

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, CALCUTTA.

O.A.NO.: 1098 of 1996.

DATE OF DECISION: 22-JUNE-2001.

Harendra Nath Halder, son of Late Surath Nath Halder, aged about 51 years, working in the post of Head Train Examiner in the office of the Carriage Divisional Mechanical Engineer, South Eastern Railway, Kharagpur Division, residing at Colonlgola, P.O.: and District : Midnapore.APPLICANT.

By Advocate :- Mr. G.Bhakat.
Mr. B.Chatterjee

vs.

1. Union of India, through the Chairman, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Calcutta-700 043.
3. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-700 043.
4. Divisional Railway Manager, South Eastern Railway, Kharagpur Division, P.O.: Kharagpur, District : Midnapore.
5. Senior Divisional Mechanical Engineer, South Eastern Railway, Kharagpur Division, P.O.: Kharagpur, District : Midnapore.
6. Sr. Divisional Personnel Officer, South Eastern Railway, Kharagpur Division, P.O.: Kharagpur, District : Midnapore.
7. Shri A.Mukhopadhyay, Chief Train Examiner, posted at C/NMP C/o CFS [SPL] Nimpura, Kharagpur, South Eastern Railway, District : Midnapore.
8. Shri T.K.Pan, CTXR, posted under CFS [SPL], Santragachi, South Eastern Railway, P.O.: Santragachi, District : Howrah.

....RESPONDENTS.

By Advocate :- Mr. S.Chowdhury.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.

HON'BLE MR. L.R.K.PRASAD, MEMBER [ADMINISTRATIVE].

O R D E R

JUSTICE S.NARAYAN, V.C.:- The applicant herein has prayed for quashing and setting-aside an order dated, 27th February, 1995 [Annexure-A/3], issued by the respondent no.6 granting promotion to two juniors [to the applicant] and denying the same to the applicant according to the modified procedure of selection laid down in Railway Board's letter dated, 27th January, 1993 [Annexure-A/2]. The applicant has prayed for a direction to the respondents to consider the case of the applicant for promotion to the upgraded post of Chief Train Examiner along with his juniors, who had already been

promoted as per order dated, 27th February, 1995 [Annexure-A/3], togetherwith consequential benefits.

2. The brief case of the applicant is that he was working on the post of Head Train Examiner on promotion w.e.f. 1st January, 1984, in Mechanical Department, Kharagpur Division. As per provisional seniority list dated, 28th February, 1993, which was published on 3rd May, 1993, the applicant was assigned 14th position in order of seniority and as against that, Mr. A.K.Mukhopadhyay and Mr. T.K.Pan [respondents no. 7 & 8] were shown at sl.no.15 & 16, but they were given promotion to the post of Chief Train Examiner while superseding the applicant. The promotion as such, to respondents no. 7 & 8 was given against the re-structuring ^{scheme} of Group 'C' & 'D' cadres, as contained in the Board's letter dated, 27th January, 1993, as at Annexure-A/2.

3. The facts, as narrated above, have not been denied by the official respondents. The point, where the parties have joined issue, is that, according to the applicant, while granting promotion under re-structuring Scheme formulated in the Board's letter dated, 27th January, 1993, it was to be given only on scrutiny of service record and confidential report, without holding any written or viva-voce test. The official respondents pleaded, inter-alia, that the applicant's case was ~~of~~ ^{not} considered in terms of the provision of the Scheme, but he could not be considered fit on the basis of the service record and confidential report, inasmuch as, during his service period from 1976 to 1994, he was under several punishments [insincerity, irregularity, service career with below average] which were very close with one another.

4. The fate of the instant case, therefore, hinges on the interpretation of the Scheme of re-construction, as contained in the Board's letter dated, 27th January, 1993, which did provide one time relaxation in regard to the selection for the purpose of promotion. The relevant extract of the Scheme, which was material

for the instant case, was contained in Clause-4 and that needs to be given below for better appreciation of the cases on the either side:-

"The existing classification of the posts covered by the restructuring orders as selection and non-selection, as the case may be may remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and or viva-voce test similarly for posts classified as non-selection at the time of this restructuring, the same procedure as above will be followed. Naturally, under this procedure the categorisation as 'Outstanding' will not figure in the panel. This modified selection has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the members involved with the objective of expediting the implementation of these orders."

5. Even on plain reading of the relaxation, as stated above, it goes without saying that the incumbent for a selection post i.e., of Chief Train Examiner, it was simply proposed not to hold any written or viva-voce test rather, it has to be done only on the scrutiny of service records and confidential reports. What we find in the instant case is that the official respondents did assert that such scrutiny was made and it has been also demonstrated on the record by producing the original file of selection process containing the minutes of the Committee, which held the scrutiny. As a result of the scrutiny of the service records and confidential reports as well, pertaining to the applicant, the Committee arrived at a definite conclusion that he was not fit to be promoted and, accordingly, resolved as such.



6. In order to satisfy our conscience, we also have gone into the file of the selection proceeding, but to find that the service records and the confidential reports on scrutiny would have certainly led the Selection Committee to arrive at a conclusion that the applicant was not fit candidate so as to be promoted. In order to briefly demonstrate the result of the scrutiny, our attention was drawn also to Annexure-R/2, which contained the lapses on the part of the applicant detected from time to time for which various punishments had been awarded. It covered the period right from 1976 to 1994. The punishment awarded by way of stoppage of increments and censor, from time to time, would lead to no other consequence than what has been arrived at by the Selection Committee.

7. Even though not clearly spelt-out in the body of the O.A., learned counsel for the applicant urged that under the Scheme of relaxation, the service records/confidential reports only for one year had to be looked into and not that the overall service career and confidential reports could be examined. In support of this contention, he has drawn our attention to Clause 5 of the Scheme, as contained in the Board's letter dated, 27th January, 1993. On going through the same, we are unable to concur with such submission. Clause 5 relates to the minimum year of service in each grade. The normal minimum eligibility condition of two years was relaxed to one year as a one-time-exception, but this does not mean that the service records/confidential reports of more than a year could not be considered for the purpose of promotion.

8. Before arriving at a conclusion, we may also refer to a decision of this Tribunal from Jaipur Bench in the case of Ramjee Lal Mina Vs. Union of India & Ors.; reported in 1997 [1] Administrative Tribunal Judgments P.204, wherein, also it was held that a Departmental Promotion Committee while considering the cases of promotion under the One Time Bound Promotion Scheme was within



competence to deny promotion on account of un-satisfactory service records. This would certainly strengthen the view as taken above in the instant case.

9. In the result, the instant O.A. has no force to succeed and, accordingly, it is dismissed with no order as to costs.

ccs 29/6/01

[L.R.K.PRASAD]
MEMBER [A]

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[S.NARAYAN]
VICE-CHAIRMAN