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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD; BOMBAY 1

OA NO. 392/91

J C Pradhan

6/8 Central Railway Officers Flat

Dadar; Bombay 14

Applicant

V/s

Union of India through

General Manager

Central Railway; Bombay VT

Respondents

Coram: Hon. Shri Justice M S Deshpande, Vice Chairman
Hon. Shri M Y Priolkar, Member (A)

Appearance:

Mr. Menghani

counsel

for applicant

Mr. V G Rege

Counsel

for respondents

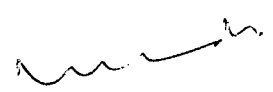
ORAL JUDGMENT:

(PER: M S Deshpande, Vice Chairman)

DATE: 13.7.93


In this application the prayer of the applicant is for a direction to the respondents to place him in the panel of 1982 for the post of Assistant Engineer for which he had been selected in the first selection held by the Departmental Promotion Committee in the year 1984.

The applicant joined Central Railway as Permanent Way Inspector Gr.III in October 1963 and was selected on 16.12.80 for deputation to Rail India Technical and Mechanical Services (RITES) and he returned to India on December 27, 1982 on completion of the contract. Selection for the post of Permanent Way Inspector Gr.I as well as Assistant Engineer were made between 1980



and 1982. The applicant was called for selection to that post on 3.6.83 and was adjusted in the panel of 1981. The first selection for the post of Assistant Engineer in Class II service was held on 13.2.84. The applicant passed the written test and gave a viva voce test on 17.4.1984. When the case for promotion was being processed the applicant was served with a charge sheet on 3.7.84 and on 27.8.84 the penalty of censure was imposed on him. The selection in 1982 for the post of Assistant Engineer class II was for 80 posts but a panel was drawn up only for 45 leaving 35 posts uncovered. The applicants contention is that he should have been placed in one of these 35 posts as the General Manager had already accorded the approval on 8.7.85 to the selection of the applicant to Class II post in respect of vacancies of 1982. The General Manager, however, wrongly sought the permission of the Railway Board to enlarge 1982 panel for including the name of the applicant and that was not granted in spite of the provision of para 210 of Chapter II of Indian Railway Establishment Manual under which the General Manager is competent to promote officers to Group B posts. After protracted correspondence the Railway Board directed by its letter dated 11.4.86 the General Manager to constitute a selection board which took into consideration the confidential reports of the applicant upto 31.3.1981 and service record upto 31.3.84 in view of penalty of censure imposed upon him. A selection committee was constituted and it ~~has~~ reached its findings on 28.5.86 holding that the applicant ~~was~~ suitable for the post of Assistant Engineer and the General Manager after granting his approval once again made the same mistake of referring the matter to the Railway Board for approval by letter dated 12.6.86 and the Railway Board by its letter dated 28.8.86 declined to grant approval to the General Manager's proposal for including the applicant's name in the panel of 1982.


The applicant had filed writ petition no. 2002/85 in the Bombay High Court and that came to be transferred



to this Tribunal and was given Transferred Application No. 282/86. By the judgment dated 7.1.87 this Tribunal dismissed the writ petition holding that the Railway Board were right in rejecting the proposal of the General Manager for inclusion of the applicant's name in the panel of 1982. The applicant then filed a review application and that also came to be dismissed. The applicant filed OA NO. 537/88 which was dismissed on 3.8.88 and an SLP filed before the Supreme Court against that decision came to be dismissed on 15.11.89.

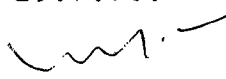
The applicant's grievance is that in the case of two other employees viz., T.I. John and K. Shankaran the Railway Board upon a reference made to it took the view that for empanelling John it was not necessary to seek the Railway Board's approval for enlarging the panel as there were 42 posts and the panel of 41 posts had been prepared. In case of Shankaran, who had also been sent on deputation to Iraq, also the Railway Board indicated that there was no need to seek the approval of the Railway Board. After the applicant became aware of this position he made a representation ^{to} through the respondents on February 20, 1990 that he should be placed in the panel of 1982 as his case had been approved by the General Manager and the Railway Board's approval was not necessary. That representation was dismissed without giving any personal hearing to the applicant and the applicant has approached this Tribunal again under Articles 14 and 16 of the constitution for differential treatment accorded to him and also contending that there was suppression of material facts in dealing with the applicant's case.

The respondents urged that there was no suppression of facts because the record was placed before the Tribunal when it rendered its decision in this connection. It is also urged that the present application would not be maintainable as the matter has been heard and decided ^{earlier} and would be barred by resjudicata.



In the judgment of this Tribunal in Tr.A. 282/86 delivered on January 7, 1987 with regard to the plea that it was not necessary to seek the Railway Board's approval for enlargement of the panel from 45 to 80 the Tribunal observed that what is important was that the panel was made after selection and according to the vacancies that were available and the contention on behalf of the applicant that the approval of the Railway Ministry was not necessary was repelled. Reference was also made to the letter dated 28.3.85. After due consideration the Railway Ministry had not approved the proposal and the main reason for not according the approval was the punishment of "censure" awarded to the applicant on 27.8.84. In the penultimate para of the judgment it was observed that though technically the applicant's name would be included in the earlier panel it would be on the basis of the performance till the subsequent selection process is over and the punishment of censure inflicted in 1984 would be relevant while considering as to whether the applicant should be selected in that year. The application came to be dismissed.

The contention on behalf of the applicant is that the subsequent correspondence was suppressed and there is no reference by the department to the letters dated 28.3.85 and 11.4.86. By letter from Shri N Anantaraman, Director, Establishment (Gazetted), Railway Board dated 11.4.86 to the General Manager, Central Railway, Bombay he had asked that the Tribunal be informed that the procedure followed by the Central Railway not being in accordance with the instructions, Board did not approve of the earlier proposal of the Railway for enlargement and that on consideration of the employee's representation, the Board have indicated that certain course of action on completion of which a decision would be available. By letter dated 28.3.85 the reasons for imposing the minor penalty of censure were indicated and after consideration the empanelment of the applicant for group B in Engineering department was made on 5.2.85 and so the proposal was made for enlargement of panel in terms of Ministry's letter dated 29.7.76.




The question is whether this correspondence has been considered by the Tribunal in the earlier cases.

In the Review Petition no. 2/87 in Tr.A. 282/86 the Tribunal observed in its order dated 18.11.1987 as under:

"... even prior to 4.2.1985 the penalty of censure had already been imposed on the applicant on 27.8.1984 and this censure along with other material record has been properly taken into account when Ministry took a decision as to whether the inclusion of the applicant's name should be approved. The concerned record under which the Railway Ministry considered as to whether the inclusion of the applicant in the panel should be approved or not was shown to the Tribunal. That record shows that the authority (Railway Board) has taken into account not only the censure, but also other relevant records, including CRs and has come to the conclusion that in the face of such record the DPC should not have recommended the name of the applicant for being included in the panel.

When the matter came up again before the Tribunal in the shape of OA 537/88 the Tribunal dismissed it summarily on 3.8.88 by reasoned order/judgment and held that the applicant's claim was barred by the principles of res judicata in view of the earlier decision in Tr.A. 282/86. Paragraph 5 of that judgement has ~~as it is~~ a bearing on the contentions which had been raised before us in this proceedings and reads "Shri Masand contended that the earlier decision by this Tribunal was obtained by the Railway Administration by suppressing certain facts. This contention does not appear to be well founded as the only question that was decided in the earlier transferred application was as to whether the refusal of approval of the Railway Board was legal and proper and the Tribunal held that it was legal."

It is, therefore, ^{clear} the letters which have been referred to on behalf of the applicant were before the Tribunal and the entire record was placed by the counsel for the respondents before the Tribunal and it cannot



be said that the earlier decision was obtained by suppression of facts. This ground is, therefore, without substance.

With regard to the differential treatment meted out to the applicant than that of John and Shankaran it may be observed that after the three decisions of this Tribunal, the matter could not have been reopened by the Railway Board on its own and respondents had to abide by the decisions rendered between the applicant and the authorities concerned. Even if a different view were to have been taken in the case of John and Shankaran by differently interpreting the instructions of the Railway Board, it would not be open for the applicant to urge that the provisions of Article 14 and 16 of the constitution were violated. Whether right or wrong the applicant's contentions had been examined by this Tribunal and overruled and the Supreme Court had rejected the SLP against the decision of this Court.

We, therefore, see no merit in either of the contentions raised by the applicant. The application is dismissed but there would be no order as to costs.



(M Y Priolkar)
Member(A)



(M S Deshpande)
Vice Chairman