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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 659/88

Transferred Application No:

DATE OF DECISION: 22/3/89

Shri Sureshkumar Jamnadas Chand ~~Petitioner~~

Shri L.M.Nerlekar

Advocate for the Petitioners

Versus

The General Manager, Central Railway, Bombay VT. Respondent

Shri V.G.Rege

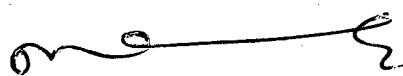
Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri R. Rangarajan, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(R. Rangarajan)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 659/88

Shri Sureshkumar Jamnadas Chandwani
V/s.

...Applicant

The General Manager,
Central Railway,
Bombay VT

... Respondent.

CORAM: Hon'ble Shri Justice M.S. Deshpande Vice Chairman
Hon'ble Shri R.Rangarajan, Member (A)

Appearance:

Shri L.M. Nerlekar, counsel
for the applicant.

Shri V.G. Rege, counsel
for the respondents.

JUDGEMENT

Dated: 24/3/89

(Per Shri R.Rangarajan, Member (A))

Applicant, herein, a graduate in Electrical Engineering, was appointed in Railways in Kurla Car Shed in the grade of Rs. 550 - 750 as a direct recruit from 28.5.74. He was confirmed as Chargeman in that grade from 26.4.79. He was sent on deputation to Construction Organisation in the same grade in the year 1981. He was promoted in the Construction Organisation on an adhoc basis to the grade of 700 - 900 with effect from 1.4.81 as Chief Technical Assistant (CTA for short). He claims that his junior one Shri Mendonca was promoted to the grade of Rs. 700 - 900 in his parent cadre from 8.10.80 and hence he should be given that grade from 8.10.80 as he is senior to Shri Mendonca in his parent cadre. However he was regularised along with his juniors in the grade of 700 - 900 in Bombay Division with effect from 15.10.81.

2. Promotion to the grade of Rs. 700 - 900 was treated as non-selection till 29.9.81. From 29.9.81 the promotion to the post in the grade of Rs. 700 - 900 was made selection by the letter No. E(NG)I-79-PMI-278

dated 29.9.81 (Exhibit D). Because of the reclassification of the post in the grade of Rs. 700 - 900 from non-selection to selection, Central Railway issued instructions to hold selection for promotion to the post in grade 700 -900 of the Electrical department for all promotions to be made after 29.9.81. As the applicant was regularised in the grade of Rs. 700 - 900 as CTA from 15.10.81 i.e. later than the Boards instruction dated 29.9.81 reclassifying the grade of Rs. 700 - 900 as selection he was asked to submit himself for a selection held in the year 1983. But the applicant stating that he should have been promoted to the grade of Rs. 700 - 900 from 8.10.80 when his junior Shri Mendeonca was promoted to that grade in his parent cadre did not appear for the selection and represented for exempting him from the selection for promotion to the grade of Rs. 700 - 900. But this was not accepted by the respondents and he was informed accordingly. However he was regularised in the grade of Rs. 700 - 900 from 14.11.84 along with his juniors as per Exhibit 'O'. Aggrieved by the lowering of his seniority in the grade of Rs. 700 - 900 he was filed this O.A. praying that he should be promoted to the grade of Rs. 700 - 900 (RS) with effect from 8.10.80 on the basis of the Railway Board's letter dated 29.9.81 (Exhibit 'D') and that his seniority should be fixed with reference to the said date and he be promoted to the grade of Rs. 840 - 1040 (RS) with effect from 1.1.84 consequent on restructuring of the cadre by appropriate proforma fixation of the pay and for considering him for further promotion to Class II as Assistant Electrical Engineer as per the Seniority position.

3. The respondents in their reply state that the promotion given to Shri Mendeonca in the open line on 8.10.80 is only on adhoc basis with no right for claiming seniority over his seniors. This ad-hoc promotion was necessitated due to exigencies of service and as at

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that time since the applicant was on deputation to Construction Organisation his junior was promoted on ad-hoc basis. This promotion was also treated as ad-hoc as the earlier roster points remained unconsumed. Hence the applicant cannot claim any seniority from 8.10.80 as the promotion of Shri Mendeonca was only ad-hoc. Further when he was promoted to Rs. 700,- 900 grade from 15.10.81 he should have been subjected to a selection in view of the Board's letter dated 29.9.81. As he failed to appear for selection when called in the year 1983, he cannot claim any seniority from an earlier date than what is given to him namely from 14.11.84. His juniors namely S/Shri Mendeonca , T.V. Rao and Aboosantoo also were asked to appear for the selection held in the year 1983. In view of the above the respondents state that there is no irregularity in fixing the applicant's seniority and as per that seniority he was allowed to progress further.

4. We have heard the learned counsel for both the parties and also perused the records. Two main issues arise in this case. They are: (i) Whether his Juniors namely S/Shri Mendeonca and T.V. Rao were promoted to the grade of Rs. 700 - 900 without subjecting them to a selection (ii) whether the applicant was informed of the selection held on 30.8.83 so as to facilitate him to appear for the selection.

5. We have taken up the second issue first so as to know whether he was informed of the date of written examination. The applicant himself states in para 16 of the application (page 12) that he was called for the selection. However he did not appear and made representation dated 10.8.83 stating that he was a regularised employee of the grade of Rs. 700 - 900 and he is called for selection ^{with} ₂

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ulterior motive, in order to deny him the benefit of 3 years service put ⁱⁿ by him in the grade of Rs. 700,- 900 (RS). His name figures in the notice No. E/CS/29/NG issued on 6.8.83 by which he was called for written test in connection with selection for the post of Foreman 'B', Haid Train Examiner in the grade of Rs. 700,- 900 (RS) Kurla/Kalva Car shed , Bombay Division. In response to this notification he had represented for exempting him from appearing for the above said written test by his letter dated 10.8.83. His representation dated 10.8.83 clearly quotes the notification dated 6.8.83. Hence we have no doubt in coming to the conclusion that he was duly informed of the written test and he having received the communication in regard to the date of the written test failed to appear for the written test conducted as part of the selection for promotion to the grade of Rs. 700 -900 for reasons mentioned above.

6. The second issue is whether his juniors namely S/Shri Mendeonca and T.V.Rao were called for the selection or not or whether they were regularised in the grade of Rs. 700 - 900 without subjecting them to the selection. We have perused the selection proceedings dated 22.11.83. The selection proceedings clearly state that S/Shri Mendeonca and T.V.Rao were absent for written test and hence they were not empanelled. One Shri Modi who was just below Shri Mendeonca in the seniority list did attend the ~~written~~ and ~~viva~~ voce test and he was empanelled. This proceedings also clearly indicate that the applicant and Shri Mendeonca did not appear for the written test and had submitted representations for exempting them in appearing for the selection. As even his juniors were called for selection the applicant cannot ask for exemption for appearing for the selection. The learned counsel for the



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applicant forcefully stated that the applicant cannot be subjected to the test in view of the fact that he was regularised in the grade of Rs. 700,- 900 from 15.10.81 and the Railway Boards letter reclassifying the grade of Rs. 700 - 900 as selection post will not apply to his case. At the time of hearing we made it clear that in case his junior Shri Mendeonca was called for the selection the applicant cannot ask for exemption from appearing for the selection. Only if his junior is exempted from the selection he can ask for exemption. As stated earlier the selection proceedings clearly state that his junior S/Shri Mendeonca and T.V. Rao were also called for selection and in view of the material available in record the applicant cannot escape from appearing for the selection.

7. We also agree with the respondent's view that the posts filled in the grade of Rs. 700 -900 after issue of the Board's letter dated 29.9.81 must be through a process of selection as on that date the grade of Rs. 700 - 900 post were made selection posts. As the applicant was regularised on 15.10.81 his regularisation is not in consonance with the rules applicable at that time and hence the respondents are right in insisting upon the applicant to appear for the selection.

8. The applicant contents that there were vacant posts in the grade of Rs. 700 - 900 even earlier to 29.9.81 and that the respondents failed to regularise him in those posts earlier to 29.9.81 and he was regularised only on 15.10.81 to deny him the due seniority. This contention is not at all appealing to us. None can demand regularisation from the date of occurrence of vacancies. For reasons indicated in the reply statement the applicant was regularised from 15.10.84 as the

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earlier roster points have to be consumed first. As can be seen from the regularisation order dated 15.10.81 there were two of his juniors also in that list. The applicant was not singled out in regularising him from 15.10.81 to allege any malafide on the part of the respondents. There is nothing on record to prove that he was regularised on 15-10-81 with ulterior motive on the part of the respondents. As the regularisation on 15.10.81 was against the rules at that time in view of the Railway Board's letter dated 29.9.81 he has called for selection in the year 1983 when he failed to appear. Had he appeared for the selection in 1983 he would have got better seniority which would have placed him on better footing. As he had failed to respond to the selection he has to blame himself only for his present seniority position. We see no justifiable reason to interfere with the present seniority position assigned to him. Even his juniors namely S/Shri Mendeonca and T.V.Rao were given seniority in the grade Rs. 700 -900 below the applicant from 14.11.84 as can be seen from Exhibit 'O'.

9. Under the above facts and circumstances of this case we see no merit in this O.A. and is liable only to be dismissed. Accordingly we do so.
No Costs.



(R. Rangarajan)
Member (A)



(M.S. Deshpande)
Vice Chairman

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