

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1274/ 96

199

T.A.No.

DATE OF DECISION 6-1-2000

Sh. Namo Narain

....Petitioner

Sh. Yogesh Sharma

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh. P. S. Mahendru

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, M(J)

The Hon'ble Smt. Shanta Shastri, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. 1274/96

New Delhi this the 6th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Smt. Shanta Shastry, Member (A).

Namo Narain,
S/o Shri P.L. Sharma,
C.G.S. Northern Railway,
Palam,
R/o Bhim Kheri,
Gurgaon (Haryana).

... Applicant.

By Advocate Shri Yogesh Sharma.

Versus

1. Union of India through
the General Manager,
Baroda House, New Delhi.
2. The Secretary,
Railway Board, Rail Bhawan,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Bikaner (Rajasthan).
4. The Divisional Personnel Officer,
Northern Railway, Bikaner (Rajasthan). ... Respondents.

By Advocate Shri P.S. Mahendru.

O R D E R (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the delayed action taken by Respondents 3 and 4 in not publishing the order promoting him from Goods Supervisor to the post of Chief Goods Supervisor (CGS) in time, which was published on 31.3.1996. He has submitted that there was no reason for the respondents to delay in issuing him the promotion order after the provisional panel of CGS was published on 31.8.1995 (Annexure A-1).

2. The relevant facts in this case which are not disputed are that the applicant was working with the

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respondents as Goods Supervisor and had successfully completed the written test as well as the viva-voce test for being empanelled for the post of CGS in the grade of Rs.2000-3200. At the time when the applicant was called for the written test for the selection to the post of CGS by order dated 26.7.1994, it was mentioned that the selection was for eight posts of CGS. In the provisional panel issued by the respondents on 31.8.1995, a list of three persons have been given, including the applicant at Serial No. 3. The applicant has submitted that the other two persons, namely, S/Shri Virender Pratap and Rameshwar Dayal were already working as CGS on ad hoc basis at the time when the panel was issued on 31.8.1995.

3. Shri Yogesh Sharma, learned counsel for the applicant has submitted that according to him there were five clear vacancies of CGS on 31.8.1995 when the aforesaid panel was published. The details of the vacancies have been given in Paragraph 4.10 of the O.A. In the reply to this paragraph, the respondents have not denied that there were five vacancies but have merely submitted that there were five persons senior to the applicant for promotion to the post of CGS and hence the applicant was not entitled for promotion against the alleged vacant posts. The learned counsel for the applicant has relied on the Railway Board's circular dated 16.10.1964 as well as the judgements of the Supreme Court in Arun Kumar Chatterjee Vs. South-Eastern Railway & Ors. (1985(1) SLR 501) (Annexure A-18) and Dalilha Sojah Vs. State of Kerala & Ors. (AIR 1999 SC 1529). He has further submitted that as per the conditions laid down in the provisional panel published on 31.8.1995, the applicant had, in fact, been sent for the P-8A promotional ^{training} course, which has also been successfully completed by him on

21.9.1995. In the circumstances of the case, learned counsel has submitted that the respondents have unduly delayed to issue the promotion order of the applicant till 31.1.1996 instead of giving him the promotion to the grade of CGS w.e.f. 1.9.1995, that is immediately after the provisional panel was issued on 31.8.1995.

4. The respondents in their reply have submitted that the mere fact that the applicant's name has been placed in the panel, does not entitle him for promotion immediately nor has any right of promotion vested in him. They have submitted that after completion of the test required for promotion to the post of CGS, they have issued the promotion letter dated 31.1.1996 and the applicant has joined the higher post on 1.2.1996. Shri P.S. Mahendru, learned counsel, has submitted that completion of the P-8A promotional course for CGS is a pre-requisite for promotion to that post which has also been stipulated in the provisional panel order and till such completion of the course the applicant cannot be promoted. In this connection, he has drawn our attention to Paragraph 227 of the IREM (Vol.I) which empowers the Railways to prescribe requisite promotional course, passing of which is a pre-condition for promotion to the post of CGS. Learned counsel has, therefore, submitted that there is no substance in the contention of the applicant that he is entitled for promotion to the post of CGS immediately after the panel was published on 31.8.1995, that is with effect from 1.9.1995. He has, therefore, prayed that the O.A. may be dismissed.

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5. Shri Yogesh Sharma, learned counsel for the applicant, has submitted that in the reply filed by the respondents, they have nowhere mentioned about the pre-requisite condition of passing the P-8A course. However, as mentioned earlier, he has submitted that in the present case even before the panel was issued the applicant had also been sent for this course which he has successfully completed on 21.9.1995.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. In the provisional panel issued by the respondents dated 31.8.1995, the following is mentioned:

"The above employees are warned that retention of their names on the provisional panel is subject to their work remaining satisfactory during the currency of the panel. The mere fact that they have been placed on the provisional panel is no guarantee for their promotion/retention against the post for which they have been empanelled. The above staff are also required to qualify P-8A promotional course in the first available opportunity".

In view of the above condition mentioned in the provisional panel read with the provisions of Paragraph 227 of the IREM (Vol.I), we see force in the submissions made by the learned counsel for the respondents that successful completion of the P-8A promotional course is a pre-requisite which has been prescribed by the Railways for promotion to ^{and retention in B2} the higher post of CGS. However, we further note that the result of the training course P-8A, which also includes the applicant's name, was issued on 10.4.1996. It is also relevant to note that even before the result of the training course was published on 10.4.1996, admittedly the applicant had been promoted to the higher post of CGS w.e.f. 31.1.1996. The condition reproduced

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in Paragraph 7 above, contained in the provisional panel further makes it clear that the panelists have been placed in the provisional panel which does not give them guarantee for promotion/retention against the post but is subject to their passing the promotional training course-P-8A. This would also show that there was no reason ~~why~~ the applicant cannot be considered as promoted to the post of CGS w.e.f. 1.9.1995 and ~~retained~~ in that panel as he had passed the promotional course which is a pre-requisite for the promotion/~~retention~~.

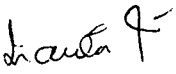
8. Respondents have contended that the applicant was not entitled for promotion as there were five persons senior to him, including S/Shri Virender Pratap and Rameshwar Dayal, who are shown senior to the applicant in the provisional panel also. There is no denial to the specific averments made by the applicant that there were five posts vacant as on 31.8.1995. It is also relevant to note that the names of persons from Serial No.2-4 given in respondent's reply to Paragraph 4.10 of the O.A. do not figure in the provisional panel. From this, the only conclusion possible is that those three persons have not been successful in the written and viva voce tests to be placed in the provisional panel for promotion to the post of CGS. That being so, since there were more than two posts vacant as on 31.8.1995, the applicant could have also been promoted after the panel was published on 31.8.1995. It is also not denied that the other two persons who were senior to the applicant, namely, S/Shri Virender Pratap and Rameshwar Dayal, were already working on ad hoc basis as CGS in the grade of Rs.2000-3200 even prior to 31.8.1995 and continued in that post till the regular promotion orders were issued on


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31.1.1996. We are also fortified in the view that we have taken by the observations of the Hon'ble Supreme Court in Arun Kumar Chhaterjee and Dalilah Sojah's cases (supra).

9. In the facts and circumstances of the case and for the reasons given above, the O.A. succeeds and is allowed. Respondents are directed to treat the applicant as having been promoted on regular basis as CGS in the grade of Rs.2000-3200 w.e.f. 1.9.1995. The applicant shall be entitled to all consequential benefits resulting from such fixation in accordance with rules and instructions.

Parties to bear their own costs.


(Smt. Shanta Shastri)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'