

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Thursday the 12th day of June, 2003

Coram: Hon'ble Mr.V.K.Majotra - Member (A)
Hon'ble Mr.Shankar Raju - Member (J)

O.A.930 of 1999

T.K.Biwalkar,
aged about 56 years,
Ex-officio Superintendent,
Central Railway,
Headquarters Office,
Personnel Branch, CSTM
R/o 55/8 Parijat,
Ganga Nagar, Nerul,
District Raigad.
(By Advocate Shri T.D.Ghaisas) - Applicant

Versus

1. Union of India
through the General Manager,
Central Railway,
Mumbai, CSTM, 400 001.
2. The Chief Personnel Officer,
Central Railway,
Mumbai, CSTM 400 001.
3. Shri I.H.Khan,
Chief Office Superintendent,
C/o CPO's Office Headquarters,
Personnel Branch,
Mumbai CSTM 400 001.
4. Shri R.O.Manore,
Chief Office Superintendent,
(on deputation to Konkan
Railway Corporation Ltd.,)
C/o CPO's Office,
Mumbai CSTM
5. Mrs.K.B.Kale,
Chief Office Superintendent,
C/o CPO's Office Headquarters,
Personnel Branch,
Mumbai, CSTM 400 001.
6. Shri N.A.Krishnamurthy,
Chief Office Superintendent,
C/o CPO's Office Headquarters,
Personnel Branch,
Mumbai CSTM 400 001.
7. Shri Chetan Ram
Chief Office Superintendent,
C/o CPO's Office Headquarters,
Personnel Branch,
Mumbai CSTM 400 001.

(By Advocate Shri V.D.Vadhavkar) - Respondents

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant, who voluntarily retired from service on 5.10.98 impugns respondents' communication dated 14.10.99, denying him the pay scale of Rs.7450-11500 (RPS) attached to the post of Chief Office Superintendent (COS) with further declaration to treat him as COS from 10.5.98 till the date of his retirement. His alternate prayer is to consider the claim against the left over vacancy as per the modified selection and in turn refix his pay and terminal benefits.

2. Applicant was promoted as OS-I in the grade of Rs.6500-10500 w.e.f. 9.1.94.

3. By Railway Board letter dated 10.5.98 certain new pay scales have been introduced as recommended by Fifth Central Pay Commission made applicable to the ministerial staff on percentage basis. Prior to 10.5.98 post of COS was not in existence which was created reducing 2% of the post of OS Grade-II. The aforesaid order takes effect from 10.5.98 and the minimum qualification is two/three years in the minimum of lower grade. Aforesaid letter was received in the office of General Manager, Central Railway in May, 1998 but was not implemented. A notification was issued on 18.11.98 for holding selection. Meanwhile, applicant sought voluntary retirement which was made effective from 5.10.98. In pursuance of selection process written examination slated for 12.12.98 and 19.12.98 were not held due to absenteeism of eligible candidates and accordingly supplementary examination was scheduled for 12.1.99. The eligible candidates have been asked to

give explanation as to their absence in the examination. Accordingly a fresh notification was issued on 5.1.99. As per respondents' order dated 10.2.1999 *viva voce* was held 9.2.1999 as a result of which a panel of five employees i.e. four General and one Scheduled Caste were declared on 10.2.1999.

4. In pursuance of demand by JCM to treat the post as non-selection, the Board considered the issue and by their letter dated 17.2.1999 it has been decided to fill up the post to the modified selection process by scrutiny of service record as a one time exception.

5. However, vide another letter dated 15.3.1999, it has been decided through a clarification that selection already finalised for filling up the post according to the normal procedure upto 17.2.1999 should stand and where the written test has been held panel may be finalised as per the instruction dated 17.2.1999.

6. Respondents processed the filling up of two posts in General category against assessed vacancies and a notification was issued on 22.9.1999. Written test was scheduled for 14.10.1999 calling six eligible officers. Though applicant's name came in the zone of consideration he made a representation on 28.4.1999 contending that since the Railway Board's letter dated 10.5.1999 was issued prior to his voluntary retirement respondents should not fill all the six post by way of regular selection, leaving one post to be filled in the later selection and as a seniormost employee he should have been considered. The aforesaid claim was rejected giving rise to the present OA.

7. Learned counsel for the applicant by referring to letter dated 10.5.1998 contended that the same takes effect from the date of issuance which has vested with him a legal right to be placed in the higher grade even after the selection had been taken later on. The claim of the Applicant has been arbitrarily ignored and by virtue of his position at serial no.1 in the seniority list and having retired after 10.5.1998 and others who have been promoted their pay scales have been regulated now from 10.5.1998. Non-inclusion of the name of the Applicant is not legally tenable.

8. It is stated that the post of Chief Office Superintendent was available on 10.5.1998 when the applicant was in service, yet he was not considered. Selection should have been ordered within a reasonable period. The incumbents have been failed for ten months without having discharging duties of a higher post. As applicant fulfills all the eligibility conditions and having completed four years' of service on 10.5.1998 he should have been considered.

9. Learned counsel states that initially the selection was ordered for a panel for the post of six assessed vacancies i.e. 2% of the counter stand as on 10.5.1998 but by subsequent letter dated 28.2.1999 for another two posts selection was ordered out of which one cannot be filled by regular selection but ought to be filled by modified selection only. Since there being only one original vacancy on 10.5.1998 applicant's claim was arbitrarily rejected which is violative of Articles 14 and 16 of the Constitution.

10. On the other hand learned counsel for the Respondents denied the contentions and by referring to Board's letter dated 10.5.1998 and particularly to clause (f) contends that since posts are being created on functional consideration, such posts should be pinpointed and should include duties of higher importance. The benefit will become admissible only to duly selected staff and that too after they move to the pinpointed post. Moreover it is stated that by clarification on 15.3.1999 selection already finalised has been decided not to be re-opened.

11. Learned counsel Shri Vadhavkar further stated that it was not the intention of the Ministry to re-open the selection which has attained finality and in cases where only written test has been held as a part of the selection panel may be finalised in terms of revised instructions contained in letter dated 17.2.99. Moreover, as initial vacancies have been filled up by a positive act of section there is no question of modified procedure being applied for subsequent selection.

12. We have carefully considered the rival contentions of the parties and perused the material on record. The number of posts as on 10.5.98 to be operated in the scale with reference to the sanctioned strength would be effective from the date of issue of the orders. The selection process could not be completed and at the time when the selection was ordered applicant stood voluntarily retired. However, the fact that applicant has not moved to the pinpointed post cannot be countenanced in the wake of the fact that

those who have been selected have already been accorded benefits from retrospective effect even without discharging the duties of higher post. After the post has been upgraded on restructuring 2% of it as per notification dated 10.5.98 would have to be operated as per the existing strength. Applicant, who admittedly had fulfilled the requisite eligibility criteria and on 10.5.98 was in position he cannot be denied consideration. However, we find that the Railway Board by a letter dated 15.3.99 decided that in terms of Ministry letter dated 17.2.99 post of COS which has arisen as a result of introduction of grade of Rs.7540-11500 w.e.f. 10.5.99 in respective category is required to be filled through the modified selection process by scrutiny of the service record only as one time exception. Applicant, who was seniormost and if the modified selection is to be applied as one time measure which dates back to 10.5.98 has a right to be considered when he was in service and this selection procedure has been dispensed with. By non-consideration applicant has been deprived of his valuable right of consideration and has been prejudiced in the matter of his pay and allowances as well as retiral benefits.

13. In the result, for the foregoing reasons OA is disposed of with a direction to the respondents to take up the matter with the Railway Board as to re-consideration of applicant's case and in the event a left over post is available to consider him as per one time modified selection process and in the event applicant is found eligible as per his seniority and record he shall be accorded the benefits as given to his counter-parts, including revision of his pay and

consequent retiral benefits, within a period of six months from the date of receipt of a copy of this order. No costs.

S.Raju
(Shanker Raju)
Member (J)

V.K.Majotra
(V.K. Majotra)
Member (A)