

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 28 FEB 1995

APPLICATION NO. 247 of 1994.

APPLICANTS:- M.W.Mushtaq Ahmed, Hubli,

V/S.

RESPONDENTS:- Senior Divisional Personnel Officer,
South Central Railway, Hubli Division
and four others.,

To.

1. Dr.M.S.Nagaraja, Advocate,
No.11, Second Floor, 1st Cross,
Sujatha Complex, Gandhinagar,
Bangalore-560 009.
2. Sri.N.S.Prasad, Advocate,
No.29, Fifth Main Road,
Gandhinagar, Bangalore-9.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 20th Feb'95.

Issued on
28/02/95

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.247/1994

MONDAY, THIS THE 20TH DAY OF FEBRUARY, 1995

SHRI V. RAMAKRISHNAN .. MEMBER (A)

SHRI A.N.VUJJANARADHYA.. MEMBER(J)

Sri M.W.Mushtaque Ahmed,
Aged 45 years,
S/o Late Mohammad Hussain,
R/o 35/Shree Nagar,
Karwar Road, Hubli-580 024. ... Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. The Sr. Divisional Personnel Officer,
Hubli Division, South Central Railway,
Hubli - 580 020.
2. Divisional Railway Manager, Hubli,
South Central Railway, Hubli.
3. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Secretary,
Railway Board,
Rail Bhavan, New Delhi.
5. Sri Shankar Bhiku,
Works Mate,
Inspector of Works,
South Central Railway, Costle Rock,
Uttara Kannada District. ... Respondents

(By Advocate Shri N.S. Prasad,
Standing Counsel for Railways for R1 to 4)

O R D E R

Shri V. Ramakrishnan, Member (A):

The applicant, who is presently a Grade I Artisan Carpenter in the Hubli Division of Southern Railway, has prayed for a direction to the effect that he should be promoted to the higher post of Work Maistry on regular basis without having to face any suitability test



with retrospective effect from March, 1989 which is the date on which Respondent No.5 was promoted to this level and that he should be assigned seniority over Respondent No.5 and granted consequential benefits.

2. The applicant, when he was working as Carpenter Gr.III, had volunteered to undergo the pre-promotional training for promotion to the level of Work Maistry. This was in response to a letter from the Engineering Department of the Hubli Division, addressed to various Assistant Engineers/Inspector of Works asking for sending names of persons to be deputed for such training. The concerned Inspector of Works had forwarded his name and he was nominated by the Divisional Office for attending the promotional training for Work Maistry during the period from 2.9.1985 to 31.12.1985. He successfully completed the training. But, has not so far been appointed to the higher post. The applicant quotes the case of Shri Muniyappa, Shri Y. Prakash Rao and Shri Shaikh Ameer, who also attended the same course, but who were given ad-hoc promotion as Work Maistries. When the Railways wanted to revert those persons, they approached this Tribunal in O.A. Nos.248-250/89 and secured an order that they should not be reverted. The applicant herein further states that Shri Y. Prakash Rao and Shri Shaikh Ameer have approached this Tribunal again with a prayer that they should be deemed to have been regularly appointed to the post of Work Maistries on the ground that they had passed the pre-promotional training and that they should not be required to appear again for a suitability test. He states that his case is similar to the case of Shri Shaikh Ameer for the reason that he had also successfully completed the training programme as Shri Shaikh Ameer. But, ^{he} concedes that while Shri Shaikh Ameer and Prakash Rao were given ad-hoc promotion as Work Maistries, the applicant had not secured the same. He also brings out that Shri Shankar Bhiku and Shri Rajaram Bapu were promoted to the level of Work Maistries

against the subsequent vacancies which arose in March, 1989 and as such, the applicant should be treated as senior to Shri Shankar Bhiku as he had taken the requisite promotional test in 1985-86 itself.

3. The Railways oppose this application. They state that Work Maistry is a non-selection ~~test~~^{post} for promotees and in terms of Rule 319(a) of Indian Railway Establishment Manual (IREM for short) promotion for non selection post shall be on the basis of seniority-cum-suitability, suitability being judged by a competent authority by oral and/or written test, etc. The competent authority had prescribed a suitability test in terms of this rule which the applicant had not undergone. It is a fact that the applicant was deputed for training in 1985 but the promotional training is not the same as suitability test and does not preclude the necessity for the candidate to undergo the suitability test. The Railways also contend that a candidate passing the training test does not acquire any vested right.

4. One of the main grounds adduced by the applicant is that three others who successfully completed the training along with him in 1985 had been given ad-hoc promotion by the Railways and two of them had approached the Tribunal for declaring that they should be deemed to be regularly appointed as Work Maistries from the date of their ad-hoc appointment with consequential benefits relating to seniority, etc. and that the applicant's position being similar, he is entitled to be treated at par with them. The two Artisans who had approached this Tribunal are Shri Shaikh Ameer and Prakash Rao in D.A. 192/94 and 278/94. In that case, we had accepted the Railways' contention that the pre-promotional training is different from the suitability test which has been prescribed by the competent

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authority under Rule 319(a) of IREM and unless they fulfil the requirements which had been laid down under Rule 319(a) they are not entitled to regular promotion. We had also agreed with the Railways' contention that while deputing 5 persons for training which included Shaikh Ameer and Prakash Rao as also the applicant, the Engineering Branch of the Hubli Division had forwarded the names without any scrutiny, ignoring their need for suitability test and without ascertaining whether the seniors were aware of the training programme at all.

5. Shaikh Ameer and Prakash Rao had received ad-hoc promotion and on their reversion from the post of Work Maistry, had approached the Tribunal in 1989 in O.A.No.248-250/1989 where they had secured an order that they should be restored to the post held by them. The applicant herein had not at any time secured any ad-hoc promotion nor had he complied with the requirement of passing the suitability test as prescribed by the competent authority in terms of Rule 319(a) of the IREM. We also find that he had applied for the post of Work Maistry in response to the Railways notification dated 12.7.1993 and was asked to take the suitability test by the notice dated 13.12.1993 Annexure-R1. We are informed that he remained absent for the written examination held in January, 1994. But, instead had subsequently approached this Tribunal seeking declaration that he should be regularly promoted to the post of Work Maistries with effect from March, 1989. The fact that he had successfully undergone the pre-promotional training which is distinct from that of the suitability test does not confer on him any right for regular appointment. We may in this context refer to the decision of the Supreme Court in State of Madhya Pradesh Vs. Raghuveer Singh Yadav - (1994) 28 ATC 255 where the Apex Court had held that a candidate passing an examination did not

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acquire any vested right. In the present case, the applicant had not even passed the suitability test, but, had only undergone the pre-promotional training.

6. Following the reasoning given by us in O.A.No.192/94 and 278/94 (Shaikh Ameer and Prakash Rao Vs. Divisional Railway Manager, Hubli and Others,) we hold that the applicant at present is not entitled for regular appointment to the level of Work Maistry in terms of the relevant rules and instructions of the Railway administration governing such promotion.

7. Accordingly, this application fails and is dismissed with no order as to costs.

Sd/-

20/2/95

(A.N.VUJJANARADHYA)
MEMBER (J)

Sd/-

(V. RAMAKRISHNAN)
MEMBER (A)



TRUE COPY

[Signature]
20/2/95

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore