

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

1. OA No. 356 of 1996

AMAL KUMAR SARKAR

2. OA NO. 357 OF 1996

ALOKE KUMAR SARKAR

VS

1. Union of India through
General Manager, E. Railway,
17, Netaji Subhas Road,
Calcutta-1
2. Divisional Railway Manager,
Eastern Railway, Sealdah,
Calcutta
3. Sr. Divisional Personnel Officer,
Eastern Railway, Sealdah,
Calcutta
4. Divisional Electrical Engineer(General)
Eastern Railway, Sealdah
5. Jr. Electrical Engineer(General)
E. Railway, Ranaghat, Nadia
6. Brij Kishore Pandey,
Mistry, Gr.I
O/o of Jr. Electrical Engineer
E.Railway, Sealdah
7. Pankaj Kumar Bhattacharjee,
Mistry, Grade I
8. Gouranga Ray,
Mistry Grade I

... Respondents in both cases

For the petitioners : Mr. G.Mukherjee, Counsel
Dr. (Ms.) S. Sinha, Counsel

For the respondents : Mr. C.Samadder, Counsel

For Pvt. respondents : None

Heard on : 15.7.97 : Order on : ~~4-7-97~~ 25-8-1997

ORDER

M.S.Mukherjee, A.M.

By this common order, we propose to dispose of both the OAs viz. OA 356/96 and OA 357/96 as they concern more or less related facts.

Petitioner's case in OA 356 of 96

2. In OA 356 of 1996, the petitioner, who was working as Wireman, Gr.I since 1991, is aggrieved by the promotions given to private respondent Nos. 6, 7 and 8 of the petition to the post of Mistry, Gr.I in scale Rs. 1400-2300/- and he has prayed for quashing of the said promotion order dated 13.7.95. The petitioner's case is that he was working as Wireman, Gr.I, a skilled grade post. The respondent No. 3 i.e. Sr. DPO, Sealdah, by his letter dated 24.1.95 addressed to various functionaries (Annexure-A to the petition) informed that selection would be made for filling up four posts of Mistry, Gr.I in scale Rs. 1400-2300/- (RP) in Train Lighting Wing and 5 posts in Power Wing and for this option from willing candidates belonging to the category of skilled Gr.I artisan with minimum 3 years service as Gr.I and total 10 years service in skilled grade, should be obtained from all categories wing wise and such option was to be sent so as to reach the designated office of respondents by 10.2.95. The petitioner's case is that he accordingly sent his option for such selection on 3.2.95 i.e. well before the stipulated date.

3. The petitioner's grievance is that despite sending his option by the due date, the respondents arbitrarily excluded him from consideration for the suitability test and respondent No. 3 by his letter dt. 12.5.95 (Annexure-C to the petition) fixed the date of suitability test on 24.5.95 and through this letter he indicated ^{it also} a list 5 eligible persons for consideration for power wing vacancies. The petitioner adds

that all these 5 eligible persons included in the zone of consideration for suitability test belong to FCO wing and none to the wireman wing or power wing to which the petitioner belongs. According to the petitioner, this was done allegedly with mala fide motive of eventually selecting the FCO staff. The petitioner immediately sent a representation against such alleged arbitrary determination of the zone of eligibility through his representation dt. 15.7.95 (Annexure-D). However, the respondents without bothering about this representation eventually by the impugned communication dt. 13.7.97 (Annexure-E to the petition) ordered promotion of 5 persons as Mistry, Gr.I and all these 5 persons were those who had been included in the zone of consideration. These five persons include also the private respondent Nos. 6, 7 and 8 to this proceeding. The petitioner again sent a representation against this arbitrary promotion on 5.1.96 (Annexure-F), but to no effect.

4. Being aggrieved, he has filed this petition praying for the quashing of promotions given to private respondent Nos. 6, 7 and 8 through the impugned promotion order dt. 13.7.95 and also for a direction on the respondents to consider the petitioner for promotion as Mistry, Gr.I in scale Rs. 1400-2300/- with all financial benefits with effect from 13.7.95 i.e. when private respondents had been given the impugned promotions.

Petitioner's case in OA 357 of 96

5. In this case, the petitioner was working as Electric Fitter-cum-Operator, Gr.I in scale Rs. 1320-2040/- he had been promoted as skilled grade artisan on 1.10.78. He claims to be senior to private respondent Nos. 6, 7 and 8 of this petition, who happen to be the same private respondents in OA 356/96. The petitioner also mentions about the communication dated 24.1.95 issued by Sr. DPO, Sealdah (Annexure-B, which

also happens to be identical with Annexure-A in OA 356/96). The present petitioner's case is that the said communication seeking option for promotion to higher post of Mistry, Gr.I, was never brought to his notice. The respondents further through their letter dt. 12.5.95 (Annexure-C to both the petitions) notified selected employees from FCO wing for consideration for selection test for promotion by ignoring their seniors like the present petitioner, who was even denied opportunity of offering any option. Eventually, all these 5 persons selected for suitability test, were promoted by the respondents' impugned order dt. 13.7.97 (Annexure-D to OA 357/96 and annexure-E to OA 356/96). The petitioner on coming to know about this promotion, sent a representation to the respondents on 17.7.95 (Annexure-E) and a further detailed representation on 5.1.96 (Annexure-F) but to no effect.

6. The petitioner has, therefore, prayed for the quashing of the impugned promotions given to private respondents and also for a direction on the respondents to consider him for such promotion as Mistry, Gr.I with all financial benefits from 13.7.95.

Respondents' case in both the OAs

7. The respondents have contested both the cases by filing separate replies. Their contention is that the particular post of Mistry, Gr.I is a non-selection post and that in order to fill up the vacancies for the promotional post of Mistry, Gr.I, option had been called for from different categories of employees in scale Rs. 1320-2040/vide Sr. DPO, Sealdah's letter dt. 24.1.95. In response to the same, a total number of 43 options had been received for the power wing. Thereafter, a combined seniority list of the optees was prepared by taking into account the date of promotion in the lower feeder grade of Rs. 1320-2040/-. The position of petitioner of OA 356/96 in this combined seniority

list was found to be in sl. No. 17. Since the total vacancies in the power wing were only 5, seniormost 5 optees from the combined seniority list, who happened to belong to FCO category/wing, were considered for the suitability test. Subsequently, they got promotion to the posts of Mistry, Gr.I after being declared suitable. The petitioner of OA 356/96 could not, therefore, be considered and the respondents have urged for rejection of his petition.

8. Regarding the petitioner of OA 357/96, the respondents have, however, conceded that he is senior in the feeder category to the private respondents 6 to 8. However, he did not exercise his option, although he had been advised to do so by his installation in-charge in time. Therefore, the respondents had no other alternative than to exclude him from the list of eligible candidates for suitability test. The respondents have, therefore, urged for rejection of his petition as well. The respondents have further added that the petitioner of OA 357/96 has subsequently been promoted as MCM in the same scale of Rs. 1400-2300/- by a latter order dt. 23.4.96.

EVALUATION OF EVIDENCE IN BOTH THE OAs

9. We have heard the learned counsel for the parties and have gone through the documents produced.

10. Mr. G.Mukherjee, the 1d. counsel for both the petitioners leading Dr.(Ms.) S.Sinha, counsel, has argued that the entire selection process was initiated to favour the favoured persons; otherwise despite exercise of option in due time, the petitioner of OA 356/96 could not have been excluded and only the 5 persons eventually promoted as Mistry, Gr.I could not be included in the zone of selection for the suitability test. The entire process started with the pre-determined bias which is also alleged in respect of OA 357/96.



11. But for examining the issue as to the number of persons to be included in the zone of consideration, the nature of the promotion post and the relevant selection procedure have to be considered. It is admittedly a non-selection post. Mr. G.Mukherjee, the 1d. counsel for the petitioners has argued that while option had been invited from all categories in the feeder cadres, all optees should have been considered for suitability test. But Mr. C.Samadder, the 1d. counsel for the respondents has submitted that promotion to the said post had been finalised as per CPO, E.Rly.'s Sl. Circular No. 67/87, a copy of which has been produced by him at the time of hearing. At para 4 of the said Sl. Circular, it is laid down that promotion to Mistry, Gr.I will be from skilled, Gr.I subject to exercising option by the concerned staff. Therefore, in terms of the said circular, options had been invited from all eligible skilled Gr.I employees category wise wing wise.

12. Now, under the provisions of para 214(c)(ii) of IREM, Vol. I, 1989 Edn. the number of eligible staff for consideration should be equal to the number of vacancies both existing and anticipated. It is the case of the respondents that there were only 5 vacancies in power wing. So, as against these 5 vacancies, only 5 persons should be included in the zone of consideration. These 5 persons had been selected on the basis of seniority amongst the optees. Mr. G.Mukherjee's objection is that this seniority amongst the optees was artificial. But taking into consideration the provisions of para 214(c)(ii) of IREM, Vol. I, along with the aforesaid CPO's Sl. circular No. 67/87 side by side, the respondents determined inter se seniority of only the optees and 5 seniormost optees were considered for the 5 posts of Mistry, Gr.I. If any of these seniormost optees had not been assessed as suitable through the suitability test, then the

corresponding number of next seniormost optees would have been subjected to the suitability test. We do not find anything wrong in this action of the respondents and to that extent, we find that the grievance of the petitioner in OA 356/96 is not tenable.

13. The case of the petitioner of OA 357/96 is, however, on a different footing. He contends that he had never been given an opportunity to offer his option. The respondents have stated in their reply that the petitioner failed to submit any option in response to the notice, even though he was advised to do so by his installation-in-charge. The respondents have, however, added that such advice was given by the installation in-charge to the petitioner over telephone. The petitioner denies that he had ever been given such advice.

14. On the face of it, this position of the respondents *prima facie* is not very satisfactory. When any option is invited by a notice, the respondents should have ensured that all concerned should get such notice well in time through usual circular procedure. The so called telephonic communication by the supervisory officer, if not independently corroborated, should not have been treated by the respondents as valid reasons for prejudging the interests of an affected employee. To that extent, the grievance of the petitioner in OA 357/96 seems to be genuine.

15. However, the petitioner wants the quashing of the promotions given to private respondent Nos. 6,7 and 8. But these private respondents have not entered any appearance nor have they filed any reply. On the other hand we notice that, there is nothing on record that these private respondents have ever been served notice by the petitioner while moving this petition or thereafter. Even from the cause title, we find that no address of at least private respondent Nos. 7 and 8 has been given. Therefore, it would be against the concept of

natural justice if we quash the promotion orders of the private respondents behind their back in order to grant relief to petitioner in OA 357/96.

16. Similar defect in the petition also exists in respect of OA 356/96 where the same private respondents 6 to 8 have not been served any notice, nor have their addresses been given at least for private respondents 7 and 8.

17. Incidentally, on further query, Dr.(Ms.) S. sinha, the Id. counsel on record for the petitioners in both the case subsequently produced for us the relevant service reports. It is seen that the 3 private respondent Nos. 6,7 and 8 had been sent copies of the petition by registered letter on 23.3.96, but this was returned by the postal authorities undelivered with the observation 'never met'. However, from the envelope of the registered letter sent by the petitioner, it is seen that the notices in both the OAs for all the 3 private respondents were sent together in one cover and the address given is C/o Jr. Electrical Engineer(General), Sealdah, Eastern Railway, Electric Power House, Sealdah, Calcutta-14. In other words, the petitioners never attempted to send the notice of the petition to the private respondents to their respective individual address. By sending the notice to them through their allegedly supervisory officer, they could not presume that the supervisory officer would serve on them. Any way, the notices eventually have not been served on the private respondents and because of the defect in the mode of service, it is the petitioners who are to be blamed.

18. Under the circumstances, we are unable to grant any relief to the petitioners.

19. Mr. G. Mukherjee, the Id. counsel for the petitioners during arguments, has quoted the Hon'ble Supreme Court's ruling in the case of Ramana Dayaram Shetty

-vs-International Airport Authority of India, AIR 1979 SC 1628
in support of his contentions about the test of eligibility.
We do not, however, find as to how this ruling is of any
assistance to the petitioners because primarily this ruling
relates to award of tenders and not a service matter and
secondly for our independent foregoing reasons, we have
already decided that no relief could be granted to the
petitioners.

CONCLUSION

20. In the result, we reject both the petitions. There
will be no order as to costs.

Mukherjee
25/8/97
(M.S.MUKHERJEE)

MEMBER(A)

A.K.Chatterjee
25.8.97
(A.K.CHATTERJEE)

VICE CHAIRMAN