



2024:DHC:9057-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 16129/2024 & CM APPL. 67766-67769/2024****UNION OF INDIA AND ANOTHER**PetitionersThrough: Mr. Ruchir Mishra, Mr. Sanjiv
Kr. Saxena, Mr. Mukesh Kr.
Tiwari, Ms. Poonam Shukla and
Ms. Reba Jena Mishra,
Advocates.

versus

SH. VIVEK GUPTA AND OTHERSRespondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT (ORAL)**

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21.11.2024**C. HARI SHANKAR, J.**

1. The respondent, an employee of the Northern Railway, was considered for promotion to the grade of Assistant Executive Engineer, (Group-B)¹ by a Departmental Promotion Committee² held in 2007.

2. As, at that time, disciplinary proceedings against the respondent were pending, the recommendations of the DPC were placed in a sealed cover. Consequent on culmination of the disciplinary proceedings, the Disciplinary Authority³ imposed, on the respondent, a penalty of

¹ "AEE"

² "DPC"

³ "DA"



2024:DHC:9057-DB



reduction of pay by three stages for three years. In appeal, however, the Appellate Authority exonerated the respondent, *vide* order dated 18 March 2010.

3. Consequent to the decision of the Appellate Authority, the respondent was promoted as AEE, and joined service as AEE on 15 July 2010. The respondent was, however, aggrieved by his placement in the seniority list of AEEs at serial number 178-A, *vide* order dated 30 July 2015.

4. The respondent, therefore, approached the Central Administrative Tribunal⁴, by way of OA 1327/2016, seeking that the order dated 30 July 2015 be quashed and that his name, in the provisional seniority list of AEEs, be placed immediately below R. N. Yadav and S. K. Pathak.

5. By order dated 17 May 2023, the Tribunal has allowed the respondent's OA. However, as, by the time the order of the Tribunal came to be passed, Raj Narain Yadav and Sunil Kumar had superannuated, the Tribunal directed the petitioner to assign seniority to the respondent immediately above Sunil Kumar w.e.f. 25 September 2007, even though he had joined service as AEE, consequent on his exoneration by Appellate Authority, only on 15 July 2010.

6. In this writ petition, preferred by the Railways against the aforesaid order dated 17 May 2023 passed by the Tribunal, it is



2024:DHC:9057-DB



contended that, in fact, the Railways had already assigned, to the respondent, seniority as directed by the Tribunal.

7. The only grievance of Mr. Mishra, learned Counsel appearing on behalf of the petitioners in the present case, is that the Tribunal has directed that the respondent be granted benefits of seniority from 2007 whereas he had actually only joined service in 2010, by which time there was a change in the seniority policy of the Railways and an integrated seniority list was maintained, as per which the seniority has to be based on as per the date of joining.

8. The submission does not appeal to us. The respondent's case was placed in a sealed cover as, at the time when the DPC recommended the respondent for promotion as AEE, he was facing disciplinary proceedings, which finally resulted in his exoneration only by the Appellate Order dated 18 March 2010. The sealed cover was accordingly opened, and the respondent was, as per the DCP's recommendation, promoted to Grade B but was granted seniority only from 2010.

9. We find no error in the Tribunal directing the respondent to be granted seniority from 2007. The consequence of opening of the sealed cover has necessarily to be that the respondent would be entitled to the same benefits which he would have obtained had he been promoted on the basis of the DPC recommendations, as if no disciplinary proceedings were pending against him at the time. Any denial, to the petitioner, of the seniority to which he would have been entitled, had he been promoted as AEE at that time, would amount to adding insult to



2024:DHC:9057-DB



injury, and, in fact, to punishing the respondent with loss of seniority for no reason whatsoever.

10. The Tribunal has, therefore, correctly directed the petitioner to be placed in the seniority list on the basis of the panel which was prepared consequent to the recruitment process and to be granted seniority from 2007 as was granted to others who participated in the recruitment process with him.

11. We, therefore, affirm the decision of the Tribunal in the OA.

12. The writ petition is dismissed.

C. HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 21, 2024/sn/dsn

Click here to check corrigendum, if any