

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**O.A. NO. 472 of 1992
T.A. NO.**

DATE OF DECISION 16.3.1992

Mahendrakumar Singh

Petitioner

Mr. B.B. Gogia

Advocate for the Petitioner(s)

VERSUS

Union of India & others

Respondents

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 judgement ? *✓*
2. To be referred to the Reporters or not ? *N*
3. Whether their Lordships wish to see the fair copy of the judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*

Mahendrakumar Singh
Train Examiner,
Western Railway
Wankaner
(Advocate Mr. B.B. Gogia)

.. Applicant

Versus

1) Union of India,
Owning & Representing
Western Railway
Through: General Manager
Western Railway
Churchgate, Bombay 400 020

2) Sr. Divisional Mechanical Engineer
Western Railway
Divisional Railway Manager's office
Kothi compound,
Rajkot 360 001.
(Advocate Mr. N.S. Shevde)

.. Respondents.

ORAL ORDER
OA No. 472 of 1992

Dt. 16.3.99

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

We have heard Mr. Gogia for the applicant and Mr. Shevde for the Railway administration.

2. The applicant was a Train Examiner and has challenged the order dt. 16.10.92, which states that his case for promotion to the post of Head Train Examiner could not be considered on the basis of the Confidential Reports of the last 3 years.

12

3. The applicant functioned as a Trainn Examiner and became eligible for promotion to the post of Hd. Train Examiner in 1990. He was promoted on 5.3.90 and he took over charge of the promotional post on 8.4.90. However, on account of some personal reasons he sought reversion and the same was agreed to by an order dt. 10.10.90. In view of this, he was debarred for a period of one year till October, 1991. He was considered for promotion at this level by the competent authority in August, 1991, but was adjudged unfit on the basis of his CRs. Again during April, 1992 he was considered alongwith a number of others for promotion, but the competent authority took a view that he was not suitable. We are informed that he was assessed again after one year and promoted by an order dt. 20.5.93

4. Mr. Gogia says that the respondents should not have denied promotion to the applicant earlier, as this is a non-selection post to be filled up on the basis of seniority-cum suitability. He says that no adverse remarks were communicated to the applicant for the period 31.3.90, 31.3.91 and 31.3.92 and there is no reason as to why he should have been considered unfit. We had directed the Railways to produce the relevant CRs of the employee, which was also shown to Mr. Gogia. After perusing the same Mr. Gogia submits that the applicant has been graded as 'average' for the period ending 31.3.91 and 31.3.92 but as per the relevant instructions 'average' is not an

adverse remark and cannot stand in the way of promotion. There is also a reference in the CR that he was deputed for some refresher course but had failed and he was sent again for the refresher course the result of which was awaited. Mr. Gogia says that based on the CRs of 1991 and 1992 the applicant cannot be denied promotion.

5. Mr. Shevde submits that the Railways have perused the CRs of the last 3 years and the competent authority had come to the conclusion that on the basis of overall performance, he was not suitable. Moreover, the employee had failed in the refresher course. He says that staff are deputed for refresher course in order to equip them to discharge their duties efficiently and while adjudging suitability for promotion this is taken into consideration. He says ^{to set} ~~find~~ there is no merit in the OA.

5. We have considered the contentions of both the counsel. We note that the applicant has since received promotion from 20.5.93. Earlier he was promoted during 1990 but sought for reversion after some time on personal ground. He was assessed in August, 1991 and found not suitable. We find from the CR that in 1988 he is graded as 'good' and also passed refresher course in that year. However in the CR of 1989 there was a mention that he was verbally instructed to improve and also in column 18 his work was said to be 'not satisfactory'. This was communicated to the applicant. Perhaps

on the basis of overall performance the department had given him promotion in 1990. In fact he became eligible for consideration for promotion after debarment and when the vacancy arose he was considered in August, 1991 and the authorities would have taken into account the CRs of 1989, 1990 and 1991. We find that in 1990 he has been adjudged as 'good'. In his CR for 1991 the grading is 'average' and it also brings out that he was sent for refresher course from 3.12.90 to 15.12.90 and failed therein. He was deputed to the said course again from 11.2.91 to 23.2.91 and the results were awaited. In some columns he has been treated as ordinary. The fact of his *failure* in the Refresher Course need not be communicated to him, as he would have been aware of the same. We, therefore hold that there are sufficient reasons to conclude that in August, 1991 he was not suitable for promotion.

7. However, the authority again considered him in the beginning of April 1, 1992 for promotion without waiting for the CR of 1992. We find that in the CR of 1992 he was graded as average and there is a statement that he failed in the refresher course but sent again on 11.2.91 to 23.2.91. There is no mention as to the result of this course. As regards the CR of 31.3.93 he has been graded as 'good' by the reviewing authority and on that basis he would have received promotion in May, 1994. We find from the HQ office

confidential letter that the remark 'average' is not to be treated as adverse. Obviously an average performance by itself may not be adequate to deprive promotion in the case of a non-selection post when nothing adverse comes to notice. When he was considered for promotion in April, 1992 ^{few} for CR of the period ^{ending} 31.3.92 would not have been available to the competent authority. When the man has been passed over for promotion earlier, it is only reasonable that one more CR should have been considered before he is assessed again for promotion, which was not done in the present case. We also do not find anything on record as to what was the result of the refresher course the applicant attended from 11.2.91 to 23.2.91.

8. Keeping in view all these factors, we direct the respondents to conduct a review DPC for any vacancy which arose subsequent to the one in April, ^{but prior to May 1993} 1992 and take into account the CRs of the applicant for the year ending 31.3.92 besides 31.3.91 and 31.3.90 and adjudge his suitability on that basis. While doing so his performance in the refresher course held in February, 1991 ^{to} which he was deputed again may also be taken into account. If on the basis of these materials the review DPC finds him suitable for promotion, the applicant shall be given promotion on notional basis from the date on which his immediate junior had received such promotion after August, 1992 and on his actual promotion in May, 1993 his pay may be refixed with all financial

benefits from that date. This exercise should be completed within three months from the date of receipt of a copy of this order.

7. With the above direction the OA is finally disposed of. No costs.

P.C. Kannan
(P.C. Kannan)
Member (J)

Nsh

V. Ramakrishnan
(V. Ramakrishnan)
Vice Chairman