

CASE NO.:
Appeal (civil) 5543 of 2007

PETITIONER:
Devisingh Meena

RESPONDENT:
Union of India

DATE OF JUDGMENT: 30/11/2007

BENCH:
Dr. ARIJIT PASAYAT & TARUN CHATTERJEE & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5543 OF 2007
(Arising out of SLP (C) No. 10899 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Gujarat High Court dismissing the writ petition filed by the appellant. His claim relates to the post of Senior Administrative Grade. He filed OA 245 of 2001 before the Central Administrative Tribunal, Ahmedabad Bench (for short the 'Tribunal'). Before that he had moved OA 8639 of 1997 making the grievance that he was not granted the post of Chief Commercial Manager, Senior Administrative Grade from 1995. His stand was that the Minister of Railways had approved his promotion in the said grade, but the same was not given effect to by the respondents. OA was decided on merits by order dated 15.1.1999. While dismissing the OA, Tribunal had observed that the applicant was not entitled for promotion to the post of Chief Commercial Manager in the grade w.e.f. 1.1.1995. The appellant had preferred Special Civil Application No.10899 of 2000 before the Gujarat High Court and while dismissing the same, learned Single Judge had directed the respondents to decide the pending representation of the applicant for his promotion in the light of existing rules and regulations.

3. Subsequently, Misc. application no.132 of 2001 was moved by the appellant in the said Special Civil Application which was also rejected by the Division Bench on 7.3.2001 in view of the appellant making a statement that he would proceed before the appropriate forum in respect of the challenge. A speaking order was passed by the competent authority on the representation. Therefore, OA No.245 of 2001 was filed. Subsequently, prayer in the OA was for setting aside the order dated 2.2.2001 passed by the Member, Railway Board and for direction to the Railways authorities to consider his case for promotion w.e.f. 1996.

4. It is to be noted that the representation was rejected on the ground that though the Minister had initially approved his promotion to the Senior Administrative Grade, subsequently, by order dated 26.4.1997 he concurred with non-inclusion of his name in the panel. He was not

considered for promotion. Before the Tribunal stand of the respondent was that merely because the Minister had earlier recommended for inclusion of appellant's name in the Senior Administrative Grade at an earlier stage, that did not confer any right to get promotion particularly when the same Minister had subsequently approved the exclusion of his name.

5. The stand of the appellant in support of the appeal is that once the Minister had approved inclusion of his name, there was no question of his subsequently disapproving the inclusion merely because it was brought to his notice that inclusion of his name was impermissible.

6. Learned counsel for the respondent submitted that the Departmental Promotion Committee ((in short 'DPC') did not recommend appellant's name. On his representation, the Minister directed his empanelment. Subsequently, when materials were placed before the Minister, he directed that there was no scope for empanelment of appellant.

7. At this juncture it is necessary to note that there was no challenge to the Minister's subsequent order. From the records it is revealed that in the order of 1996, when DPC had referred the panel to the Minister for his approval, the name of the appellant was not included in the list. The Minister while approving the panel included the name of the appellant and then approved the panel. Subsequently, the Member, Special Railway Board, who was one of the members of the DPC, advised the Secretary, Railway Board, to place the matter before DPC for re-consideration in view of the observations made by the Minister.

8. Thereafter, DPC put up a detailed note indicating the reasons as to why the name of the appellant can not be included for promotion to Senior Administrative Grade. The Minister accepted the reasons given by the DPC for non-inclusion and further approved the panel which did not figure appellant's name.

9. It is not in dispute as per applicable provisions, the promotions have been granted. Appellant's name was not recommended by the DPC and, therefore, he could not have been appointed.

10. Appellant's stand is that once the Minister had directed inclusion of his name, there was no scope for making a departure from the view. This stand is clearly unsustainable. As has been rightly contended by the learned counsel for the respondent, at the first stage though the Minister had directed inclusion of appellant's name, subsequently when relevant material was placed before him, he took a view different from what he had taken earlier. As noted above, there was no challenge to the Minister's order disapproving the case of the appellant.

11. That being so, there is no scope for interference with the orders passed by the Tribunal and the High Court. The appeal is without merit and is dismissed. There will be no order as to costs.