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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 661/90

XXXXXX Application No:

DATE OF DECISION 16.12.92

Shri Dheerajlal M. Shah Petitioner

Shri G.K. Masand Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri A.L. Kasturey Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. PRIOLKAR MEMBER (A)

The Hon'ble Shri V.D. DESHMUKH MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *M*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*M*  
(M.Y. PRIOLKAR)  
MEMBER (A)

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(2)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 661/90

Shri Dheerajlal M.Shah

... Applicant.

V/s.

Union of India through the  
General Manager, Western Railway  
Bombay.

Chief Mechanical Engineer  
Western Railway, Churchgate,  
Bombay.

Chief Works Manager,  
Carriage Workshop,  
Western Railway  
Lower Parel,  
Bombay.

... Respondents.

CORAM: Hon'ble Shri M.Y.Priolkar, Member (A)  
Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri G.K. Masand, counsel  
for the applicant.

Shri A.L. Kasture, Counsel  
for the respondents.

ORAL JUDGEMENT

Dated: 16.12.92

( Per Shri M.Y. Priolkar, Member (A) )

The applicant was employed as a Foreman 'A' in the pay scale of Rs. 840 - 1040 at the Carriage and Wagon Shop of the Western Railway, Lower Parel until his retirement on 31.7.1986. The next promotion post for the applicant was Principal Foreman in the scale of Rs. 840-1200. The applicant had earlier approached this Tribunal (OA 15/86) against non consideration for promotion to the post of Principal Foreman, which was for the reason that he had not completed 5 years shop floor requirement. By the judgement dated 17.10.88 this Tribunal struck down the requirement of 5 years work in shop floor as per the Railway Board instructions of 27.1.76 and directed the respondents to consider applicant's case for promotion to the post of Principal Foreman from the date he attained the age of 50 years. The applicant had filed contempt petition against the non implementation of the

Judgement. This Tribunal by its order dated 9.2.90 struck down the order of the Chief Mechanical Engineer dated 31.5.89, by which after going through the service records of the applicant, the Chief Mechanical Engineer had come to the conclusion that the applicant did not have excellent and outstanding report and was therefore not considered fit for promotion as Principal Foreman. The Tribunal's order on this contempt Petition was that the case of the applicant may be considered in accordance with the instructions in the circular dated 27.1.76 and in the light of the direction in the earlier Judgement. In pursuance of this order dated 9.2.90 the selection committee met but did not find the applicant suitable to be placed on the panel of Principal Foreman in the scale of Rs. 840 - 1200 in terms of Railway Board's letter dated 27.1.76. This had the approval of the General Manager as per memorandum dated 12.7.90. The applicant was also informed accordingly by Chief Works Manager's letter dated 26.7.90. Both the communications are impugned in the present application with the prayer to direct the respondents to promote the applicant to the post of Principal Foreman with effect from 2.7.78, when he completed 50 years of age with all the consequential benefits.

2. The Railway Board's letter dated 27.1.76 states that only Shop Superintendents / Foreman 'A' who are excellent in their own line on the Shop floor but are not promoted in the normal course to Class II service should be appointed as Principal Foreman on personal basis as a reward for specially meritorious work and proven efficiency. It is also laid down that there will be no fixed number of posts of Principal Foreman but only those Shop Superintendents / Foreman 'A' who do not get promotion to Class II service in the normal course but who are otherwise really outstanding should be considered for

appointment as Principal Foreman. The procedure prescribed for the selection is that separate selection for the regular Class II posts, <sup>independent of selection of</sup> will be held by a duly constituted Selection Board consisting of three Heads of the Departments including the Chief Mechanical Engineer nominated by the General Manager. The Selection Board will interview each candidate and consider his confidential records for the preceding three years. No written test will be held. However, candidate will be awarded marks out of a maximum of 100. Only those candidates securing 80% marks and above will be considered to have qualified. It is also stated that only persons who have been rated as outstanding for the last three years successively should normally be selected by the Selection Board.

3. Learned counsel for the applicant argued that although the requirement of 80% marks in the interview has been laid down it is not being followed in practice and the word "normally" used in para 1(3) of the Railway Board's letter dated 27.1.1976 permits the selection of candidates even securing less than 80% marks. He also states that two candidates who were actually selected for this post in 1977 selection namely Mr. Rana and Mr. Yadunath Singh had in fact identical reports as the applicant but still they have been selected in relaxation of requirement of 80 % marks. He also alleged bias on the part of the Chief Mechanical Engineer, who was one of the members of the Selection Committee constituted in 1990 on the ground that this officer had already passed an order on 31.5.89 in which he had come to the conclusion that the applicant did not have excellent and outstanding reward and therefore was not considered fit for promotion as Principal Foreman.

4. According to the respondents, the selection in 1990 was made in pursuance of the direction of this Tribunal dated 9.2.90 which was to make the selection in accordance with provisions contained in Railway Board's letter dated 27.1.76 and since the applicant failed to secure minimum 80 % marks in the interview and also did not have outstanding record in the previous 3 years, he was not found fit for promotion.

5. We have perused the record, namely the Selection Committee proceedings and also the CRs of the applicant. The applicant had completed 50 years of age on 2.7.1978 and was to be considered for promotion on that date. It is seen from the record that in interview the applicant did not secure the prescribed minimum marks of 80%. His CRs of 1972, 75 and 76 were produced before the Selection Committee, as CRs of 1973, 74 and 77 were found to be not available. This shows that out of the required 3 years CRs namely 1975, 76 and 77, CRs of 76 and 77 only were available for the perusal of the Selection Committee. On the basis of both these CRs and ignoring 1972 CR which was less than " good", we find that the grading given by the selection committee for 1975 and 76 which was " good" cannot be considered as perverse and we do not think on the basis of actual entries in the CRs, there should have been any higher grading and certainly not "outstandings" for these 2 years CRs. Thus the requirement of outstanding record for the previous 3 years has not been met in this case. Even if this requirement could be relaxed because of the word 'normally' in para 1(3) of the Railway Board's letter as argued by the learned counsel for the applicant, still in our view the requirement of the candidates having to secure 80% marks and above for the selection could not be relaxed by the competent authority, namely General Manager for whom the Railway Board's instructions were binding.

In our view, therefore, the applicant has been rightly not found fit to qualify for promotion under the Railway Board's letter dated 27.1.76.

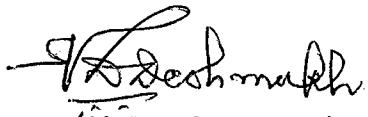
6. The second contention advanced by the learned counsel for the applicant was that two other officials having identitical record as the applicant were in fact promoted after selection in 1977 under these very instructions of the Railway Board. The CRs of these two could however not be produced by the respondents as the prescribed period of preserving the records after the date of retirement was stated to be over and it was presumed that the records might have been destroyed as the records were not readily traceable. The learned counsel for the applicant contended that no serious efforts have been made to trace out the record and that non production of record is deliberate. He argued that the respondents were aware that because of the earlier application filed by the applicant before the High Court the record might be required to be produced at some stage of the proceedings and the record should not, therefore, have been destroyed. We do not find much merit in this contention. The earlier applications were finally disposed off. It would not be reasonable to expect the respondents to hold on to all the relevent records inspite of the specific period of preservation of record being prescribed, because of the remote possibility that the same may be required some time in the future. Learned counsel also stated that in his view the period of 5 years prescribed for the preservation of the records under Railway Board's letter dated 17.8.76 communicated under Western Railway Headquarter's letters dated 4.5.76 and 23.7.76 will not apply in the present case and the files will have to be preserved indefinitely, since the title of the relevant schedule is " records other than files". However, since there is a specific preservation period

prescribed as 5 years for destruction of CRs, the CRs of 1981 and 1982 of those two officials were due for destruction in '86 and '87, whereas the present application was filed in 1990. We would not therefore, dis-believe the statement of the respondents that these records could not be made available as they were not traceable and it is presumed that the record was destroyed.

7. The last contention of the applicant was that the selection was vitiated because one of the members of the Selection Committee constituted in 1990, namely Chief Mechanical Engineer was biased. The only ground of bias is that admittedly the Chief Mechanical Engineer had already come to the conclusion vide his order dated 31.5.89 that the applicant was considered unfit for the post of Principal Foreman. Learned counsel therefore, urged that he being one of the members of this Selection Committee constituted in 1990 in pursuance of the Tribunal's order, the selection made by the committee stands vitiated. In support of this contention he relied upon the decision of the Delhi High Court decided on 17.2.76 in the case of Smt. Swaran Lata and another Vs. Union of India (SLJ 1976 325). In para 15 of the Judgement it is stated that the petitioner in that case alleged that while she was leaving the interview board she heard respondent No.5 say to the other members of the Board that the petitioner could not be selected. There is no such allegation in the present case. A judgement of the Supreme Court (A.K. Kripak Vs. Union of India) is also quoted in this para of the Delhi High Court Judgement, in which the Supreme Court has observed that in a group deliberation each of the group is bound to influence the others, more so, if the members concerned is a person with special knowledge and that his bias is likely to operate in a subtle manner. We are, however, of the view that these observations would not be applicable in the

present case. It is seen from the selection committee's proceedings produced before us that each of the three members of the selection committee had given separate marks under all headings to each candidate. The marks given to the applicant by the Chief Mechanical Engineer against whom the applicant has alleged bias are, however, the highest among the three members of the selection committee. Secondly the instructions dated 27.1.76 under which the selection was to be made are mandatory and stipulate that Selection Board is to be constituted of three members of the department including the Chief Mechanical Engineer. Besides, since we are also of the view as already stated earlier, that on the basis of the CRs of the applicant, his record could not be considered to be outstanding, therefore, a finding to the same effect by the Chief Mechanical Engineer could not be faulted as biased or based on any extraneous considerations. We do not, therefore, think that the allegation of bias has been substantiated in any way in the present case. The learned counsel for the applicant requested for the CRs produced before us to be shown to him but we had rejected this prayer since we had ourselves seen the record and we are satisfied that no useful purpose will be served by producing the record at this late stage for the inspection of the applicant. In fact the prayer of the applicant himself in this application was that this record be produced before the Tribunal.

8. For the reasons stated above, we do not find any merit in this application. It is accordingly dismissed but without any order as to costs.



(V.D. DESHMUKH)  
MEMBER (J)



(M.Y. PRIOLKAR)  
MEMBER (A)

4. Regarding the first ground, the scope of our review is well defined. As observed by the Supreme Court in the case of A.T.Sharma v. A.P.Sharma (AIR 1979 SC 1047),

".....There are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. ...."

In the present case, the plea that the record of the other two employees was exactly identical with that of the applicant was taken for the first time in the rejoinder filed by the applicant on 30-4-91 to the written reply of the respondents to the O.A. In their sur-rejoinder dated 1-7-1992, the respondents had submitted that the concerned record being old record of 1977 or earlier was not readily available. The final hearing of the case took place on 16-12-1992. The applicant had, therefore, ample time to produce at the time of final hearing the kind of evidence which he is seeking to produce now through a review petition, in support of his contention that the records are still available. We are satisfied that it should have been possible for the applicant if he had exercised due diligence,

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to produce any such evidence in support of his case before the judgment was delivered. We are not, however, expressing any views about the merits of the evidence now produced.

5. After going through the review petition, we do not thus see any error in our judgment dated 16-12-1992 which is apparent from the record, or any other justification to warrant a review of that judgment. The review petition is dismissed.



(V.D. DESHMUKH)  
Member(J)



(M.Y. PRIOLKAR)  
Member(A)

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