

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 905/99

Date of Decision : 27th May 2002

A.K.Srivas _____ Applicant

Shri G.K.Masand _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri S.C.Dhawan _____ Advocate for the
Respondents.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?

(iii) Library yes

P.G.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.905/99

Dated this the 27th day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

Anil Kumar Srivas,
Deputy Chief Claim Officer,
Central Railway,
New Administrative Building,
5th Floor, Mumbai CST.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Ministry of
Railways, Rail Bhavan,
New Delhi.

2. Chairman,
Railway Board,
Rail Bhavan,
New Delhi.

3. General Manager,
Central Railway,
Mumbai CST.

4. K.M.Rao,
Retd. General Manager
of South Central Railway,
presently residing at Flat No.3,
Housing Society Colony,
Four Bungalows, Near Machhi Market,
Juhu Versova Link Road,
Andheri, Mumbai.

...Respondents

By Advocate Shri S.C.Dhawan

..2/-

S.L.Sriv

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the respondents' action in bypassing the applicant and allowing his juniors promoting them to Senior Administrative Grade since 1993 is illegal with the direction to the respondents to promote the applicant to the Senior Administrative Grade from the date his immediate junior Shri Madhav Pathak was promoted to the said Grade with suitable compensation.

2. The applicant who belongs to Scheduled Caste was communicated Adverse Remarks for the year ending on 31.3.1990 on 19.9.1990. The applicant submitted representation against the same vide letter dated 11.10.1990 (Ex-G), which was disposed of by the General Manager vide his letter dated 24.1.1991 (Ex-H). The applicant submitted Review Petition dated 19.2.1991 (Ex-I) and also an appeal through C.C.M. Central Railway dated 13.7.1992 to the Chairman, Railway Board (Ex-J) followed by another appeal dated 24.12.1993 through C.C.M. Central Railway (Ex-L).

3. The applicant was communicated Adverse Remarks vide letter dated 13.7.1994 (Ex-M). The applicant represented against the same vide his representation dated 21.10.1994 (Ex.M-1). The same were expunged by the General Manager vide his letter dated 15.3.1995 (Ex.M-2).

P.(SJM)

4. The applicant vide his letter dated 20.10.1995 (Ex-N) addressed to Member Traffic, Railway Board, New Delhi, through proper channel, prayed for his due promotion to Senior Administrative Grade, atleast on Adhoc basis, which is permissible whenever the vigilance enquiry had not been completed in more than two years, which is replied vide Headquarter Office letter bearing No.Q694-S/TC dated 6.6.1996.

5. After the conclusion of the disciplinary case against the applicant, in which it came on record that no vigilance case whatsoever could be established against the applicant, the applicant once again represented vide his letter dated 7.9.1998 for promotion to Senior Administrative Grade (Ex-P), which was replied vide letter dated 1.2.1999 (Ex-Q).

6. The reply of the respondents vide letter dated 6.6.1996 (Ex-O) is that his claim for promotion to Senior Administrative Grade had been considered and in panel approved on 23.12.1993, the applicant was not selected based on his performance, whereas the findings of D.P.C. held on 29.12.1994 and 22.2.1996 had been kept in the sealed cover due to his involvement in a vigilance case.

7. The investigation into applicant's conduct was initiated in the year 1989 at the instance of Respondent No.4 had been completed by the year 1990 but for the first time in the Mid of year 1993 when applicant became eligible for consideration for promotion to Senior Administrative Grade, a vigilance angle was given to the same and in pursuance of the same disciplinary proceedings were initiated against the applicant.

8. The respondents have stated in para 2 of the written statement that the applicant was issued with a chargesheet Memorandum dated 10.2.1994 and after conclusion of the proceedings, a minor penalty of withholding of 2 sets of Privilege Passes for the calender year 1998 was imposed upon him vide order dated 27.7.1998. Thus, during the period commencing from 10.2.1994 till 27.7.1998 the applicant was under clouds.

9. The respondents have placed before us DPC meetings dated 4.9.1996 and 4.9.1997. On perusal of the said minutes of the meetings, we find that against the name of the applicant it is stated that "involved in vigilance case and assessment will be placed in sealed cover". While doing so, the respondents failed to consider O.M. dated 14.9.1992 that the case of the applicant for adhoc promotion can be considered as the chargesheet is not finalised within 2 years. Applicant's representation dated 20.10.1995 Ex.'M' (OA.page 77 to 82) relates to his earlier non consideration for Adhoc promotion which relates to earlier D.P.C. 23.2.1993 and 29.12.1994 wherein he was not selected. The respondents replied to the same vide letter dated 6.6.1996. Thereafter, the applicant filed OA. on 7.10.1999, as such the claim in this respect is barred by time. The minutes of DPC meeting dated 29.12.1994 and 22.2.1996 referred in Ex.'O' letter dated 6.6.1996 have not been placed before us. However, the claim in respect of the same is barred by time.

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10. Applicant again represented vide his representation dated 7.9.1998 and the said representation relates to review of ACRs. and promotion which was replied vide reply dated 1.2.1999 Ex.'Q' (OA.page 87).

11. DPC met on 31.12.1998 and the applicant's case was considered. ^{In respect of which} ~~A DPC met on 4.9.1997,~~ representation dated 7.9.1998 is a delayed representation because it is being filed after about a lapse of one year but as it is replied on 1.2.1999 and thereafter OA. was filed within one year, we proceed to consider the grievance on merit in this respect.

12. The respondents have erred while keeping the case of the applicant in sealed cover in their DPC meeting 4.9.1996 and 4.9.1997 and the applicant failed to agitate the matter within the reasonable time. Considering the reply dated 1.2.1999, the OA. is within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985. The reply states that "for promotion to SA grade has been considered by the Board from time to time since December, 1993 but he was not found suitable for promotion".

13. DPC which met on 31.8.1998, the case of the applicant was considered and he was not found suitable for promotion.

S.(S.W.) -

..6/-

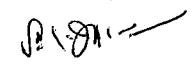
14. For adhoc promotion and regular promotion, no different criteria can be adopted. As such, when applicant is not found fit for regular promotion, he cannot be said to have been fit for adhoc promotion.

15. In the result, we do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.



(S.K.AGARWAL)

MEMBER (A)



(S.L.JAIN)

MEMBER (J)

mrj ~~Order~~ dated 24/6/1982
to Applicant .. respondent(s)
on 24/6/1982

