tribunal in an original application, being O.A. No.1140 of 2006.

Ms. Mitra, learned advocate appearing for the petitioner submits that the petitioner was a member of the Indian Railway Traffic Service and in recognition of his meritorious service he got successive promotion upto the level of Senior Administrative Grade. He was thereafter considered for promotion to the next higher level, being the Higher Administrative Grade (in short, HAG) in the year 2006 along with other officers. Arbitrarily, the petitioner was denied promotion. Aggrieved thereby, he approached the learned Tribunal.

According to Ms. Mitra, the learned Tribunal did not take into consideration the categorical contention of the petitioner that he was denied promotion on the basis of uncommunicated adverse entries in his Annual Confidential Reports (in short, ACRs). The authorities illegally proceeded by fixing a benchmark of 'Very Good +'

without communicating the ACRs of the previous five years which were taken into consideration. Such non-communication of entries in the ACRs is violative of the principles of natural justice. The learned Tribunal glossed over the said issues, as argued and did not return any finding on the same. Reliance has been placed upon the judgments delivered in the cases of *Dev Dutt Vs. Union of India and Others*, reported in (2008) 8 SCC 725, *Abhijit Ghosh Dastidar Vs. Union of India and Others*, reported in (2009) 16 SCC 146 and *Sukhdev Singh Vs. Union of India and Others*, reported in (2013) 9 SCC 566.

Ms. Mitra further argues that the learned Tribunal ought to have appreciated that the selection under consideration was not one on the basis of the comparative merit. The test was one of suitability of an officer drawn up for consideration according to seniority and while conducting the said process, it was incumbent upon the authorities to communicate the adverse entries as the benchmark fixed was '*Very Good +*'.

Per contra, Mr. Mishra, learned advocate appearing for the respondents submits that there is no infirmity in the judgment impugned. The authorities have strictly proceeded on the basis of the procedure laid down for filling up the post of HAG. The petitioner was under the impression that certain adverse remarks have not been communicated to him, however, there were no adverse remarks in the petitioner's ACRs in the preceding five years. Mere absence of adverse remark does not

necessarily mean that the petitioner was otherwise fit for promotion to HAG. The scope and ambit of consideration for promotion was not restricted only to the benchmark but there were other parameters, as disclosed in the memorandum dated 3rd June, 2002.

Heard the learned advocates and considered the materials on record.

A perusal of the judgment impugned reveals that the argument as regards non-communication of adverse remark in the ACRs, as advanced by the petitioner, was duly considered. The selection in question was pertaining to a grade in the top order of the administrative hierarchy and the issue of selection of such officers was not restricted only to the benchmark as set by the committee but factors pertaining to overall grading encompassing several years' performance, pertinence and aptitude were the other parameters taken into consideration. The process of selection as laid down by the Ministry of Railways had been strictly followed. In the said conspectus, the learned Tribunal rightly refused to exercise discretion in favour of the petitioner.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of

pronouncements leaves cleavage in the opinions formed in the respective cases. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Ms. Mitra, however, the same are distinguishable on facts. In the case of *Dev Dutt (Supra)*, the issue was relating to promotion to the post of Superintending Engineer. In the case of *Abhijit Ghosh Dastidar (Supra)* the Court observed that the entry of 'good' ought to have been communicated as he was having 'very good' in the previous years and in the case of *Sukhdev Singh (Supra)* the remarks of 'outstanding/very good' were downgraded to 'good' .

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned.

The writ petition, being WPCT 71 of 2008 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)

