

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH.

Original Application No.23/2001.

Wednesday, this the 29th day of August, 2001.

Hon'ble Shri Justice Ashok Agarwal, Chairman,  
Hon'ble Smt. Shanta Shastry, Member (A).

C.K.Bansode,  
Railway Quarter No.RB II/12/  
2, Near DRM Office, C.Rly.,  
Solapur,  
Maharashtra State - 413 001.  
(By Advocate Shri R.D.Decharia)

...Applicant.

v.

1. Union of India through  
The General Manager,  
Central Railway,  
Headquarters Office, CST,  
Mumbai - 400 001.
2. The Chief Personnel Officer,  
Central Railway,  
Headquarters Office, CST,  
Mumbai - 400 001.
3. The Divisional Railway Manager,  
Divisional Office,  
Central Railway,  
Solapur,  
Maharashtra State - 413 001.  
(By Advocate Shri S.C.Dhawan)

...Respondents.

: O R D E R (ORAL) :

Smt. Shanta Shastry, Member (A).

The following reliefs have been sought by the applicant.

"a) This Honourable Tribunal may be pleased to call for the relevant records and proceedings which led to the wrongful illegal order vide letter No.SUR/P/Comm1/Sele/ CTI dt. 23.12.2000 (Annexure - A-1) and after going through the legality and propriety of the same be pleased to quash and set aside the letter dt. 23.12.2000.

OR

b) This Hon'ble Tribunal may be pleased to hold and declare that the Applicant is entitled for promotion as C.T.I. Gr. Rs.6500-10500 (RSRP) as per his panel position in the panel declared by the Respondents vide their letter dt. 16.3.1998 and 23.7.1998 with consequential benefits.

c) The Hon'ble Tribunal may be pleased to hold and declare that the Applicant is not required to appear for fresh selection of C.T.I. Gr. Rs. 6500-10500 (RSRP) being proposed to be held (Written Test) on 13.01.2001 and 20.1.2001 by the Respondent No.3 vide their impugned order dt. 23.12.2000.

- d) Pass any other appropriate order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- e) The Respondents may be directed to pay the cost of this application."

2. The applicant is presently working as Assistant Chief Ticket Inspector in the Grade of Rs. 5,500-9,000 in the Central Railway Headquarters at Solapur on a regular basis. He belongs to SC community. The applicant was found suitable and empanelled for promotion to the post of Chief Ticket Inspector (for short, CTI) vide letter dt. 16.3.1993. He was placed at Sl.No.4 amongst the SC candidates. Thereafter, the promotion order of Shri B.D.Khobragade, the candidate at Sl.No.5 was issued on 30.4.1998. Applicant's promotion order was not issued as at the relevant time he was undergoing punishment upto 31.5.1999. The applicant after completion of the penalty, represented for promotion against the post kept reserved for him. Accordingly, his promotion order was issued on 6.9.1999 posting him at Wadi i.e. out of Solapur. The applicant submitted a representation for retaining him at Solapur as Chief Ticket Inspector on medical grounds and also requested that in case it was not possible to retain him at Solapur on promotion, his transfer order on promotion may be postponed till May, 2000 i.e. till the end of the academic year. He submitted reminders on 15.10.1999 and 12.12.1999. The Divisional Commercial Manager, Solapur issued a letter to the applicant's immediate Supervisor directing not to relieve the applicant on transfer to Wadi as his representation was under consideration vice Shri M.G.Savai, C.T.I., Solapur who was to retire in January, 2000. Again on 17.1.2000, the applicant submitted a further letter requesting

...3.

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that his promotion on transfer may not be effected till May, 2000. In the meantime, the respondents promoted two other empanelled General Community employees and posted them at Solapur. The applicant, therefore, again represented. Thereafter, in June, 2000 the applicant was issued with a charge sheet for a major penalty proceedings and his promotion order could not be given effect to. Also the life of the panel dt. 16.3.1998 had expired by then.

3. It is the contention of the applicant that he had represented against his transfer on promotion on medical grounds and that too he had asked for staying of his transfer till the completion of the academic year i.e. upto 31.5.2000. The respondents did not relieve him till major penalty proceedings were initiated in June, 2000. The Learned Counsel for the applicant has drawn our attention to various instructions regarding date of effect of promotion orders and relieving the employees, as well as, effect of refusal of promotion on transfer. He has also produced the copy of the Judgment of the Bangalore Bench of the Tribunal in the matter of A.C.Prabhakaran Vs. Chief Personnel Officer and Ors. (1995 (29) ATC 71), wherein it has been held as follows:

"In the context we now approach the third objection which Shri Prasad urged with reference to Rule 224 of the Manual. The Rule requires to be interpreted and, therefore, it would be apposite to quote the same and it reads thus -

"224. Refusal of Promotion :

I. Selection Posts

- (i) The employee refusing promotion expressly or otherwise (i.e., that he does not give in writing his refusal but also does not join the post for which he has been selected), is debarred for future promotion for one year but he is allowed to be retained at the same station in the same

post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

The Rule (supra) is plain enough and admits of no ambiguity and presents little or no difficulty at all in its consideration. What the Rule enjoins is that if the railway servant has refused promotion expressly that is if he does not record his refusal in writing and also does not join the post for which he is selected he had of course to be axed for the time being. But even without a recorded declination of promotion but however continuing to stay there, it could still be gathered in such cases that the officer had declined promotion in which even Rule 224 operates to deny such promotion."

4. The Respondents in their written reply have submitted that the applicant on his transfer on promotion to Wadi had insisted on his being retained at Solapur and he had given a conditional refusal in accepting the promotion. The Respondents had therefore, asked him to give an unconditional refusal, which he did not do so. In any case, his representation was considered and finally he was informed that his request to retain him at Solapur could not be considered. Thereafter, vide order dt. 29.6.2000, the applicant's promotion was stayed. According to the Respondents, since the panel was no more in force, the applicant could not be granted any promotion and therefore, he has to appear again in the selection for the post of CTI in Solapur Division. On 23.12.2000 the applicant also was asked to appear in the selection, of course this was subject to his result not being declared, the applicant appeared in the selection. This was by way of interim order dt. 11.1.2001 by this Tribunal.


5. We have heard Learned Counsel for both sides and have perused the relevant Rules, as well as, Judgments relied upon by the applicant. The Rules provided that if a person does not

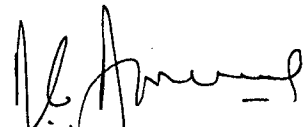
accept promotion, then he is debarred from promotion for one year. He becomes entitled to promotion only after the lapse of one year. The applicant has repeatedly contended that since he was not relieved it cannot be held against him by not granting promotion. It is quite clear that the applicant was not relieved because his representation was under consideration as on 12.12.1999. However, thereafter, he was given a clear reply that his request could not be granted. Therefore, merely because he was not relieved it cannot be said that he is not at fault. Since he could not give an unconditional refusal, the matter was pending. Be that as it may, by the time 31.5.2000 arrived i.e. upto the time up to which the applicant had sought the postponement of his transfer order he was charge sheeted for a major penalty and also the life of the panel was over. In our considered view, the applicant himself is responsible for losing his promotion. As the life of the panel got over, there is no other alternative left to the applicant than to appear in the selection again, which he has now done as per the directions already given in the matter.

6. The applicant has relied on the Judgment in the case of A.C.Prabhakaran (supra). It is seen from para 224 of the manual that even without recorded declination of promotion, but however, continuing to stay there, it would still be gathered in such cases that the officer had declined promotion in which event Rule 224 (i) operates to deny such promotion. Thus, the applicant's continued stay in Solapur without giving an unconditional refusal still amounts to his declining of the promotion and therefore, it has to be held that

the applicant of his own accord had refused the promotion. Since the applicant has knowingly remained at Solapur without joining at Wadi on promotion, this Tribunal cannot come to his help in this matter.

7. In the result, the OA being devoid of any merit, is dismissed. The Respondents are directed to declare the result of the selection wherein the applicant had appeared. No costs.

  
(SHANTA SHASTRY)  
MEMBER(A)

  
(ASHOK AGARWAL)  
CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Review Petition No.67/2001  
in OA No.23/2001

Dated:11/12/2001

CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri C.K.Bansode

... Applicant

V/s.

Union of India & Ors.

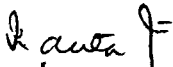
... Respondents

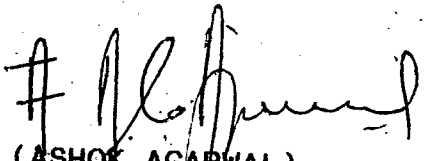
Per Smt.Shanta Shastry, Member(A)

ORDER BY CIRCULATION

This review petition has been filed against the order dated 29/8/2001 in OA No.23/2001 by the applicant therein. The applicant has sought review of the above said order on various grounds. According to him the Tribunal erred in appreciating the application in its proper perspective and the orders passed suffer from mistake of facts and mistake of law. The various circulars, copies of relevant case law attached with the application and rejoinder were not explicitly discussed and appreciated and have been perused in a casual manner. While the Tribunal took cognisance of para-8(b) of the judgement in the case of A.C.Prabhakaran V/s. C.P.O & Ors in OA-596/93, the para 1(c) thereof which is most relevant to the case of the applicant has been lost sight of. This is a mis-interpretation of law and deserves to be reviewed. The case law referred by the Applicant being a decision of the Division Bench of the Bangalore Bench should have been considered and the ratio should have been applied in the case of applicant as per extant orders and if the Tribunal wanted to differ, the matter should have been referred to a larger Bench.

2. The applicant has also advanced further arguments to show that he had not refused promotion.
3. We have carefully considered the grounds taken by the applicant. It is incorrect to say that the Tribunal did not apply its mind to the circulars and the case law cited by the applicant. In fact, this order was passed in the Open Court when the learned counsel for applicant was very well present in the Court. He himself had taken us through the judgements and the circulars.
4. Mere wrong interpretation cannot be reason for review. The applicant has tried to re-argue the case. No fresh evidence has been produced. Even if conclusions arrived at are taken to be wrong, that by itself cannot be a ground for review. Accordingly, the review petition is dismissed.

  
(SMT. SHANTA SHASTRY)  
MEMBER(A)

  
(ASHOK AGARWAL)  
CHAIRMAN

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