

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this *Monday* the *2nd* day of December, 2002

Coram: Hon'ble Mr.Justice Birendra Dikshit - Vice Chairman
Hon'ble Mr.B.N.Bahadur - Member (A)

O.A.864 of 1996

S.Anantharaman,
Chief Communication Engineer,
Western Raiway,
Churchgate,Mumbai.
(By Advocate Shri G.S.Walia) - Applicant

Versus

1. Union of India
through the Secretary,
Railway Board,
Rail Bhawan, New Delhi.
2. General Manager,
Western Railway, Churchgate,
Mumbai.
3. S.A.A. Zaidi,
Additional General Manager,
Northern Railways,
Baroda House,
New Delhi.
4. R.C.Vatsa,
C.S.T.E.,
Nothern Railways,
Baroda House,
New Delhi - 110 001.
5. Chandrika Prasad,
Additional Member (Signal),
Railway Board,
Rail Bhawan, New Delhi.
6. V.P.Chandan,
Additional Member,
(Telecommunications), Railway Board,
Rail Bhawan,
New Delhi.
(By Advocate Shri Suresh Kumar) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The Applicant in this case is aggrieved at his non-promotion to the post of Principal Head of the Department (PHOD) which, at that time, carried a scale of pay of Rs.7,300

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7,600/- . He claims that he is the seniormost Chief Telecommunication Engineer in the cadre of Signal and Telecommunication Engineers of Indian Railways. He thus comes up to the Tribunal seeking, in substance, the relief for the quashing and setting aside of two orders through which he superseded the first order dated 16.9.1994 and the second order dated 28.6.1996. The Applicant further seeks consequential reliefs as described in Para 8 of the OA.

2. The facts, as put forth by the Applicant, are that he was working as Chief Communication Engineer, Western Railway w.e.f. 1.1.1986 (subsequent to filing of the Application he has superannuated). Applicant states that there has been no adverse remarks communicated to him in his service, and only in 1985-87, some petty cases were foisted upon him, which ended in token/minor penalties. He describes these charges etc. in some detail and then makes the point that although he was due for promotion in 1992, he was by-passed in 1994 (16.9.1994) and persons junior to him promoted. He alleges that rules were not followed for selection and CRs for the relevant period have not been considered in proper perspective. Applicant states that he made a representation dated 16.9.1994.

3. Applicant then comes to the second supersession by order dated 28.6.1996 where one Shri V.P.Chandan was promoted to the grade of Rs.7300-7600/- (Exhibit-E). Here the modality used by Selection Committee for selection is challenged, and the



....3/-

instructions dated 10.3.1989 (Exhibit-F) are referred to and the objections taken that these were not followed. It is alleged that Respondent has been framing their own rules to suit their own purpose for promotion of officers to PHOD. Letter dated 6.8.1996 (Exhibit-G) and 1.8.1995 and 6.8.1995 are referred to. This point was argued at some length by learned counsel, Shri Walia, and will also be taken up ahead. Suffice to say that the modality of procedure of selection has been questioned. Certain other grounds have also been taken and these were argued by learned counsel for the Applicant.

4. Respondents have filed a reply-statement, resisting the claims of the Applicant. It is stated that the Applicant, who is working in the Senior Administrative Grade in the scale of Rs.5900 - 6700/- had been considered at selections held on 1.8.1994 and 24.10.1996, which selections, it is contended, were conducted in accordance with law. The point is taken that the present OA is barred by limitation in so far as the selection of 1994 is concerned. As regards selection held on 24.10.1996, it is stated that Applicant was not selected by Selection Committee in view of assessment of his performance and that this was approved at the highest level in Government. Such assessment made by DPC and Government for selection post cannot be challenged, it is averred.

5. The further part of the written statement provides parawise replies in detail. The Applicant has filed a rejoinder



where he aspect of limitation is discussed. A sur-rejoinder has also been filed by the offical respondents.

6. We have seen all papers in the case and have heard learned counsel Shri R.G.Walia for the applicant and Shri Suresh Kumar for official respondents. No appearance is made on behalf of private respondents, who had been served with notices. Shri Walia took us through the facts of the case at some length and pleaded that the entire records of the case of the Respondents should be seen. He made the point that it would be necessary to check if proper record is placed before the DPC and if any adverse remarks were taken into consideration, whether these were conveyed to the Applicant including the remark "Good" (as per Hon'ble Supreme Court in the case of U.P Jal Nigam and others Vs. Narinder Kumar Agarwal, 1996 (1) SCSLJ 306)). Shri Walia also made the point with regard to the same rulings that it needed to be asserted whether any reports/assessments made by Reporting Officer in the Confidential Report were downgraded. The case law in the matter of U.P.Jal Nigam was depended upon.

8. One of the important grievances made on behalf of the Applicant was that the wrong procedure was followed. It was strenuously argued that the procedure that should have been followed by the Selection Committee was the one that was laid down by the circulars of the competent authority viz. Ministry of Personnel (Department of Personnel & Training) dated 10.3.1989),



a copy of which is available at page 27 of the Paper Book. As against this, Shri Walia argued that the criteria for selection that was followed was the one laid down in the letter of June 12, 1995, a copy of which is also available at page 30 of the Paper Book. Counsel for the Applicant stated that the Department of Personnel & Training is the correct authority for the laid down conditions and instructions for posts of the level of PHOD and that the latter circulars is issued by Western Railway from Headquarters at Mumbai which had no authority. He took us at length over the contents of both circulars and stated that it will need to be assessed with reference to record as to which circular was followed. Learned counsel also referred to Para 1606 of Indian Railway Establishment Code and sought support from the case law in the matter of Dr. Binoy Gupta Vs. Union of India & others, (2002 (3) A.T.J. PAGE 7).

9. Arguing the case on behalf of the Respondents their learned counsel, Shri Suresh Kumar first took the point that the 1994 selection could not be challenged as it was time barred. Hence he argued that the relief sought by way of seeking quashing and setting aside of the order dated 16.9.1994 was hit by limitation. No condonation application has been filed either.

10. Arguing the point regarding the letter issued by Western Railway (Page 30 of the Paper Book), learned counsel sought to draw attention to Annexure-R-1 to the Rejoinder dated 16.5.1995. This is what has to be followed from the year 1996-97 onwards.



Shri Suresh Kumar argued that the Applicant was in no way prejudiced and if a DPC followed a particular procedure, it followed it for all persons and there was no discrimination or prejudice even in regard to this aspect of downgrading. It was argued that the prejudice would need to be seen as per latest judgmentsG of the Hon'ble Supreme Court.

11. Learned counsel on both sides sought to take support from a series of case-law, which we have seen.

12. One thing which is clear is that the Applicant is challenging to distinguish causes of action even though both may relate to his being not provided with promotion to PHOD. The first cause of action is his supersession vide order dated 16.9.1994 and the second vide order dated 28.6.1996. In fact this is amply clear not only from the facts, his own averments but also from Para 8 under the title "Relief Sought". In regard to the order dated 16.9.1994, he should have approached the Tribunal within one and a half years i.e. by about middle of March 1996. He is over five months late and has not filed any application for condonation of delay. In fact he states in the OA that the Application is within time. This is a very senior officer who not only chooses to keep quiet while he is superseded in 1994 and only when this happens again in 1996, it is he who comes up and seeks the opportunity to challenge both causes of

action. On the one hand, he is hardly hit by limitation and the circumstances do not even warrant condonation of delay of five months which is not small, let alone the fact that no application is filed for condonation of delay. Therefore, the relief seeking quashing and setting aside of order dated 16.9.1994 is rejected on the grounds that it is hit by limitation.

13. The technical point regarding multiple reliefs being sought was also taken up by Respondents but especially since first relief sought now goes, we are not accepting this contention of the Respondents and proceed to examine it on merits. To recapitulate the main point made was that relevant record be seen and indeed we have done that. Another ground strenuously related to the correct procedure being not followed by Selection Board/DPC. The case laws cited by both sides have been considered. A properly constituted DPC has indeed met in 1994 and 1996 and these have all been seen. In the 1996 DPC held on 24.10.1995, it is brought to the Committee's notice that the Railway Ministry has passed resolution in laid down principles and procedures for making appointments to posts in the scale of Rs.7300-7600/- . It is mentioned indeed approval of ACC has been sought. It is then stated that in the provisions of the resolution the criteria laid down are as follows:-

(a) That officers should have worked in Senior Administrative Grade for minimum three years and should be less than 57 years of age on 1st July of the year for which panel is made.

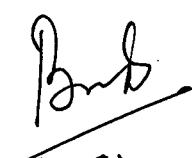


....8/-

(b) Only such of the empanelled officers should be normally appointed to these posts who are able to serve for at least one year. General DPC guidelines have then been mentioned for the Committee. It is further stated that for five years' vacancies, 14 officers are required to be considered etc. No where is it stated that about a particular minimum number of 'Outstanding' reports being necessary or otherwise nor is any O.M. especially the O.M. referred. Shri Satnam is classified as 'Good' but it is also mentioned and penalties imposed on him between 1989 to 1992 which also mentioned in the panel drawn up, five people are empanelled and it is seen that none of the officers who are classified as 'Good' have been taken. This is an important point that we note.

14. We have carefully seen the record and, therefore cannot be convinced that, as alleged, the Committee, has followed a system which is totally inapplicable under existing instructions. Even though it is mentioned about proposal going to ACC, no where is it stated as mentioned above that the ingredients of the letter dated 12.6.1995 are being followed.

15. We have infact thus gone quite a bit in leaving the file with regard to the allegations made. Going in further into the details to assess the method of assessment of individual officers would be going in a manner as if we are placing ourselves as superior body to the DPC and the Government at the highest level. That would be incorrect as per law settled in this regard in



several judgments of the Hon'ble Supreme Court and we shall certainly not go contrary to the settled law.

16. We have also considered the aspect regarding the well settled law in the matter of U.P.Jal Nigam and others Vs. Prabhat Chandra Jain & others (supra). We are not convinced that the relief sought can be provided by any infringement of this case law, in the facts and circumstances of this case.

17. It is also relevant to note that if any penalties have come on record in the career of the Applicant, taking those into account count into overall assessment, cannot be faulted. These, however, are not the sole or even main basis of the consideration of Applicants case by Selection Committee, as can be seen from record.

18. In view of the above discussions we are not persuaded that there is any case for interference in the matter before us. The OA is therefore dismissed with no order as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)

B.Dikshit

(Birendra Dikshit)
Vice Chairman