

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

D.A. No. 2394/93

New Delhi, dated the 19th May, 1995

HON'BLE MR. J.P. SHARMA, MEMBER (J)

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri Balkaran,
S/o Shri Jagar Deo,
Dy. Chief Yard Master,
Tuglakabad,
New Delhi.

(By Advocate: Shri B.S. Maines)

APPLICANT

VERSUS

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

(By Advocate: Shri B.K. Aggarwal)

RESPONDENTS

ORDER (ORAL)

BY HON'BLE MR. J.P. SHARMA, MEMBER (J)

The applicant joined the Railway as a Pointsman and was duly promoted to the grade of Yard Foreman (Asstt. Yard Master) in the scale of 1400-2300 and again to the post of Yard Master in the scale of 1600-2660 and subsequently he was promoted to the grade of Dy. Chief Yard Master in the scale of Rs.2000-3200. There the next promotions are also with which we not concerned with this case. The grievance of the applicant is that he was promoted as Yard Master on 2.1.87 in the grads of 1600-2660 and on the basis of the restructuring he was further given promotion in 1993 to the grade of 2000-3200 by the order dated 19.10.93 with condition to pass the P-16 prescribed course for retaining the promotional posts, but was suddenly reverted to the initial grade of Yard Foreman (AYM) in the scale of Rs.1400-2300. The applicant filed the application on 8.11.93

and this application was subsequently got amended on 12.12.94. The relief prayed by the applicant in the amended application is for quashing the order dt. 19.10.93 and further quashing of letter of Zonal Training School dated 5.10.93 declaring the applicant failed in P-16 course.

2. The Respondents have contested the granting of relief to the applicant on the ground that the initial promotion of the applicant to the grade of 1600-2660 by the order dated 2.1.87 was provisional, subject to the passing of the P-16 course. A copy of the order has been annexed in Page 11 in Annexure 2. There is a clear mention that these are temporary and ad hoc posts, and are subject to passing of P-16 course which does not bestow upon them any right to seek permanent absorption, or for claiming seniority over the seniors, and they are liable to be reverted if they do not qualify P-16 course in the first attempt.

3. Respondents have taken their stand that by restructuring of the posts by the circular dated 27.1.93 the post of Rs.2000-3200 became a selection post, but even though a selection post it had to be filled by modified procedure of selection, to the extent that selection of the basis of scrutiny of service records and Confidential Reports and not by holding written and viva-voce test. The Respondents have given a chart in their reply in para 4.5 to 4.7 page 3 of the counter regarding revised structuring of the post in the grade of 2000-3200. The stand of the Respondents is that the applicant has failed in P-16 course in the first attempt which was not only a pre-requisite for promotion to the grade of Rs.2000-3200 but even for Rs.1600-2660, and the applicant was, therefore, reverted to the grade of Rs.1400-2300. The applicant had, therefore, no case according to the Respondents

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4. The applicant has also filed the rejoinder to the counter filed to the amended O.A. while along with the counter is annexed a statement showing number of punishments initiated on the applicant from time to time. The promotion order dated 26.8.93 annexed with the counter shows that the staff can be promoted on restructuring of the cadre to the next higher post after restructuring irrespective of passing P.16 course. The staff name appears in comprehensive list must be sent for P-16 course at the earliest opportunity in preference to the other staff and in case they fail in the first attempt they should be reverted. The Respondents have annexed a photo copy of the letter dt. 5.10.93 for P-16 course stating that Shri Bal Karan the applicant has failed. The letter dated 19.10.93 goes to show that the applicant has been reverted to the post of scale of Rs.1400-2300.

5. We heard the learned counsel for the applicant Shri Mainee at considerable length. He argued that the applicant while undergoing the course was 55 years of age and according to the circular of the Railway Board, a copy of which is annexed with the Rejoinder dated 16.1.81, there is certain relaxation in respect of some persons regarding qualifying P-16 course. It is not in dispute that the Senior Transportation Course is meant for the promotional grades of Yard Master as well as for Dy. Chief Yard Master in the grade of 1600-2660 and Rs.2000-3200. Para 3 of the circular is quoted below:

"3. While the age limits have been prescribed for the Section Controllers and Traffic Inspectors vide Board's letter No.E(NG)1-73 PMI/80 dt. 24.1.74, no age limit has been prescribed for promotion of ASMs and SMs to higher grade posts in their respective cadres. Board have examined the letter and it is considered that the training as prescribed in the above letters is necessary for all the persons who are required to undergo these training courses; exemptions being granted only in exceptional cases i.e. heart patients etc, but only by COPS or CPTS personally, with a view, however, to save the elder persons from strenuous examinations on completion of training, the trainees, between the ages 50 to 55 may be subjected to an objective type test and trainees above 55 years of age may be given Oral test to 2 months duration."

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6. The learned counsel for the applicant highlighted the fact that the applicant was at an advanced age when the test was held and the papers were of such type that he could not adequately attempt because of age. Thus not qualifying the P-16 course on unrelaxed standard cannot be treated as failing of the applicant in that course. We have given careful scrutiny to the language of the circular and we find that the power to relax has been given to the competent authority to which the applicant had himself sought relaxation. When the applicant has himself gone into training and has taken the selection course, the question of exemption from training does not arise. The applicant's counsel has also not argued for the exemption from the training. After the completion of the training there was a qualifying test. The learned counsel for the applicant has stressed in the case of person between 50-55 years of age, only objective test and in the persons of 55 years oral test should have been allowed. This practice was not adopted and as such the applicant has failed in P-16 course. Though we agree with the interpretation given by the learned counsel, but at the same time the promotion on restructuring was specifically subject to passing of P-16 course as evident from Order dated 26.8.93 (Annexure R4). The contention of the learned counsel is that the condition of passing the P-15 course is in respect of the grade of 2000-3200 only but it was a regular promotion and not a conditional one. We find the factual position asserted by the learned counsel is totally different as the notice under which the promotion was given by the competent authority under directions of the Railway Board letter dated 26.8.93 (Supra). Thus we hold that it is necessary for the applicant to pass the P-16 course for the post of Rs. 2000-3200. The grievance is also to the fact had he been reverted to the post of Yard Master in the scale of Rs. 1600-2660 then there could have been certain justification, but the applicant has been reverted to the post of scale Rs. 1400-2300 at the fag end of his service.

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It is, therefore, argued that it

This is highly and grossly unfair to the applicant who was working in the post of Dy. Chief Yard Master ^{grades} from 1987 onwards by reverting him two ~~levels~~ below.

The learned counsel contended that the applicant was not sent for P-16 course. Respondents' counsel has taken serious view to the fact that the applicant has in no where has made any representation for not sending him to the P-16 course. In this connection the policy of restructuring undertaken by the Ministry of Railways vide circular dated 27.1.93 has to be seen. The mode of selection only has been modified for both the selection and non-selection post except that the written or the oral test was not to be held and the selection shall be based on the scrutiny of the record of service and ACR. If the applicant was not having a lien in the grade of Rs. 1600-2660 he is not to be considered for the post of Dy. Chief Yard Master in the scale of 2000-3200. In any case if the applicant had passed the P 16 course he would have got substantive appointment in both the grades simultaneously i.e. 1600-2660 and 2000-3200. Since he failed to qualify he cannot be given appointment to that posts/grades. These restructuring policy also provided, excepting the higher grade post in each cadre, the promotion should be effected on as is where is basis, as a result of these restructuring. However, the Admn. may pin point these posts as per administrative requirement as when the present incumbent vacates the post on retirement/promotion, transfer etc. The order of reversion passed by the Respondent dated 19.10.93 directing the Chief Yard Master, TKD Area Office that Shri Bal Karan, DCYM/TKD was

temporarily promoted in the scale of Rs.2000-3200 vide their office order dt. 1.10.93 pending passing P 16 course, because he has failed in P 16 course from 5.7.93 to 17.9.93, the order dt. 1.10.93 is cancelled and ^{he} is reverted as AYM in the scale of Rs.1400-2300 with immediate effect. The reversion to the grade of 1400-2300 of AYM is justified because of the fact that the order of promotion dt. 21.1.87 clearly stated "that the promotions are purely temporary and on ad hoc basis pending passing P-16 course which do not bestow upon them any right to seek permanent absorption for claiming seniority over the seniors and they are liable to reversion if they do not qualify P-16 course in the first attempt." The applicant has not stated anywhere that he was never called for joining the P-16 course. The applicant has also not challenged the order dt. 21.1.87 that his promotion is subject to the passing of P 16 course. The learned counsel for the applicant has stressed that passing of the P 16 course was only possible when the applicant would have ^{been} relieved and directed to join the course and the Respondents or the Admn., has not relieved him for joining that course. That is not also the relief prayed for nor there is a challenge to the non-action of the Respondents or the Admn. in calling the applicant for joining the P 16 course. The appointment of the applicant in the grade of 1600-2660 as Yard Master was only a stop gap arrangement till he clears P.16 course and further his promotion to the next higher post of DCYM would not be regular though in the promotion order dt. 1.10.93 it has not been mentioned. As already referred to above in Aug. 93 the Hqrs. have directed the Division Area Manager,

Northern Railway of all the Divisions to carry out cadre restructuring of non-gazetted cadre w.e.f. 1.3.93 and the staff should be promoted to the next higher post irrespective of P-16 qualification. Such staff will be sent immediately for P-16 course. The promotion of the applicant is, therefore, on restructuring as Dy. Chief Yard Master cannot be said to be regular. The applicant was therefore holding only the substantive grade of Asstt. Yard Master in the scale of Rs.1400-2300 and if he fails in the qualifying test he is to be reverted to the substantive aforesaid grade.

7. Learned counsel for the applicant has stressed fervently that the procedure applied of examining the applicant for qualifying P-16 course is against the circular of the Railway Board of 1981 referred to above. That circular lays down that the trainee above 55 years of age may be given oral test with two months duration. The training started in July 93. Though the applicant has not given the exact date birth but in the amended application the applicant has stated that he has crossed the age of 55 years of age. Thus he was on the margin as per his averment in the amended O.A. However, in the absence of exact date of birth neither in the verification clause nor in the title of the application, the averment made cannot be flatly accepted.

8. It is therefore held that the impugned order do not call for interference. However, in view of all that has been stated above and as the applicant is on the verge of reaching the age of superannuation the Respondents may without making it a precedent, consider reverting him only as Yard Master Rev. 1600 (Rs.1600-2660) subject to testing him again in accordance with the modified/procedure provided in the circular of Railway Board

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No. E(NG) 1-80/PMI-124 dated 15.1.81 and in case he qualifies retain him as Yard Master (Rs.1600-2660) and thereafter consider him for future promotion in the grade of Rs.2000-3200.

9. With the above observations, this O.A. is dismissed with no order as to cost.

Arfahje
(S.R. ADIGE)
Member (A)

Jormane
(J.P. SHARMA)
Member (J)

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