

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 305/91 & O.A.1342/91
XXXXXX

DATE OF DECISION 9.6.1992

K. John Crepitie _____ Applicant (s) in O.A.305/91
S.Rahumudden _____ Applicant in O.A.1342/91

Mr.Ashok M.Cherian _____ Advocate for the Applicant (s) in
O.A.305/91

Mr.P.Sivan Pillai Versus _____ Advocate for the Applicant
in O.A.1342/91.
The Divisional Personnel Officer, _____ Respondent (s)

Southern Railway,Thiruvananthapuram and 2 others.Respondent in O.A.305/91.

Union of India through the General Manager,
Southern Railway, Madras-3 and 3 others. _____ Advocate for the Respondents in O.A.1342/91

CORAM : Mrs.Sumathi Dandapani _____ Respondents in O.A.1342/91
Advocate for the Respondents in both the O.As.

The Hon'ble Mr. S.P.MUKERJI,VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN,JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

Since common questions of law, facts and reliefs are involved in these two applications they are being disposed of by a common judgment as follows.

2. The applicant in the first application (O.A 305/91) which was filed on 21.2.1991 who has been working as a Painter Khalasi originally on an ad-hoc and temporary basis and later regularised has prayed that he should be declared to be entitled to be appointed as a Permanent Way Mistry in preference to any others who are selected on the basis of the selection initiated by the notice dated 12.2.1991 at Annexure A-9 and the respondents directed to appoint him as Permanent Way Mistry in the Thiruvananthapuram Division of Southern Railway. The applicant in the second application (O.A.1342/91) dated 20th August, 1991 who has been working as B.T.Checker and also like the first applicant appeared in the selection test for promotion as Permanent Way Mistry has made a similar prayer that the respondents be directed to promote him as Permanent Way Mistry in accordance with his seniority and selection based on the notice dated 6.3.1989 at Annexure-A1 of his application. The brief facts of the case are as follows.

27

2. Both the applicants responding to the notice dated 6.3.89(Annex A2 in the first application) volunteered themselves for the post of Permanent Way Mistry. They passed the written test held on 21.4.1990 and viva on 25.6.90. However, the results of the test were not communicated to them. Against the three vacancies of Permanent Way Mistries the applicants have claimed promotion on thebasis of their ranking in the merit list and seniority. The first applicant states that he was informed that against the three vacancies he ranked second in the merit list. Hehas also stated that in the letter dated 14.6.1990 whereby he was called for appearing in the viva test having qualified in the written test he was asked to give an undertaking that since he had been regularised as Painter Khalasi with effect from 21.11.89 he will not claim any benefit on that basis or seek reversion to the cadre of Artisan. He had given that undertaking vide Annexure A-7. Likewise the second applicant was also asked vide the communication dated 14.6.90 at Annexure-A4 in the second application, to give an undertaking that having been regularised as B.T.C. with effect from 19.9.85, he will not claim any benefit on account of his working as B.T.C . and he would not ask for reversion as B.T.C. on a later date. The second applicant replied vide his communication at Annexure A5 that as B.T.Checker he was éligible for promotion as Permanent Way Mistry. Even on that reply he was allowed to appear in the viva. The grievance of the applicants is that without declaring the results of the test held in pursuance of the notice dated 6.3.89, the respondents initiated action inviting fresh applications from Gangman against the same vacancies of Permanent Way Mistries vide the impugned notice dated 12.2.91 at Annexure-A9 of the first application.

3. In the counter affidavit the respondents have conceded that the applicants have the requisite qualifications for promotion to the post of Permanent Way Mistry, but they were not eligible to appear in the test and it was by mistake they were allowed to do so. In accordance with the relevant rules only the Gangmen with three years of service as such are eligible for promotion as PWM. The first applicant did not have three years of service as Gangman, he was empanelled as Gangman on 5.6.81 and thereafter transferred as Colony Gangman on 1.7.83. He was

posted as Painter Khalasi at his own request on 29.10.86 and at the time of submission of application he was working as Painter Khalasi. As Painter Khalasi he was not eligible for consideration for appointment as PWM, and did not have three years of service as Permanent Way Gangman. When this and other discrepancies in respect of other candidates were noted, the competent authority decided to conduct a fresh selection and the impugned notification dated 12.2.91 was issued. They have denied that the first applicant was regularly working as Gangman and deputed to work as Painter Khalasi as a temporary arrangement and have stated that he was transferred as Painter Khalasi at his request. As Painter Khalasi he can seek further promotion in that trade and not promotion in the cadre of Gangman. In respect of the applicant in the second application, the respondents have stated that he while working as Gangman was promoted to officiate as Plan Recorder on an ad-hoc basis. When there was a vacancy in the cadre of Ballast Train Checker, the second applicant volunteered for the post but failed in the selection test. However, he was promoted as B.T.C on an ad-hoc basis in 1985. When the next selection for BTC came in 1987, the second applicant did not appear in the written test on the ground that he had passed the written test in the earlier selection. He filed an application before the Tribunal in O.A.233/87 claiming seniority in the cadre of BTC. The applicant was reverted to his original post under the Permanent Way Inspector. He moved the Tribunal in another O.A. 174/88 challenging his reversion. The Tribunal set aside the order of reversion and directed the respondents to consider him for promotion as BTC with effect from 19.9.85 with all benefits. Accordingly the second applicant was promoted as BTC with ^{retrospective} effect from 19.9.85. The respondents have stated that when the notification inviting volunteers for the post of PWM was issued on 6.3.89, the applicant also volunteered, passed the written test and was permitted to appear in the viva on his written declaration that he will not seek any benefits in the BTC cadre. Since as BTC he has other avenues of promotion he cannot seek promotion as Permanent Way Mistry. Actually the second applicant applied for such

a promotion as Worksmate on 20.3.89 vide Ext.R.1 (a)). He cannot seek promotion in two categories. As BTC he is not entitled to promotion as PWM.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents was good enough to produce for our perusal the proceedings of the DPC and the relevant files. From the proceedings of the Selection Board meeting held on 25.6.90 in pursuance of the notice dated 6.3.89 for the post of Permanent Way Mistry, it is revealed that two candidates were to be selected for the posts from amongst Gangmen and Keymates who have necessary qualification of 10 + 2 with Science and Mathematics and had put in minimum of three years of regular service. There were five eligible volunteers. Out of these five, only three qualified in the written test and called for viva. The viva was conducted on 25.6.90 and only two candidates were included in the panel. The applicant in the ^{designated} second application was placed as No.1 as Senior Gangman and the applicant in the first application was placed as No.2. They were designated in the proceedings as Senior Gangman and temporary Gangman respectively. From the relevant files it appears that both the applicants who had qualified in the written examination were said to have lien in the Gangman's grade and they were admitted in the written examination because at the time of their application "they were borne on the cadre of Gangman even though they were not actually holding the post of Gangman at the time of admission to selection". It was held, however, that since at the time of selection they were not holding the post of Gangman, they were not eligible. It was also noted that since one Shri A.J. George had not completed three years of service on the date of issue of notification dated 6.3.89, he will not be eligible to appear in the selection. In that context with the orders of the Divisional Railway Manager it was decided on 6.2.91 that the whole selection proceedings should be cancelled and fresh selection ordered. Accordingly the impugned notification inviting volunteers for the same posts was issued.

5. From the above it is clear that at the time of applying in response to the notification dated 6.3.89, the first applicant was holding the lien in the cadre of Gangman even though he had been working as a Painter Khalasi since 29.10.86. It is also clear from the records that after the trade test the first applicant was absorbed and regularised as a Painter Khalasi on 21.11.89. Thus at the time of applying in response to the notice of 6.3.89 the applicant had his lien as a Gangman and therefore, he was fully eligible for the post of Permanent Way Mistry . It is on that basis that an undertaking was asked from him and it was also given by him. To say at this stage that it was a mistake that he was allowed to appear in the test, will be against the facts on record. The respondents fully knew that he has been working as a Painter Khalasi and it is on that basis that the undertaking was taken from him. He cannot be denied the benefits of his selection. The argument of the learned counsel for the respondents that after having been empanelled as Gangman on 5.6.81 the first applicant voluntarily went over ^{to} a different cadre of Colony Gangman with effect from 1.7.83 and therefore, he is not eligible for promotion as PWM as he was not a Gangman, cannot be accepted. This is in view of the fact that as indicated in the applicant's representation dated 13.7.1990 at Annexure-A10, he "was again posted as Gangman under PWI/QLN on administrative grounds vide AEN/QLN O.O No.AEN/QLN/ 161 of 3.10.1986". Without going into the question whether Colony Gangman and ^{we can reasonably presume that} Gangman are in different cadres, since the first applicant was posted as Gangman on 3.10.86 and was working as a Painter Khalasi from 29.10.86 on an ad-hoc and temporary basis with lien in the cadre of Gangman, he was fully eligible for promotion as PWM on the date of his application. It is true that with effect from 21.11.89, he had been absorbed regularly as Painter Khalasi but since on the date of his application, admittedly he has been holding a lien as Gangman and had given an undertaking as required by the respondents, his selection vide the notice dated 6.3.89, cannot be faulted. As regards the second applicant, like the first applicant on the date of application he was working as Senior Gangman

and fully eligible for promotion as Permanent Way Mistry. He admittedly had his lien in the cadre of Senior Gangman. However, he was working as B.T.Checker on an ad-hoc basis from 1985 and in accordance with the orders of this Tribunal dated 27.7.89 in O.A.174/88 he was regularly promoted as BTC with effect from 19.9.85 with all consequential benefits. Thus, on the dates of the notice on 6.3.89 ^{and of his application} his status was that of a regular BTC. He was asked to give an undertaking on 14.6.1990 at Annexure A4 in the following terms:-

" You are being considered for the selection of PWM as at the time of application you were a Sr.Gangman under PWI/QLN. Now that you have been regularised as BTC w.e.f. 19.9.85 in conformity with order of CAT, you have to give an undertaking that you will not have any claim of benefits accrued on account of working as BTC and you will not ask for reasons to that cadre of BTC and you will not ask for reversion to that cadre of BTC on a later date in the event of your final selection as PWM.

You may also please note that in the event of selection your pay will be fixed with reference to your position as Gangman duly maintaining your lien as Gangman."

In response to the above, the second applicant vide his letter dated 21.6.90 at Annexure A5 replied as follows:-

" As directed in the above reference I am submitting the following for your kind information.

The channel of promotion to PWM and Worksmate is from BT Checker also there is precedence to this effect of a BT Checker being promoted as PWM in Railways. Hence I am eligible for the promotion from the BTC cadre to PWM.

As per the CAT order my junior is still working as Workmate in scale Rs.1400-2300 for the last two years and you have not taken any decision over the CAT's order till date to promote me as Worksmate on par with him.

Incidentally it is to be submitted that if I am selected for the post of PWM, it is requested to fix the pay at least on par with my junior Shri M.Thankaraj who is still working as Worksmate."

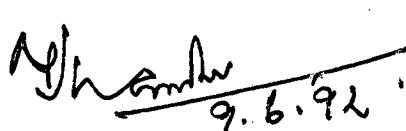
From the above it is clear that as B.T.Checker he did not give an undertaking foregoing the benefits of his appointment as BTC for the

.7.

purpose of promotion as PWM. On the other hand he insisted upon the benefit of pay at the same level as that of his junior in the cadre of B.T.Checker who was promoted as Worksmate. The respondents were prepared to consider him for promotion as PWM provided he relinquished his claims in the cadre of BTC/Worksmate. Since the second applicant did not agree to this position and did not allow his ^{prohibition} lien as BTC to be transferred to that of Gangman with effect from 19.9.85 which he had claimed before the Tribunal and had obtained, the second applicant is estopped from claiming promotion as PWM in the line of promotion of Gangman.

6. It is also seen from the records that the panel prepared by the Selection Board including the names of the second applicant and the first applicant has not yet been formally cancelled, nor has the order of the General Manager obtained for not accepting the recommendations of the panel as required in para 213(c) of the Indian Railway Establishment Manual.

7. In the facts and circumstances we uphold the selection of the applicant in the first application (OA 305/91) and direct the respondents to promote him as Permanent Way Mistry on the basis of the recommendations of the DPC which met on 25.6.1990 with effect from the date any of his juniors ^{was} ~~were~~ promoted as Permanent Way Mistry against the vacancies for which the said Selection Board made the recommendations. As regards the second application (OA 1342/91) it is only to be dismissed and we order accordingly. There will be no order as to costs.


9.6.92
(N.DHARMADAN)
JUDICIAL MEMBER


9.6.92
(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R. A. 25/93 in
O. A. No. 305 1991

DATE OF DECISION 26-02-93

Union of India rep. through Applicant (s)
DPO Southern Railway and others

Smt. Sumati Dandapani Advocate for the Applicant (s)

Versus
John Crepetic Respondent (s)

None Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

and

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

(Hon'ble Shri S. P. Mukerji)

We have carefully gone through the R.A. and connected papers. The R.A. raises the same questions on merits of the case as have been considered in great detail in our judgment and rejected. If the Review Applicants are not happy with or does not agree to the findings in the judgment they cannot reopen them through a Review Application. Their remedy lies in appeal. No error apparent on face of record or new material has been brought out to warrant a review. Accordingly the Review Application is dismissed by circulation.

N. Dharmadan
(N. Dharmadan)
Judicial Member

S. P. Mukerji
26.2.93
(S. P. Mukerji)
Vice Chairman

26.2.93

DT 305/91

8PM AND

35

Mr. Asok M. Chariar
Ms. Preethy

Learned Counsel for respondent is directed to file statement within two weeks with a copy to learned Counsel for applicant.
List for further direction on 14.1.93.

AMR

S
(AVH)
10/12S
(SPM)
10/1214.1.93
(2)pro bono Counsel for petitioner
Mrs. Preethy for respondent

The Learned Counsel for the respondent has filed a statement stating that the judgement of this Tribunal has been complied with.

At the request of the Learned Counsel for the petitioner, list for further direction on 21.1.93

AMR

S
(AVH)S
(SPM)

14-1-93

21-1-93

-2-

(24) Mr Asok M Cherian
Mrs Preethy

The learned counsel for the respondents has filed a statement reporting compliance of the judgement of the Tribunal. The learned counsel for the petitioner accepts the same. Accordingly, the CP(C) is closed and the notice discharged.

AV Haridasan
(AV Haridasan)
J.M.

21-1-93

S.M.
(SP. Mukerji)
V.C.

*X.O. received
21-1-93
M.B.O.*