

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

D.A.19/87

Shri G.K. Sunder,  
30, South Eastern Railway,  
Co-operative Housing Society,  
Ranapratapnagar,  
NAGPUR - 400 022.

.. Applicant

V/s.

1. Union of India, through  
the Secretary, Ministry  
of Railways, Railway Bhavan,  
NEW DELHI.
2. Chairman, Railway Board  
Secretary, Ministry of Railways,  
Rail Bhavan,  
NEW DELHI.

.. Respondents.

Coram: Hon'ble Vice Chairman B.C. Gadgil  
Hon'ble Member(A) L.H.A. Rego.

Appearances:

Shri P.G. Palshikar  
Advocate  
for the applicant

Shri M.I. Sethna  
Counsel  
for the respondents

JUDGMENT

DATE : 29/4/1988

(PER: B.C. GADGIL, VICE CHAIRMAN)

The applicant who is a Railway employee has a grievance about the illegal refusal to promote him to the post of Additional Chief Engineer in the Central Railway.

2. The applicant joined Railway Service in 1957 as Assistant Engineer in the Central Railway. He earned various promotions from time to time. In 1983 he was promoted to the post of Additional Divisional Railway Manager. The next promotional post was that of Additional Chief Engineer. The concerned Departmental Promotion Committee (DPC) drew up a panel of the selected employees for this promotional post and

the name of the applicant was included in that panel. We are told that the DPC finalised its proceedings on 3.2.1986 and the Minister approved the same on 10.2.1986. Shri K.B. Thorat retired from the post in the grade of Additional Chief Engineer on 31.1.1986. One Shri Gajjar was appointed in the place of Shri Thorat. Shri Jeyapaul was asked to look after the work of Shri Gajjar. This order was passed on 6.2.1986. However, it was clear during the course of the arguments, that the name of Shri Jeyapaul was not in the panel and it was only a local arrangement, whereunder, Shri Jeyapaul was asked to look after the work of Shri Gajjar. Thereafter, the department considered filling in of the vacant post of Additional Chief Engineer on a regular basis. In April 1986, certain officers who were junior to the applicant were promoted. Even thereafter, promotion of other junior officers took place in like manner. The applicant's grievance is that he having been selected by the DPC, was entitled to promotion to the post of Additional Chief Engineer and that the administration committed a wrong in dislodging him by appointing his juniors to the said post. The applicant has, therefore, filed this application for appropriate relief, that he be considered for promotion to the post of Additional Chief Engineer according to his own turn and that consequently he be appointed to that post.

3. The respondents have filed their reply and resisted the claim. It was not disputed that the DPC had selected the applicant and included his name in the Select Panel. The respondents, however, contend, that CBI registered a First Information Report (FIR) against the applicant on 29.3.1984. A copy of that report was received by the Department in 12.4.84 wherein it was stated that the applicant was alleged to have been involved in corruption. The CBI registered the case for investigation. The respondents further contend that the CBI

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delayed forwarding their investigation report. This report was received in June 1986. It was analysed and it was decided to initiate departmental proceedings against the applicant. A charge sheet was issued on 31.10.1986 for the departmental enquiry. It is for this reason that the respondents had stated that they had taken appropriate steps in not promoting the applicant till the completion of the said departmental enquiry. The Government of India (Ministry of Railways) considered on 3.11.1977, the procedure to be followed <sup>in</sup> ~~for~~ in regard to promotions, where the conduct of an employee was under investigation and issued necessary orders on the same date. The relevant part of these orders reads as follows:

"The question of evolving a procedure for promotion of officers from Group 'B' to Group 'A' and within Group 'A' who are under suspension, or against whom disciplinary proceedings have been initiated and/or whose conduct is under investigation, has been under consideration. The Ministry of Railways have now decided that in such cases the following procedure may be followed:-

- (a) An officer whose conduct is under investigation may be promoted, if promotion is otherwise due except when the investigation has been completed and the competent authority is of the view that disciplinary proceedings should be initiated against him, in which case, promotion is to be withheld;

(b) .....

2. It is clarified that the mere fact that a preliminary enquiry or a regular case has been registered by the Central Bureau of Investigation against a gazetted officer, or that complaints against him are being looked into in a preliminary departmental enquiry, by vigilance investigations or otherwise will not be a ground for treating the said officer as one whose conduct is under investigation. Promotion is to be withheld only

when the competent authority on consideration of the results of the investigation either by the Central Bureau of Investigation or any other agency, departmental, vigilance or otherwise, has formed the opinion that the evidence collected indicates a prima facie case against the officer, and that a charge sheet may be issued to him on specific imputations where departmental action is contemplated or sanction for prosecution may be accorded where prosecution is proposed. Until the competent authority arrives at such a conclusion, the officer may be treated at par with others in the matter of promotion."

4. Shri Palshikar, learned counsel for the applicant contended, that these orders were not followed in the case of the applicant. What was contemplated by the said orders was either completion of the investigation and the decision of the competent authority that the disciplinary proceedings should be initiated. This is clear from <sup>part</sup> (a) of the Government of India <sup>de</sup> ~~Para 2~~ orders dated 3.11.1977 reproduced in para 3 above, <sup>de Para 2</sup> of that order, makes the position more explicit. It specifically states, that promotion is to be withheld, only when the competent authority on consideration of the result of the investigation, either by the CBI or any other agency, departmental vigilance or otherwise - has formed an opinion that the evidence collected indicates a prima facie case and that a charge sheet may be issued for departmental action. The grievance of Shri Palshikar is that the respondent's reply in this application and more particularly para 1(c), revealed, that the report of the CBI was received by the department on 6.6.1986 and after this report was analysed a decision was taken to initiate departmental proceedings. The relevant part of this plea reads as follows:

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"The investigation report was received in this office on 6th June, 1986. The investigation report was analysed and it was decided to initiate proceedings under D&A Rules for imposition of major penalty (for removal, dismissal, etc.) against the officer."

It was contended by Shri Palshikar that this plea was self-revealing and showed that the decision to hold a departmental enquiry was taken some time after 6.6.1986. It was, therefore, urged, that till that time there was no justification for the department to withhold promotion of the applicant. He relied upon the last sentence of para 2 of the above Government order dated 3.11.1977 which stated, that until the competent authority arrived at such a conclusion, the officer should be treated at par with the others in the matter of promotion. Shri Palshikar, therefore, contended, that action on the part of the respondents in not granting promotion to the applicant was erroneous and liable to be quashed.

5. Shri Sethna, learned Counsel for the respondents argued, that the aforesaid Government order dated 3.11.1977 was in the nature of executive instructions and therefore they would not be absolutely mandatory. He also submitted that the use of the word "may" in clause (a) in the above orders (that word has been underlined by us) would suggest, that discretion is left <sup>to</sup> with the department, for taking a decision as to whether he should or should not be promoted. In our opinion this contention is not well-founded. The very purpose of the orders is to lay down certain procedures and principles, which are to be followed while considering promotion of an employee whose conduct is under investigation. The wording of the orders does indicate that a mandate is given, that the promotion shall

be withheld 'only' when the competent authority has formed an opinion, that the evidence collected indicates a prima facie case and that a charge sheet should be issued for departmental enquiry. As mentioned above, the respondent's reply gives an impression that such a decision was taken for the first time, after June 1986 i.e., after the CBI report was received. It is common ground that certain officers junior to the applicant were promoted before such decision was taken and in our opinion withholding <sup>the</sup> ~~the~~ promotion to the applicant without taking any decision as contemplated by the Government order of 1977 would be bad.

6. It was, however, contended, that the files in the office would show that a decision as contemplated by the 1977 orders, were taken before the juniors to the applicant were promoted in April 1986. We were shown certain notings made by various officers. It is not necessary to give the details of these notings. However, the notings give an indication that the CBI was to be requested to expedite the report. Even a telephonic communication was made with the CBI for the purpose. Thereafter a reminder was sent and it was only thereafter that the CBI report was received. It appears that the CBI report was received on 12.6.1986. Thus the above notings are scarcely of any avail to the respondents. The respondents then relied upon a noting dated 7.4.1986 made by the Secretary wherein he had proposed certain promotions and transfers. As far as the applicant is concerned, it was merely stated against his name that he was involved in a vigilance case and consequently no

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promotion and posting <sup>were</sup> ~~was~~ proposed. This proposal was approved by the Chairman, Railway Board on 10.4.1986.

7. It was contended by Shri Sethna, that these notings by the Secretary and its approval by the Chairman would show that a decision was taken in April 1986 not to promote the applicant. He also argued, that this decision was on the basis of some other record that was available, apart from the CBI report, which was received later. In fact the applicant has a grievance about the orders that flowed from the said notings ~~inasmuch~~ as he was not promoted. Shri Sethna argued, that the fact a decision was taken not to promote the applicant would by implication mean that the concerned authority had formed an opinion that the evidence against the applicant, indicated a prima facie case and that a charge-sheet should be issued against the applicant. Shri Palshikar argued that the respondents would not be able to contend that there was an implied inferential decision as contemplated by the orders. According to him the sequence should be that that there should be a formation of opinion about the prima facie case and that a departmental enquiry ought to be initiated against him. According to him it is only after such formation of opinion and decision that the promotion could be withheld. He further contended that in the present case promotion of the applicant was withheld, without opinion being formed by the competent authority, as contemplated by the orders. According to him the respondents could not contend that the end result of refusal to promote should be treated as a formation of opinion without any formal procedure leading to it.

There seems to be substance in this contention. It will not be possible for the respondents to contend that inference should be drawn about formation of opinion simply because the respondents decided not to promote the applicant. On the contrary, the Government orders of 1977 clearly show<sup>la</sup> that until the opinion as contemplated by Law is formed, the employee should be treated at par with other employees in the matter of promotion.

8. The net result, therefore, is that promotion was refused to the applicant in derogation to the 1977 orders and without forming an opinion as contemplated by them. Consequently this action of the respondents is liable to be struck down. Hence we pass the following order:

ORDER

(i) The application partly succeeds.

The action of the respondents in refusing to promote the applicant to the post of Additional Chief

(ii) Engineer, at a time when his juniors were promoted is struck down.


(iii) The respondents are directed to consider anew, the case of the applicant for promotion to the post of Additional Chief Engineer in April 1986. It is further directed, that while considering such promotion, the respondents would not be entitled to take into account, the CBI case and other matters that flow therefrom. A decision about this consideration should be taken expeditiously, say within two months from today.


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(c) Parties to bear their own costs of the application.

The files that were made available to us as mentioned in the judgment are returned to the respondents.

  
( L.H.A. REGO ) 29.4.88  
MEMBER (A)

  
( B.C. GADGIL )  
VICE - CHAIRMAN