

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:617/92

Date of Decision:14/9/99

M.T.Metkar

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

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

- (1) To be referred to the Reporter or not? *No*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.617/92.

DATED THE 14TH DAY OF SEPTEMBER, 99.

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.

HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

M.R.Metkar, working as
Chief Inspector of Wireless Traffic,
Central Railway, Bombay V.T.,
Bombay - 400 001.

... Applicant.

By Advocate Shri G.S.Walia

v/s.

1. Union of India through
General Manager,
Central Railway,
Bombay VT, Bombay.
2. Chief signals and Telecommunication
Engineer, Central Railway,
Bombay VT, Bombay.

... Respondents.

By Advocate Shri S.C.Dhawan.

I ORDER I I ORAL I

[Per Shri R.G.Vaidyanatha, Vice Chairman]


This is an application filed under Section-19 of Administrative Tribunals Act. Respondents have filed reply. We have heard Shri G.S.Walia, learned counsel for Applicant and Shri S.C.Dhawan, learned counsel for Respondents.

2. The applicant's case is that he was working as Inspector Wireless Traffic in Grade-III in the Central Railway. He came to be promoted as Dy. Inspector Wireless Traffic in the payseale of Rs.1600-2600, then he was further promoted as Chief Inspector Wireless Traffic(CIWP) in the



grade of Rs.2000-3200 in April,91. Applicant's grievance is that he should have got this promotion as CIWT in March,89 when the vacancy of CIWT arose but he has been denied promotion only on the ground that he has not put in two years service in the previous cadre. It is stated that though the Railway Board circular dated 19/2/87 fixes a minimum two years service in the feeder cadre to get eligibility to promotion in the next cadre, the applicant is governed by Railway Board letter dated 28/10/75, where the promotional prospects of Wireless Operators were kept intact and it cannot be diluted by 1987 circular. Applicant relies on two decisions of Madras Bench of Tribunal where on the basis of Board's circular of 1975, the OA has been allowed in preference to Board's circular of 1987. But the applicant's stand is that the respondents cannot put any condition of two years service in the feeder cadre in view of the letter dated 28/10/75. He made a representation in this behalf to the Railway Administration which came to be rejected vide Impugned letter dated 3/4/92. Therefore, the applicant has approached this Tribunal for quashing the Impugned letter dated 3/4/92 and set aside the condition of two years service in the feeder cadre as applicable to applicant and that he is entitled to be promoted in the payscale of Rs.2000-3200 w.e.f. April,89 when a clear vacancy arose and for other consequential benefits.

3. The respondents in their reply have pleaded that the application is barred by limitation. It is stated that by virtue of Railway Board circular dated




19/2/87, in Group 'C' post one has to put in two years service in lower cadre to get promotion to higher grade. It applies to all employees including the applicant. It is stated that the Railway Administration is empowered to make rules which govern future promotions ~~and this power is~~ unrestricted. It is also stated that the chance of promotion is not a condition of service and therefore the right of respondents to modify ~~or amend~~ ^{or amend} the rules is unrestricted. It is stated that the decisions of the Madras Bench are not applicable to the facts of the present case. It is stated that in February, 89, the post of CIWT was temporarily downgraded as DIWT and therefore no post of CIWT was vacant in March, 89. It is also pleaded that the said post of CIWT was only restored in March, 91 when the case of applicant was considered and he was promoted in April, 91. It is therefore stated that applicant's prayer for retrospective promotion from 1989 ~~is~~ liable to be ~~xxxxxxx~~ rejected since there was no such post available at that time. It is stated that two years service is minimum requirement for a promotion from lower grade to higher grade and it applies to all departments including applicant's department. It is therefore stated that the applicant ~~is~~ not entitled to any of the reliefs.

4. Arguments were addressed at the bar ~~on the point~~ ^{whether} whether minimum two years service is necessary in the feeder cadre for promotion to the higher post as per Railway Board's circular dated 19/2/87. While not disputing the fact that minimum two years service is

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necessary as per Railway Board's circular dated 19/2/87, learned counsel for applicant maintained that in view of 1975 letter, the departments where officials working in the Wireless Traffic Department were entitled to promotion as per the then practice where there was no minimum period of two years service. He strongly placed reliance on two decisions of Madras Bench which are Annexed to the OA. One of the judgement is dated 7/6/89 in OA-359/88 and the other is dated 12/7/91 in OA-561/90. No doubt the Division Bench in those two judgements have taken a view that minimum two years service for next promotion as per 87 circular should not be applied to this particular department to which the applicant belongs in view of letter dated 1975. The learned counsel for respondents tried to canvas the correctness of the said two decisions. In our view since they are decisions given by coordinate Bench, even if we are inclined to take a different view, needless to say, the matter will have to be referred to a larger bench. The arguments of the counsel for respondents that the rules can be changed or amended is not without force. However, in the facts and circumstances of the case, we need not go into the question whether the decisions of the two Benches of Madras Bench requires re-consideration or not since on facts the OA can be disposed of.



5. In the two decisions of Madras Bench, there were peculiar facts which clearly pointed out that there were vacancies but inspite of that officials were not promoted by relying on 1987 circular, that is why the Madras Bench of the Tribunal gave a specific direction that the promotion should be ordered from the particular date when the vacancies arose. But in the present case, the applicant has come with a definite allegation that there was vacancy of CIWT in March, 89. This has been specifically denied in the written statement and there is a positive assertion that there is no post of CIWT from March, 89 till March, 91. It is the applicant who has come to Court seeking a direction that he should be promoted. Sufficient documentary evidence ^{is not placed} on record to show that a vacancy did arise in 1989 April and he was not considered for promotion. ~~xxxxxxxxxxxxxxxx~~

Respondents have made a specific statement that from February, 89 post of CIWT was downgraded and there was no post of CIWT from February, 89., till it was again restored in March, 91. The applicant has not even filed a rejoinder to this reply denying the allegation. If ^{89,} there was a vacancy in/ he should have produced sufficient materials in support of the same. The question of giving a direction to respondents to consider the case of the applicant for promotion will not arise even if we ~~xxx~~ ^{now} apply ~~xxxxxxxxxxxxxxxx~~ 1975 circular and 1987 circular. Therefore, in the facts and circumstances of the case, in the absence of specific material, we cannot grant any relief in favour of applicant in the form of retrospective

for

promotion to applicant. We may also place on record that applicant has since retired from service during the pendency of the OA. In the facts and circumstances of the case we are not inclined to grant the reliefs prayed for by the applicant.

6. Learned counsel for applicant contended that the impugned order of the Competent Authority rejecting his request is on the ground that he has not completed two years of service for promotion. It may be so. It will not help the applicant in any way since there is no sufficient materials on record to show that in April, 89 there was a vacancy to consider the case of the applicant. Therefore the application is liable to be rejected.

7. In the result, the applicant fails and it is dismissed. No order as to costs.

B.N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.