
(1957) 01 CAL CK 0024
In the Calcutta High Court
Case No : Matter No. 75 of 1956

Hemendra Nath Roy

APPELLANT

Vs

S. Sarangapanny and Another

RESPONDENT

Date of Decision : 10-01-1957

Acts Referred:

Citation : AIR 1957 Cal 459 : 61 CWN 260 : (1957) 2 LLJ 666

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The petitioner is a railway servant employed as a commercial clerk at the Howrah Goods Office of the Eastern Railway. He is in a post which under the Railway Establishment Code can be described as a "non-selection post". In the Eastern Railway there are two kinds of posts, viz., selection posts, in which promotion is determined by efficiency and not seniority, and non-selection posts in which promotion is determined by seniority and not efficiency. In the case of non-selection posts, however, it is open to the authorities to find out whether, although a person is entitled to promotion as a result of seniority, he is suitable for the post to which he was going to be promoted. The legal position with regard to promotions in non-selection posts has been dealt with by me in my decision: . Ramdulal Banerji Vs. General Manager Eastern Railway and Others, (A). After considering the rules and the relevant circulars. I held that a person in a non-selection post could not be compelled to sit in a general examination for purposes of qualifying for his promotion. But this did not preclude the authorities from testing him individually. It appears that thereafter, on or about March 22, 1956, the Railway Board by their letter No. E56PMI/12/3 has amended the relevant rule and has provided as follows:

"Non-selection posts will be filled by promotion of the senior-most suitable employee, the suitability, whether of an individual or a group of employees, being determined by the authority competent to fill the post on the basis of the record and/or departmental tests, if necessary."

2. Although this appears to be the rule which is now applicable, it must be mentioned that several circulars issued by the Deputy General Manager (Personnel) appear to have thrown a great deal of doubt upon it. In his letter dated August 2, 1956, a copy whereof is annexed to the petition of Hemendra Nath Roy filed on December 21, 1956, and marked as Ext. C, it is stated that the Railway Board had since decided that with regard to non-selection posts, departmental tests need not be held until receipt of advice to the contrary, in respect of promotion from one non-selection post to another, and that the existing orders of the Board regulating such promotions based on the record of service etc. should continue. This is followed by another letter dated September 12, 1950, which is also Ex. C to the said affidavit and this letter also says that departmental tests need not be held. Mr. Gupta on behalf of the respondents says that these letters of the Deputy General Manager (Personnel) appear to have been issued by mistake and are being corrected. He says that the position is really governed by the order of the Railway Board dated March 22, 1956 mentioned above. If that be so, then the position is that the holder of a non-selection post can now be asked to sit in a departmental test, which may include a general examination, just to see whether he is qualified to hold the post to which he claims promotion. The rule as to seniority in such a case is not abrogated, but still prevails. The only thing that can be done is that the authorities may ask the holder of a non-selection post claiming promotion by virtue of seniority to go and pass such a test before his seniority can entitle him to promotion. In the cadre to which the petitioner belongs, there is no question of division, and in no case is there a question of making it competitive. Either a candidate passes or he does not. In other words, what is aimed at is to determine whether a candidate has attained a particular standard of efficiency. I am further told, and this appears from an actual instance which is cited before me, that what actually happens is this: If a person passes, then in his service record the word "passed" is inserted. Therefore, a passed candidate is entitled to promotion according to seniority.

3. In this particular case, when the application was first made, the petitioner alleged that he had not been called upon to sit at any test. Mr. Gupta informed me that he will satisfy the Court that the petitioner had been called upon to sit in such an examination. He has now confessed that his instructions were not accurate, and that the petitioner had not been called upon to sit as a test prior to the issue of the Rule. Subsequently, however, the petitioner has been called upon to sit at a test, and he has actually appeared in it. The position, therefore, is that his promotion will be according to seniority as appearing from the record subject to the fact that he must pass in the test in which he appeared. Mr. Gupta on behalf of the respondents says that this is the procedure that will be adopted and indeed must be adopted. Mr. Sen on behalf of the petitioner says that the way in which the examination is being held makes his client apprehensive that juniors would get preference. I, however, do not see now that can be. If the test was a competitive one, and promotion was considered according to the place obtained

by the candidate in such a general examination, then there was the chance of a junior employee superseding a senior one. Here, however, that is not the position. All that is being found out is whether the person claiming promotion has attained a particular standard of efficiency. It is not a competition and there is no question of places. Once the petitioner has passed the tests, the authorities must determine promotion according to seniority. Then there comes the question of those who have been already promoted contrary to this rule. There certainly has been some confusion and it may be that certain persons have been promoted without strict adherence to the rules. Mr. Gupta, however, says that upon the petitioner passing the test, he will be promoted according to seniority. If this is so, there can be no objection. In any event, I can do nothing with regard to this aspect of the matter, because those who might have been illegally promoted or whose promotion might affect the interest of the petitioner are not before me, and therefore in this application I cannot pass an order affecting their interests. In view of the statement made by Mr. Gupta as to the course that will be followed by the respondents, no further order is necessary in this application. The petitioner however will have liberty to apply if this course is not followed or if the respondents follow a course contrary to law. There will be no order as to costs.