

In The Central Administrative Tribunal
Calcutta Bench

OA.No.18 of 1997

Present : Hon'ble Mr. D. Furkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Yashwant Kumar Baboolal Applicant

- Vs -

- 1) Union of India, through General Manager, S.E. Railway, Garden Reach, Calcutta.
- 2) General Manager, S.E. Railway, Garden Reach, Calcutta.
- 3) Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta.
- 4) Divisional Railway Manager, S.E. Railway, Nagpur.
- 5) Divisional Personnel Officer, S.E. Railway, Nagpur.

.... Respondents

For the Applicant : Mr. S.N. Mitra, Advocate

For the Respondents: None

Heard on : 2-5-2000

Date of Order : 19/05/2000

ORDER

G.S. MAINGI, AM

The applicant has filed this application before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. The following reliefs have been claimed by the applicant :

- i) That the entire process for filling up the 10 posts/ vacancies of PWMs in scale of Rs.1400-2300 be held as illegal, invalid and void ab-initio and quashed.
- ii) To declare that the applicant is eligible and entitled for promotion as PWM in the scale of Rs.1400-2300/- against one of the 10 vacancies of PWMs and direct the

Contd...

respondents to promote the applicant against one of the said 10 vacancies and to direct the respondents to process for filling up the remaining 9 vacancies of PWMs strictly in accordance with law.

iii) Costs.

2. The brief fact of this case is that the applicant is working as a Senior Gangman under PWI/Chhindwara, South Eastern Railway in Madhya Pradesh and he passed the suitability test for promotion to the post of PWM vide DPO/NGP's note dated 31.7.91 as also DPO/NGP's letter No.F/Admn/Engg/T&P/PWM dated 4.4.94. It appears from the application that the Chief Personnel Officer, S.E. Railway issued a letter dated 7.4.95 circulated under DPO/NGP's Memorandum No.F/Admn/Engg/Sel/PWM dated 28.4.95 which was covered by the letter of the Divisional Personnel Officer, S.E. Railway, Nagpur, vide letter No.F/Admn/Engg./GRC dated 28.4.95 according to which that the procedure followed by the South Central Railway has adopted a special procedure which should also be adopted by the S.E. Railway taking on overall view of the situation. This justification had come from the Recognised Labour Association. The applicant could not ensure why the incomplete letter has been filed in this case. Id. Counsel of the applicant was asked during the course of the hearing on 2.5.2000 as to why this letter/circular is incomplete. But he could not give a satisfactory answer. Respondents have also filed this letter in their reply and were also unable to give a satisfactory reply. Therefore, this has been taken into consideration while deciding this application.

3. It is the contention of the applicant that he had already passed the suitability test for promotion to the PWM in the scale of Rs.1400-2300 in 1991 and therefore he was not required to proceed for the suitability test for the second time. The applicant had drawn our attention to the Rule No.214 (C)(iv) of the Indian Railway Establishment Manual. This is confirmed from the Rule 214(c)(iv) which has been circulated by the Railway Board's letter No.E(NG)/1-CFO -1-98 dated 13.8.97 that an employee who has

efm

passed a suitability test once need not be called for the test again and ^{he} should be eligible for promotion as and when vacancy arises. It is the contention of the applicant that he had already qualified in the suitability test in 1991. The applicant has again mentioned ^{also} the rule 143 of the Indian Railway Establishment Manual which deals with the provision as to why the recruitment is to be done, what is the educational qualification required, the age limit prescribed for the job, screening, stipend and change of ~~pre-~~ promotion to higher grade. Although the applicant had studied upto 11th Class as there was no 10 + 2 system in M.P. at that time; he was not considered for appointment or promotion to the post of PWM which requires minimum qualification of 10 + 2 standard. This was got verified by Railways and still no action was taken. It is observed from Annexure-H to the application that a letter was sent by DPO dated 31.7.91 under the Head - "Regarding result of the suitability test for promotion to the post of PWM" which shows that Shri Yeshwant Kumar, s/o Baboolal, Gangman under PWI/Chhindwara was found suitable for promotion as PWM in the S.E. Railway. This has not been annexed by the respondents in their reply. It is found from the Annexure-I to the application that the Divisional Personnel Officer, S.E. Railway, Nagpur had addressed a letter on 4.4.94 to the Chief Personnel Officer(Engg.), S.E. Railway, Garden Reach, Calcutta stating the case of the applicant in which it is stated that the applicant had ^{suitability} again appeared in the examination and passed but his result was withheld on a representation that the qualification of the applicant is only of 11th standard which is not equivalent to 10 + 2. On verification it is found that in M.P. 10 + 2 was introduced in the year 1988 onwards and prior to 1988 there was secondary school certificate of 11th Standard available. However, the applicant has since passed the Class VIII standard in March 1987. Therefore, the applicant could not be considered for promotion. He also cited a case of another person, namely, Shri Ravindra Prasad, who had the same educational qualification and as such on the same analogy the applicant should be promoted to the post of PWM. It has been decided

Contd....

after discussion in the DFC meeting that the case should be referred to the Headquarters. But ~~no~~ reply appears to have been received by the Divisional Railway Manager to his letter dated 4.2.94 even now and by now after six years the Railway Administration lost sight of the same.

4. It has been pointed out by the respondents in their reply to the O.A. that the application has not been made in proper format. But in view of the fact that a very important relevant question of promotion or appointment of a railway employee in a very massive ^{effort is involved,} organisation it should be accepted for consideration.

5. The respondents gave their reply through Shri K.S. Acharjee, Divisional Personnel Officer, S.E. Railway, Nagpur in July, 1997 who is the 5th respondent in the application. He has pointed out that as the application is not in the proper format, this Tribunal has no jurisdiction over this matter and limitation under Section 21 is a substantive law and not amenable as provided under Section 5 of the limitation Act being an objective law. What we want to point out is that the reply to the applicant has not been properly adopted and it does not convey any sense properly. The reply was given by the Divisional Personnel Officer of South-Eastern Railway, Nagpur who is very much junior in the office where the other respondents are the General Manager, South-Eastern Railway, Garden Reach, Calcutta, the Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta and the Divisional Railway Manager, South-Eastern Railway, Nagpur. It does not appear that it has been filed with the prior approval of the other respondents. Although he has stated that it has been filed on his behalf as well as on behalf of the other respondents being authorised in this behalf. This could not be admitted as none appeared on behalf of the railway respondents at the time of hearing on 2.5.2000. It has been stated in reply that the contentions of the present application was the same as those of OA.1254 of 1996 which has been pending for adjudication before this Tribunal for which a reply was filed by the respondents. While submitting the reply

the respondents have stated that the order issued by the Chief Personnel Officer, S.E. Railway, who is the respondent No.3 in the application, wherein detailed instructions were given as to how the posts of PWM against promotional quota, will have to be filled up and the said instructions were in pursuance of Section B, Sub-section III of Rule 143 of IREM (1989) and there was nothing contrary to rules, as alleged or at all. We do not find that the order of the Chief Personnel Officer (Admn) of South-Eastern Railway has been based on the instruction of Rule 143 of IREM. The only contention in the reply is that the selection would be made on the basis of written test and it does not say those who will qualify in the written test would be called for viva-voce. But there was no scope for other written or viva-voce test. We have considered the manual and we find that this provision is not there and that has been highlighted by the applicant also during the course of hearing. In fact all these statements made by the Divisional Personnel Officer of S.E. Railway, Nagpur are not supported by the appropriate evidence. When someone is to give details to a Court, he should be ^{supported by} ~~prepared~~ by the relevant instructions or order which should not be contrary to the statutory rules and regulations.

6. We have made some observation regarding limitation period as also jurisdiction of this Tribunal in para 3 of sub-para (a) of the reply. It has been stated that certain orders have been referred to but no orders have been annexed ^{in reply} to the original application. Hence, no specific order can be made. That was so, it should have been pointed out as to what order has been mentioned. He has further given an absolute misleading statement in para 3(a) of the reply that no representation was made by the applicant stating his alleged grie-vances. Therefore, the application does not conform to the provisions contained under Section 20 of the Administrative Tribunals Act, 1985. It appears that two officers drafted this reply to the original application filed by the applicant. On the very first page of the

efm

Contd...

application where the application mentioned about the details of the application in para 1 that he had made a representation to the General Manager, S.E. Railway, Garden Reach, Calcutta on 11.10.96 and no decision has been communicated by the General Manager in the matter of promotion of the applicant to the post of Permanent Way Mistry. The xeroxed copy of the representation is available at Annexure-J to the application. Such a vague reply given by the respondents appears to be misleading. So justice should be given in this application. It is the contention of the respondents through respondent No.5 in their reply to the O.A. that this Tribunal has no jurisdiction in this case. This is probably because of the applicant is posted in Nagpur Division which is located in Maharashtra. The jurisdiction of this Tribunal has been explained under Section 14 of the Administrative Tribunals Act, 1985 and it is read with Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987. During the place of filing applications - an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction - (i) the applicant is posted for the time being, or (ii) the ^{case} case of action, wholly or in part, has arisen. It is quite clear that the first three respondents are posted in Calcutta and rests are posted in Nagpur. It is the challenge of the applicant against the order and direction of the S.E. Railway, Calcutta and applicant has every right to file an application before the Calcutta Bench of this Tribunal. This being the contention of the respondents that while the application has not been properly adopted, then the reply of the respondents is not better having ignored this matter for quite some time.

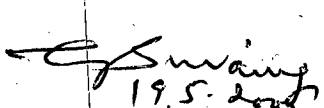
7. The case was listed for hearing on 2.5.2000 when Ld. Advocate Mr. S.N. Mitra appeared on behalf of the applicant but the respondents were not represented by any one. This shows lack of interest taken by the respondents in the disposal of the matter which is agitated by the aggrieved employee before this Tribunal. This is indeed arbitrary. The General Manager is a very senior

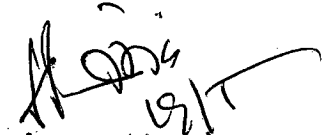
efm

Contd.....

officer and he has ample power. But the position of the General Manager has not been properly made use of by the respondent No.5 who drafted the reply on his behalf as also on behalf of remaining first four respondents. He could have decided the matter at their level and the ~~Administration of the South-Eastern Railway~~ should have been made aware of the goings on. Mr. Mukherjee, Id. Advocate for the applicant highlighted the grievance of the applicant by stressing each and every point during the hearing. We are of the view that the General Manager or the other concerned respondents should look into the matter properly when one Ravindra Prasad was promoted as PWM who also had the same qualification as that of the applicant and who had not qualified in 1991 whereas the applicant had qualified in 1991.

8. In view of above, discussion, we direct the General Manager, South-Eastern Railway, Calcutta to dispose of the representation of the applicant dated 11-10-96 within a period of 2 months from the date of communication of this order. The original application may also be treated as a part of the representation of the applicant. We, therefore, expect that the General Manager will comply with the ~~exercise~~ ^{conditions} set out by us while disposing of the representation of the applicant. Accordingly, we dispose of the application awarding no costs.


(G.S. Maingi)
Member(A)


(D. Purkayastha)
Member(J)

DKN