

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No.9485/2022

L.K. Vyas S/o Late Shri P.L. Vyas, Aged About 57 Years, R/o Flat No. B-302 Rail Nikunj, Railway Officers Multi Storyed Flats, Opposite CBI Phatak, Jagatpura, Jaipur (Raj.) Presently Posted As Deputy CCM (HQ), North Western Railways, Jaipur (Rajasthan) Grade-A.

-----Petitioner

Versus

1. U.O.I. Railway Board, Through The Secretary, "Rail Bhawan", Rafi Marg, New Delhi- 110001.
2. Chairman, The Railway Board, Rail Bhawan, Rafi Marg, New Delhi- 110001.
3. General Manager, N.W. Railway, Jawahar Circle, Jaipur 302018.
4. Union Public Service Commission, Through Its Chairman, Dholpur House, Shahjahan Road, New Delhi- 110011.
5. The Secretary, Department Of Personal And Training, North Block, Lok Nayak Bhawan, New Delhi- 110003.

-----Respondents

For Petitioner(s)	:	Mr. R.N. Mathur, Senior Advocate assisted by Mr. Shovit Jhajharia, Advocate
For Respondent(s)	:	Mr. Devesh Kumar Bansal, Advocate Ms. Shalini Sheoran, Advocate

**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN**

Order

16/02/2023

Heard.

This petition is directed against the order dated 02.03.2022 passed by the Central Administrative Tribunal, Jaipur (hereinafter referred to as "Tribunal") whereby the petitioner's prayer for

consideration of his case by a review DPC for promotion against vacancies of the year 2008-09 has been rejected.

Shorn off unnecessary details, for promotion to the post of Group-A Junior Scale of Indian Railways Traffic Service against four (04) unreserved vacancies of NWR, DPC was held on 15.06.2009. The Officers, who were assessed included Ajay Kumar Sharma, A.P. Mishra, Anuj Bhargava & Satya Pal Mairh and another eight officers including the petitioner. Against those vacancies, promotions were made.

One of the promotee Ajay Kumar Sharma was earlier considered for promotion against the vacancies of the year 2007-08, but he was not found fit. Later on when the penalty was wiped out, his case was considered as stated hereinabove.

In the meanwhile, junior to Ajay Kumar Sharma, Jaswant Singh was considered earlier and promoted against the vacancies of the year 2007-08.

The respondents decided to grant promotion to Ajay Kumar Sharma against the vacancies of the year 2007-08 but as no vacancy was available, instead of reverting Jaswant Singh, a supernumerary post was created.

The petitioner's case is that if once Ajay Kumar Sharma was granted promotion by creating a supernumerary post treating it to be vacancy of the year 2007-08, as far as four vacancies of 2008-09 are concerned, they all were liable to be filled up by holding review DPC. It was the case of the petitioner that as three senior officials namely A.P. Mishra, Anuj Bhargava & Satya Pal Mairh were found fit and promoted against the vacancies of the year 2008-09, the vacancy which was actually not filled up by Ajay Kumar

Sharma due to his promotion against the vacancies of the year 2007-08, by creating a supernumerary post, the petitioner was entitled to be considered for promotion against the vacancies of the year 2008-09 by holding review DPC.

The case of the petitioner was opposed by the respondent-Railways by taking stand that it was only by chance that Ajay Kumar Sharma, who was actually considered fit for promotion in the DPC held on 15.06.2009, was considered favourably for grant of promotion against the vacancies of the year 2007-08 and to facilitate that, a supernumerary post was created, therefore, the petitioner could not be granted any benefit. The stand of the Public Service Commission, however, was one which favoured the writ petitioner.

Learned Tribunal, however, rejected the claim of the petitioner holding that there is no legally sustainable right and there is no illegality committed by respondents in not allowing the request of the petitioner to consider him for promotion only on the ground of a chance occurrence of an employee getting pushed one year up, without any consequential reversion, one year down, of another employee.

The facts, which are not in dispute, are that one vacancy against which Ajay Kumar Sharma was considered for promotion in the DPC which was held on 15.06.2009 ultimately was not filled up. The respondents decided to promote Ajay Kumar Sharma against vacancies of the year 2007-08. As vacancies of the year 2007-08 were actually not available because one Jaswant Singh junior to Ajay Kumar Sharma was promoted earlier, the respondents created a supernumerary post. That would clearly

mean that vacancy against which Ajay Kumar Sharma could be considered for promotion in the DPC held on 15.06.2009 was never filled up.

From the material on record, it is clear that when DPC was held on 15.06.2009, four vacancies existed for the year 2008-09. The name of the petitioner finds place at Sr. No.5. A.P. Mishra, Anuj Bhargava & Satya Pal Mairh were found fit and it is on record that they were promoted. Definitely in such a case, the petitioner was entitled to be considered for promotion as against the vacancies of the year 2008-09 which remained vacant.

The submission of learned counsel for the respondents that it was only a chance vacancy, therefore, the petitioner was not entitled to be considered for promotion is not acceptable in law.

Right to be considered for promotion against the available vacancy, upon fulfillment of eligibility condition, flows from Article 16 of the Constitution of India. Certainly, if the petitioner falls in the zone of consideration, on account of one vacancy which was not filled up by promoting Ajay Kumar Sharma, the petitioner became entitled for promotion against that vacancy which was pertaining to year 2008-09. The petitioner was eligible for being considered for promotion against that vacancy. It appears that because of the circular dated 08.02.2002, senior persons having crossed the minimum benchmark for promotion, petitioner's case was not considered though he was next to Satya Pal Mairh. In view of the decision of the respondents to promote Ajay Kumar Sharma against the vacancies of the year 2007-08 by creating a supernumerary post, it was obligatory on the part of the respondents to consider the petitioner for promotion against the

vacancies of the year 2008-09 by holding review DPC. The action of the respondents is, therefore, patently illegal. Learned Tribunal, while examining the claim of the petitioner, failed to consider settled principles of service jurisprudence that an employee is entitled to be considered for promotion according to Rules once the vacancy exists provided he fulfills the eligibility criteria. Therefore, the order of the Tribunal cannot be sustained in law.

In the result, the petition is accordingly allowed. The order of the Tribunal is set aside. The respondents are directed to convene review DPC for the vacancies of the year 2008-09 and consider the case of the petitioner. If the petitioner is found fit for promotion against the vacancies of the year 2008-09, in that case, he is entitled to be granted seniority treating his promotion against the vacancies of the year 2008-09.

No order as to costs.

(ANIL KUMAR UPMAN),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ