

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.473/2001

Mumbai, this 18th day of July, 2001

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P.Singh, Member(A)

M.K.Waghmare
22-B, Savali Housing Society
Bijapur Road, Near Indira Nagar
Solapur

... Applicant

(By Shri D.V.Gangal, Advocate)

versus

Union of India,through

1. Secretary
Railway Board
Ministry of Railway, New Delhi
2. General Manager
Central Railway, Hqrs. Office
Mumbai CST, Mumbai
3. Divisional Railway Manager
Central Railway, Solapur Division
Solapur

... Respondents

ORDER(oral)

By Hon'ble Shri Justice Birendra Dikshit

The order dated 31.7.2000 impugned by the petitioner reads as follows:

"The case of Shri M.K.Waghmare, PI-II of SUR Divn. regarding non-consideration of his promotion as PI-I against upgraded post w.e.f. 1.3.93 received under All India SC/ST Rly. Employees Association, Solapur Divn.'s Memorandum dated 30.5.2000 handed over to GM has been examined and it is advised as under:-

One post of PI-I Gr. Rs.2000-3200(RPS) was guarded for SC community on restructuring cadre w.e.f. 1.3.93. On receipt of clarification received from Railway Board to release the guarded post upto the extent of 15% and 7 1/2% for SC & ST respectively, the benefit of upgradation was granted to Shri D.P.Shankar (SC) PI-II of JBP who was seniormost SC community employee as on 1.3.93.

Shri Waghmare, though senior to Shri R.P.Kulkarni and J.P. Mate of SUR Divn. in the base grade, he was considered for empanelment in the PI-III
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selection on relaxed standard against SC quota and hence he will be considered for further promotion against SC quota only and not against general vacancies. Shri Waghmare would not have made eligible in the selection of PI-III conducted by DRM(P) SUR in the year 1982 and found place in panel and had he not belonged to SC community. Shri Waghmare was called for the selection to the post of PI-I held in the year 1995 & 1996-97. In the 1995 selection, he did not qualify in the written test. Though he empanelled in the selection held in 1996-97 he submitted his refusal for promotion on 18.1.99.

Incidentally it is stated that the above issue has been raised by CRMS in the PNM meeting held at Hqrs. level. After detailed discussion with Sangh in the PNM meeting, the above item has been closed".

2. The learned counsel for the applicant contended that despite being seniormost, the respondents have not considered him for further promotion by ~~re~~empanelling him for the post of PI-I at the selection held in the year 1993 and appointed R.P.Kulkarni and J.P.Mate as PI-I superceding the claim of the applicant. The applicant is at present Personal Inspector (in short 'PI') Grade II working at Solapur.

3. The applicant's case in short is that he was appointed as Junior Clerk on 18.8.77, ~~and~~ promoted as Senior Clerk on 19.3.81 and further promoted as PI-III and PI-II (non-selection post) on 25.8.82 and 18.4.83, respectively. According to him, overlooking his claim, the respondents promoted R.P. Kulkarni and J.P.Mate as PI-I superseding him. Relying upon restructuring order dated 27.1.93, he claims that he was entitled to be considered for empanelment for promotion as PI-I at the selection of 1993. The respondents did not consider him for empanelment for the reason that he was empanelled at PI-III selection on relaxed standad against SC quota and ~~18.1.99~~

not against general vacancies.

4. Learned counsel for the applicant relying upon the judgement of the Hon'ble Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab (1995) 29 ATC SC 481 argued that the applicant should have been considered against the general vacancy.

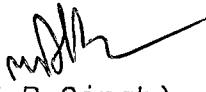
5. We do not find applicant entitled for any relief in this case. The reason for our conclusion is that the applicant after failing to qualify for the empanelment for promotion to the post of PI-I held in the year 1995, qualified at the selection of 1996-97 and was thereafter empanelled for promotion. However, when it came to his posting on promotion, he refused to accept the promotion on 18.1.99. When applicant has refused promotion in the year 1999, he cannot be allowed to raise the grievance that he was wrongly not empanelled in 1993. Even if we assume that he was entitled for consideration for empanelment in 1993 but when he has refused promotion in 1999, a subsequent year when he was being actually granted promotion on his being empanelled, we are not inclined to entertain his claim for non-consideration in a year much earlier. An employee who refuses promotion in a year subsequent to which he was wrongly overlooked at an earlier empanelment, can have no grievance against his non-consideration for empanelment for promotion in an earlier year about his non-empanelment. We would like to further observe that the applicant has refused promotion in the empanelment of 1996-97 and if he is allowed relief then he will be taking advantage of promotion with effect from 1993 i.e. seven years earlier which we are not

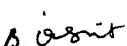
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inclined to grant. So far as applicant's counsel argument that refusal of promotion in the year 1999 cannot be taken to the prejudice of the applicant and his empanelment for the year 1996-97 is concerned, we are not agreeable to the same as he has refused promotion and there could be no cause of action for his earlier non-empanelment.

6. We have examined the claim of applicant on merits also. The applicant has no case even on merit. The applicant was empanelled ~~as~~ PI-III on relaxed standard against SC quota. The empanelment of the year 1993 is against general vacancies. Once applicant has stood promoted against SC quota on a relaxed standard at an earlier stage then, though initially selected against general vacancy, he has to be considered for empanelment against SC quota only. He cannot be allowed to shift from one side to another in the way he is trying to take advantage for the purpose of promotion on both kind of empanelment. Thus, we are of the opinion that he could be considered for further promotion against SC quota only and not against general vacancies. There appears no illegality to us in rejection of claim of applicant for empanelment in 1993 against general vacancy even on merits. In view of aforesaid position, the OA is liable to be dismissed.

7. For aforesaid reasons, the OA is dismissed. No order as to costs.


(M.P.Singh)
Member(A)


(Birendra Dikshit)
Vice-Chairman(J)

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