

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 219/94

Date of Decision: 25.6.1999

Sh.Khaleel Ur Rehman

Applicant.

Sh.H.S.Sawant for Sh.R.D.Decharia

Advocate for
Applicant.

Versus

U.O.I. & ors.

Respondent(s)

Sh.V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M. Agarwal, Chairman

Hon'ble Shri. R.K. Ahooja, Member(A)

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

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(R.K. Ahooja)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

O.A. No.219/94

THIS THE 25TH DAY OF JUNE, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Shri Khaleel-Ur-Rehman
Office Supdt.II(Adhoc)
Residing at Railway Quarter
No.RB-.II.8/183
Near DRM Office, Central Railway
Solapur-
Pin 413 001 Applicant

(Sh.H.S.Sawant for
Sh.R.D.Deharia, Counsel)

Vs.

1. Union of India, through
General Manager,
Central Railway
Bombay VT
Pin-400 001
2. The Divisional Railway Manager,
Central Railway
Divisional Office,
Solapur,
Pin-413 001
3. Mrs. A.S.Risbud,
Office Supdt. II,
Divisional Commercial Manager's
Office, Central Railway
Divisional Office,
Solapur PIN 413 001 15 ... Respondents

(BY ADVOCATE SHRI V.S.MASURKAR)

ORDER

R.K.AHOOJA:-

The applicant who was substantively Head Clerk in the Commercial Department of the Railways and was working as Office Superintendent Grade II in the pay scale of Rs.1600-2660(RPS) on an ad hoc basis filed this O.A. being aggrieved by his supersession by respondent No.3 to the post of Office Superintendent.

2. The case of the applicant is that his name appeared at Sl.No.2 in the ^{seniority} list of Head Clerks and that of respondent No.3 appeared at Sl.No.4. The

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post of Office Superintendent Grade II is to be filled through selection and to that end a written test was conducted on 12.9.1992 and out of 9 persons only 5 persons including the applicant and respondent No.3 were declared to be qualified and eligible to appear in the viva voce test. This test was held on 21.12.1992. After the test was held, the results declared included two names including ~~one~~ that of Sh.J.P.Tanga who was senior to the applicant and Smt.A.S.Risbud, i.e. respondent No.3. Both the aforesaid persons were immediately promoted as Office Superintendent Grade II by order dated 24.12.1992.

3. The applicant states that he has been wrongly superseded because in the past promotions had been made on the basis of seniority amongst those who qualified in the written test; that the selection committee was biased against him and, therefore, gave him lesser marks in the viva voce; that respondent No.3 happened to be relatively much younger and would have got an opportunity to work in the higher post after the impending retirement of the applicant in 1997 and ^{that} there were three vacancies and the applicant could have also been promoted as per his seniority along with others. On these grounds, the applicant has sought a direction to declare him suitable for promotion from the same date ~~that~~ his junior was promoted.

4. We have heard the learned counsel and have also gone through the record. The post of Office Superintendent-Grade-II was admittedly to be filled through selection. Thus persons with higher rating would steal ^{at} march over others. The applicant who participated in the selection process both in the written test as well as the viva voce tests cannot now

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challenge the selection only because he has failed to make ^{the} grade. The mere fact that he has been working as Office Superintendent Grade II on an ad hoc basis on the basis of his seniority also does not vest him with any superior right for promotion.

5. As held by the Supreme Court in HIRANYALAL DEV AND ORS. vs. STATE OF ASSAM, AIR 1988 SC 1069, the concept of supersession is relevant only in the context of promotion but not in the context of selection. Thus the applicant cannot claim a superior right against persons with superior merit only on the basis of his higher seniority. It is well settled that an employee has no vested right for promotion and is only entitled to consideration for promotion in accordance with the recruitment rules. Therefore, the claim of the applicant for promotion either on the ground of seniority or on the basis that respondent No.3 should have taken her turn after his retirement or that earlier appointments were made in a manner that the seniority was not disturbed are irrelevant since the promotional post is to be filled by selection process.

6. It has also been contended by the applicant in his O.A. that the members of the selection committee were biased against him. We find nothing on record to substantiate this allegation. It is easy to make an allegation of mala fide but difficult to establish it. Apart from the allegations, we find no corroboration whatsoever.

7. In view of the above discussion, we do not find that any interference is called for by the Tribunal as

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for
prayed/by the applicant. Accordingly, the O.A. is
dismissed. There will be no order as to costs.

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(K.M.AGARWAL)
Chairman

R.K.Ahujja
(R.K.AHUJA)
MEMBER(A)