

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:

788/2001

Date of Decision:

18-11-01

Vitthal Chauder

Applicant.

Sh. D. V. Gangal Adv.

Advocate for
Applicant.

Versus

Union of India & ors.

Respondent(s)

Shri S. C. Dhawan Adv.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice Birendra Dikshit - Vice Chairman

Hon'ble Shri. B. N. Bahadur - Member (A)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal? X

(3) Library. X

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(B. N. BAHADUR)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this *Monday* the *18th* day of *November* 2002

Coram: Hon'ble Mr. Justice Birendra Dikshit - Vice Chairman
Hon'ble Mr. B.N. Bahadur - Member (A)

O.A. 788 of 2001

Vitthal Chandar,
Painter Grade-I,
Senior Section Engineer,
(Carriage & Wagon), Central Railway,
Mumbai, C.S.T.
(By Advocate Shri D.V. Gangal for
Shri S.V. Marne)

- Applicant

Versus

1. Union of India
through the General Manager,
Central Railway,
Headquarters Office,
Mumbai CST.
 2. Divisional Railway Manager,
Mumbai Division,
Central Railway,
Mumbai CST.
 3. S.D. Patil
Senior Section Engineer,
Central Railway, Dadar,
Mumbai - 400028.
(By Advocate Shri S.C. Dhawan)
- Respondents

O R D E R

By Hon'ble Mr. B.N. Bahadur, Member (A) -

The Applicant in this case is aggrieved that the cadre of Polisher have been clubbed together by the Respondents and seeks the relief inter alia that this should be declared illegal. He also has a grievance regarding his seniority position in view of this, and hence seeks a declaration that he should be considered for the post of Master Craftsman (MCM) w.e.f. 1.9.2001 in a retirement vacancy and that Respondent no.3 should not be considered for promotion.

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2. The basic facts as recorded in the chronology of events by applicant in his OA are that after joining as Khalasi in 1972, the Applicant was promoted in the line of Painter and finally became Painter Grade-I in March 1993. Also, it is averred that the Applicant is due for MCM for which he has passed a trade test. It is further averred that in July, 1998 one Shri Adhav was indeed promoted as Painter superseding the claim of Applicant inasmuch as the said Adhav is a Polisher and the Applicant avers that a Polisher cannot be promoted as MCM Painter. Besides the Applicant claims seniority over Shri Adhav with reference to the Base-Grade. These points are expounded in the OA, and further details provided in Para 4 of the OA. Certain grounds are taken by Applicant in Para 5, which, among others was argued by the Applicant's learned counsel, Shri D.V.Gangal at length.

3. The Respondents have filed a written statement in reply, resisting the claims of the Applicant and stating that due to change over from wooden body coaches to steel body coaches and use of laminates etc. the need for Polishers or MCMs (Polishers) was reduced and hence the number of posts of Polishers were reduced. However, as per Railway Board's instructions and rules, it was decided to post Polishers to the cadre of Painters, after Conversion Training. The implications of this basic point are then explained at some length in the written statement.

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4. As regards seniority, the point made by Respondents is that certain Polishers were posted as far back as December, 1977 as Painters and seniority of merged cadre was published on 31.8.1999. No objections were raised by Applicant at this stage or even when one Shri Kamalakar Digamber was posted as Painter in December, 1997. The point regarding non-joinder of persons promoted has also been taken by Respondents. The written statement of Respondent goes on to elucidate these points by cross-reference to various documents annexed with their written statement.

5. We have heard learned counsel on both sides apart from perusing the papers in the OA carefully. Learned counsel Shri D.V.Gangal argued at length after taking us over the facts. The Respondents case was argued by their learned counsel Shri S.C.Dhawan. The points taken by the learned counsel are discussed one by one below.

6. The first point taken by Shri Gangal was that in fact the merger of cadres of Painter and Polisher was not correct and that the two cannot be inter-changed. In fact, this point has been taken at length in the OA also. He also alleged that no training was provided to Polishers as per action plan. On this point we cannot accept that there is anything wrong or arbitrary in the merger of cadres. Circumstances develop due to changes in technology, and these have to be accepted. Whatever protection to job and livelihood of Polishers could be provided has been provided and no discrimination or unfairness *per se* can

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be observed in the action of the Railways to meet a situation necessitated by changing technology. In fact such things have happened in many government organisations, including the Indian Railways. There is no malice. Hence this argument of the Applicant cannot be accepted.

7. The next point taken by Shri Gangal was that Applicant did not have any knowledge of the adverse effect of his seniority, as no seniority list was published and what has been brought forth are either office notes or orders of posting etc. From a careful perusal of the annexed papers and the facts of knowledge of promotion of others, it is clear that Applicant had knowledge of the manner in which seniority position of Polisher/Painter were being operated and promotions given. We have carefully seen Annexure-R-4 (Page 31/32) in this regard. The Applicant himself talks of certain facts in the OA from which it is clear that he had knowledge of above mentioned developments.

8. At this stage it is indeed late for Applicant to claim lack of knowledge and there is some substance in Shri Dhawan's argument that in the very OA, statements have been made at Page 6 and Page 7 which clearly show that the Applicant had enough knowledge of how seniority and promotions were being regulated. The Applicant has come to the Tribunal at a very late stage.

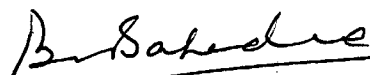
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9. The argument was raised on behalf of Applicant that base-grade seniority should be followed. While this may suit the Applicant for promotions which now he sees coming up, it is not right to come up now to challenge this aspect. It is difficult to assume as stated above that Applicant was ignorant of developments right from December, 1997 and provide him benefits especially in the face of facts and documents on record.

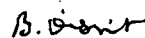
10. A point was also argued that the Respondents had not provided any Conversion Training to the Polishers. There is a clear statement on affidavit by Respondents in this regard and in the absence of any evidence to the contrary we have to presume that the Railways have made satisfactory arrangements by suitable training people to ensure that their work does not suffer for want of skilled personnel. In any case this is not a point which would entitle the Applicant to the reliefs that he seeks.

11. To sum up we are convinced that the merger of cadres was not something that was wrongly done and that the Applicant cannot claim lack of knowledge of the operation of seniority procedures after all these years especially in the background of his own assertions in the OA and the Annexures on record. Further he is claiming a benefit which will also have the effect unsettling settled positions in Respondents' organisation.

12. In view of the above discussions we are not convinced that we can provide the relief sought by the Applicant. The OA is therefore dismissed with no order as to costs.



(B.N. Bahadur)
Member (A)



(Birendra Dikshit)
Vice Chairman