

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. xx
T.A.No. 67

198 x
198 6

DATE OF DECISION 30th June, 1987.

Shri Vasant Ramchandra Dhuldhule Applicant/s.

Applicant in person. Advocate for the Applicant/s.

Versus

Union of India Respondent/s.

Mr. V.G. Rego Advocate for the Respondent(s).

CORAM:

The Hon'ble Vice-Chairman B.C.Gadgil
The Hon'ble Member J.G.Rajadhyaksha

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether to be circulated to all Benches? Yes

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH.

Transferred Application No.67/86.

Shri Vasant Ramchandra Dhuldule,
Quarter No.RE/RB/III/1-E,
Near Central Railway Colony,
Ajni,
NAGPUR.

... Applicant
(Original Petitioner)

v/s.

1. Union of India,
through
The General Manager,
Central Railway,
Bombay V.T.
2. Dy.Chief Electrical Engineer(POH),
Central Railway,
Bhusawal. ... Respondents

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

Appearances:

1. Applicant in person.
2. Mr.V.G.Rege,
Advocate for the Respondents.

JUDGMENT
(Per B.C.Gadgil, Vice-Chairman)

Date: 30th June, 1987.

Writ Petition No.1099/80 of the file of the High Court of Judicature at Bombay has been transferred to this Tribunal for decision..

2. The averments in the Original Writ Petition as also in the replies filed by the respondents before this Tribunal are many. Similarly, a number of contentions have been raised by the parties in the respective pleadings. However, all of them are not pressed before us and hence we propose to deal with only those points that have been argued.

.... 2/-

3. To understand the controversy between the parties a few facts need to be stated. The applicant(the original Writ Petitioner)is a railway employee working with the Central Railway. In 1972,he was "B"Grade Traction Foreman in the Electrical Distribution unit. In that year, on administrative grounds he was transferred to another unit known as Periodical Overhauling Unit(in short POH) in the construction organisation,ie.during construction of the workshop for Periodical Overhauling. He worked there till 1977, and was retransferred to his parent unit. He made a grievance about this transfer as he was suffering financial loss on account of the difference in pay of the post which he was holding in the POH and the post in his parent unit. After the POH ^{Construction} was over the department decided to have a separate permanent organisation known as POH(Maintenance). On 20-9-1977 the POH(Maintenance) organisation wrote to the Chief Personnel Officer of the Central Railway that the POH(M) would have no objection to absorb the applicant in POH(M). Ex. I to the application is that letter. The relevant portion reads as follows:

"With the background and the experience gained by Shri Dhuldhule during construction works it will be rather opportune to post him in the POH organisation to look after the maintenance work. This office has no objection to his being absorbed in this organisation either as Shop Supdt.Gr.Rs.840-1040(RS)failing which at least in the grade of Rs.700-900(RS).Necessary orders may please be issued."

The Chief Personnel Officer of the Central Railway, on 26-9-1977, passed an order(Ex.J to the application) that sanction has been accorded to the applicant being transferred to the POH Shop with immediate effect and that his posting will be decided by the Dy.Chief Electrical Engineer(POH)BSL. The applicant was appointed as Traction Foreman. The applicant's contention is that he has been permanently absorbed in the POH organisation. He relies upon the letter dtd.28th October,1978(Ex."K" to the application) written by Shri A.K.Jain,Superintending Electrical Engineer to the Head of the parent department of the applicant asking for certain information. It is a letter pertaining to two employees one of them is the applicant. The initial portion of the letter reads as follows:

"Following staff who had arrived on transfer from your Organisation to Electric Loco Shed(POH)Workshop,BSL have now been permanently absorbed in the cadre of this workshop with effect from 27-3-1978. In order to fix their seniority position,it is necessary to know the position they would have had in the parent organisation on 27-3-78,had they continued in that Organisation....." *(Emphasis supplied)* 3/-

"Since the seniorities are to be finalised soon, I request that their seniority position held by them is non-fortuitous capacity in their parent organisation may be furnished very early...."

According to the applicant, he was thus permanently absorbed in the POH organisation and that he could not have been re-transferred to his parent department. He contends that in spite of this position the railway administration erroneously passed an order dtd 14th September, 1979 (Ex.G to the application) that the applicant is relieved and is transferred to his parent department. It is this order that is being challenged before us as bad. The applicant has also claimed that after quashing the order he should be allotted the posting in POH in the appropriate cadre and he should be paid the difference in the pay and other allowances which loss he has been required to suffer on account of the impugned order dtd. 14-9-1979.

4. The respondents have filed their replies at two stages. The first reply is filed with an affidavit of Shri V.D. Vadhykar, while the second reply is filed under an affidavit of Dharmaraja Venkata Natarajan. As we have already stated, it is not necessary to give all the allegations in these replies. We would mention only those allegations or contentions which are relevant for the decision as to whether the impugned order dt. 14-9-1979 is good or bad. It is not in dispute that in 1972 when the temporary organisation known as POH was formed the employees were asked to make an application for posting in that organisation. Such posting could be given to those employees who would pass the test before the Screening Committee and would also undergo the necessary conversion training. In 1972, the applicant applied for the post but he did not appear for the screening test. However, he was taken in the POH organisation on account of exigency of the work. It was only a temporary arrangement. In 1976, there was another circular for such screening test. The applicant appeared for the test. However, he failed. It was contended that thereafter the applicant was repatriated to his parent department. The respondents admit that the applicant has been again sent to POH organisation in 1977. Their contention, however, is that the applicant was not absorbed in the POH organisation because he has not passed the screening test and has not undergone the training. It is alleged that the question of absorption of the applicant in POH organisation was reviewed by the High Level Committee and a decision was taken that the applicant should be sent back to the parent department. It was therefore contended by the respondents that the impugned order dtd. 14-9-1979 is quite legal and proper.

5. Hence the only question that is relevant for the purpose of deciding this application is as to whether the applicant was permanently absorbed in POH organisation as contended by him. The applicant relies upon the office order dtd.20-9-1977(Ex.I) issued by the Chief Personnel Officer whereunder the applicant has been transferred to POH shop with immediate effect. According to the applicant all that was left was with the Dy.Chief Electrical Engineer POH who himself decided the posting of the applicant. It was contended that this order does not say that the applicant has not been permanently transferred so as to be absorbed in POH. On 27-3-1978, the POH organisation was declared closed. It is common ground that the term "closed" means that there would not be any entry of an employee into the said organisation and similarly no employee from that department would go to other departments. In the background of this event of 27-3-1978 the applicant contends that the letter dtd.28th October, 1978(Ex.K) would be of much importance. We have reproduced the relevant part of that letter. According to the applicant this letter conclusively proves that he has been permanently absorbed with POH.

6. Mr. Rege for the respondents contended that the contents of the letter at Ex.K need not be given undue weightage because there is no formal order of absorption of the applicant in POH organisation. However, he has admitted, during the course of the arguments that such formal orders of absorption have not been passed even with respect to other employees who have undoubtedly been absorbed in the POH. Another contention of Mr. Rege is that for absorption in the POH it was necessary for the applicant to pass the screening test and also to undergo training; and that the applicant not having passed the screening test is not entitled to be permanently absorbed. It was lastly submitted that the applicant has not undergone any training which was a must for such absorption. Mr. Rege relied upon the fact that the High Level Committee has reviewed the case of the applicant and it was found that the applicant could not have been absorbed in the absence of any formal order. However, certain statements in the letters at Ex.C & D would be relevant. For example in Ex.C, the letter dtd.15th May, 1979, the applicant was informed that his case for final absorption in POH Workshop is to be reviewed. Similarly, by Ex.D the applicant was informed that the review is being made due to the representation made by some other staff members. There is much substance in the contentions of the applicant that the term "review" itself indicates that the applicant has much been ..5/-

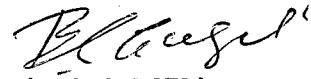
earlier absorbed in the POH organisation and that it would be idle for the respondents to contend that there was no absorption simply for want of any formal order.

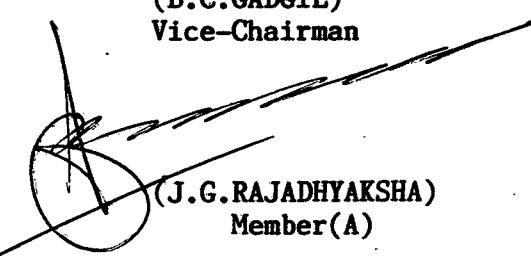
7. Mr.Rege for the respondents tried to support the impugned order on the ground that the absorption,if any, of the applicant in POH organisation was erroneous on two counts. It was alleged that the applicant has not passed the test before the screening committee and secondly it was necessary for him to undergo one year's training. The argument is that in the absence of these two factors the applicant was erroneously absorbed and that therefore the department was right in sending him back to his original department. It was urged by the applicant that passing of the screening test and the necessity of training is not at all mandatory. For that purpose he drew our attention to the fact that two persons by name Parthasarathy and Guruviah were selected for absorption without screening tests. To get over this position Mr.Rege submitted that these two persons were trained in France and hence they were not asked to undergo screening test. Though the reason appears to be plausible it is not totally acceptable inasmuch as it is common ground that they have been given one year's training after selection. The applicant submitted that such a training was not at all necessary if they have been selected without screening test on account of training in France. Mr.Rege urged that there would be nothing wrong if additional training would be given by the department after the selection. We need not consider this controversy. Suffice it to say that there are certain persons who have been selected without screening test.

8. The applicant also contended that four employees viz. S/Shri Kundra,Mahna,Harjit Singh and Shrihatti were not given any training after their selection. It was submitted on behalf of the respondents that such training for them was not necessary in view of their experience in the working of loco maintenance. It is thus clear that the screening test and the subsequent training after absorption is not a "must". There are instances where these factors ^{have} not been applied rigidly while absorbing persons in POH organisation. The question is as to whether the department can support their action against the applicant ? In our opinion the department has not applied its mind to some important factors that are in favour of the applicant. We have already observed

that the applicant initially worked in POH organisation from 1972 to 1977. Not only that but the responsible officer from the POH organisation has himself recommended that the applicant can be absorbed in the POH organisation. On the basis of this recommendation the applicant was retransferred to POH organisation in 1977 and he continued to work in that organisation till 1979. Thus the applicant has an experience of about seven years in the POH organisation. The said organisation itself wants the applicant to be absorbed and in the background of these factors, it would not be possible for the respondents to contend that the initial absorption of applicant in POH organisation should be reviewed and set aside by reason of absence of screening test and training. It cannot be doubted that the screening test must be for the purpose of ascertaining the suitability of the person to work in POH organisation and the conversion training in the POH organisation would be necessary to make the concerned employee further suitable in that organisation. The view taken by the department about repatriation of the applicant to his original parent department on the above mentioned few factors is a technical view not to be accepted as a valid one. This is so as the applicant has already worked in POH organisation for seven years and the said organisation itself has recommended his absorption. What is necessary to be seen is the substance of the matter and not its ~~fault~~ ^{form}. We are therefore not inclined to accept the contention of the respondents that the impugned order is unsupported by just and legal grounds. That order is liable to be quashed.

9. The application therefore partly succeeds. The impugned order dtd. 14th September, 1979 (Annexure "G" to the application) is set aside. Consequently, the transfer of the applicant from his post as officiating Shop Superintendent (C) in the grade of Rs. 840 - 1040 to a post under Sr. DEE (TD) BSL is quashed and it is declared that the applicant continues to hold the post which he was holding prior to 14th September, 1979. The respondents are directed to issue necessary orders in pursuance of this judgment and to pay to the applicant all the monetary reliefs which are payable to the applicant in terms of his posting immediately before 14th September, 1979.


(B.C. GADGIL)
Vice-Chairman


(J.G. RAJADHYAKSHA)
Member (A)