

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 697
T.A. No.

1987

DATE OF DECISION 18-3-91R.N.Jauhari, Bombay PetitionerMr. G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India through G.M. Respondent

Western Railway

Mr. A.L.Kasture

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

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. Whether it needs to be circulated to other Benches of the Tribunal ?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No. 697/87

(8)

R.N.Jauhari,
Bombay

...

Applicant

vs

1) Union of India
Through General Manager,
Western Railway

2) Railway Board
The Secretary,
Rail Bhavan,
New Delhi.

3) The General Manager,
Western Railway,
Churchgate Bombay.

Respondents.

Coram: Hon'ble Mr. Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Mr. M.Y.Priolkar, Member(A)

Dated 18-3-91

Advocates

Mr.G.S.Walia
for the applicant.

Mr. A.L.Kasture
for the respondents.

Oral

Judgement

(Per: Mr. Justice U.C.Srivastava, Vice-Chairman)

This application has been filed by the applicant under the Administrative Tribunals, Act 1985 for getting reliefs from department. The applicant is employed as Asstt.Commercial Supdtt.(Group 'B' Gazetted) in the Western Railway Headquarters office at Churchgate. Applicant states that after Written Test and viva voce examination he was placed on the panel of Asstt. Commercial Supdtt. (in short ACS) on 2.5.1984. The panel was notified under Headquarters office letter No.E(G)1024/4/1 (Comml) dated 2.5.1984. The applicant's name was at Sr. No.27 in the said panel. Applicant has to undergo a medical examination

in accordance with para 1015 of the Section B of Chapter X of Indian Railway Establishment Manual (Second Edition).

2. The posts of ACS in commercial department are not connected with the train working or use of trolley on open line. As such applicant was found fit for the category of Asstt. Commercial Supdtt. and it was incumbent upon the respondents to promote and post the applicant as ACS. However, a respondent No.3 refused to promote the applicant as ACS on a misleading and misunderstanding of the relevant provisions in this respect. The applicant therefore represented his case to the General Manager against his non-promotion under his letter dated 2.6.1984. The representation of the applicant was forwarded to the Railway Board by the General Manager, Western Railway, Bombay alongwith respondent No.3's letter dated 3.7.1984. The Railway Board considered the representation of the applicant and stated that the applicant should give an undertaking in writing that he would have no claim for consideration for appointment to Sr. Scale or for absorption in Group 'A'/Junior Scale so long as the medical shortcomings continued. It is also stated that the undertaking should also include a mention of his awareness that he would continue on adhoc basis in Group 'B' only so long as a post in Group 'B' conforming to his medical suitability is available. The said decision of the Railway Board was conveyed to the applicant under office letter No.E(G)/838/4 dated 21.7.1984.

3. According to the applicant he therefore had no other alternative but to submit to the illegal and unreasonable condition and had no choice in the matter as non acceptance would have resulted in stagnation and non-promotion of the applicant. He had no other option but to come to Tribunal.

The relevant paragraph regarding medical examination under which the employee has to undergo medical examination i.e. Para 1015 is as under:-

"Para 1015 - For the purpose of examining the visual acuity of the railway servants promoted from Class III to Class II, the posts in Class II should be divided into two categories as follows:-

- (a) posts connected with the train working or use of trolley on open line; and
- (b) the rest of the posts.

For Category (a), the following visual acuity standards should apply:-

Distant Vision 6/12, 6/12 with or without glasses.

Near Vision Sn.0.6, 0.6 with or without glasses

Night Vision should be normal.

Colour perception should be normal

Field of Vision : Normal.

Binocular vision - The Railway servant should have binocular vision.

Note: 1. The difference between power of lenses in each eye shall not exceed 4.00 D.

2. Total Myopia shall not exceed - 6.00 D in each eye.

3. Total Hyper metropia shall not exceed + 6.00 D in each eye.

4. Colour perception will be tested at distance of 16 feet from the Edridge green Lantern with and aperture of 13 m.m. diameter and the time of exposure will be 5 seconds.

5. Squint will be considered a disqualification for the staff coming under the above mentioned category.

For category (b), the following standards will be applicable:-

Distant Vision - 6/18 in one eye regardless
of vision in the other eye,
with or without glasses.

Near Vision - Sn.O.6 in one eye regardless
of vision in the with or without glasses.

Note: 1. Total amount of Myopia shall not exceed
8.00 D in the corrected eye.

2. Officers of the Railway Protection Force
and Medical Department in addition should
have normal colour perception and night vision.

3. Any organic disease which is likely to result
in lowering of the visual acuity should be
considered as a disqualification.

Examination for determining the visual acuity will not be
necessary in case of Class III railway servants promoted
from Categories B1 and those falling in group 'A'.

4. The Railway Board approved the said relaxation and
the applicant thereafter promoted as Officiating ACS (Claim)
with effect from 4.9.1984.

5. The applicant thereafter submitted a representation
to respondent No.3 wherein applicant requested that he should be
absorbed in Personnel Branch as Asstt. Personnel Officer for
which the medical category is II(b). His request was not acceded
to on the ground that he never qualified for the post of Asstt.
Personnel Officer. Thereafter he has approached to the Tribunal.

6. The railway administration contested the claim
of the applicant. The railway administration submitted that
the applicant gave voluntary statement and the applicant cannot
go against that. He has binding of the undertaking under which
relaxation was given to him and he was promoted.

7. During the course of arguments Mr.Walia learned counsel for the applicant stated that he had instructions from his client who is present that the undertaking referred to in this judgement earlier was taken under his client undertakes that pressure and/ he will claim promotion to category 'A' under para 1015 so long as he is not medically unfit for the category, and as he had already undergone the process of test and interview and was fully qualified his appointment should have not been on the adhoc basis but on regular basis, till the post being in existence, should have been ^{been} on regular basis, being posted against the regular post.

8. In view of statement of the learned counsel it is not the question as to whether certain undertaking was given under compulsion or any other question, but the fact remains that because of the said undertaking the applicant got the promotion, otherwise he may not have got the promotion at that stage. Once the promotion is ordered there appears to be no reason why promotion is not to be maintained. In view of the statement made by the learned advocate of the applicant, respondents should consider the case for regularisation , having worked on adhoc basis for several years more so when applicant will not claim so long as he is found medically fit for the same promotion to Class 'A' on the basis of relaxation. The application is disposed with the above directions, with no order as to costs. The matter of applicants regularisation may be decided within 3 months from today in the light of observations made above.

Shinde
(M.Y.Priolkar)
Member(A)

U.C.Srivastava
(U.C.Srivastava)
Vice-Chairman
(U.C.)