

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:662/1996

Dated this the 16th day of October, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN, - VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry - MEMBER(A)

A.J.Kapadia,
Sr.Clerk, CC TRI,
RR BCT, Mumbai,
Divisional Railway Manager,
Under DRM/BCT,
Western Railway,
Bombay - 400 008. ... Applicant

By Advocate Shri H.A.Sawant.

V/s.

1. The Divisional Railway Manager,
Bombay Central Division,
Divisional Office,
Bombay Central,
Mumbai - 400 008.
2. The General Manager,
Western Railway Head Quarter Office,
Churchgate,
Mumbai - 400 020. ... Respondents

By Advocate Shri V.S.Masurkar

ORAL ORDER

Per Smt. Shanta Shastry, Member(A)

The applicant in this OA who was working as Senior Clerk at the relevant time has sought promotion and posting as Head Clerk in the scale of 1400-2300 with effect from the date from which his juniors were promoted and posted as head clerks i.e. 23/11/95 and to pay special allowance of Rs.70/- p.m. with effect from the same date. The applicant has also claimed arrears and wages as per scale of Head Clerk with effect from 21/5/92 as he was working in Catering where two vacancies of Chief Clerk and Head Clerk were available and he shouldered higher responsibility.

2. The learned counsel for the applicant submits at the begining of the hearing that the applicant has now been granted the promotion sought for by the respondents vide letter dated 15/4/97. This letter was issued during the pendency of the OA. Further, the applicant was also granted special pay of Rs.70/-p.m. vide memorandum dated 23/4/97 by the respondents. Thus, the relief sought for by the applicant has already been granted to the applicant. However, the learned counsel for the applicant submits that the applicant's seniority also needs to be revised accordingly which has not been done so far.

3. The respondents submit that having granted the necessary relief now nothing survives in this OA.

4. The learned counsel for the respondents also brought to our notice that the applicant in para-4.1 of the OA has made an averment that he was recruited as a clerk through the Railway Recruitment Board (RRB in short) and subsequently he was working at the Bombay Central under DRM(DC). The respondents in their reply filed on 2/4/97 have categorically submitted that the contention of the applicant that he was recruited as a clerk through RRB is "false to his knowledge." The applicant has filed rejoinder to the reply on 26/5/97. The learned counsel for the applicant however has not brought to ^{to} our attention any averment in the rejoinder to refute the contention of the respondents that the applicant has not been recruited as clerk through RRB. It is thus noted that the statement made in OA in

para-4.1 is a false statement. In order to verify this record, we kept this matter as part-heard yesterday on 15/10/2001. Today the record has been produced by the respondents and we find from the service book of the applicant that he was initially appointed/recruited as substitute cleaner and he was not recruited as clerk through the RRB. The learned counsel for the applicant now however submits that this is a small mistake and therefore tenders his apology on behalf of the applicant and requests condoning the lapse on his part. As already stated, the applicant had ample opportunity to rectify the mistake when he filed the rejoinder as far back as on 26/5/97 especially after the respondents had made the averment in their reply dated 2/4/97 specifically in this regard. The applicant has verified. It is not that he is illiterate or an uneducated person. At the time he filed OA, he was a senior clerk and at the time of filing the rejoinder, he was a head clerk. It has been further brought to our notice by the learned counsel for the respondents that the applicant in his representation dated 28/11/95 addressed to the DRM(E)BCT, regarding grant of special pay of Rs.70/- p.m. which is the subject matter of this OA had stated therein that he is also looking into the All India SC/ST Railway Employees Association in Catering Branch as President. Therefore there is no reason to rectify the mistake. He has failed to come up with MP even to amend the OA to that extent. However, the applicant has failed to correct his mistake. A person holding such high position of responsibility should not have acted in an irresponsible way.

5. In the facts and circumstances of the case we are unable to accept the apology tendered by the learned counsel for the applicant. Therefore on this ground itself and also because of the attempt to mislead this Tribunal as well as on account of misuse of the process of law, the OA deserves to be dismissed.

6. Coming to the merits of the case as already pointed out, the applicant has already received the relief as he has claimed for in para 8(a) of the OA. The applicant is now claiming seniority on the basis of the promotion granted now. We find that there is no whisper about granting of the seniority in the relief clauses. At this stage of final hearing of the application, we cannot go into this. Therefore on merits also nothing survives in this OA and it has become infructuous. The OA is disposed of accordingly.

7. In view of the reasons recorded in paras 4 and 5 above normally ^{we} would have imposed exemplary cost in the matter against the applicant. However, considering that the applicant belongs to scheduled caste community and the reliefs have already been given to the applicant by the respondents, we consider it appropriate to impose nominal cost of Rs.500/- on the applicant in favour of the respondents.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER(A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN