

(11)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 714/87

199

T.A. NO: ---

DATE OF DECISION 12-11-1992

Mrs. Shantidevi Singh

Petitioner

Mr. C. M. Jha

Advocate for the Petitioners

Versus

Union of India and two ors.

Respondent

None

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman

The Hon'ble ~~Mr.~~ Ms. Usha Savara, 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 ?

Sh
(S.K.DHAON)

mbm* MD

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.714/87

Mrs. Shantidevi Singh,
D/5, Sagar Vaibhav Co-op.
Hsg. Scty., Laxman Mhatre Road,
Dahisar,
Bombay - 400 068. .. Applicant

-versus-

1. Union of India
through
General Manager,
Western Railway HQ,
Churchgate,
Bombay - 400 020.
2. Bhupendra Singh,
Senior Commercial
Officer,
C.C.S. Office,
IIInd Floor,
Churchgate,
Bombay - 400 020.
3. K.H. Vaswani,
Senior Commercial
Officer,
Western Railway
Churchgate,
Bombay - 400 020. .. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.C.M.Jha
Advocate for the
Applicant.
2. None for the
respondents.

ORAL JUDGMENT: Date: 12-11-1992
(Per S.K.Dhaon, Vice-Chairman)

By means of order dt. 20-8-1987

passed by the General Manager, Western Railway,
certain postings of certain officers were made.

One Shri Bhupendra Singh, one of the respondent
to this application, according to the said
order, who was Offg.ACS(Cl.II)RTM was promoted
to the Sr.Scale and was posted as Offg.SCO(R)
(Adhoc)CCG. The promotion of Bhupendra Singh
has given a grievance to the applicant.

2. On 5-5-1984 a combined seniority list of the employees who are placed on panels for promotion to Class II posts of ACS/AOS was published. According to it the seniority was based on the position of the employees on their respective panels. It appears that the applicant was shown at Sr.No.39 in the said list whereas Shri Bhupendra Singh was shown at Sr.No.41. The applicant has, therefore, come out with the case that since she was senior to Bhupendra Singh the impugned order clearly amounted to an order superseding.

3. A reply has been filed on behalf of the respondents. In paragraph 5 the material averments are these: The promotion of Class II officers to Sr.Scale post is subject to suitability. Suitability is adjudged on the basis of confidential reports by a committee consisting of four Heads of Departments. Such a committee considered the case of the applicant and Bhupendra Singh. It, however, did not find the applicant suitable for promotion to the senior scale on the basis of confidential reports obtained by the applicant. Shri Bhupendra Singh, though junior to the applicant was considered suitable for promotion to Sr.Scale post by the Committee.

4. An additional reply was filed on behalf of the respondents. In paragraph 5 of the said reply the material averments are these: The Railway Board, under their confidential letter dt. 15-5-87 laid down certain norms authorising General Manager to promote Group 'B' Officer to

Sr. Scale post on adhoc basis. One of the norms was that the concerned Group 'B' Officer should have secured 17 points in his/her confidential reports during the last five years. The applicant was considered for adhoc promotion to Sr. Scale post on 30-7-87 and again on 12-11-1987 by the duly constituted Departmental Promotion Committee on the basis of the above mentioned norms. However, she failed to secure 17 points in her C.R. for the last five years and therefore, she was not recommended for promotion.

Shri Bhupendra Singh secured 17 points and therefore he was recommended for promotion.

5. Two submissions have been made in support of this application. The first is that the confidential circular of the Railway Board could not be taken into account by the Committee which considered the case of the applicant for promotion. We are unable to appreciate this submission. Even in the absence of the circular, it was open to the Committee to formulate some rule or guidelines for itself so as to judge the best person, suitability being the criterion for the recommendation to make a promotion. Even if it accepted the norms laid down by the Railway Board and adopted the same universally, no exception could be taken or can be taken. What is to be seen is as to whether the committee acted fairly in considering the cases of all the prospective candidates for promotion. It is not the case of the applicant that the Committee did not apply the norm universally or it was actuated by any malafide

consideration. Reliance is placed by the learned counsel upon a decision of the Bombay High Court in the case of Rambhau Raghobaji Rewatkar v. State of Maharashtra, 1984 Mh.L.J.1049. This was a case where a government servant had been placed under suspension, the order of suspension continued to last beyond the period of six months, the government servant concerned filed a petition in the High Court and contended that in view of a circular issued his case of suspension should have been reviewed after the expiry of period of six months and that not having been done the order of suspension was liable to be interfered with. The High Court pointed out that the circular had no statutory force, it could not contain the condition of service as envisaged in proviso to Article 309 of the Constitution and therefore the government servant concerned could not file a writ petition to enforce the contents of the circular. This case has no application to the facts of the present case. The other submission advanced is that the promotion being adhoc the respondents acted illegally in adopting the criterion of suitability for adjudging a candidate fit for promotion. We may state that there is no averment in the application that even in the case of an adhoc promotion the respondents could not adopt suitability as the sole criterian and act on the basis of the recommendation of the committee. May be, there may be some rule or circular of the Railway Board or some railway authority

departing from the normal rule. The applicant had sufficient opportunity to amend this application because we note that he has even filed a sur-rejoinder in this proceedings. In the absence of any pleading it is difficult for us to quash the impugned order on the sole ground that the criterion of suitability could not be adopted since the appointment was in the nature of adhoc appointment.

6. Reliance is placed by the learned counsel for the applicant in the case of M.L. Trivedi and another vs. Union of India and others (1987)4 ATC 69. There the applicant had come out with a clear case that since the appointment to the higher post was to be done on adhoc basis the only criterion which could be adopted was seniority subject to fitness. The respondents there, it appears, could not successfully demonstrate that there was any material either in the form of a rule or instruction having force of a rule that in the case of ad-hoc promotion the criterion of suitability should be adopted. In those circumstances it was held that in case of adhoc promotion seniority should not be departed from. This case is not apposite as we have already indicated that the applicant has not laid necessary foundation in the application.

7. This application has no force. It is dismissed but with no order as to costs.

Usha Savara
(USHA SAVARA)
Member(A)

S.K.Dhoni
(S.K.DHONI)
Vice-Chairman