

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.279/96

DATE OF DECISION:

Tuesday, this the 18th Day of July 2000

Shri Amarjit Singh Applicant.

(By Shri P.G.Zare, Advocate)

Versus

Shri Union of India & Ors. , Respondents

(By Shri. M.I. Sethna Sr. Advocate with Shri S.C.Dhawan).

CORAM


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

Hon'ble Shri B.N.Bahadur, 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.


(B.S. Jai Parameshwar)
Member (J)

sjt

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.279/96

DATED: TUESDAY, this the 18TH DAY OF JULY, 2000.

CORAM: HON'BLE SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri Amarjit Singh,
S/o Shri Surjan Singh,
Working as Professor/Track-1
at Indian Railways, Institute of
Civil Engineering, Pune,
R/o. Railway Block No. RB V-I, RB Mill Road,
Pune 411 001. Applicant
(Applicant represented by Shri P.G.Zare, Advocate)

vs.

1. The Union of India
through Chairman, Railway Board
Ministry of Railways, Rail Bhavan,
New Delhi.

2. The Secretary, Railway Board,
Ministry of Railway, Rail Bhavan,
New Delhi. Respondents.
(By Shri M.I.Sethna, Sr.Advocate with Shri S.C.Dhawan)

O R D E R (ORAL)

[Per: B.S. Jai Parameshwar, Member (J)]

Heard Shri P.G. Zare, Learned Counsel for the Applicant
and Shri M.I. Sethna learned Counsel for the Respondents.

2. The Applicant is at present working as Professor/track-1
as Junior Administrative Scale of Rs. 3700-5000 (RPS). On
28.7.1994 the Ministry of Railways conveyed through telegraphic
message to all the GMs informing that the JAG Officers mentioned
therein were to be placed in the selectin Grade w.e.f. 1.7.1993.
In the said list of Officers name of the Applicant is shown at
Sr.No.32. Thereafter on 11.10.1994 he submitted a note to the
Director to fix his pay in the selection time scale. He was then
informed that a message was received not to implement the
promotion of the applicant to the selection grade. The

...2/-



Applicant submits that as a result of this he has not been given promotion to selection grade without giving any reasons.

3. Hence he has filed this application for the following reliefs.

i) To hold and declare the contents of the letter vide Exhibit III in not promoting the Applicant to Selection Grade, as illegal, bad in law, arbitrary, capricious, null and void and of no consequences.

ii) To call the records of the Selection in question and after going through legality or otherwise thereof, they will be pleased to quash and set aside the impugned order of denial of promotion to the Applicant vide Exhibit III, and

iii) To constrain the Respondents in implementing the promotion order which was not implemented without assigning any valid and reasonable reasons.

4. The respondents have filed their reply. Their submission is that even before the communication dated 27.7.1994 was sent by the Ministry of Railways, the Applicant was issued with a charge memo dated 1.10.1993. Further they rely upon the Office Memorandum dated 12.1.1988, to contend that even though the applicant was placed in Selection grade by the message dated 28.7.1994 the same was not given effect to as the applicant was already served with the charge Memo on 1.10.1993. The applicant is fully aware of the reasons.

..3/-



5. The Learned Counsel for the Applicant during the course of arguments contended that as on 1.7.1993 he was not issued with any charge memo nor any disciplinary proceedings was pending. Hence the decision of the Ministry of Railway in placing selection grade w.e.f 1.7.1993 must be given effect to. On ^{the} other hand, the Respondents submit that the message was sent without verifying the fact of disciplinary action pending against the applicant. Further vide note dated 10.10.1994 the Director had informed the applicant that the Board had given instructions not to give selection grade to the applicant after issue of the wireless message. It is now to be considered whether as on the date of 27.7.1974 when the Ministry of Railways informed the General Managers about inclusion of certain JAG officers in the Selection grade can have the effect of the Applicant placing in the selection Grade from an earlier date. The message is dated 27.07.1994 when that is so it cannot be operated retrospectively. As per the message, though officers have to be placed in selection grade w.e.f. 1.7.1993, the same can be applied to those against whom no punishment is in force or no disciplinary action is pending.

6. Admittedly as on the date the applicant was under cloud and he was issued with a charge memo dated 1.10.1993.

7. The Hon'ble Supreme Court has clearly laid down the procedure to be followed in such cases in the case of UOI vs. Janaki Raman (AIR 1991 SC 2010). Further the instructions contained in the O.M. dated 12th January, 1988 is clear on that point. Para 7 is relevant and is reproduced hereinbelow.



...4/-

"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be consieered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is competely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

8. Therefore merely because the Ministry of Railways indicated its decision to place the applicant in the selection grade it cannot be taken as promoting the applicant to the Selection Grade when a charge memo is pending.

9. The Learned Counsel for the Applicant produced the order No. E(O) I-93/PU/2/87 dated 26.6.1997 to state that charge memo has been concluded by imposing a penalty of withdrawing one set of full rate pass due to him during the calendar year 1996-97.

10. In view of the above we do not feel it necessary to give any direction for promotion of the applicant to selection grade.

11. Hence applicant is not entitled to the reliefs sought in the O.A. The O.A. is therefore, liable to be dismissed.

12. Accordingly, O.A. is dismissed with no order as to costs.



(B.N. Bahadur)

Member (A)



B.S. Jai Parameshwar)

Member (A)

sj*