

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1195/93

Date of Decision: 28.10.97

K.C.Kasbe

Applicant.

Shri R.D.Deharia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. M.R.Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not?x
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

B.S.Hegde

(B.S.HEGDE)

MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.1195/93

28th this the ~~July~~ day of October 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

Kamlakar C.Kasbe,
Movement Inspector,
Divisional Office,
C.Railway, Bhusawal.
R/o Methodist Church,
Near Teen Pulia,
Khandwa (M.P.)- 450 001.

By Advocate Shri R.D.Decharia ... Applicant
V/S.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.
2. The Chief Personnel Officer,
Headquarters Office, G.M.'s
building, 1st Floor, Central
Railway, Bombay V.T.
3. The Divisional Railway Manager,
Divisional Office, Central Rly.,
Bhusawal, Dist. Jalgaon. (MS).

By Advocate Shri R.R.Shetty ... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

In this OA. the applicant has impugned
the communication dated 24.6.1993 at Annexure-1A-2'
(p.15) by which the applicant has been informed that
"on scrutiny of service record and confidential reports
and over all assessment the departmental promotion
committee has found that you are not suitable for the
promotion to the Gr.Rs.2000-3200."

2. The applicant was working in the scale of Rs.1600-2660 and the promotional post for which he was considered was in the scale of Rs.2000-3200. 34 promotional posts in the Grade of ^{Station Superintendents/} Deputy Station Superintendent (Dy.SS) were available and the grievance of the applicant is that although the Railway Board had directed that the re-structuring orders should be implemented by modifying the existing selection procedure to the extent that the selection will be based only on scrutiny of Service Records and Confidential Reports without holding any Written Test or viva-voce test and although he has not been communicated any adverse remarks, ^{still} but he has been denied promotion and some of his juniors have been promoted. The relief claimed by the applicant is to hold and declare that the applicant is suitable for promotion to the post of Station Superintendent/Dy.SS in the Gr.Rs.2000-3200 according to modified selection procedure against the upgraded post as a result of re-structuring of cadre w.e.f. 1.3.1993 and that he should be deemed to have been promoted and should be given all consequential benefits as a result of this promotion including seniority and arrears of pay.

3. Respondents have opposed the OA.

In the Sur-rejoinder they have stated that there were only 26 vacancies and not 34 as originally assumed, none of the juniors of the applicant have, in fact, been

promoted because the promotion orders of his juniors of the general category have been withdrawn & it is only 3 juniors belonging to SC who have been considered for promotion against SC quota and therefore the applicant should not have any grievance. It is contended in the Sur-rejoinder that even if the applicant had been promoted on the basis of ^{the} earlier assumption of availability of 34 posts he would have been in fact reverted as a result of issue of revised orders on 8.3.1996. In our view, this changed situation does not affect the contention of the applicant that he was wrongly held unsuitable for promotion and we, therefore, have to consider this OA. on merit.

4. The contention of the applicant is two fold. First of all, it is contended that no adverse remarks were communicated to him and therefore ^{if} the DPC proceeded on the basis of uncommunicated adverse remarks, the action of the DPC should be held to be invalid. The applicant also invites attention to the Railway Board instructions that the grading of "average" should not be regarded as adverse for promotion ^{during} restructuring. Lastly, the applicant relied on the judgement of Patna Bench in Chitranjan Singh vs. Union of India & Ors. reported in ATR 1990(1) CAT 337 in which relying on Supreme Court judgement in Brij Mohan Singh Chopra vs. State of Punjab (AIR 1987 SC 948) it was held that :-

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"Adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report."

5. The second contention of the applicant is that the DPC was biased and in particular it was contended across the Bar that one ^{officer Member} (L) who held a grudge against him influenced the final decision of the DPC.

6. Respondents have denied the contentions of the applicant. According to the respondents, the question of ^{anyone or DPC as a whole} being biased does not arise. DPC went strictly by record in terms of Railway Board instructions. DPC also noted that the applicant had been awarded with penalty of with-holding of increment raising his pay from Rs.2150 to 2200 in the grade of Rs.1600-2660 normally due on 1.8.1993 for slack supervision and lack in co-ordination as per Sr.Divisional Operating Manager, Bhusawal's letter dated 29.10.1992.

7. We have considered the rival contentions of the parties and have also perused the record produced by the respondents. It is seen that the C.Rs. for the years ending 31.3.1992 ^{and 31.3.91 are the} (L) 'Average' and C.R. for the year ending 31.3.1990 is not available. The DPC appears to have also taken into account the punishment awarded to him and has held him unsuitable. We do not find anything illegal ^{with the action taken by the DPC.}

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8. So far as the allegation regarding the DPC being biased against him is concerned, no factual material is produced to lay a foundation for such a supposition and a mere statement across the bar cannot justify any conclusion. Apart from this, the juniors who have been earlier selected have been reverted on a review of the number of restructured posts. We do not find that the DPC was wrong in holding the applicant unsuitable for promotion at the time it met.

9. The OA. therefore has no merit and the same is, therefore, dismissed with no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J)

mrj.