

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 417 of 1999.

Dated this Friday the 16th day of February, 2001.

K. C. Sharma, Applicant.

Shri K. B. Talreja, Advocate for the
applicant.

VERSUS

Union of India & Another, Respondents.

Shri S. C. Dhavan, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S.K.I. Naqvi, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? X
- (iii) Library. P

B. N. Bahadur
(B. N. BAHADUR).
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 417 of 1999.

16th Feb.

Dated this Thursday, the 15th day of February, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A)
Hon'ble Shri S.K.I. Naqvi, Member (J).

K. C. Sharma,
Under Divisional Electrical
Engineer, (Traction Distribution)/
Kalyan, Under Executive Control of
Divisional Railway Manager,
Central Railway,
Mumbai C.S.T., Mumbai - 400 001.

... Applicant.

(By Advocate Shri K. B. Talreja)

VERSUS

1. The General Manager,
Through the Union of India,
Central Railway, Mumbai CST,
Mumbai - 400 001.
2. The Divisional Railway Manager,
Central Railway, Mumbai C.S.T.M.,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri S. C. Dhavan)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri K.C. Sharma who states in para 1 of his O.A. that he is aggrieved by the action of Respondents in not giving him one time bound promotion (O.T.B.P.) and also stating in the (impugned) order dated 31.03.1999 (Exhibit 'A') that only a senior employee has been promoted to the post of skilled category. No junior employee has been considered for promotion. And thus, rejecting the case of Applicant, Shri Kailash Chandra Sharma.

AS

2. The facts of the case, as put forth by the Applicant, are that he is working as Khalasi with effect from 07.04.1980 and that, as a result of restructuring he is working as Khalasi Helper in the grade of Rs. 2610-3540 with effect from 01.03.1993. He states that although he has worked for 19 years, he has not been provided with One Time Bound promotion (O.T.B.P.) He further has the grievance that his non promotion to the grade of Skilled Category was wrong. It is also his ground that while considering the candidates for promotion, three people should have been called and not one at a time, as have been done.

3. The Respondents have filed a written statement in the case, where it is stated that the Applicant was, in fact, promoted to the post of Khalasi Helper with effect from 01.03.1993 and that he has in fact suppressed the fact that such promotion was granted after he was screened and found suitable and given a higher grade.

4. Further, giving the details of the promotional channels available, Respondents state that no person junior to him has been given promotion to skilled or semi skilled categories. Further details are provided and averments made, as parawise replies, by the Respondents.

5. We have considered all papers in the case, including the rejoinder to which occasional references were made by the Learned Counsel for Applicant. We have heard the Learned counsel on both

sides, Shri K. B. Talreja for the Applicant and Shri S. C. Dhavan for the Respondents. The main argument taken by Shri Talreja was that the placement of the Applicant from Khalasi to Khalasi Helper was not a promotion, but something which had come about purely as a consequence of restructuring ordered by the Indian Railways. He sought to support this stand by a reference to para 211 of I.R.E.C. The second plank of his arguments related to his non-promotion to the skilled or semi skilled categories on a number of grounds which are stated below in gist:

- (a) No seniority list has been published.
- (b) The question of calling for willingness for promotion should not arise as per normal service law and such action was wrongfully made.
- (c) The correct procedure of taking suitability test was not followed, since only one person was called for suitability test at a time. This point was argued repeatedly.

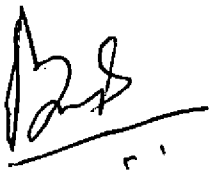
6. Arguing the case on behalf of Respondents, Shri Dhavan, made the point that the placement of Applicant as Khalasi Helper, being in higher grade and done after a regular selection process was certainly a promotion, and cannot be said to be a mere effect of restructuring. He thus made the point that having been promoted in 1993, the Applicant was clearly not eligible for O.T.B.P. as per extant rules.

B.S.

7. In regard to the grievance of promotions, Learned Counsel also referred to the provisions in the I.R.E.M. to state that options were called because Khalasis had to make a choice from the various trades that became available at the level of Khalasi Helper. Further, a clear list as per seniority was announced, to which no objection has been taken. Since this is a non-selection post, there was nothing wrong in officials on the list being tested one by one, since only one vacancy existed. He referred to the various documents on record to substantiate these arguments.

8. In the first place, we have carefully considered the pleadings made on both sides in regard to the claim for O.T.B.P. In the facts and circumstances obtaining, and the clear position that Khalasi Helper carries a higher scale of pay and that Applicant was promoted after a regular selection process, we cannot agree with the contention of the Applicant that his placement, having come as a part of restructuring could not be considered as promotion. It does not need too much of reasoning to come to the conclusion that having been provided a promotion in 1993, the Applicant has no justification for his claim to O.T.B.P. according to extant rules.

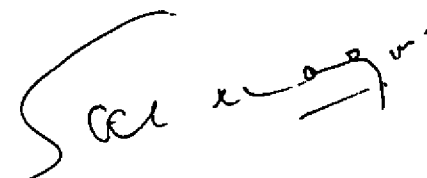
9. In regard to the second claim also, the facts have been stated above by us. On the one hand, we find that the invitation for participation in the selection process for Skilled/Semi-Skilled categories was logical and contravened no rules or principles of natural justice. Secondly, we find that




the Applicants have been called as per seniority and no violation of the seniority principle is seen to occur. In any case, seniority is not the subject of controversy here and has not been challenged. Finally, in view of the fact that the post is a non-selection post, it follows that calling of one person for a Trade Test at a time to find out his suitability or otherwise, cannot be held to be wrong in legal terms, since only one post was available and the post is a non-selection post.

10. We must record here that at the time of arguments, the Learned Counsel for Respondents had taken a stand that the O.A. suffered from the flaw that it seeks two distinct and different reliefs. Since, however, as discussed above, the Applicant has failed to establish his case on all counts urged, we are not going into this aspect.

11. In view of the discussions made above, it is clear that the Applicant has not made out any case for our interference in the matter. This O.A. therefore deserves to be dismissed and is hereby dismissed with no orders as to costs.


(S.K. I. NAQVI)
MEMBER (J).

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16/2/01
(B.N. BAHADUR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

REVIEW PETITION NO. 22/01
IN
ORIGINAL APPLICATION NO. 417/99

CORAM: HON'BLE SHRI B.N. BAHADUR.
HON'BLE SHRI S.K. NAQVI.

MEMBER (A)
MEMBER (J)

K. C. Sharma

.. Applicant

By Advocate Shri K.B. Talreja.

Vs.

Central Railway

.. Respondent

By Advocate Shri S.C. Dhawan.

ORDER

DATED: 1/8/2001.

Hon'ble Shri B.N. Bahadur.

.. Member (A)

This is a Review Petition No.22/01 in OA 417/99 filed by the applicant in the OA. The review petition ends with the prayer which reads as follows:

"It is, therefore, prayed politely that the methodology adopted in the Trade Test is wrong and deserves to be quashed and set aside and fresh Trade Test be conducted as per rules and if applicant is found suitable posted or else considered against 25% quota for which he is eligible for any of the skilled posts available in the department."

2. We have gone through the review petition and the points made therein. As will be clear from the contents of the review petition as indeed from the prayer reproduced above, the original applicant is

seeking to re-argue the OA on certain grievance that he has on merits. Well, as he may have a grievance, the remedy for such grievances does not lie in a review petition.

3. We do not find any error apparent on the face of the record or any new fact come to light. Hence, the grievance made out cannot be considered in a review petition. In the circumstances, the review petition is hereby rejected. No costs.

S.K.I. Naqvi

(S.K.I. NAQVI)
MEMBER (J)

B.N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

Gaja

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order/Judgment despatched
to Applicant/Respondent(s)
on 14/8/01

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