

(2013) 10 DEL CK 0319
In the Delhi High Court
Case No : Writ Petition (C) 6069 of 2003

L.N. Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0319

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Prakash Chandra, for the Appellant; Geetanjali Mohan and Ms. Mansi Gautam, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in the instant writ petition is to the order dated April 03, 2003 passed by the Central Administrative Tribunal, Principal Bench whereby the Original Application No. 1534/2002 filed by the petitioner was dismissed. The Original Application was filed by the petitioner inter-alia seeking promotion and seniority to the post of Station Superintendant in the scale of Rs. 2375-3500 with effect from March 01, 1993. The petitioner joined the respondents as Station Master in the year 1964. He continued on the same post till 1993. Following the restructuring and upgradation of Group "C"/"D" post by the respondents, 52 posts of Station Superintendent in the grade of Rs. 2000-3200 and Rs. 2375-3500 became available for upgradation against which 43 posts were upgraded during 1993, 1994 and 1995 leaving 9 vacancies. The vacancies were to be filled by combine upgradation of Station Masters, Yard Masters, Traffic Inspectors and Section Controllers.

2. The respondents vide their letter dated March 27, 1993 and February 09, 1994 directed that the restructured vacancies be filled by seniority and record of service. The petitioner was not promoted on the ground he was serving a penalty from August 01, 1992 till January 31, 1993.

3. Aggrieved against his non promotion the petitioner approached the Tribunal by way of Original Application No. 1534/2002. It is the case of the petitioner that though he was undergoing punishment during the same period still the same could not come in the way of his promotion as similarly placed persons have been granted promotion. It was also the case of the petitioner that the respondents have adopted improper and incorrect method of selection. According to him the promotion was to be effected according to seniority and he being the senior most Assistant Station Master in the scale of Rs. 1400-2300 the promotion should have been granted to him.

4. The case of the respondents was that the petitioner did not belong to the concerned feeder cadre and therefore he could not have been promoted. According to them selection was duly carried out in the year 1995 by promoting those persons who had two years service and were in the scale of Rs. 1600-2660. Since the petitioner was in the scale of Rs. 1400-2300 he was not considered for promotion. The respondents also contend that the petitioner cannot have any grievance as no junior to him was promoted. They also state that the petitioner got promotion to the grade of Rs. 1600-2660 with effect from November 01, 1993 which was ordered to be given on January 12, 1994 but he joined the post only on March 01, 1997.

5. It may be relevant to note here that the petitioner had earlier approached the Tribunal by way of two Original Applications being Original Application No. 3362/1992 and Original Application No. 1080/1995 wherein his claim was for promotion to the post of Station Master in the grade of Rs. 1600-2660 with effect from December 07, 1992 was rejected.

6. The issue which falls for our consideration is whether the petitioner is entitled to be promoted as Station Superintendent in the grade of Rs. 2000-3200/ Rs. 2375-3500. It is an accepted position that the fresh vacancies were created vide order dated January 27, 1993. It is also accepted that a decision was taken to fill up the vacancies by combining all vacancies in different grades. The eligibility was fixed as two years in the scale of Rs. 1600-2660. His claim for the said post was with effect from March 01, 1993. He proceeds on a fallacy that he was in the grade of Rs. 1600-2660 on March 01, 1993. He was not given promotion between August 01, 1992 and January 31, 1993, because he was undergoing a punishment. He could get promotion only on January 12, 1994 with effect from November 01, 1993. He assumed the charge of promotion only on March 11, 1997.

7. He having not been promoted to the grade of Rs. 1600-2660 earlier to November 01, 1993, he cannot have any claim for promotion to the higher grade of Rs. 2000-3200/ Rs. 2375-3500 with effect from March 01, 1993. We note for the benefit the following conclusion of the Tribunal in the impugned order which reads as under:-

The applicant's reliance is on the decision of the Principal Bench of the Tribunal

in OA-2430/93 disposed of on 15.7.1999, where it was indicated that the restructured posts should be filled up by those belonging to the same cadre. Even the said order, does not come to the applicant's help, as he was not in the feeder cadre when the restructured vacancies in the grade of Rs. 2000-3200/- came for being filled up but was working only in the scale/grade of Rs. 1400-2300/-. Only those in the grade of Rs. 1600-2660/- could have been considered for the above and admittedly, the applicant was not amongst them. His plea that the Department has wrongly denied him promotion on the basis of the penalty, whereas a few others similarly placed have been promoted, also cannot come to his assistance, as one mistake, if any, committed by the respondents cannot give rise any right for the applicant that the same mistake should also be committed by the respondents once again to benefit him. The applicant has not been able to prove any malafides on the part of the respondents to deny him promotion or show that his activities in furtherance of collective bargaining as an active worker of the staff union had come in the way of his promotion. The fact is that at the relevant time he was not in the feeder cadre of Rs. 1600-2660/- wherefrom only he could have been considered for promotion in the scale of Rs. 2000-3200/-. The fact that the promotions were ordered from three or four cadres or that SC candidates were adjusted did not come in the way of his promotion. Having been only in the pay scale of Rs. 1400-2300/-, he had not become eligible for being considered. Respondents' action, in the above circumstances, cannot be called in question.

8. We agree with the conclusion of the Tribunal. We may state here that a promotion presupposes eligibility in accordance with the rules and instructions. In the present case the eligibility being two years in the grade of Rs. 1600-2660 as on March 01, 1993 which the petitioner did not possess he could not have been promoted from that particular date. Furthermore, it is noted that the petitioner was undergoing the punishment between the year 1990-1993 even assuming he was eligible, still there was an impediment for his promotion to the said post. We do not find any merit in the writ petition filed by the petitioner and the same is dismissed. No costs.