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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 108/88

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DATE OF DECISION 19.1.1994

Shri T.L.Madnani Petitioner

Shri A.S.Bhambani Advocate for the Petitioners

Versus

Genl. Manager, C.Rly. Bombay & Anr. Respondent

Shri J.G.Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri N.K.Verma, Member (A)

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? M
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 ? m

(N.K.VERMA)
Member (A)


(M.S.DESHPANDE)
Vice Chairman

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 108/88

Shri Thakurdas Lundiomal Madnani

... Applicant

V/S.

The General Manager, Central Railway,
Bombay V.T. & Anr.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri N.K.Verma

Appearance

Shri A.S.Bhambani
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 19.1.1994

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant seeks promotion to the Grade Rs.700-900 from 1.8.1983 pursuant to the Railway Board's Circular dated 29.7.1983 on the basis of seniority and service record and payment of arrears.

2. The applicant was working as Assistant Station Master on 1.8.1983 in the scale of Rs.455-700. The applicant was working with the Central Railway since 1951 in the scale of Rs.455-700. After restructuring the applicant continued to be in the same post but in the grade Rs.550-750 in accordance with the restructuring which was done by the Railway Board's Circular dated 29.7.1983. The applicant claims that he should be posted as Deputy Station Superintendent in the grade of Rs.700-900 without being required to go through the normal selection process but in accordance with the

modified selection process. He was, however, required to take the written and viva-voce test. Though he passed the written test, he was not selected by the interviewing Board. According to him, he was assured by one Shri Awasthi who was a Member of the interview Board that evaluation and assessment of the interviewing Board would not be the same as adopted in the normal selection process and that they would be more liberal to the seniors. However, the applicant came to be interviewed by another Board of which Awasthi was not a Member and the interview taken on the next selection resulted in prejudice to him as the interviewing Board adopted different standards. According to him, if he were to have been selected by the modified selection process, he would have been given the pay in the grade Rs.700-900. There were 90 posts available in that cadre for the Bombay Division. 58 came to be filled without conducting selection and the remaining 32 posts remained vacant. According to the applicant, he should have been given one of the 32 posts given by the Railways under the modified selection process.

3. The respondents' contention is that the applicant was promoted in terms of the Circular dated 29.7.1983 in the grade Rs.550-750 because he was substantively working in the grade of Rs.455-700 on 1.8.1983 on the basis of the prescribed procedure, namely, scrutiny of service record without holding any written and or viva voce tests. The applicant appeared for the written test conducted later but could not qualify in the viva voce test. The allegations regarding Ashok Awasthi's promise were denied and it was contended that the applicant was entitled only to be placed under the Circular in the scale Rs.550-750 and not in the scale Rs.700-900 and even the other Railways had adopted the same procedure.

4. At the hearing, the learned counsel for the applicant draw our attention to the various provisions of the Circular dated 29.7.1983. Para 3.1 of the Circular mentions that :

" The vacancies in the various grades of the posts covered in these categories as existing on 31.7.1983 and those arising in the context of present cadre restructuring will be filled in in the manner indicated in the Circular. However, in a case where, as a result of this restructuring, an individual Railway servant becomes due for promotion to more than one grade above his present grade, and if promotion to posts in any of these grades calls for selection than promotion to that Grade(s) will be governed by the normal rules for promotion."

The applicant's submission was that he was already in the scale Rs.550-750 when this Circular was issued. It is difficult to accept this contention in view of the respondents' statement in the reply that the applicant was given the scale Rs.550-750 w.e.f. 1.8.1983 in pursuance of the said Circular. We enquired from the learned counsel for the applicant whether he had any material to show that he was already in the scale Rs.550-750 when Circular dated 29.7.1983 was issued, the applicant could not produce that material at the time of hearing. The applicant was in the scale Rs.455-700. He claims to be entitled to both the scales Rs.550-750 and Rs.700-900, the latter being the scale of Deputy Station Superintendent. The Annexure to this Circular shows that the category of Assistant Station Masters was spread over in three pay scales, viz. 330-560, 425-640, 455-700 and the revised designation of these categories were respectively Assistant Station Master 330-560, Asstt. Station Master 425-640 and Station Master 455-700. The Station Masters in the original category 425-640 ^{into} would come the revised category of Deputy Station Superintenden

550-750 and the Station Master 455-700 was converted into the category of Station Superintendent (Non-Gaz.) 700-900. There is no support for the applicant's contention that the cadre of Rs.455-700 was upgraded or merged in the pay scale of Rs.550-750. Even if we presume that the applicant belonged to the category which carried the scale Rs.455-700, the immediate promotion that the applicant could have got in the normal selection process would be in the scale of Rs.550-750. He claims to be entitled to the scale Rs.700-900 that of the Deputy Superintendent. We have already adverted to the position that under Para 3.1 if promotion to posts in any of these grades calls for selection then promotion to that Grade(s) will be governed by the normal rules for promotion. The category of 455-700, according to the Annexure, was selection post and the applicant could claim appointment to that post as per the modified rules as embodied in Para 3.2 of the Circular. That para provides that:

" This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by way of a special dispensation in view of the numbers involved, with the objective of expediting the implementation of these orders. It is reiterated that the normal rules governing promotion to selection and non-selection posts will apply to vacancies in the aforesaid categories arising after 1st August, 1983."

The position therefore is clear that the applicant could not have claimed the promotion without going through the process of test and interview ^{being} before given the scale Rs.700-900 on the basis of this Circular.

5. With regard to the applicant's contention that such a benefit had been given to certain others by the Western Railway, Shri Sawant, learned counsel for the respondents pointed out that this position was denied

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in the reply and sur-rejoinder. Reference was also made to the clarification obtained from the Western Railway and the Annexure to the written statement shows that even the Western Railway had adopted the same course as has been adopted by the present respondents. Nothing therefore turns on the allegation that the Western Railways implemented the Circular in a different manner.

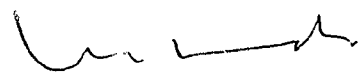
6. With regard to the assurance that was given by Shri Avasthi, it is difficult to see how the change in Board can be said to have prejudiced the applicant. The applicant had to appear at the interview. He did appear at the interview before a Board properly constituted and that Board did not find the applicant fit. There cannot thus be any room for the apprehension that double standards were adopted while assessing the suitability of the applicant for the higher post.

7. Reference was also made to the boycotting of the examination and interview in the intervening period. But that would not give the applicant any right or claim to a post to which he was not entitled without ~~going or under-~~^{going} ~~taking~~ the selection process.

8. Learned counsel for the respondents urged that the application would be barred by time. But we find that the applicant had made representations to the respondents as stated in the application and the present application would be in time ^{having} in regard to those representations.

9. We see no merit in the application. It is dismissed.

(N.K.VERMA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.