

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.639 /2001.

Wednesday, this the 30th day of January, 2002.

Coram: Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Smt. Shanta Shastri, Member (A)

V.B.Dialani,
Sr. Booking Clerk,
Central Railway,
DRM, Central Railway,
Mumbai CST.
R/o. Brk. No. 1533/2,
Section No.29,
Ulhasnagar - 4, Dist. Thane.
(By Advocate Shri K.B.Talreja)

...Applicant.

v.

1) The Union of India,
Through the General Manager,
Central Railway,
Mumbai CST

2) The Divisional Railway Manager,
Central Railway,
Mumbai CST.
(By Advocate Shri Suresh Kumar)

...Respondents.

: O R D E R (ORAL) :

Smt. Shanta Shastri, Member (A)

The applicant is aggrieved that inspite of having been placed in the select list for the post of Guard and also being high in the order of merit, he has not been promoted, while others in the select list have been issued with the promotion orders.

2. The applicant was nominated for pro-Guard promotion course No.407 from 3.6.1999 to 24.7.1999 at the Zonal Training Centre, Bhusaval, while he was working as a Senior Booking Clerk. He successfully completed the training course and was selected and

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placed at Sl.No.2 in the order of merit. He had high expectation of promotion.

3. The Learned Counsel for the applicant submits that the applicant wanted to change over from Commercial Department to the Operating Department and he was very keen on being selected as a Guard. In fact, he was offered promotion in the Commercial Department in the higher grade in 1998, but he refused to take the promotion as he had already been nominated for the pro-Guard promotion course. He is now disappointed that inspite of having merit, he is not promoted as yet, even after a period of two years. He has therefore, approached this Tribunal to direct the Respondents to post him as Guard and also ^{to} give him his due seniority over his juniors with other consequential benefits accruing from the date his juniors have been posted.

4. Respondents have filed their counter reply. The Respondents have not denied that the applicant was selected for the post of Guard and was also high in the merit list. However, he could not be promoted, as disciplinary proceedings had been initiated against the applicant. A major penalty charge sheet was issued to the applicant on 19.2.1999 and after a due enquiry the applicant has been imposed the penalty of reversion to the initial grade of Rs. 3,200-4,900 (RSRP) fixing his pay at Rs.3,200/- for a period of five years with cumulative effect vide order dt. 11.5.2001. Further, another major penalty charge sheet was issued to the applicant on 7.3.2001, the enquiry was finalised and a penalty of withholding of increment for a period of six months after completion of the previous penalty, if any, with further instructions that on expiry of the

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period this will not have the effect of postponing the future increments was imposed vide order dt. 4.6.2001.

5. In view of these penalty orders, the applicant could not be promoted.

6. Learned Counsel for the applicant pleaded that mere withholding of the increment cannot come in the way of his promotion. The increments could have been withheld even after promoting him. Besides, it is not a matter of promotion, but it is a mere transfer to the same grade in a different department and therefore, these punishments ought not to come in the way of his promotion. The applicant has also filed the relevant Recruitment Rules for the post of guard at Annexure No. VI of the OA.

7. According to Rule 124(1) of the Indian Railway Establishment Manual, Vol. I, 1989 Edition, the vacancies in the category of Goods Clerks in the scale of Rs. 1,200-2040 are to be filled as under :

- (i) 15% by direct recruitment from the open market through the Railway Recruitment Boards; and
- (ii) 85% by Promotion as under :
 - (a) 31% by selection from amongst Senior Train Clerks/Train Clerks.
 - (b) 54% by selection from amongst Ticket Collectors, Commercial Clerks, Switchmen, Yard Staff, Brakesmen as per quota decided by each Zonal Railway Administration for each of these categories."

The applicant was selected under the category (b) and it is crystal clear that this is a promotion and not mere selection post on transfer.

8. We have heard the Learned Counsel for the applicant, as well as, the Respondents and have given careful consideration to the arguments advanced. It is very clear that the applicant has

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been denied promotion because of the penalties imposed on him in two major penalty charge sheets. It is quite obvious that the applicant cannot be promoted during the pendency of the disciplinary proceedings or during the operation of the penalty. The Respondents have also drawn our attention to a letter of the Railway Board dt. 21.1.1993. In terms of para 3.9 of the letter if a person becomes due for promotion after finalisation of disciplinary proceedings and the penalty imposed is either of withholding of promotion or withholding of increment or reduction in lower stage in time scale or reduction to a lower time scale, grade or post, then the person should be promoted only after the expiry of the penalty. This being the position, in our considered view, there is no merit in this OA. Accordingly, the OA is dismissed. No costs.

Shanta
(SHANTA SHASTRY)
MEMBER (A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.