

10) C.P.No.96/2001 in
O.A.601/2001

Date: 20.11.2001

Applicant is present in person. Mr.S.C. Dhawan
alongwith Mr.Suresh Kumar for the respondents.

The applicant has made following prayer in
Contempt Petition:-

"1. The Railway Board's order of 19.9.2001
and G.M.C. Railway's order of 24.09.2001 are
cancelled and position ante restored.

2. That the Respondents be directed to
implement the order of this Hon'ble Tribunal in
word and spirit.

3. Provide the applicant the benefit of
notional promotion and consequential benefits
like arrears etc. from the date of convening the
PPC for 1999.

4. 24% interest on the amount of arrears as
requested under 3 above to deter Administration
in future for such arbitrary acts.

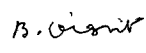
5. Any other order be passed in favour of
the petitioner which the Hon'ble Tribunal deems
fit to prevent injustice."

The petitioner has not prayed for taking any
action for wilful disobedience of the order or any
directions of the Court. Under circumstance, the relief
prayed for is not a relief for which action may be
required under Contempt of Courts Act. The Contempt
Petition No.96/2001 is dismissed.

Shri S.C. Dhawan appearing for respondents states
that the reply to O.A. is ready and he will be filing
it within 24 hours. The petitioner, who is appearing in
person, states that he does not want to file any
rejoinder.

Let the case be listed for admission/final
hearing on 23.11.2001.


(B.N. Bahadur)
Member (A):.


(Birendra Dikshit)
Vice Chairman.

H.

25) 23.11.2001

Applicant in person.
Mr. Suresh Kumar, Counsel
for respondents.

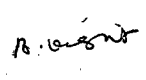
Let on 3/12/2001.

Recd. Reply

dtd. 20/11/2001
from Respondents
No. 1 & 2. On
20/11/2001.


23/11


(B.N. Bahadur)


(B. Dikshit)

O.A. 601/2001

3.12.2001

Applicant in person.

Shri S. C. Dhanan for the
respondent.

List this case on 4.12.2001.

(Sud. S. Shastri)
M.A.

(Bhendra Dikshit)
V.C.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA No.601/2001

Dated:4th Dec,2001

Heard the applicant in person and Shri Suresh Kumar, Counsel for Respondents.

2. The applicant has challenged his non selection for the post of Principal HOD in the Railways in the panel of 1999. According to him since he has 'very good' Confidential Reports, and the Bench mark for selection is 'very good', he should have been selected. The marks system adopted for Bench Mark by the DPC is not proper as earlier also in 1987, there was a similar mark system and this was withdrawn vide letter dated 6/8/96. He claims that he was not aware about the new guidelines adopted by the Railways for the selection to the post of Principal HOD which requires that there 'should be three 'very good' and two 'outstanding' Confidential Reports amounting to total 22 marks.

3. The applicant has further challenged the selection of one Smt.Sunita Awasthi. According to him the selection of Shri Tiwari also does not appear to be proper. However, the applicant has not made them parties to the OA.

4. The learned counsel for the respondents submits in instructions that the guidelines/norms have been notified through Gazette notification and he undertakes to produce a copy of the same and the applicant seeks time to go through the same in the meantime. According to the applicant these guidelines are contradictory to the guidelines given by the DOPT and he states that the new guidelines were not circulated to them. The learned counsel for respondents shall file an affidavit for the same.

List the case on 11/12/2001.

Shanta S
(SMT.SHANTA SHASTRY)
MEMBER(A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

Received
Affidavit on
behalf of
Respondents
received on 10-12-2001

MB

(33) 11.12.2001

Present: Applicant in person.
Shri Suresh Kumar for respondents.

After hearing the reply of counsel for respondents Shri Suresh Kumar, an affidavit has been filed at this stage by the applicant without serving a copy of the same on the other side. We are not inclined to accept the affidavit at this stage. This affidavit is dated 11th December, 2001. As the applicant has prayed that this be taken on record, place the same on record. Orders reserved.

Shanta

(SMT. SHANTA SHASTRY)

MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)

VICE CHAIRMAN

Recd Original Records
of DPC Proceeding.

pg

for Affidavides
Adv. for Respondent
(Shri Suresh Kumar)

23/11/2002.

Shanta
23/11/02

231102

Date:-

Applicant by

None

Respondent by

Mr D Keshav for Suresh Kumar

Judgement/Order

Signed and Pronounced

today re 231102

In the open Court by

Hon'ble Shri

Justice B. Dikshit

and Hon'ble Shri

Shanta Shastri (A)

Shanta
Court Officer
23/11/02

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA

601/2001

Hon'ble Vice Chairman / ~~Member (J)~~ / ~~Member (A)~~

may kindly see the above Judgment for
approval / signature.

haver f

~~V.C. / Member (J) / Member (A) (K/S)~~

Hon'ble Vice Chairman

B. Bant

~~Hon'ble Member (J)~~

~~Hon'ble Member (A) (K/S)~~

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 601/2001

23.01.2002

Date of Decision: 12.2001

K.K. Verma

Applicants

Shri P.A. Prabhakaran

Advocate for Applicants

in person

Versus

Union of India & another

Respondents

Shri S.C. Dhawan with
Shri Suresh Kumar

Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT.

VICE

HON'BLE SMT. SHANTA SHASTRY.

CHAIRMAN

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

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 601/2001

THIS THE 23rd DAY OF JANUARY, 2002

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHASTRY MEMBER (A)

Shri K.K. Verma,
presently working as
Financial Advisor and
Chief Accounts Officer (Traffic),
Central Railway CST,
Mumbai-400 001. Applicant

By Advocate Shri P.A. Prabhakaran.
Applicant in person has
Versus

1. Union of India, through
Secretary, Railway Board,
Rail Bhawan, New Delhi-110 001.
2. General Manager,
Central Railway,
Mumbai CST,
Mumbai-400 001. Respondents

By Advocate Shri S.C. Dhawan with Shri Suresh Kumar.

ORDER

Smt. Shanta Shastri. Member (A)

The applicant in this OA is aggrieved by his non selection to the post of Principal Head of Department (PHOD) in the scale of Rs.22400-24500 (RPS). According to the applicant he is one of the senior most persons who ought to have been selected and posted as PHOD in preference to his juniors in as much as his service record is absolutely clear and there is no reason whatsoever to have ignored the applicant for the said promotion.

2. The applicant is presently working as FA & CAO (Traffic) in the Railways. He joined the railway service in July, 1966 through the UPSC selection. According to the applicant he was posted in the Senior Administrative Grade (SAG) in the year 1989 with effect from 1988. During the period from October, 1993 till 1998 the applicant claims that he had several laudable achievements to his credit. He was never communicated any adverse remarks.

3. The promotion to the grade of PHOD was considered in 1997. The applicant's case was also considered, but he was not selected. Being aggrieved, the applicant filed OA 237/98 seeking promotion to the post of PHOD. This OA was disposed of by this Tribunal on 22.02.2001. It was held in this OA that the infirmity in the non selection of the applicant was the non communication of the gradings of 'Good' in the Confidential Reports of the applicant for the years 1992-93, 1993-94 and this had prejudiced the officer in terms of the ratio settled in two judgments (Udai Krishna & U.P. Jal Nigam). It was therefore, directed that the respondents should communicate the entries in accordance with the normal procedure since the bench mark for further promotion is 'Very Good' and provide opportunity to ^{the} applicant to file representation/appeal as provided. The representation should be decided and if there be a change made by the competent authority in the grading as a result of the decision taken for either/

both years, then fresh selection committee shall be convened to consider the case of the applicant in the light of the amended Confidential Reports grading. In case thereafter the DPC finds him fit, he shall have to be provided the benefits of notional promotion and consequential benefits from the date of convening of the first DPC for the post of PHOD on 29.7.1997. The respondents accordingly have communicated the entries in his Confidential Reports of 1992-93 and 1993-94, a decision is still awaited on the representation made by the applicant against the same.

4. In the meantime, a further DPC was held in 1999. The claim of the applicant was again considered by the DPC but he was not found fit for empanelment on the basis of his performance as reflected in his ACRs. The panel was approved on 08.12.1999 for the year 1997-98. The applicant has therefore, prayed for a direction to the respondents to re convene the DPC for purpose of applicant's promotion as PHOD and that he should be promoted from the date the DPC of 1999 was convened with all consequential benefits with the seniority, fixation of pay, arrears of pay thereon. The applicant has also prayed 24% interest on the arrears. Beside this prayer the applicant has prayed that the officer who wilfully disregarded the instructions issued by the Board from time to time in writing the CRs are taken up so that atleast in future the upright and sincere officers do not suffer. He has also sought a direction

to investigate how the authorities made the entry regarding issuance of warning to the applicant in the DOP proceeding of 1997 as the administration was not able to produce any proof to that effect. If it is found that this entry was maliciously entered into the DOP proceedings the concerned officer should be taken up drastically so that this type of mischief in the garb of confidentiality does not occur in future.

5. The case of the applicant is that he is entitled to be promoted to the post of PHOD on the basis of Confidential Reports for the period from April, 1992 onwards. The respondents have not adopted uniform and relevant criteria for the selection to the post of PHOD. Therefore, the supersession of the applicant by junior persons is vitiated. No adverse entry or material has been conveyed to the applicant. He had earned all his earlier promotions at the appropriate time on selective merit. According to the applicant earlier the criterion for the selection for the post of PHOD was laid down in the Board's letter dated 15.5.1987. Some sort of point system was prescribed for assessing the grading for promotion to different posts. The ACR gradings were given points i.e. for outstanding-5, very good-4, Good-3, Good/Unfit-2 1/2, Average-2 and below average-1. So the concerned person would be considered for promotion post on the points obtained on the ACRs for 5 years. However, this letter was superseded by the Board's letter dated 26.9.1989. This particular letter

is based by and large on the Government of India DOP&T OM dated 10.3.1989 which prescribed the procedure to be observed by the DPC. It was made applicable to all the Ministries/ Departments of Government of India. However, again in 1995 the Railway Board issued instructions on 16/22.5.1995. Some amendments were made in the Board's letter dated 26.9.1989. These instructions were supposed to be adopted for the panels to be prepared from 1996-97 onwards. However, this letter too came to be cancelled on 06.8.1996.

6. In the DOP&T OM dated 10.3.1989 for promotion to the grade of Rs.3700-5000 and above the bench mark laid down is 'Very Good' to be assessed on the basis of Confidential Reports by the Selection Committee. According to para 2.2 of the aforesaid OM in the case of each officer, the over all grading is to be given by the DPC such as 'Outstanding', 'Very Good', 'Good', 'Average' or 'Unfit'. The applicant has been considered 'Fit' for promotion on the basis of the ACRs. Though all his ACRs for the previous five years were 'Very Good', he was still not promoted as PHOD. This is against the criterion accepted by the administration itself. He satisfied the condition of 'Very Good' gradings for five years and yet he has been excluded from the panel.

7. The respondents in their reply have stated that the applicant's claim for the Higher Administrative grade was considered once again in 1999, but he was not found suitable. The applicant cannot claim promotion to the Higher Administrative Grade as a matter of right. His only right is for consideration, which was given. The respondents have submitted that as per the extant instructions only those cases wherein an officer is graded as 'Unfit for promotion' to the next grade, the remarks leading to the officer's disadvantage are to be communicated to the officer. The remarks in the ACR of March, 1993 and March, 1994 had not been communicated to the applicant because he was graded as 'Fit' for promotion. However, as directed by this Tribunal, the remarks/ gradings were communicated to the applicant and the applicant sent his representation which is under consideration.

8. The respondents submit that the Selection Committee had followed uniformly the procedure for selection to Administrative Grades as laid down in Railway Board's letter ~~dated~~ dated 26.9.1989. A letter dated 16/22.5.1995 of the Railway Board laying down the criteria for selection of PHODs and AGMs was circulated by the Western Railway vide their letter dated 12.6.1995. The instructions contained therein were to be followed for the panels to be prepared for 1996-97 onwards. However, these instructions were withdrawn vide Railway Board's letter dated 31.7.1996 and

circulated by Western Railway vide their letter dated 06.8.1996. Therefore, while preparing the panel of PHODs of IRAS for the year 1997-98 those instructions were not followed.

9. The learned counsel for the respondents has produced all the relevant records pertaining to the proceedings of the Selection Committee meeting held on 27.9.1999 and the various letters laying down the norms. It transpires from the record that the Railway Ministry had decided with the concurrence of the DOP&T that the minimum bench mark for selection should be 'very good plus' and for this purpose an officer should have earned a minimum of three 'very good' and two 'outstanding' gradings during last five years. The Railway Board reviewed the position and decided that so long as an officer's aggregate performance equals three 'very good' and two 'outstanding' ratings or 22 points (assigning five points for 'outstanding', four points for 'very good' three for 'good' and two for 'average') over last five years he may be considered 'Fit' for promotion to PHOD. It was further decided that in case of marginal shortfall reaching to 22 points i.e. 21 points the same may be considered as grey area. The approval of the DOP&T was sought to the aforesaid policy vide letter dated 22.5.1996 of the Railway Board. Approval of DOP&T was received on 26.8.1996. Accordingly following the aforesaid norms the Selection Committee assessed the officers and classified the applicant's performance as

'good' as he could obtain only 20 points with 'very good' assessment for all the five years under consideration. He was therefore, not recommended for promotion to PHOD.

10. The applicant has challenged this points system. According to him when he had got 'Very Good' grading in each of the five years under consideration, he made the bench mark of 'Very Good' and therefore, he should have been granted the promotion. Even in the past, the points system had been set aside. Therefore, the respondents should not have resorted to the points system again without the knowledge of the employees concerned. This change in norms was not circulated and they failed to follow the guidelines given in the order of 26.9.1989 and therefore, the selection is vitiated and the respondents should reconsider the case of the applicant.

11. We have heard the applicant in person and the learned counsel for respondents. The only point for consideration is whether the respondents' action in not selecting the applicant only because he did not get 22 points for the gradings in his ACR is justified?. It is to be seen that the Railways did not follow uniform procedure. According to the OM dated 26.9.1989 the bench mark for purpose of promotion from the JAG to SAG, SAG to AS grade shall be 'Very Good'. Instead of following this, the respondents changed the criterion to three Very Good and two Outstanding i.e. the bench mark

of 'Very Good plus' and further assigned points to the gradings requiring 22 points for 'Very Good' assessment. This is arbitrary and needs to be quashed and set aside.

12. It is true that the respondents, instead of following the guidelines given in the letter dated 26.9.1989 based on the DOP&T OM of 10.3.1989 followed the point system and also changed the bench mark to 'Very Good plus'. The respondents have justified by saying that they had obtained specific approval of the DOP&T for this change and therefore, their action cannot be faulted. In our considered view what was made known to all was that the bench mark for the post of AS and above would be 'Very Good'. - It was not made open that a different system would be followed and the bench mark would be 'Very Good plus'. Further, the bench mark of 'Very Good' is construed as having three 'Very Good' and two Outstanding reports, this would go contrary to the bench mark of overall 'Very Good' as one who has secured 'Very Good' every year will still not get the over all grading of Very Good. Therefore, this system appears to be anomalous in that a person getting 'Very Good' for five years is not graded as 'Very Good'. Even if it has to be assumed that whatever the respondents did, they did it in consultation with and with the prior approval of the DOP&T which is nodal Ministry for issuing guidelines in regard to personnel matters, still, such change in the criterion affects the employees adversely. An opportunity should therefore have been given to the

employees before adopting such system. Not only that, going by the earlier observation of this Tribunal in OA No.237/98 even the grading of 'Very Good' falling short of the bench mark of 'Very Good' plus' becomes adverse and causes prejudice to the concerned employees and therefore, this 'Very Good' grading also should have been communicated to the applicant before putting the stamp of unsuitability on the applicant. In our considered view, therefore, the action of the respondents in declaring the applicant as unsuitable on the basis of the points system appears to be arbitrary. Since the applicant had received the grading of 'Very Good' in each of the five years under consideration, the applicant has to be considered as 'Very Good', which is the bench mark for such post and should have been selected for promotion to the posts of PHOD. In our considered view the Selection Committee has certainly made a departure from the laid down norms without prior proper notice to all concerned. This amounts to violation of principles of natural justice. The DPC was certainly free to adopt its own method to assess the officers' performance independently without accepting the grading given each year. There is no quarrel about that. It is not for the Tribunal to interfere. However, we find that the Selection Committee simply followed the norms given to it by classifying the applicant as 'good' because five 'very good' CRs did not fetch a total of 22 points. The Selection Committee did not change or arrive at gradings different than those

given in the ACRs, however, converted the same into an authentic figure of 20 not considered good enough for bench mark of 'very good plus'. The norms were fixed internally, they were not notified. The notification produced by the respondents is of 29.3.2000 which is not material to the present case, it being issued after 1999 and also because it does not mention anything about the bench mark of 'very good plus'. The letter of 26.9.1989 has also not been set aside or superseded. We have therefore to hold that the non selection of the applicant is not justified. As the applicant has not made the selected persons parties to the OA we do not disturb their selection. However, in view of the fact that the applicant has five very good CRs, we hold that he is entitled for promotion to PHOD and direct the respondents to hold a review DPC for promoting the applicant to PHOD in terms of letter dated 26.9.1989 of the Railways with effect from the date his juniors were promoted with all consequential benefits. The promotion shall be notional from 08.12.99. Arrears shall be payable from the date of the review DPC. We accordingly direct the respondents to reconsider the selection of applicant in the light of the observation made above for grant of promotion to the post of PHOD in the grade of Rs.22400-25400 by holding a review DPC.

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**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Dated this Friday the 13th day of August, 2010

Coram: Hon'ble Shri Jog Singh - Member (J)
Hon'ble Shri Sudhakar Mishra - Member (A)

**Contempt Petition No.110 of 2002
in
O.A.601 of 2001**

K.K.Verma,
Retd.FA&CAO (T), Central Railways,
R/o 11, 'Roshera',
Opp.K.C.College, Churchgate,
Mumbai - 400 020.
(None)

- Applicant

Versus

1. Shri R.K.Singh,
Secretary, Railway Board,
Rail Bhawan,
New Delhi - 110 001.
2. Shri S.P.S.Jain,
General Manager, C.Railways,
Mumbai, CST - 400 001.
(By Advocate Shri S.C.Dhawan)

- Respondent

O R D E R (Oral)

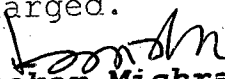
Per: Shri Jog Singh, Member (J)

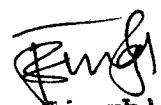
The present Contempt Petition has been filed for non-implementation of the Order dated 23.1.2002 passed in OA 601 of 2001 (**K.K.Verma Vs. Union of India & another**) by which the respondents were directed to

convene a review DPC. Somehow the respondents approached the Hon'ble High Court by way of Writ Petition No.2167 of 2002 and there was an interim order passed on 11.10.2002, in favour of the respondents.

2. Heard the learned counsel for the respondents. It is noted that during the pendency of the said Writ Petition, the respondents on their own have conducted a review DPC in compliance of this Tribunal's Order dated 23.1.2002 and the said DPC has not recommended the case of the applicant for empanelment in the Higher Administrative Grade and the said recommendations have been confirmed by the Appointments Committee of the Cabinet on 30.9.2002. Shri Dhawan, learned counsel for the respondents has produced a letter issued by the Ministry of Railway Board on 8.10.2002 to this effect. The said letter is taken on record.

3. In view of the above, we do not find any point to keep the present Contempt Petition pending. The same is accordingly dismissed as infructuous. Notices discharged.


(Sudhakar Mishra)
Member (A)


(Jog Singh)
Member (J)

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