

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A.NO./151/91
xTANNOx

DATE OF DECISION 16th March 2000

Atul R. Danak

Petitioner

Mr.K.K. Shah

Advocate for the Petitioner [s]

Versus

Union of India & others

Respondent

Mr.N.S. Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr.

P.C. Kannan,

Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

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Atul R. Danak
Thakkar Building
2nd floor
Near Bank of India
Station Road
Anand- 388 001

Applicant

Advocate: Mr. K.K. Shah

Versus

- 1) Union of India, notice to be served through: The General Manager, Western Railway Churchgate, Bombay- 400 020.
- 2) Divisional Signal Telecommunication Engineer/C/Tele/BRC, to be served through Divisional Railway Manager Western Railway, Pratapnagar Baroda.
- 3) Chief Project Manager (Railway Electrification) to be served through Divisional Railway Manager Divisional Office, Western Railway, Kota.

Respondents-

Advocate: Mr. N. S. Shevde-

JUDGEMENT

IN

O.A./151/91

Dated 16th March 2000

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicant is a direct recruit to the level of Sr. Draftsman and who was initially allotted to work under the Railway Electficiation Project in Kota *and* is aggrieved by the fact that his name does not figure in the list circulated by letter dated 28.2.91 as at Annexure A indicating persons who are eligible to take the selection for the post of Chief Draftsman/

Chief **Estimator**/Chief Design Assistant in the scale of Rs.2000-3200. He has sought following reliefs:-

(A) This Hon'ble Tribunal may be pleased to held that the action of the respondents by not including the name of the applicant or not showing the name of the applicant in the order dated 28.2.91 for proposed selection of the Chief Draftsman in the scale of 2000-3200 is illegal, arbitrary and discriminatory and be further direct to the respondent to include the name of the applicant in the aforesaid list and give supplementary chance for the selection of Chief Draftsman in the interest of justice with all consequential benefits.

(B) This Hon'ble Tribunal may be pleased to allow this application with costs.

(C) Any other order or direction may be deemed fit in the interest of justice may be passed.

2. We have heard Mr. K.K. Shah for the applicant and Mr. Shevde for the Railway Administration.

3. Mr. K.K. Shah says that the applicant was recruited as a direct recruit through Railway Service Commission for the level of Sr.Draftsman. The Railways chose to post him in the Railway Electrification Division which is not a permanent establishment. He joined on 12.4.1984. He says that after

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completion of apprenticeship /training etc. he was appointed as Senior Draftsman on 12.4.85. He contends that the Railways did not inform him in time about his seniority position at the level of Sr.Draftsman etc. After working for a number of years, he had been allotted to Kota Division. But the Kota Division expressed its inability to absorb him for want of vacancies and he was given option to go to some other division. He accordingly opted for posting in Baroda Division and he was given lien in such division. Mr. Shah says that owing to administrative lapse, considerable time was taken in allotting the lien to the applicant in the railway establishment. He draws our attention to Rule 103 of the Indian Railway Establishment Code Vol.I which deals with definitions and says that as per Rule 103 (28) lien means the title of a railway servant to hold substantively either immediately or on termination of a period or periods of absence a permanent post, including a tenure post, to which he has been appointed substantively. He also refers to Rule 239 which reads as follows:-

" 239 Lien: Unless in any case it be otherwise provided in these rules a railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired in other post".

He says that Rule 240 says that a railway servant holding permanent post retains a lien on that post unless it is transferred etc. He contends that all these rules will bring out that the lien is to a post and not to any particular establishment. The Railways action in delaying the fixation of his lien in Baroda etc. has caused prejudice to the applicant. Mr. Shah further contends that some persons who have not been promoted or working on 12.4.84 as Senior Draftsman have been called for the selection for the post of Chief Draftsman in the impugned list and according to Mr. K.K. Shah inclusion of their names while ignoring the name of the applicant for taking the selection for the promotion to the level of Chief Draftsman is discriminatory. He refers in this connection to Ground-B in the pleadings.

4. Mr. Shevde for the railway administration resists the O.A. He contends that what is challenged is the non-inclusion of the name of the applicant in the eligibility list for the post of Chief Draftsman, Chief Estimator etc. He says that the eligibility list will include only those persons who are holding the post of Head Draftsman on a regular basis.

Mr. Shah had contended that the applicant had been promoted to the level of Head Draftsman by the order dated 29.8.1998 as at Annexure A-3 by the DST (E) Baroda and had referred in this connection to the copy of the order enclosed at Annexure A-3. Mr. Shevde says that the applicant was not holding the post of Head Draftsman on a regular basis and as such was not eligible to be considered for the next higher post of Chief Draftsman. The applicant was working in the Railway a Electrification Project in Kota which is not a permanent establishment and as such his lien has to be fixed in an establishment which is permanent in nature. Initially the department fixed his lien in Kota Division but the D.R.M. Kota stated that for want of vacancies it would not be possible to absorb him in Kota division. Mr. Shevde refers to the letter dated 18.8.89 as at Annexure A-5 where the applicant was informed about this and he was asked to give his fresh willingness for fixing the lien in other three divisions and to be transferred to Survey and Construction Department. Pursuant to this, the applicant gave his willingness to be posted to Baroda Division and he was transferred by an order which was issued on 19.10.89 a copy of which is at Annexure A-4 where a request was made to the concerned division to fix his lien in that division after ascertaining the vacancy

position. After joining the construction organisation on 29.8.89 he was given ad hoc promotion to the level of 1600 - 2660 (Annexure A-4) He was promoted to the level of Head Draftsman purely on ad hoc basis and it was made clear in that order that it is an ad hoc arrangement and the employee would not have right for that post in future. Mr. Shevde says that the promotions in the Construction Organisation are faster than the open line. However, the fact remained that this promotion was given purely on ad hoc basis and the applicant had not become a regular Head Draftsman for being considered for promotion to the next higher level of Chief Draftsman.

Mr. Shevde also denies that some juniors were allowed to take the selection test and their names were included in the eligibility list circulated by letter dated 28.2.91 as contended by the applicant in ^{Group} Group B. He says that Shri S.K.Sharma was holding on ad hoc basis the post of Chief Draftsman and Shri G.C.Sharma was in Kota Division and was senior to the applicant. He refers in this connection to the reply statement of the Railways which states that the contention that certain persons are junior to the applicant is not correct and ~~they~~ they were in fact senior to him and because they were seniors they were called for the

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selection. Mr. Shevde says that the lien of the applicant was transferred formally to Baroda Division as is seen from the order dated 17.6.94 where his name is shown. He says a copy of this order is at Annexure R-4 to the reply statement which shows that the applicant was working in the Construction Organisation of Baroda but his lien was transferred to Baroda Division. Accordingly his lien was fixed in Baroda. Mr. Shevde says that in the combined seniority list the applicant ^{figures} was since promoted to the level of C.D.M. in 1993 as is seen from the order dt.27.1.94 as at Annexure to the MA/84/2000.

Mr. Shevde says that the applicant has not produced any material to rebut the clear averment of the railways that the persons called for selection are senior to the applicant by way of producing the seniority list and the eligibility list but has merely made a general statement that S.K.Sharma, M.L.Popli, G.C.Sharma are junior to him without any materials in support of that contention. They in fact are seniors. Mr. Shevde contends that the applicant has since been promoted to the level of Chief Draftsman and should not have much of a grievance.

5. Mr. K.K.Shah by way of rejoinder contends that the seniority list produced by the Railway Administration cannot be relied upon and the

seniority list of Chief Draftsman circulated by letter dated 21.5.98 which has been produced by the Railways at such a late stage cannot be relied upon. He says that the seniority list says that the applicant is working in Kota Division whereas he is in fact working in Baroda Division. Mr. Shah also submits that the statement of Mr. Shevde that only regular Head Draftsman can appear in the selection test for the Chief Draftsman is not correct, as according to his information some other persons, who could not have become regular Head Draftsman were allowed to take the examination in Supplementary test which was organised later.

6. We have carefully considered the rival contentions. As brought out earlier, the relief sought for is that the applicant's name should have been included in the eligibility list for selection to the post of Chief Draftsman as circulated by letter dated 28.2.91 as at Annexure -A. Mr. Shah has argued that even persons who are not regular Head Draftsman can take such a test which is contested by the Railways.

We find that para 154 of IREM specifically deals with the promotion for Draftsman in Civil Engineering Department. It says that the channel of promotion from Draftsman/Sr. Draftsman is to that of Head Draftsman in the scale of Rs.1600-2660 and then

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to the level of Chief Draftsman in the scale Rs. 2000-3200. The applicant himself had admitted that he was promoted purely on ad hoc basis by the order dated 29.8.89 as at Annexure A-3 by the Construction Division as Head-Draftsman. Shri Shevde has stated that promotions in the construction organisation are faster than the Open Line. The fact remains that the applicant was promoted purely on ad hoc basis and it is ~~also~~ not made clear to him that he would have no claim for the post in future. He had not at that time become a regular Draftsman and as such as per para 154 of IREM he could not have been considered for promotion to the next higher level of Chief Draftsman.

Mr. Shah has referred to Ground B of the pleadings that some persons who were not working as Senior Draftsman on 12.4.84 had been called for selection to the post of Chief Draftsman. This allegation is categorically denied by the Railways. in their reply statement. This has not been controverted either by way of rejoinder or production of relevant seniority list. During the hearing Mr. Shah has stated that the seniority list of Y CDM which was circulated later showing the applicant at Sr.No.65 is not a proper seniority list as he has been shown in Kota Division whereas his lien is kept in Baroda Division. We find

from the seniority list that there is a column Division which includes not only the regular division but also railway electrification etc. which is not a permanent establishment. Obviously this column does not relate to the division in which the lien is maintained but organisation in which the candidate is actually working. So far as the applicant is concerned, the reference to Kota Division as the place of working is obviously a mistake as he had been working in Baroda Division. Mr. Shevde has argued that it is an integrated seniority list at the zonal level which takes the seniority on the basis of date of entry at a particular grade and any mistake in referring to the division where the applicant is working will be immaterial and will not affect the seniority list. There is force in the statement of Mr. Shevde. Apart from this, as has been brought out earlier the fact that the applicant was not a regular Head Draftsman would not entitle him to be included in the eligibility list for selection to the post of Chief Draftsman. ✓

There was some reference to a supplementary test etc. held later where some other persons who according to Mr. Shah were junior were called and this is not a part of the pleadings nor had been

substantiated. In the light of the clear provisions contained in para 154 the applicant is not entitled to be included in the eligibility list for selection to the post of CDM when he was not holding the post of Head Draftsman on a regular basis at the relevant time. The applicant also has not been able to substantiate the allegation that some persons who are junior to him and who are also not regular Head Draftsman had been included in the eligibility list. The relief sought on the present O.A. cannot therefore be granted.

7. While the applicant has no legal right to the relief sought for, we note that there is some discussion regarding allotment of lien, transfer of lien etc. Mr. Shah had argued that the lien is to a post and not to the establishment. However, the definition of lien talks of substantive appointment to a permanent post. In an organisation like the Railway Electfification which is a temporary establishment, there cannot be any permanent post and there is no question of a person working there getting a lien in that organisation. His lien has necessarily to be fixed in a permanent establishment. Initially the applicant's lien was sought to be fixed in the Kota Division by the Head Quarters office as is seen from the letter at Annexure A-2 but the Kota division brought out that they do not have permanent posts against which he can be

accommodated and consequently, the applicant was given an option to choose a division/as per his option, his lien was transferred to Baroda Division. Mr. Shevde says that his lien has been fixed by order dated 17.6.94 in Baroda Division and that this would be from the date of his regular promotion. However, it is possible that owing to the uncertainty in fixing his lien in the permanent establishment there could have been some delay in the normal line of promotion. This is not an issue in the present O.A. and as such this has not been dealt with by the Railways and the Tribunal cannot give any finding in this regard. While the applicant is not entitled to the relief sought in the present O.A., it does not preclude him from submitting a representation to the Railway Administration if he finds that the confusion with regard to fixation of his lien had resulted in delayed regularisation at the level of Head Draftsman and had also resulted in some of his juniors being promoted. If he finds that this is in fact the case, he may submit a representation giving necessary details to substantiate his stand and if he does so, we expect the Railway Administration to deal with it on merits and pass appropriate orders.

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7. Subject to the above observation we dismiss the present O.A. with no orders as to costs.

Draeey
(P.C.Kannan)

Member (J)

DR ^{for}
6/3/2011
(V.Ramakrishnan)
Vice Chairman

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