

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.720/2000

Dated this 19th day of August, 2003.

Shri S.A.Nikam ... Applicant
(By Shri G.S.Walia, Advocate)

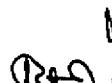
versus

Union of India & Ors. ... Respondents
(Respondents by Shri S.C.Dhawan, Advocate)

CURAM:

HON'BLE Shri Justice S.R.Singh, Vice Chairman
HON'BLE Shri S.K.Agrawal, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.


(S.R.Singh)
Vice Chairman

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.720/2000
Dated this 19th day of August, 2003

CORAM: HON'BLE SHRI JUSTICE SAKHA RAM SINGH, VICE CHAIRMAN
HON'BLE SHRI S.K.AGRAWAL, MEMBER (A)

G.A.Nikam,
Residing at
E/14/6 Matunga Labour Camp,
Mumbai 400 019. ... Applicant

(Applicant by Shri G.S. Walia, Advocate)

vs.

1. Union of India, through
General Manager,
Central Railway,
C.S.I.
Mumbai 400 001.
2. Chief Claims Officer
Central Railway,
C.S.I.
Mumbai 400 001. ... Respondents.

(Respondents by Shri S.C. Dhawan, Advocate)

O R D E R

[Per: Justice S.R.Singh, Vice Chairman]:

The applicant herein retired on superannuation w.e.f. 31.7.2000 from Railway Service as Office Superintendent. While working as Head Clerk in the scale of Rs.6000-8000 he had to face a departmental enquiry (SF-5) for major penalty pursuant to Charge Memo dated 27.02.89. The enquiry terminated with an order dated 23.3.1994 for removal from Railway Service. The order of removal from service was however stayed by the Tribunal in O.A. No.532/94 which was finally allowed vide order dated 26.11.1998 and the order of removal dated 23.3.1994 from service was quashed. The Chargesheet and all proceedings pursuant thereto were also quashed, however, with liberty reserved to the respondents to issue fresh chargesheet by competent authority.

(Signature)

2. The department however, preferred not to issue any fresh chargesheet and instead promoted the applicant from the post of Head Clerk Grade Rs.5000-8000 (RPS) to the post of OS Grade II in the pay scale of Rs.6500-9000 (RPS) on the basis of scrutiny of his service records - a procedure adopted as "one time exception" in respect of the post of Chief Office Superintendent and Depot Stores Supdt. promotion to which was otherwise required to be made by holding a suitability test. It is not disputed that these posts are selection posts and appointment to these posts is made by promotion on the basis of selection. Subsequently, the applicant was promoted as Office Superintendent Grade-II w.e.f. 3.4.1997 vide order dated 09.2.2000. The grievance of the applicant, however, is that while his junior Shri D.R. Vanmali was promoted to the post of Office Superintendent-II on 18.6.1992; as ~~Office Supdt~~ Grade-II w.e.f. 1.4.1996 and as Chief Office Superintendent w.e.f. 18.6.1992, the applicant has been illegally denied the promotions to the posts of OS-II and OS.II w.e.f. the date his junior Shri D.R. Vanmali was promoted to these posts. This denial, according to the applicant, has resulted in denial of promotion to the post of Chief Office Supdt.

3. The case of the respondents on the other hand is that though the applicant's junior Shri D.R. Vanmali was promoted as Office Superintendent-II w.e.f. 18.6.1992, the applicant could not be promoted as SF b was pending against him and subsequently he was removed w.e.f. 23.3.1994. The post of Office Superintendent Grade II and the post of Chief Office Superintendent, are Selection Posts. The applicant could not be promoted along with Shri D.R. Vanmali though he appeared in the suitability test

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along with Shri D.R. Vanmali and other eligible candidates. His promotion to the post of Office Supdt. Grade-II w.e.f. 1.3.1993, it is alleged by the respondents, was given on scrutiny of his Service Records on the strength of R.B.E. No.27/99 which laid down the procedure for filling up the post of Chief Office Superintendent and Depot Stores Supdt. in the scale of Rs.7,450-11,5000/- by scrutiny of service records only as a one time exception in modification of the existing procedure of holding a ~~selection test~~ ^{selection test.} ~~selection test.~~

4. The relief claimed herein is that respondents be directed to consider and promote the applicant as Office Superintendent Grade-II w.e.f 18.6.1992; as Office Superintendent Grade I w.e.f 1.1.1996; and as Chief Office Superintendent with effect from 10.8.1999 i.e. from the date his junior D.R. Vanmali was promoted and fix his pay accordingly giving all consequential benefits including fixation of pension and retirement benefits with 18% interest on arrears till the date of payment.

5. We have had heard Shri G.S.Walia, counsel for the applicant and Shri S.C. Dhawan counsel for the respondents and perused the pleadings. Admittedly, the applicant appeared in the suitability test along with other eligible candidates including his junior Shri D.R. Vanmali. The result of the applicant's test, however, could not be declared for the reason that he was facing a Departmental Enquiry which resulted in an order of removal from service. The order of removal from service having been quashed by the Tribunal, the question that arises for consideration is whether the ~~applicant's~~ result of suitability test the applicant appeared in could be declared for promotion on the basis of the suitability test would depend upon the result of the test and applicant's rank in the order of merit.

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6. The procedure for promotion of Railway Servants who are under suspension or against whom departmental proceedings/prosecutions have been initiated has been laid down in RBE No.13/93 dated 21.1.1993, a copy of which was produced by the learned counsel during the course of argument. The instructions contained in the said letter of the Railway Board apply to " (a) *Promotions from Group 'D' to Group 'C' within Group 'C' and from Group 'C' to Group 'B' to selection posts; and (b) promotions within Group 'D' ~~from~~^{from 2} group 'D' to group 'C' and within group 'C' to non-selection posts*" vide para 1 of the letter dated 21.1.1993. The procedure laid down in para 3 "shall be applicable to (i) Railway servants in respect of whom a chargesheet for major penalty has been issued and the disciplinary proceedings are pending and (ii) Railway Servant in respect of whom prosecution for a criminal charge is pending." vide para 2 of the RBE No.13/93. Paragraph 3 of the said Circular dated 21.1.1993 of the Railway Board in so far as it is relevant is quoted as under:

3.1 Such a Railway servant shall not be promoted even if already borne on a selection panel/suitability list till after the results of the proceedings against him are known. There is, however, no objection to promote him if he is not under suspension and the proceedings already initiated are for the imposition of only a minor penalty.

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3.3. On the basis of position assigned in the selection panel/suitability list, a list of qualified persons should be prepared keeping in view the following:-

(a) It should exclude the names of those mentioned in items (i) to (iii) of para 2 above.

(b) It should include the names of those who are not under suspension and against whom disciplinary proceedings for the imposition of only a minor penalty have been initiated.

3.3.1. In the case of promotion to selection posts, from the list of persons prepared on the above basis, a panel of the prescribed size as per extant orders less the number of persons excluded from the list vide para 3.3.(a) above who but for their suspension etc. would have figured in the selection panel should be prepared and announced as provisional selection panel."

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3.4. If the disciplinary proceedings against the person under suspension etc. for whom a vacancy has been reserved, in the case of promotion to selection posts,

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is finalised within a period of two years of the approval of the provisional panel, and, in the case of promotion to non-selection posts is finalised at any point of time, and if the person is fully exonerated or his suspension is held to be wholly unjustified, he may be empanelled/enlisted and promoted in his turn. This will also apply to prosecution cases.

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3.8. XXXX XXXX XXXX

(a) XXXX XXXX XXXX

(b) XXXX XXXX XXXX

(c) In respect of promotion to selection posts, the cases of persons referred to under para 3.3. (a) above which are not finalised within a period of 2 years of the approval of the provisional panel and who are not called for the next selection; vide para 3.8 (a) above, should be reviewed after finalisation of the cases and dealt with for the purposes of empanelment, promotion, fixation of pay etc. on the lines indicated in para 3.6 and 3.6 above.

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It had been contended by Shri S.C. Dhawan, learned counsel for the respondents that the applicants' suitability test result of which could not be declared because of the reason that the applicant was facing a departmental enquiry lost its efficacy after a period of two years and the applicant cannot now claim any right on the basis of the said suitability test. The submission made by Shri S.C. Dhawan cannot be countenanced. The Railway Board letter referred to hereinabove provides in no uncertain terms (vide para 3.7) that in case of promotion to selection posts, if the disciplinary cases against all the staff for whom vacancies have been reserved are finalised within a period of 2 years of the approval of the provisional panel, the panel should be finalised by interpolation of the name so such persons at the appropriate places. *Otherwise the panel has to be kept as provisional till the finalisation of the last pending case* and according to para 3.8 (c) the cases of persons referred to under 3.3. (a) which are not finalized within a period of 2 years of the approval of the provisional panel and who are not called for the next selection "should be reviewed after finalisation of the cases and dealt with for the purpose of empanelment, promotion, fixation of pay etc. on the lines indicated in paras 3.6 and 3.6 above." The applicant, in our opinion, acquired a right to be empanelled depending upon the result of suitability test be appeared in which right remained in suspended animation during the pendency of the disciplinary proceedings and with the order of the Tribunal dated 26.11.1988 quashing the chargesheet and enquiry proceedings the right of the applicant which was under suspended animation stood revived and the respondents are bound to declare the result of the

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suitability test of the applicant and take such action as may be warranted depending on the result of the applicant's suitability test. ^{and in} In that event, his case will have to be reviewed as provided in paragraph 3.8 (c) of the Railway Board's Letter referred to above.

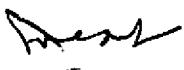
7. ^{gain 2} It cannot be said ~~stated~~ that if the applicant is found to be successful in the suitability tests, he would be entitled for promotion with effect from the date his junior Shri D.R. Vanmali was promoted to the post of Office Superintendent Grade II. By order No.S.O.O.No.16/2000 dated 4.2.00, the applicant has been promoted from Office Superintendent Grade II ~~of~~ (Gr. Rs.6500 - 9000 (RSRP) to the post of Office Superintendent Grade-I in the grade of Rs.6500-10500 w.e.f. 3.4.1997. We are of the view that in case he is promoted to the post of Office Superintendent Grade II with effect from the date his junior Shri D.R. Vanmali was promoted in that event he would be entitled to the post of Office Superintendent Grade I w.e.f. from the date Shri D.R. Vanmali was promoted to that post and the applicant would be entitled to be considered for promotion to the post of Chief Office Superintendent notionally in accordance with law.

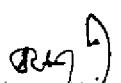
7. In the circumstances, we are of the considered view that the ends of justice would be met if the respondents are directed to declare the result of the suitability test of the applicant and take appropriate follow up action thereafter depending on the result of suitability test.

8. Accordingly, the Original Application succeeds and is allowed in part. The respondents are directed to open the sealed cover and declare the result of the applicant's suitability test

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held for promotion to the post of Office Supdt. Grade II and take a follow up action on the basis of the result of the Suitability test in accordance with law keeping in view the observations made in this judgement within a period of two months from the date of production of a certified copy of this order. No order as to costs.


(S.K. Agrawal)
Member (A)


(Sakha Ram Singh)
Vice Chairman

sj*