

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXX
NEW BOMBAY BENCH

XXXXXX
T.A. No. 148/87

198

DATE OF DECISION 30.12.1987

Shri Prempal Sharma

Petitioner

Shri S.R. Atre

Advocate for the Petitioner(s)

Versus

General Manager, Central Railway Respondent
Bombay V.T.

Shri D.S. Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice Chairman

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? - Yes
2. To be referred to the Reporter or not? - Yes
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, NEW BOMBAY.

Tr. Application No.143/87.

Shri Prempal Sharma,
Railway Stores Department,
Khalasi of Manmad.

... Applicant.

V/s.

General Manager,
Central Railway,
Bombay V.T.

... Respondent.

Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil,
Hon'ble Member (A), Shri J.G. Rajadhyaksha.

Appearance

Shri S.R. Atre, Advocate for the applicant
Shri D.S. Chopra, Advocate for the respondents

Oral Judgment:

(Per Shri B.C. Gadgil, Vice-Chairman) Dated: 30.12.1987.

Regular Civil Suit No.92/1984 of the file of the Civil Judge, Junior Division, Manmad is transferred to this Tribunal for decision. Initially, that suit was filed in the Court of the Civil Judge, Junior Division, Nandgaon and was numbered Regular Civil Suit No.10/79. After it was transferred to Manmad Court, it was numbered as 92/84.

2. The controversy is a very short one. The applicant joined Railway Service as Khalasi on 3.8.1971. He was regularised on 15.2.1972. A Railway Khalasi, being a class IV employee, is entitled to seek certain promotional posts including that of Material Checker. The Railway Administration prepared a panel on 8.4.1975 for these promotions. The applicant appeared for the concerned written and viva voce examinations. His name was included at Sl.No.11 in the panel. However, he could not get appointment to the promotional post immediately. The panel was treated as lapsed after two years and a process of preparing a fresh panel was taken up *at*

the end of 1979. The applicant did not appear for the written and oral examination on the ground that the panel prepared in 1975 would continue to be operative and that it cannot lapse. It appears that certain persons were subsequently promoted as Material Checkers. However, the applicant did not get such appointment. He, therefore, filed the suit in question praying that the Railway Administration should be directed to make promotional appointments to the posts of Material Checkers in accordance with the panel dt. 8.4.1975. He has also prayed that he should get his pay and other monetary benefits of the promotional post whenever his turn would come for such appointment under that panel.

3. The Respondents resisted the Suit by filing their written statement. In substance, the contention of the respondents is that the post of Material Checkers is a 'selection' post and that a panel prepared for such post lapses after two years. The respondents, therefore, contend that the applicant cannot rely upon the panel of 1975 if, unfortunately, within a period of two years he was not able to get any promotion as Material Checker. It was contended that the preparation of the panel in 1979 is quite legal and proper.

4. We have requested Mr.S.R.Atre (for the applicant) to argue the matter as **amicus Curiae** on behalf of the applicant. We heard Mr.Atre for the applicant and also Mr.D.S. Chopra for the Respondents. Thus the only question that is material for our decision is as to whether the post of Material Checker is a selection post or an ordinary promotional i.e. non selection post. The action of the respondents will be quite legal and proper if it is a selection post. The position would be otherwise if the

post is an ordinary promotional post.

5. Regulation No.109 of the Indian Railway Establishment Manual is relevant for deciding the question. It reads as follows :

"Lower grades in Class III like Junior Clerks, Brakesmen, Material Checkers, Stores Clerks/ Issuers, Switchmen, Cabinmen, Shunting Jamadars, etc. in scales such as Rs.105-135, 100-130, should be wholly filled by promotion from class IV railway servants who have put in 5 years service. In the case of posts which are in the normal avenue of promotion to Class IV railway servants, promotion should be made from amongst the railway servants of the Deptt. concerned in each promotion unit on the basis of seniority-cum-suitability after holding such written and/or practical tests as may be considered necessary. In the case of posts which are not in the normal avenue of promotion, promotion should be made on the basis of selection after holding such written and/or practical test as may be considered necessary and from panel drawn and according to prevailing rules in respect of selection posts".

There cannot be any serious dispute that the promotion to the post of Material Checker is in the normal avenue of promotion to the class IV Railway Servant and consequently that promotion would be on the basis of seniority cum suitability. Of course, a written and/or practical test may be prescribed, but it would be for the purpose of deciding the suitability of the employee for that post. In view of this Regulation No.109, it would not be possible for the Railway Administration to contend that promotion to the post of Material Checker is to a selection post and that therefore, a panel would lapse after a period of 2 years. Consequently, the panel for the promotion on the basis of seniority-cum-suitability would not lapse. It would continue to be operative till it is exhausted.

6. It the present case, we are told that in 1978 one person was promoted as Material Checker on ad-hoc basis and in 1979 6 more persons were similarly promoted. Thus, appointments of 1978 and 1979 are of persons who are not included in the panel of 1975. In the background of this position Mr. Atre would be right when he contends that applicant should have been appointed as Material Checker at least in 1978. Hence we pass the following orders :

O R D E R S

1. The application partly succeeds.
2. The respondents are directed to give effect to the panel dt. 8.4.1975 and to make promotions to the posts of Material Checkers on that basis.
3. The respondents are further directed to give promotion to the applicant to the post of Material Checker on the basis of his placement at Sl. No. 11 in the panel. This should be done by taking into account the appointments that have been made by the department from 1978 or even earlier. It is need-less to say that the applicant would be entitled to have all the monetary benefits including salary etc. arising from that promotion. These orders should be complied with by the respondents within a period of 4 months from to day.
4. Parties to bear their own costs.

B.C. Gadgil
(B.C. GADGIL)

VICE - CHAIRMAN.

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)

MEMBER (A).