

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 146/89

Transfer Application No:

DATE OF DECISION: 7.2.95

Smt. Pratibha A. Jalgaonkar Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri V.Narayanan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

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

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

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 146/89

Smt. Pratibha A. Jalgaonkar

... Applicant.

V/s.

Union of India through
The General Manager,
Western Railway,
Churchgate, Bombay.

The Chief Signal &
Telecommunication Engineer,
Western Railway,
Churchgate, Bombay.

Shri Kamlesh Panwar
Sr. Draftsman,
Chief Singnal Telecommunication
Engineer, Churchgate, Bombay.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri D.V.Gangal, counsel
for the applicant.

Shri V.Narayanan, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 7.2.95

(Per Shri M.R. Kolhatkar, Member (A))

The applicant was appointed on 5.3.1982 as Tracer in Drawing office of the Chief Signal and Western Railway Telecommunications Engineer. In terms of instructions contained in Railway Board's letter No. E(NG)III-78 RRI/3 dated 20.7.78 the posts of Sr. Draftsman, scale of Rs. 425 -700 are required to be filled in the following manner.

- i) 50% by direct recruitment of Diploma holders in Mechanical/Electrical/Signal/Telecom. Engineering.
- ii) 25% by promotion after selection from Asstt. D/man.
- iii) 25% from amongst Tracers and Asstt. D/men who are matriculates, who are not above 45 years of age and who have put in 3 years service as Tracer.

It is seen from the circular of Western Railway dated 12.9.86 that there were in all 12 vacancies of Senior D'man of which 6 were to be filled by Direct recruitment, 3 by promotion after selection from Asstt. D'man and 3 by promotion after selection from Tracers and Asstt. D'man who are matriculates and are not above 45 years of age. In the selection held in May 1987, the selection board selected the applicant against the quota of Asstt. D'man/ Tracer. Vice memorandum dated 4.6.87, applicant's name was shown after the name of W.M. Farreira and P.K. Sawant at Serial No.3 against the SC quota. By a separate order S.B. Vanmali (SC) was selected against the SC quota against the category of Asstt. D'man and appointment was made thereafter. The applicant was however not appointed as Sr. D'man. The representation of the applicant was negatived and she was advised to appear for fresh selection on 6.1.89. She refused to appear for the selection on the ground that she was empanelled earlier and entitled to be appointed on the strength of the panel which is valid for two years i.e. upto 27.5.89. The applicant has therefore filed this O.A. in which the relief claimed is that she should be promoted from 5.3.89 as Sr.D'man and given all consequential benefits and also to hold and declare that the promotion of Kamlesh Panwar, ^{and} ~~and~~ ^{is} ~~not~~ ^{entitled} is illegal and that the applicant is ~~alternatively~~ entitled to be promoted as Senior D'man with effect from 4.6.87 by down grading the said post.

2. Respondents have stated in their reply that in view of CAT's interim orders dated 24.4.87, the applicant cannot be promoted as Sr. D'man as it would amount to promotion of SC candidates in excess of 15% quota fixed for them. Copy of the interim relief order was enclosed by the respondents. This interim relief has been passed in the context of J.C. Mallik case by which the Railways were required to follow the ratio in that case, that any appointment of SC/ST should be made to the

extent of 15/7%. In the present situation S.B.Vanmali has been holding the post of Sr.D'man reserved for SC against 25% Asstt. D'man quota. Kamlesh Panwar has been holding the other post of Sr. D'man against the direct recruit quota. Kamlesh Panwar was selected as an apprentice with effect from 10.8.87. The applicant has under the circumstances challenged the appointment of Kamlesh Panwar.

3. The applicant has annexed (Annexure 'K') copy of the Audit inspection report which states that the circular dated 14.1.88 which states that prescribed period of training for Sr.D'man is one year in the context of the case of Kamlesh Panwar is irregular.

4. At the argument stage the learned counsel for the applicant produced before us copy of the Railway Board circular dated 19.2.87 referred to in Audit Inspection Report which shows that the training period of Draftsmen 'B' in Mech/Elec. and S & T Deptts. Diploma holders is two years. The learned counsel for the respondents was not able to show us any circular consequent to 1987 circular issued by the Railway Board which is contrary there to. The learned counsel for the respondents states that in 1964 the training period was fixed as one year. The clarification of the Railway Board is awaited. One limb of the argument of the applicant is that to the extent of the Railway Board Circular dated 19.2.87 which is required to be followed by Western Railway which cannot issue any order contrary to and inconsistent with that circular, Kamlesh Panwar cannot complete his training till 10.8.89. Even assuming that the applicant has become entitled to be considered for promotion only after completion of two years service as Asstt. Draftsman, even then on 5.3.89 she was entitled to be appointed as Sr. D'man in spite of the interim order of the Tribunal, following Malik's case.

The second limb of the argument is however that apart from this dispute of the training period in respect of Kamlesh Panwar, the applicant is entitled to be considered for appointment as Sr.D'man immediately after the announcement of the panel along with Shri S.B.Vanmali who was appointed as Sr. D'man in terms of the memorandum dated 4.6.87. The respondents obviously cannot contend that the applicant was to be considered in Asstt. D'man quota, against which quota Vanmali has been appointed. The applicant was required to be appointed against the quota of Tracers for which the minimum length of service required is three years and admittedly the applicant had completed three years of service as tracer on 5.6.87. The learned counsel for the respondents was not able to show us any rule under which those who have been considered against Tracers/Asstt. D'man quota, there is requirement of putting in minimum ^{two} years service as Asstt. D'man. We are therefore, required to go by the rules quoted in Memo of 12.9.86 which specifically states that 25% posts are to be filled from amongst Tracers and Asstt. D'man who are matriculates, who are not above 45 years of age and who have put in 3 years service as Tracer.

5. We consider that the action of the respondents in considering Kamlesh Panwar who had been treated as having completed the training on 10.8.88 and on that basis appointed as Sr.D'man to the applicant was illegal. We however do not purpose to go into the matter, Since, in our view, we are able to hold that the applicant is entitled to be appointed as Sr.D'man immediately after the empanelment, which panel was announced on 4.6.87.

6. We therefore allow the application and dispose of the same by passing the following order.

ORDER

O.A. is allowed. The respondents are directed to promote the applicant as Sr. D'man with effect from 4.6.87^{and} on this basis give her all consequential benefits including pay fixation and promotion to further posts. There will be no order as to cost.

M.R.Kolhatkar

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(M.R.Kolhatkar)
Member (A)

B.S.Hegde

(B.S. Hegde)
Member (J)

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