

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 278 /1996

Date of Decision: 10 January 1997

S K Kapoor

Petitioner/s

Mr. P.G. Zare

Advocate for the
Petitioner/s

V/s.

UOI & ors.

Respondent/s

Mr. S C Dhawan

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri P.P. Srivastava, Member(A)

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

[Signature]
MEMBER(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001.

O.A.No. 278 OF 1996

DATED : 19th JANUARY, 1997

Coram : Hon. Shri B S Hegde, Member(J)
Hon. Shri P P Srivastava, Member(A)

Sushil Kumar Kapoor
Senior Engineer
(Construction), Central Rly.,
Mumbai
Flat No.D-6 Central Railway
Officers' Quarters,
Dada Saheb Phalke Road,
Dadar (East),
Mumbai 400 014
(By Adv. Mr. P G Zare)

..Applicant

V/s.

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

2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi

(By Mr. S C Dhawan, Counsel)

..Respondents

ORDER
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[Per: B S Hegde, Member(J)]

1. Heard Mr. Zare, counsel for the applicant and Mr. S C Dhawan, counsel for the respondents, and perused the record.

2. In this O.A. applicant is challenging the selection made by the Railway Board vide its order dated 19.12.93 promoting certain Group B officers in Civil Engineering Department to the Junior Time Scale of the Indian Railway Service of Engineers (IRES) with effect from 24.12.92 on



the basis of the UPSC recommendations. Applicant is a Civil Engineer, a Group B employee, of the Central Railway and his main grievance is that the selection made by the DPC requires to be quashed as his name is not included in the selection list.

2. The impugned order was passed as back as in 1993 whereas the applicant has filed the O.A. in February 1996 after a lapse of more than three years. Miscellaneous Petition for condonation of delay has been filed by the applicant, but on perusal of the Miscellaneous Petition we find no ground is made out by the applicant for condonation of delay in filing this O.A.

3. In the absence of any cogent and valid explanation offered by the applicant for delay in filing the present O.A. the application is barred by limitation. However, we are not inclined to dismiss the O.A. on the ground delay and the O.A. is being disposed of on merits at the admission stage itself. We therefore admit the O.A. and proceed to decide the O.A. on merits.

4. On perusal of the O.A. we find that pursuant to the selection list published by the respondents the applicant made representation as back as on 2.11.93 and the respondents had rejected the vide letter dated 10.12.93/4.1.94 stating that the applicant has been

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considered by the DPC convened by the UPSC for absorption into Group 'A' in IRES but has not recommended for such induction and that when the selection is made on merit supersession is not an uncommon feature.

5. The Ld. Counsel for the respondents contended that the applicant ought to have filed the O.A. within six months of the rejection which he did not do and he has not disclosed any cause of action. It is an admitted position that appointment to junior scale is made by direct recruitment through open competitive examination conducted by the UPSC or by promotion of Group 'B' officers of the Civil Engineering Department of the Railways of not more than 40% of the vacancies shall be filled by departmental promotion. Ld. Counsel for respondents submits that the promotion from Group 'B' to fill up the promotion quota vacancies in Junior Scale is done through selection conducted by a DPC convened by the UPSC. The promotion is done based on the recommendations of the DPC. It is not the case of the applicant that he has not been considered against the promotion quota vacancies during the years 1989, 1990 and 1991 along with other eligible officers of the Central Railway. The applicant was not selected due to comparatively low gradation assigned to him by the DPC. The alleged juniors who have been selected were either assessed as better than the applicant or have been selected against "reserved" quota vacancies and the selection is based on merit.

162

6. The case of the applicant is considered by the DPC purely based on his self assessment and not based on any comparative assessment by the competent authority. The main ground of attack is that he has not been given opportunity to make his representation and noninclusion of his name in the panel is not justified. As stated earlier, against the final selection he made representation which has been considered by the competent authority and the same was rejected. Therefore, it cannot be said that he has not been given reasonable opportunity to make his views clear.

7. Admittedly if the selection is based on merit the posts are classed as "Selection Grade Posts" which itself suggests that promotion to these posts is not automatic being made only the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. It is a well established rule that promotion to selection grade or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available. Courts have held that whenever promotion to a higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is

not sufficient that in his confidential reports it is recorded that his services are satisfactory. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Therefore it is the duty of the management to consider the case of the officer concerned on the basis of relevant material.

8. In the light of above we do not find any material for our interference in the DPC selection and quahsing the alleged impugned order dated 19.12.93 as the applicant has not made out any case. Accordingly we ADMIT the O.A. and dismiss the same at the admission stage itself as devoid of merit with no order as to costs.



(P.P.Srivastava)

Member(A)



(B.S.Hegde)

Member(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, FRESCOT RD, 4TH FLR,
MUMBAI - 400 001.

REVIEW APPLICATION NO.24/97 in
ORIGINAL APPLICATION NO.278/96.

DATED THIS 12th DAY OF MARCH, 1997.

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

Hon'ble Shri P.P.Srivastava, Member (A).

Sushil Kumar Kapoor,
Senior Engineer(Construction),
Central Rly.,
Mumbai.

... Applicant.

Vs.

Union of India,
Through the Chairman,
Railway Board,
Rail Bhavan,
New Delhi.

... Respondent.

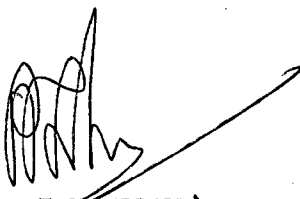
{ TRIBUNAL'S ORDER BY CIRCULATION }

This Review application is filed by applicant seeking review of judgement dated 10/1/97. In the OA, the applicant has challenged the selection made by the Railway Board vide its order dated 19/12/93 promoting certain Group B Officers in Civil Engineering Department to the Junior Time scale on the basis of the UPSC recommendations. The applicants' contention is that though he is a Civil Engineer, a Group B Employee, he has not been selected and the selection held by the DPC requires to be quashed. In the judgement it is said that promotion to selection grade or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be considered except where the merit of the officers is judged to be equal and no other criterion is, therefore, available. Accordingly, the OA was dismissed at the admission stage itself.

[Signature]

On perusal of the review petition, we do not find that any new points have been brought to our notice for reconsideration, on the other hand he is trying to re-argue the case on the very same grounds. The Apex Court has held that once an order has been passed by this Court, review thereof must be subject to the rules and cannot be lightly entertained. A review of a judgement is a serious step and reluctant resort, to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier, by judicial fallibility.

In view of the ratio laid down by the Apex Court, we do not find any merit in the Review petition and the same is dismissed, ^{by} ~~by circulation.~~


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

abp.