

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 379/1996

Date of Decision: 19.10.2001

Shri Kishore L. Khatri & 6 Ors.

Applicants

Shri G.L. Walia.

Advocate for Applicants

Versus

Union of India & another

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)  
HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X
- (3) Library

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(SMT. SHANTA SHASTRY)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

O.A. NO.379/1996

Friday, the 19th day of October, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)  
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

1. Kishore L. Khatri.
2. Kritya Nand Pandey.
3. Prashant Chunekar.
4. Ashok Kumar Meena.
5. K. Danny George.
6. Pramod Nandeshwar.
7. Ajay Sankhla. .. Applicants

All the above at present working as Chief Booking Clerks Bombay Division of Westery Railway.

By Advocate Shri G.S. Walia.

Versus

1. Union of India, through  
General manager,  
Western Railway,  
Head Quarters Office,  
Churchgate, Bombay-400 020.
2. Divisional Railway Manager,  
Western Railway, Bombay Division,  
Bombay Central,  
Bombay-400 008. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The applicants in this OA had applied in pursuance of employment notice No.6/89 dated 23.9.1989 issued by the Railway Recruitment Board, Bombay for filling the post of Commercial/Traffic Apprentices in the pay/scale of

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the pay scale of Rs.1600-2660 (RPS). It was stipulated in the notice that there would a training period of two years before permanent absorption. It was also indicated that the vacancies pertained to Headquarters of Bombay Division, Western Railway and Headquarters Bombay, Bhusawal, Nagpur and Sholapur Divisions of Central Railway and the selected candidates were liable to be posted anywhere in these Railways including Railway Projects. The applicants all being successful were selected and sent for training. They completed their training on 20.4.1994. Thereafter, instead of absorbing them as Commercial Inspectors, they were absorbed as Chief Booking Clerks vide order dated 11.8.1994 in the pay scale of Rs.1600-2660. The applicants represented against their non absorption as Commercial Inspectors (CMI) first on 15.3.1995 and thereafter followed up with further representations of 20.6.1995, 02.11.1995 and 08.11.1995. The respondents vide their letter dated 23.4.1996 informed one of the applicants i.e. Applicant No.1 that his request for absorption in the CMI cadre was not possible.

2. The applicants being therefore, aggrieved have prayed to be absorbed as Commercial Inspectors with all consequential benefits of seniority, pay fixation, increments, arrears etc.

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3. The contention of the applicants is that they were mainly recruited for the post of Commercial Inspectors. At the time the selection was announced there were vacancies available. Not only that but the Chief Commercial Manager had taken a decision that the applicants should be posted on other divisions as per their options and rest of the applicants in other categories in Bombay Division. It had even been suggested that some of the posts of Senior Commercial Inspectors can be down graded to accommodate at least seven of the candidates selected. However, the respondents did not do so and simply absorbed the applicants in the post of Chief Booking Clerks. Their non-absorption is malafide and arbitrary. The applicants have also cited that some other Assistant Commercial Inspectors were given posting as Commercial Inspectors by way of promotion, but the applicants were denied the posting as Commercial Inspectors. According to the channel of promotion and policy declared by the Railway Board, the applicants are required to be posted as CMIs only. The respondents cannot take a unilateral decision to post all the applicants as Chief Booking Clerks. It is not necessary to have two years training to be absorbed in cadre other than that of CMI. Inter changing is possible only within the Commercial category and not with the Traffic category as the training is not imparted of operating branch.

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4. The respondents in their written statement submit that except applicant No.6, the remaining applicants were absorbed as Chief Booking Clerks in the same pay scale as that of the CMI. The applicants joined without any objection or protest. They are now estopped from raising this grievance after having taken the appointment. The representation made by the applicants on 20.6.1995 and thereafter, were duly considered and rejected on merits.

5. The learned counsel for the respondents submits that it was not necessary to absorb all the candidates on the completion of two years of training. Merely because they were selected, they do not have a right for being posted as CMIs.

6. According to the policy as given in the Railway Board's letter dated 15.5.1987 only 15% of the posts in the pay scale of Rs.1600-2660 (RPS) are to be filled in the category of Commercial Inspectors. The cadre of Commercial Inspectors in the aforesaid pay scale consists of seven posts. Therefore, 15% of these posts come to only 1.05, at the most one Commercial Apprentice could have been posted as Commercial Inspector. Further, as per para 9 (nine) of the same letter, it has been made clear that Commercial Apprentices will be recruited also for the post of Chief Booking/Goods/Luggage Clerks in the same pay scale of Rs.1600-2660. The respondents submit that at the time

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of absorption of the applicants there were no vacancies of Commercial Inspector and therefore, the applicants were absorbed as Chief Booking Clerks strictly in accordance with the Railway Board letter dated 15.5.1987 as well as the letter dated 03.8.1994. There was nothing malafide or wrong in absorbing the applicants as Chief Booking Clerks. No post can be upgraded or down graded without the sanction of the competent authority and considering that only 15% of the posts can be made available, it would not have been in the administrative interest to upgrade or down grade posts. As far as the promotion of five Assistant Commercial Inspectors as Commercial Inspectors is concerned, they were promoted in restructuring vide letter dated 31.5.1993. The applicants are direct recruits. The respondents have also stated in their reply to the applicant No.1 on 23.4.1996 that it was also observed that number of posts in the cadre of CMI manned by direct recruits were in excess of the percentage laid down. On the other hand, the engagement of direct recruitment in the cadre of Booking Clerks have been virtually negligible resulting in poor representation. Considering this aspect it was decided to restore the balance of direct recruits and to ensure that the rankers were not deprived of opportunity for promotion as CMI and therefore also the direct recruits were allotted the category of Booking Clerks. The respondents also ruled out change over to the category of CMI after having joined as Chief Booking Clerks.

14

7. The respondents have also raised the point of non-joinder of parties. The learned counsel for the respondents further urges that the applicant No.1 did not challenge the reply given to him vide letter dated 23.6.1996 by which he was informed about there being no possibility of his being posted as Commercial Inspector.

8. The learned counsel for the applicants reiterated that the applicants having applied in pursuance of the employment notice had legitimate expectations for being absorbed as CMI. During their period of training, about 10 Assistant Commercial Inspectors were promoted on adhoc basis ignoring the claim of the applicants. Absorption as Chief Booking Clerks will completely diminish and destroy the career of the applicants as they will be totally debarred from reaching the highest scale of Rs.2375-3500 which would otherwise be available to them if they had been absorbed as Commercial Inspectors. In the past the respondents had always followed the policy of absorbing the Commercial Apprentices through direct recruitment as Commercial Inspectors only. The applicants have submitted a copy of the notings in the Railway file in this context, wherein it had been proposed that Shri Kishore Khatri and Shri Shakti Bali, Commercial Apprentices had met the Chief Commercial Manager and had said that they wanted to be posted as CMIs even by diversions to other than Bombay. There were four

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vacancies of CMIs and it would be better if options were asked for posting the CMIs on diversion other than Bombay and it can be specified that only four vacancies existed and rest would be absorbed as CBC/CLC/CGC on BCT diversions and the posting of CMIs would be done as per seniority. This action would go to show that there were vacancies. According to the applicants, the action of the respondents is malafide and arbitrary, at least few of the applicants could have been absorbed as Commercial Inspectors. But the respondents are not ready to do so.

9. The learned counsel for the respondents expressed surprise how the applicants could lay their hands on the internal notings of the respondents. The respondents, however, brushed aside this stating mere notings in the file do not give right to the applicants. The respondents rely on the judgment in the case of Puranjit Singh Vs. Union Territory of Chandigarh (1995 SCT 65).

10. We have heard the learned counsel for the applicants as well as the respondents and have given our careful consideration to the arguments advanced. We find that in terms of the Railway Board's letter dated 15.5.1987 that 15% of the posts of CMIs in the pay scale of Rs.1600-2660 were earmarked for direct recruitment through the Railway Recruitment Board and 10% by Limited Departmental Competitive Examination from amongst serving graduates in Commercial Departments other than

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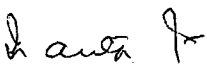
Ministerial. The applicants were duly selected and in normal course they would have been absorbed as Commercial Inspectors. However, the respondents have pointed out the difficulty in absorbing the applicants as Commercial Inspectors, because there was already excess of the direct recruitment quota of 15% over the years, whereas the direct recruitment to the CBC quota was negligible. The respondents, considered it necessary to restore the balance. Further, there were no vacancies at the time the applicants have completed the training. The applicants also accepted the posting as Chief Booking Clerks without any ~~ad~~<sup>h</sup> mur. It is not that the applicants were monetarily affected, they were given the same pay scale as of the Commercial Inspectors. The applicants had argued that there were vacancies available, but the adhoc promotees from the category of Assistant Commercial Inspectors were, adjusted against those vacancies by promotion and also if the respondents wanted they could certainly have down graded some of the posts of Senior Commercial Inspectors to accommodate the applicants. Prior to this the respondents had always absorbed the direct recruits as CMIs. The deviation from the laid down practice has to be called as arbitrary. We have perused the reply given by the respondents vide their letter dated 23.4.1996 addressed to Applicant No.1. This letter is self explanatory and very clear regarding the policy and approach of the respondents. There is no malafide or arbitrariness in this. This has been done after careful


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consideration of the then existing situation, there was no ~~debar~~ in absorbing the applicants as Chief Booking Clerks, as on a query it was pointed out that the training is common to all whether Chief Booking Clerks or the Commercial Inspectors. Regarding non-joinder of parties, the applicants have not sought specific relief against the promotees but have only challenged the decision in normal practice of posting Commercial Apprentices as CMIs, therefore, the same is allowed.

11. Though the applicants have referred to the notings in the Railway file, we refrain from taking note of the same. As rightly pointed by the respondents, they are only by way of proposals and not by way of decision. Also the applicants have produced it at the time of hearing and how they have obtained inter departmental notings has not been explained.

12. In our considered view, therefore, the action of the respondents in absorbing the applicants in the post of Chief Booking Clerks does not call for any interference by this Tribunal. In the facts and circumstances of the case, the OA is dismissed. No costs.

  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

  
(SMT. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)