

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

Original Application No. 296/86.

Shri S.A.Yadav,
12 Quarters Near Loco-Shed,
Amla.

... Applicant

V/s.

1. Union of India through its
General Manager, Central Rly.
Bombay.V.T.
2. Divisional Mechanical Enginee(Power),
Central Railway, Nagpur.
3. Chief Mechanical Engineer, Central
Railway, Bombay V.T.,
4. Divisional Railway Manager, Central
Railway, Nagpur. ... Respondents.

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

JUDGMENT:-

(Per J.G.Rajadhyaksha, Member(A))

Dated: 30.6.1987.

The application filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 can be disposed of on two points which arise out of the application and the contentions raised before us. These points are (a) whether the cancellation of the order of promotion granted to the applicant on 26.3.1983 is valid and good and (b) whether the applicant must undergo fresh selection test in view of the orders on the restructuring scheme issued by the Railways?

2. The facts briefly are that the applicant joined service as a Trade Apprentice from 16.4.1964 in the Railways, became a Fitter in December, 1975, then became Fitter Chargeman 'B' grade and at the relevant time was

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working as such when on 26.3.1983 he was promoted Fitter Chargeman 'A' grade. This promotion was cancelled by a subsequent letter dt. 31.5.1983 on the ground that he was undergoing two minor penalties. His representations for restoration did not yield any results. Further on 6.9.1985 he was asked to take a written test if he desired to be promoted further as Assistant Mechanical Foreman. He did not find a place in the panel prepared on or about 1.5.1986. The applicant did not, admittedly, take the test and has now come before us challenging both the cancellation of the order of promotion and the orders requiring him to take the qualifying test.

3. The learned advocate for the applicant Smt. Shinde contends that though admittedly the applicant was undergoing two minor penalties for alleged negligence in his duties there were clear rules viz. No.4.2 (vi) of the Railway Servants (Discipline and Appeal) Rules and Item 3 on page 22-23 of the Railway Servants (Discipline and Appeal) Rules, 1968, that indicate that minor penalty need not stand in the way of promotion. She further contends that because of such rules, cancellation of the promotion of applicant was an additional penalty imposed in violation of Article.311(2) of the Constitution and the Railway Servants (Discipline and Appeal) Rules. The applicant had no notice of such cancellation. The Respondents have resisted this suggestion and it has been contended by Mr. Chandurkar that firstly the promotion of the applicant given to him on 26.3.1983 was itself very clearly a purely ad-hoc promotion, on a trial basis, pending regular promotions issued by the Head Quarters office which were then managing this cadre. Therefore, no right was vested in the applicant to hold the

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promotional post indefinitely. Further, Mr. Chandurkar argues that it was perfectly within the rights of the Respondents to cancel this Promotion Order as they discovered that the applicant was undergoing two minor penalties. This fact had not been known to Respondents when applicant was promoted by another Section of the Administration and therefore, there is nothing wrong in the Administration correcting their mistake of granting an erroneous promotion to the applicant. Further, he points out that when minor penalties were inflicted on the applicant, the rules did not require that a regular departmental enquiry need be held, as long as the delinquent was given a reasonable opportunity to make a representation. Such was accorded to the applicant. He had appealed against the penalty and that appeal too was considered and rejected. Therefore, so far as the minor penalties were concerned the applicant could now have no grievance.

Then he further argues that in the cancellation of the promotion erroneously granted to the applicant there was no element of penalty involved. He agrees that ordinarily a minor penalty should not, by itself, stand in the way of promotion. But, there is nothing in the rules which would prevent the Departmental Promotion Committee from taking into account the minor penalties against a Railway Official for the purposes of determining his suitability for promotion. In the present case this was what was done and therefore, there is nothing wrong with the cancellation of the promotion.

4. As for the second point also Smt. Shinde argues

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that the restructuring scheme of the Railway which has been reproduced in the relevant extracts in annexures to the application permits that a grade promotion shall be granted without the person concerned having to undergo fresh qualifying tests. As the applicant had already been so promoted in 1983 and his cancellation of promotion was irregular, he should have been considered for promotion under restructuring and he should have been promoted without having to take a written test. To this the reply of the Respondents and the contentions of Mr. Chandurkar the learned advocate for the respondents is that this restructuring scheme envisages a certain number of posts to be upgraded. It is true that promotions to such upgraded posts can be granted on the basis of seniority-cum-suitability without the regular procedure so far as seniormost persons are concerned, and so far as their promotions as a result of restructuring is concerned, to the limited extent of the posts available. He then points out that for the remaining persons a written test is a must. Further he contends that the post of Fitter Chargeman 'A' is undoubtedly a selection post and the applicant could not have gone to that selection post without undertaking a test. He further emphatically states that so far as the promotion of the applicant as Assistant ^{Mechanical} Foreman is concerned this would be definitely be a promotion involving two grades from Fitter Chargeman 'B' and such two promotions from one grade to another cannot possibly be automatic under restructuring scheme and therefore, it would be incumbent upon the applicant to take the selection test. The applicant failed to take such selection test though he was called upon to do so, and, therefore, he has not been considered for promotion as Assistant Mechanical

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Foreman.

5. We have heard both the applicant's advocate and the Respondents' advocate and we have perused the records. The references given by the learned advocate for the applicant are to clarification given by the Railway Board under rule.4 regarding suspension and rule 6 regarding "penalties and disciplinary authorities" as given in the publication of the Government of India; Ministry of Railways August, 1976 edition. The first viz. clarification 4.2 (vi) under rule.4 does not apply to this case. The second ^{is} discussed both by the learned Counsel for the Respondents and by us in the Judgment. We find that so far as the first point about cancellation of promotion is concerned there cannot be any grievance as such. The very rules cited by Smt. Shinde show that ordinarily minor penalties should not stand in the way of promotion. But we accept the point of view of the Respondents that it is for the Departmental Promotion Committee (DPC) to decide whether such minor penalties should be taken into account. In the present case since the applicant was undergoing two minor penalties, one after the other, running totally for a period of one year and a half, if the D.P.C. took that into consideration we cannot find any fault with the D.P.C. findings. Therefore, if the applicant had been granted a promotion without the fact of his minor penalty being brought on record or becoming known to the authorities which issued him the promotion order, then as soon as such fact came to light, even in the case of an ad-hoc promotion, it was appropriate for the Respondents to cancel the promotion by annexure V

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to the application. In terms of the promotion order itself, it was liable to be cancelled at any time without notice (Annexure.I).

6. On the second point we find that the restructuring orders themselves (annexure VI to the application) make it very clear that the procedure of promoting persons to selection posts or the distinction between the selection and non-selection posts has not been abolished by the restructuring orders. What has been done is that one grade promotion can be granted even to a selection post provided that the person is senior and suitable. In other words an unsuitable person can be omitted from such promotion. Secondly, the orders themselves say that if promotion involves jumping of one grade and going to a higher grade then the process of Selection will necessarily come into play and such promotion will not be automatic. In the light of these, we do not see how the applicant can claim that he should have been promoted Assistant Mechanical Foreman without asking him to undergo the selection process viz. written test and the viva voce to which he had been invited and which he had been assiduously avoiding to take. In the circumstances, we do not see much substance in the second contention about being compelled against the rules to take the written test and the viva voce for selection purposes.

7. Last of all, we would consider the applicant's suggestion that he has suffered financial loss because of the cancellation of his promotion and the withholding of his increments. We find that his increment had fallen due on 30.6.1981. The penalty imposing the first withholding of increment was to be effective from

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1.5.1982 therefore, he could not get an increment on the due date, but this was postponed by 6 months. The second penalty postponed the increment further by one year. Therefore he became due to be considered even for the release of his increment on 30.10.1983 or 1.11.1983. We also find from the records and from the Respondents' contention that the respondents have granted an ad-hoc promotion to applicant on 1.7.83 i.e. slightly in advance of the end of his penalty period. Further he was promoted on 17.10.1984 again on an ad-hoc basis pending filling up of vacancies by the Chief Personnel (M) Officer, Bombay. But on decentralisation of the cadre the applicant's promotion was regularised w.e.f.1.1.1984 with all benefits of fixation of pay etc. It is thus clear that only the penalties earned by the applicant had rightly stood in the way of his getting his increments as also his being considered for grade promotion. In the circumstances, we do not find any reason to interfere with the action taken by the Respondents. If the applicant desires a promotion he will have to undergo the appropriate selection process.

8. Considering all these circumstances we feel that the application deserves to be dismissed. We therefore, pass the following orders.

ORDER

1. The application is dismissed.

2. In the circumstances of the case, the parties to bear their own costs.

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

VICE - CHAIRMAN

N.G.Rajadhyaksha
(N.G.RAJADHYAKSHA)
MEMBER(A).