

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

OA No.98/1996

Date of decision 27-7-2001

Shri P.B.Ninawe and Ors. Applicants

Sh. V. S. Masurkar with Shri
K. R. Yelwe Advocate for the
applicants

VERSUS

Union of India and Ors. Respondents

Shri S.C.Dhawan ... 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?
3. Library.

By
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

No

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH MUMBAI

OA No.98/1996

Mumbai this the 27th day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt. Shanta Shastry, Member (A)

1. Shri P.B. Ninawe,
6/5, Central Railway Officers,
Flat, Opposite Hindu Colony,
Dadar (E), Bombay-400014

2. Shri A.S. Ramteke,
E-24, Berkley Place, Central
Railway Officer Colony,
Byculia Bombay

.. Applicants

(By Advocate Shri V.S. Masurkar with
Shri K.R. Yelwe)

VERSUS

1. The Union of India through the
Secretary, Railway Board, Rail
Bhawan, New Delhi.

2. The General Manager,
Central Railway, Bombay V.T.

.. Respondents

(By Advocate Shri S.C. Dhawan)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

This application has been filed by two applicants who are direct recruit officers of Indian Railway Stores Service (IRSS) belonging to a Group 'A' service. They are aggrieved by certain Notifications issued by the respondents appointing Group 'B' officers to Group 'A' en bloc by promotion and also assigning 5 years antedated seniority to them (Annexures A 1 to A 8 and Annexure B).

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2. The applicants were recruited as direct recruits to IRSS in accordance with the IRSS Recruitment Rules (RRs), 1979, as amended from time to time. These Rules provide, inter-alia, that 60% Group 'A' vacancies are to be filled by direct recruitment through competitive examination conducted by UPSC and (ii) 40% Group 'A' vacancies shall be filled by group 'B' Departmental Officers. According to the applicants, they were appointed as direct recruits (DR) in the examination held in 1986 and 1988 with effect from 16.5.1988 and 22.1.1990, respectively. They have submitted that the respondents by various Notifications annexed at Annexure A-1 to Annexure A-6 have promoted 26 group 'B' officers to group 'A' in the years 1992 and 1993 w.e.f. 3.6.1992, although it is noted that by annexure A-6 Notification 35 group 'B' officers have been promoted w.e.f. 19.1.1994 (not 3.6.1992 as stated by the applicants) and subsequently 39 more group 'B' officers were promoted to Group 'A' in the years 1994 and 1995 w.e.f. 19.1.1994 which should include annexure A-6 in addition to Annexures A-7 and A-8. The main contention of Shri V.S. Masurkar, learned counsel is that these impugned Notifications/promotions have been made in gross violation of the RRs wherein the promotees have also been given five years antedated seniority by the respondents. However, during the hearing, learned counsel has submitted that the five years granted to the promotee officers in terms of the

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principles adopted by the respondents in pursuance of their letter dated 30.11.1976 is not pressed in the OA. However, he has emphasized that the respondents' action in promoting the group 'B' officers to group 'A' is in violation of the relevant provisions of the RRs as it is in excess of the 40% quota.

3. The above facts and the submissions made by the learned counsel have been controverted by the respondents in their reply and we have also heard Shri S.C.Dhawan, learned counsel.

4. The respondents have taken a preliminary objection that the application suffers from non-joinder of necessary parties as all the promotees, who according to the applicants have been promoted in excess of the provisions of the Rules who would be adversely affected have not been impleaded. On the other hand, learned counsel for the applicants, has submitted that the applicants are only challenging the principle of seniority adopted by the respondents in respect of the promotees who are in excess of the 40% quota as provided in the RRs. He has relied on the judgement of the Hon'ble Supreme Court in V.P.Shrivastava and Ors. Vs.State of M.P. and Ors. (1996 SCC(L&S) 670) in which the earlier judgement of the Court in the case of GM (South), Central Rly. Vs. A.V.R. Sidhanti (1974(3)SCR 207) and A.Janardhana Vs. UOI (1983(3) SCC 60)

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have been followed. In the facts and circumstances of the case and following these judgements of the Supreme Court, we find force in the submissions made by the learned counsel for the applicants. In this view of the matter, the preliminary objection taken by the respondents for non joinder of necessary parties is rejected.

5. This OA has been filed on 18.1.1996. Therefore, taking into account the particular facts and circumstances of the case, including the promotion order dated 14.9.1995, the plea of limitation taken by the respondents is rejected.

6. On the merits of the case, the respondents have also referred to IRSS/Recruitment Rules. They have submitted that the Notifications appointing officers to group 'A' junior scale have been issued after the competent authority has accepted the recommendations of the DPC. They have also submitted that where a DPC could not be held in a particular year ~~but~~ the vacancies have been taken for the particular years. According to them, the impugned Notifications have been passed in accordance with the Rules and relevant instructions relating to the procedure for making promotion. In Para 6(12) of the reply, they have submitted that there has been no excess appointments/promotions of Group 'B' Officers to group 'A' (Junior scale) as alleged by the applicants and, therefore, they have

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submitted that they are not entitled to the reliefs as prayed for by them in Para 8(2) of the OA. The respondents have also submitted a chart showing years-wise vacancies which they have filled up and copy of the same was also given to Shri K.R.Yelwe, learned counsel for the applicants, (copy placed on record). Shri S.C. Dhawan, learned counsel has submitted that in the circumstances of the case, as there has been no excess promotions as alleged by the applicants, the OA may be dismissed. In the reply, the respondents have submitted that with regard to the 26 promotees referred to by the applicants, two had already retired and one had expired. However, the contention of the learned counsel for the applicants is that there has been excess promotion of 8 officers, which has not been referred to or explained by the respondents.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The contention of the applicants that the respondents have, in violation of the provisions of RRs, promoted officers in excess of their quota is essentially a question of fact. It is noted that while the applicants have submitted that in the promotion orders relating to 26 group 'B' officers in the years 1992 and 1993 there were

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excess promotions of 8 officers, in the reply filed by the respondents they do not specifically refute these allegations. No doubt the respondents have stated that out of these 26 officers, two had already retired and one had expired and therefore, the seniority position would concern 23 officers only. However, they do not categorically refute the allegations made by the applicants in their table at Para 4.2 that there were excess promotions of 26 officers in violation of the quota prescribed in the RRs. Similarly, for the year 1994 the applicants have stated that there was excess promotion of 25 officers. While these allegations have been denied by the respondents but at the same time they have also not stated the correct factual position. The chart submitted by the learned counsel for the respondents showing year wise vacancies does not also clarify the factual position. However, it is also relevant to note that the applicants themselves have not filed any rejoinder to the reply filed by the respondents as far back as 15.11.1994.

9. It is the case of both the parties that under the RRs as amended from time to time, recruitment to IRSS is made by 60% competitive examination held by the UPSC and 40 % by promotion of eligible group 'B' officers from the Department. No doubt, these rules have to be strictly complied with by the respondents while making promotions

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from group 'B' officers to group 'A'. The main issue raised in this application is whether the respondents have or have not made promotions in the 40% quota from group 'B' officers to group 'A' in excess of the provisions contained in the RRs as submitted by the applicants. This is a question of fact and it was for the respondents to have brought on record the relevant documents to show the vacancy position for each year in question which has not been done. At the same time the applicants have also not filed any rejoinder or documents to substantiate their averments that the promotions of group 'B' officers were in excess of their quota for the earlier years.

9. In the above facts and circumstances, the OA is disposed of with the following directions:—

The applicants may submit a detail representation with supporting documents, if possible, to substantiate their claim that the promotion of group 'B' officers to group 'A' in the aforesaid period has been made in excess of the provisions of RRs. This shall be done within two weeks from the date of receipt of a copy of this order. Respondents shall then re-examine the issues to ensure that the quota for promotion prescribed in the RRs are strictly complied with. This shall be done within two months from the date of the receipt of the representation and they shall pass a detailed, reasoned and speaking order with intimation to the applicants. No order as to costs.

Shanta
(Smt. Shanta Shastry)
Member(A)

Lakshmi
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)