

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI ABENCH: :MUMBAI

ORIGINAL APPLICATION NO. 282/96

MONDAY, THE 30TH DAY OF APRIL, 2001

SHRI JUSTICE BIRENDRA DIKSHIT. ... VICE CHAIRMAN
SHRI B.N. BAHADUR. ... MEMBER (A)

Abichandani Parso,
retired D.T.T.I./ Central
Railway, Bombay VT,
Resident of 7/129 Jai Shastri
Nagar, Mulund Colony,
Bombay-400 082. ... Applicant

By Advocate Shri K.B. Talreja.

Vs.

1. The Union of India
through the General Manager,
Central Railway,
Bombay VT.
2. The Divisional Railway Manager,
Central Railway,
Bombay VT. ... Respondents

By Advocate Shri S.C. Dhawan.

O R D E R (ORAL)

Shri B.N. Bahadur. ... Member (A)

This is the application made by Shri Abichandani Parso seeking the relief from this Tribunal for a direction to the respondents to promote him to the grade of Rs.2000-3200 from the time he completed one year in lower grade. Consequential reliefs of arrears of pension are also sought. The brief facts of the case made out by

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the applicant through his written pleadings and arguments on behalf of his counsel Shri K.B. Talreja are as follows: The applicant was promoted to the post of DTTI in the scale of Rs. 1600-2600 with effect from 2.12.1992. The grievance of the applicant for the promotion is to the further higher grade of Rs.2000-3200 in the post of CTTI. The applicant states that there were number of vacancies in effect six in number, and that applicant was not provided such promotion even till when he retired, as he states at the end of May, 1995. In this connection, it may be seen that the OA is filed some 9 months after retirement. Another grievance brought forth by the applicant is that the juniors were considered and the name of one Pohurkar is mentioned in this connection. Learned counsel for the applicant also quoted the point that even though 2 years of service is required for consideration for promotion, there was a case for relaxing this as per enabling provision of instructions issued by Railway Board in this connection. On the adhoc nature of this empanelment, Learned counsel for the applicant argued that it was not his fault he was kept adhoc for nearly 3 years and this should not have stood in the way of his promotion.

2. Other points as made out in the written pleadings were reiterated by the learned counsel in furtherance of his claims.

Mrb

3. The respondents have filed a detailed reply. Their case was also argued by their learned counsel Shri S.C. Dhawan. The learned counsel stated that promotion of the applicant was adhoc in nature, and no regular promotion was made. Admittedly the cadre was a dying cadre and under such circumstances, he was not eligible for promotion. The question of relaxation could not also be considered in such background. With regard to number of vacancies available, it is stated by the respondents and argued by the learned counsel, that the posts were not announced as a result of restructuring and adequate posts were not available. Further, the applicant was not the senior most person especially in the background of the fact that common seniority in the Central Railway is taken into account for promotion to the post of CTTI. It is a Headquarters controlled post. Thus, since the applicant did not have the seniority and being adhoc promotee, he could not be considered. It is stated that no one junior to the applicant was ever promoted admittedly, and the case of only junior Shri Pohurkar is mentioned in written statement, was a case considered and operated only to fill up backlog vacancy of SC candidates. ^{12/5} Learned counsel for the respondents specially drew our attention to paras 12 and 14 of the written statement in regard to points related to seniority, number of posts available etc.

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4. It is first to be seen that, indeed, the promotion of the applicant was adhoc in nature. It has to be seen, ^{also, B-b} ~~firstly seen~~ that he has no claim for promotion for 2 years after adhoc promotion since 2 years service is a minimum requirement. Even later, ^{even B-b} assuming that adhoc promotion should also been counted for being eligible for promotion, it has to be stated that under the circumstances, as explained, when the cadre was a dyeing in view of the change in technology in signalling etc., no right can accrue to a person for promotion unless discrimination, arbitrariness are shown as per settled law. Mere existence of vacancies cannot give any right. No junior has been promoted admittedly, except Shri Pohurkar whose case we deal ahead.

5. On the basis of a perusal of the pleadings on both sides including rejoinder, we are unable to come to any conclusion as to how a person junior to the applicant has been promoted. (Unfortunately, no seniority list has been filed by the applicant either). The only point that has to be considered is regarding the promotion of one Pohurkar. Admittedly he was an SC, ^{official B-b} and as explained in para 9 of the written statement the promotion was made only to fill in the backlog of reserved vacancies. On this score, therefore, the applicant can have no grouse vis-a-vis seniority and it cannot be said that any junior

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in open category has been promoted by bypassing the applicant.

6. Another point taken by the learned counsel for the applicant while arguing the case was that recourse should have been taken to the provision enabling relaxation of 2 years condition. Such powers are available with the senior officers like General Manager. Now the power of relaxation is clearly a discretionary power. Exercise of such discretionary power cannot be claimed as a matter of right. Certainly, in the background of the fact that the cadre was *dying* cadre, we cannot construe that the relaxation can be justified.

7. In view of the discussions made above, we do not find any reason for interfering in the matter. The OA is dismissed with no order as to costs.

B. N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

R.P.No.37/01
in
O.A.No.282/1996

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SHRI B.N. BAHADUR, MEMBER (A)

Shri Abhichandani Parso Applicant

vs.

Union of India & Ors. Respondents

ORDER IN REVIEW PETITION No.37/01 BY CIRCULATION
DATE OF DECISION: 14.08.2001

[Per: B.N.Bahadur, Member (A)]:

This is a Review Petition filed by the Applicant praying for a review of the Order made by us in O.A.No.282/1996. The Original Application of the Applicant had been dismissed vide judgement dated 30th April, 2001.

2. The Review Petition now made before us has raised certain issues which seek to discuss the case on merits, inasmuch as the review petitioner i.e. the Original Applicant in the O.A. is dissatisfied with the conclusions arrived at by us while deciding the O.A. Hence he has urged the arguments taken by him and finally concludes the Review Petition by making a prayer as follows:

"PRAYER: In the circumstances it is most politely prayed for atleast notional promotion without any arrears as at least the applicants' future pensionary benefits shall not be denied in the interest of justice."

3. Nowhere in the RP. has a point been raised that there is any error apparent on the face of the record or that the Review Petition seeks to raise a new fact that has come to light.

4. Much as the Applicant is entitled to have a grievance in regard to the conclusions arrived at by us in the O.A., this

cannot be agitated in the form of a Review Petition. Suffice to say that there is no error apparent on the face of the record in the decision made by us in O.A.No.282/96 nor is there any new fact come to light. Hence the Review Petition is devoid of any merit and cannot be entertained. R.P.37/01 in O.A.No.282/96 is, therefore, rejected. No costs.

B.N. Bahadur
(B.N. Bahadur).
Member (A)

B. Dikshit
(Birendra Dikshit)
Vice Chairman

sj*

dt. 14/10/01
order/judgement despatched
to Applicant/Respondent (s)
on 19/10/01

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