

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 136/96

DATE OF DECISION: 28/7/2000

Mrs.M.T.Patel & 11 Ors.

Applicant.

Shri R.Ramesh

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri V.S.Masurkar

-----Advocate for
Respondents.

CORAM:

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

Hon'ble Shri Govindan.S.Tampi, 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.

(GOVINDAN.S.TAMPI)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:136/96
DATED THE 28TH DAY OF JULY, 2000.

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER(J)
HON. SHRI GOVINDAN.S. TAMPI, MEMBER(A)

1. Mrs.M.T.Patel
2. Shri B.M.Patel
3. Smt.Veena S.Nag
4. Shri M.L.Waghela
5. Smt.Geeta Rathod
(All working as Head
Clerks in the
Establishment Branch
of Western Railway at
Bombay Central under
Respondent No.3).

6. Smt.Hasumati M.Parmar
7. Smt.Geeta B.Surti
8. Smt.P.R.Umarvanshi
9. Shri Ishwarbhai B Patel
(All working as Head Clerks
in the Works, Stores, Medical
& Budget (WSM B) Group at
Bombay Central on Western
Railway under Respondent
No.3).

10. Shri R.C.Patel
11. Shri Bholabhai F.
12. Shri Harilal G.
(All working as Head Clerks
in the Operating Commercial
Mechanical, General (OCMG)
Group at Bombay Central on
Western Railway under
Respondent No.3).

... Applicants.

By Advocate Shri R.Ramesh

V/s.

1. Union of India,
through the General Manager,
Western Railway, Churchgate,
Bombay - 400 020.



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2. The Chief Personnel Officer
(Administration),
Western Railway,
Churchgate,
Bombay - 400 020.

3. Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents

By Advocate Shri V.S.Masurkar

(O R D E R)

Per Shri Govindan.S.Tampi, Member(A).

OA No.136/96 has been filed by Smt.M.T.Patel and 12 Others against Union of India, Chief Personnel Officer, Western Railway and Divisional Railway Manager, Western Railway. Through this application, the applicants contest the denial of provision for reservation for Scheduled Caste/Scheduled Tribe candidates in the promotion to the restructured post of Chief Clerks in Western Railway. Out of these applicants, those at Sr.No.6 to 9 and 10 to 12 have been permitted to segregate their application and they have filed OAs 274 and 275/96. This application therefore concerns only applicants 1 to 5. All these applicants belonging to Scheduled Caste and Scheduled Tribe working as permanent employees in Railway and working as adhoc Chief Clerks or Head Clerks state that when restructuring orders were issued by Railway Board on 27/1/93 the upgrading a large number of posts, their case actually have been excluded from the consideration.

2. The Railways have not considered these restructured posts ~~are~~ those in respect of which reservation policy existed. They seek the following reliefs:-

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8.a. that the respondents be directed to recompute the vacancies falling for SC/St employees in the selections called for Chief Clerks under memoranda dated 17/1/96 (Ex.A1, 17.1.96 (Ex.B) and 24.1.96 (Ex.C), without taking into account any SC/St employee promoted to Chief Clerks grade on base seniority.

b. that the respondents be directed to fill up the vacancies of Chief Clerks arising out of restructuring orders dated 27/1/93, lying vacant till date, with the SC/ST employees eligible for the same, before calling for fresh selections;

c. that this Honourable Tribunal be pleased to hold and declare that those of the applicants who were placed in the panel for promotion as Chief Clerks under restructuring orders dated 27/1/93, cannot be subjected to a fresh selection, called under the impugned memoranda at Exhibit 'A', "B" and "C".

d. that the applicants be permitted to file this application jointly.

e. that such other and further order or orders be passed as the facts of the case may require;

f. that costs of this application be provided for.

3. The respondents contest that the posts of Chief Clerks restructured are selection posts and the reservation policy was not strictly applicable to them.

4. During the hearing of the OA before us today, it was indicated on behalf of the applicants by Shri R.Ramesh, Learned Counsel for applicant that the reliefs sought have been granted in respect of all the applicants except in Smt.Veena.S.Nag, Applicant No.3. The decision is therefore called for only in

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respect of Applicant No.3., and that this was apparently on account of the fact that some Disciplinary Proceedings have been initiated against her on a much later date. The restructured vacancies related to an earlier period and therefore there was no reason to have denied her also the benefit, she prayed. He also seeks to place reliance actually on a later memorandum No.E/D/1025/2/I Vol.2 dated 28/4/93 (Ex.D) of the Railway Ministry wherein it has been indicated that consequent on the upgradation/restructuring w.e.f. 1/3/93, 22 Head Clerks in the scale of 1400-2300 were found suitable and placed for promotion to the post of Chief Clerks on the grade on 1600-2660 which included Smt.Veena.S.Nag, Applicant No.3 at Sr.No.18 of the list. Still the same has not been extended to her. *Hence this application.*

5. Contesting the above, Shri V.S.Masurkar, Learned Counsel appearing for Respondents indicated that in the case of Applicant No.3, she was actually denied the promotion only on account of her ^{service} records which were totally unsatisfactory and a decision was actually taken by ^{the} Competent Authority to deny her the promotion. He also ~~actually~~ produced the Minutes of the ^{proceedings} ~~Railway~~ wherein it was indicated on the basis of CRs, Smt.Veena.S.Nag was ^{not} considered ~~fit~~ for promotion and this has been recorded on 30/7/97.

6. We have considered the rival contentions. It is found that the applicant who belongs to Scheduled Cast and who was a Head Clerk was selected and found fit for being appointed as Chief Clerk by Railway Board's letter dated 28/4/93 and her case

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should not have been denied on account of Charge Sheet or proceedings thereafter. We have also seen her Service Book. She has been given certain punishments but on subsequent dates. The Punishments actually cannot have retrospective effect and the conscious decision actually taken on 28/7/97 cannot alter the situation. If the averments that it was based on CR cannot be accepted, as if she was actually not fit the basis of CRs during 1993, the relevant period, she could not have been found fit for promotion and empanelled on 28/4/93. Therefore it is clear that authorities have denied this Scheduled Caste candidate her due on extraneous consideration not relatable to the relevant period. This was incorrect and calls for rectification.

7. In view of the above, the application is allowed and the respondents are directed to grant Applicant No.3 promotion to the grade of Chief Clerk in terms of the selected panel dated 28/4/93 and place her above her immediate junior with consequential benefits if any. The application is accordingly disposed of in respect of applicant No.3. In respect of other applicants, the reliefs sought having been duly extended, the application becomes infructuous and is accordingly dismissed. Parties to bear their own costs.

(GOVINDAN.S.TAMPI)
MEMBER(A)

abp

(B.S.JAI PARAMESHWAR)
MEMBER(J)

28/7/2022

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO.80/2001
IN
ORIGINAL APPLICATION NO. 136/1996.

Friday, this the 12th day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

Mrs. M.T.Patel & Ors. ...Applicants.
(By Advocate Shri R.Ramamurthy)

v.

Union of India & Ors. ...Respondents.

AND

1. Shri V.D.Gupta
General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.

2. Shri Nikhilesh Jain
Divisional Rail Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

(By Advocate Shri V.S.Masurkar)

...Contemners.

: ORDER ON CONTEMPET PETITION (ORAL) :

Smt. Shanta Shastry, Member (A).

The applicant has filed this Contempt Petition being aggrieved by the manner in which the Respondents have implemented the order dt. 28.7.2000 in OA No. 136/96. The direction given by the Tribunal in the aforesaid OA was "application is allowed and the respondents are directed to grant Applicant No.3 promotion to the grade of Chief Clerk in terms of the selected panel dt. 28.4.1993 and place her above her immediate junior with consequential benefits if any. The application is accordingly disposed of in respect of applicant No.3". In compliance of this, the Respondents promoted the

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applicant as Chief Clerk w.e.f. 1.3.1993 against the reserved post of SC in restructuring of cadre vide their office order dt. 14.12.2000 with placement on the panel above her immediate junior. The Respondents have granted further promotion to the applicant to the post of Office Superintendent - I w.e.f. 12.8.1997 on proforma basis vide order dt. 30.3.2001 i.e. from the date her junior Smt. Sunita Chikhalkar was promoted.

2. The Learned Counsel for the applicant admits that the applicant has been granted promotion to the post of Chief Clerk from the date her immediate junior was promoted and the applicant has also been paid the full arrears consequent upon the promotion. The applicant, however, contends that the respondents have given the further promotion to the post of O.S. - I on a proforma basis. They ought to have given full arrears for promotion in the post of O.S. - I. Further grievance of the applicant is that the respondents have not considered the applicant for promotion to the post of Chief O.S., as the applicant was due for the same in 1999.

3. The Respondents have explained that the applicant was given proforma promotion in keeping with the Railway Rules as in para 228 of the Indian Railway Establishment Manual Vol. I, according to which even if promotion has been denied erroneously, no arrears are to be granted as the Railway Servant did not actually shoulder the duties and responsibility of a higher post.

4. In regard to further promotion to the post of Chief O.S., the Respondents submit that the applicant is not the seniormost SC, whereas, another person who is senior to the applicant.

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Although he has been transferred along with his post to Rajkot Division, his lien has been maintained for one year from 1.6.2001. There is some CBI investigation against the person concerned and his promotion to the post of Chief O.S. has been kept in sealed cover. In the circumstances, they could not consider promoting the applicant to the post of Chief O.S.

5. The Learned Counsel for the applicant once again argued that she was entitled to the arrears of pay in the promotion post of O.S. Gr.I. Further, the Respondents have withheld her increment for a period of two years in the post of O.S. - I though the penalty was in the post of Head Clerk. Therefore, this was also not justified. The Learned Counsel for the applicant further contended that when the post of Chief O.S. is lying vacant, the applicant ought not to have been denied the promotion to the post. According to the Learned Counsel, the applicant was entitled to all the consequential benefits after her promotion to the post of Chief Clerk.

6. We have heard the Learned Counsel for the applicant, as well as, the Respondents. A perusal of the direction given by this Tribunal as already reproduced in para 1 above makes it clear that the Tribunal's direction was with reference to the post of Chief Clerk i.e. promotion to the post from the date her immediate junior was promoted with consequential benefits. In our considered view, therefore, the relief was confined only to the promotion to the post of Chief Clerk. This is also confirmed from the prayers that the applicant had made in the OA. No where, in the prayers there is any mention about granting of further promotions to the post of O.S. - I and Chief

O.S. In the facts and circumstances of the case, we are satisfied that the Respondents have complied with the directions of the Tribunal dt. 28.7.2000. While the applicant may be aggrieved by the non-payment of arrears in the further promotion post of O.S. - I and non-promotion to the post of Chief O.S. In our opinion, this grievance cannot form part of the C.P. Accordingly, the Contempt Proceedings are dropped. Notices are discharged and the C.P. is dismissed. It would be open to the applicant to agitate his other grievances separately as per law and Rules.

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(SMT. SHANTA SHASTRY)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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dt: 12.4.2002.
order/Judgement despatched
to Applicant/Respondent(s)
on 19.4.2002

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