

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1142/92

DATE OF DECISION:

Shri R.D. Moolya & Ors. Applicant

Shri S.S. Walia Advocate for Applicant.

versus

General Manager, Western Railway & Ors. Respondents

Shri V.S. Masurkar, Advocate for Respondents

CORAM

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

Hon'ble Shri S.L. Jain, Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library.

(B.N. Bahadur)
Member (A)

at*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1142/95.
DATED THE 4th DAY OF MAY 2000.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A) (04-05-2000).
HON'BLE SHRI S.L.JAIN, MEMBER(J)

1. R.D. Mourya, working as)
Sr. Statistical Inspector)
under Statistical and)
Analysis Officer,)
Compilation Office,)
Ajmer,)
Rajasthan)
2. D.R. Shembekar,)
Working as)
Sr. Statistical Inspector)
Under Fa & CAO,)
Headquarters Office,)
Western Railway,)
Churchgate,)
Bombay 400 020.)
3. Murli P. Tolani,)
Working as Sr. Clerk)
under Statistical and)
Analysis Officer)
Compilation Office)
Ajmer,)
Rajasthan.)
4. Dinesh Nai, Working as)
Divisional Statistical)
Inspector)
Under D.R.M.'s Office)
Bhavnagar, Para)
Gujarat.)
C/o G.S. Walia)
Advocate,)
High Court,)
Mumbai.400 001.)

) Applicants

Applicant by Shri G.S.Walia, Advocate.

Vs.

1. Union of India, through
General Manager
Western Railway
Headquarters Office
Churchgate
Mumbai 400 020.

Bs

:2:

2. Financial Advisor and
Chief Accounts Officer
Western Railway
Headquarters Office
Churchgate
Mumbai 400 020.
3. Divisional Railway Manager
Jaipur Division,
Western Railway,
Jaipur.
4. Raghunath Bagra
Ex-Goods Guard
Presently working as
Statistical Inspector (ad hoc)
DRM's Office
Jaipur Division
Jaipur.

----- Respondents

(Respondents by Shri V.S.Masurkar, Advocate)

O R D E R

Per Shri B.N.Bahadur, Member(A)

The four applicants in this case have the grievance that the official respondents have promoted Respondent No.4 (R-4), against the rules and to the prejudice of the applicants in matters of seniority and promotion. They are before the Tribunal challenging the impugned order dated 13/7/1995 (Ex-A) through which R-4 has been regularised as Statistical Inspector (STI).

2. The facts of the case stated in brief by the applicants are, that Applicant Nos.1 and 2 are working as Senior Statistics Inspector, Applicant No.3 is selected for posting as Statistical Inspector (STI) and Applicant No.4 is working as Divisional Statistical Inspector. They are working in a Branch under FA & CAO called Statistical Branch, and in that Branch there is a definite hierarchy for purposes of promotion, etc, which has

..3

B.N.

been described in detail in the application. Applicants state that the selection was ordered for the post of Senior Statistical Assistant (Rs.1400-2300) vide circular dated 5/7/94, and although R-4 did not apply for this post, he has been ultimately appointed thereto by the Impugned order. In para Nos.4.5 to 4.9, the background of the case of R-4 has been described in detail and it is stated that the Headquarter at Mumbai had initially opposed the adhoc selection vide Exhibit-D at page-30 and it was only on the protracted correspondence and insistence by DRM, Jaipur that this has eventually been approved. It is alleged that this is against rules and will effect the seniority position of applicants.

3. In their written reply, the Respondents have first taken the point that this Bench has no jurisdiction in respect of persons posted in Jaipur, and also that the joint application cannot be allowed since the applicants are holding different ranks.

4. After describing the position in regard to the various applicants, the defence taken by respondents is that R-4 was medically decategorised and offered alternative employment as Statistical Inspector in the grade of Rs.1400-2300 on the basis of recommendation of Screening Committee and posted w.e.f. 14/5/91. The circumstances under which Jaipur Division pursued his case are described. It is also stated that this matter was taken up by the Western Railway Mazdoor Sangh as a PNM item

...4

B.S.

and record thereof is at Annexure R-4. It is agreed that R-4 will get his seniority of STI scale w.e.f. 1997, when he joined as Goods Guard. In conclusion, the point is stressed that the recognised Unions as well the Jaipur Division have insisted for absorption of R-4 and the General Manager, who is the highest authority in Zonal Railway has ordered the absorption "on the ground that rules do not prohibit or prevent a Guard being given alternate employment as SI". It is also stated that the order of 14/5/91 did not indicate the arrangement as being temporary.

5. We have heard learned Counsel on both sides. The Learned Counsel for the Applicant took us over the facts of the case and reiterated the points made in the application in detail. He argued the case at length, The gist of the salient points made by him are as below:-

- (a) A regular selection was envisaged and initiated in 1994 and no application was made by R-4.
- (b) There is no rule under which such appointment can be made, and the letters from Headquarter at Exhibit -D and F are clear indications that the action of the Jaipur Office is against rules and authority.
- (c) Calling the appointment as a backdoor entry, Counsel for Applicant argued that Union pressure was behind that action.

B.S.

(d) In regard to the defence that Applicant No.1 and 2 are not adversely affected, it was argued that the seniority granted to R-4 would make him senior to all Applicants including applicant in the grade of Rs.1400-2300.

6. The Learned Counsel for the Respondents argued the case in detail, first making the point that this Bench lacks jurisdiction against persons posted in Jaipur and also made the point that the application was hit by delay & laches/limitation since the cause of action arose in 1991.

7. Learned Counsel reiterated the point that Applicants were not similarly situated and that applicant No.1 being already in a higher grade was not at all aggrieved by the action. If seniority was effected, they could make a representation.

8. Arguing on merits, Learned Counsel asserted that the Rehabilitation of decategorised personnel being the bounden duty of the Administration, it was for the Administration to decide where such a person was to be fitted and no infirmity be taken if it existed can be alleged except one of malice, if at all.

9. Learned Counsel for Respondents argued that although the proposal of DRM, Jaipur was initially objected to, the General Manager had ultimately approved it. In reargument, Counsel for Applicant repeated to say that the cause of action arose only with the impugned order and no delay and laches existed only because of appointment of R-4 in the regular position could applicants have moved the Tribunal. Learned Counsel defended his

B.S.

action in coming to Mumbai Bench and cited the section-20 of the act and the judgement of Mumbai High Court in WP 1745 of 1999 this connection.

10. We will first take up the issues regarding limitation, joint application and jurisdiction. There is no gainsaying the fact that a regular process of selection in this case was initiated vide letter at Ex-B, in 1994, and after protracted correspondence as described above it was only on 13/7/1995 was R-4 regularised. The Impugned order clearly states in the first paragraph that the (earlier) appointment of R-4 w.e.f. 14/5/91 was on adhoc basis. There was, only later, a conscious decision regarding a Selection Process for this post taken up in 1994. Thus, the cause of action starts with the Impugned order in July, 1995 and the Application having been filed in August 1995, it cannot be said to be hit by limitation. As regards joint application, it is true that not all the applicants are in the same rank, but they are in rungs in the same hierarchy as described, in para-4 of the Application. There is no doubt that the applicant No.1 who is in a senior grade than R-4 today will get effected in the seniority list of Grade Rs.1400-22300 when R-4 gets seniority from 1977. Hence, we can see no objection for the allowing of joint application.

11. In regard to the point about two of the applicants being posted in Rajasthan, this is indeed a fact, and normally one would expect them to go the Bench of the Tribunal there. However, we are in Writ Petition NO.1745/99 dt. 5/4/1999. In that judgement it is held by the High Court that when an order is made by the Headquarter office situated like in present case in

...7

B.S.

in Mumbai, the applicants would be within their right to agitate their case before the Bench located at the Headquarter since part of the cause of action arises within the jurisdiction of that Tribunal. The objection in this regard therefore, cannot be sustained in view of the categorical judgement of the Bombay High Court.

14. Coming to the instructions of the Railway Administration cited by either side, we note that there is the Master Circular No.25, being depended upon by the Respondents (Annexure A-6). There is then the copy of Railway Board's letter dated 3.11.1971, which has been referred to for support by the applicants. A copy of this letter is also, in fact, annexed at Annexure V by Respondents only. The former document of instructions indicates that while Railway Servants, who are medically unfit/decategorised, are expected to be provided in allied categories of posts there is no bar to their being put in other Cadres. This is clear from a comprehensive reading of the Circular. In fact, it is further stated that even when such Railway men are fitted in other Cadres, their service rendered in corresponding Grade should be reckoned for seniority. The former letter of 1971 provides guidelines indicating the categories where running staff should preferably be fitted in. Now two things are to be seen. Firstly these are guidelines to be borne in mind by competent authorities and not statutory rules. We cannot discard them since they are Railway Board's instructions. The second point noted is that the latter set of instructions

B.S.

referred to above are of 1981, whereas the former are of 1971. Assuming discrepancy, the latter will be taken as relevant. In this document, it is clear that there is no bar against the applicants in this case being fitted into Cadres of Statistical Inspectors.

15. With this being the position of Rules/Instructions, we would examine now whether the decision of the Administration is otherwise arbitrary or perverse etc. We note, first of all, that the Respondents state that a Screening Committee had examined this case and had recommended the fitment of the Respondent No.4, in the Grade of Rs.1400--2300/- in the statistical Branch. Thus, it is a conscious decision in consonance with the system which envisages a Screening Committee to look into the matter. It is true, as strongly contended by the Counsel for Applicant, that earlier on the Headquarter Office had not approved the proposal of Jaipur Division for regularisation of R-4 as STI. But here no Rule etc. was quoted for non approval and it was merely stated that this is against "laid down procedure". Even if this was the interim position, it cannot be overlooked that the senior most officer i.e. General Manager, has approved the regularisation, ultimately, and the earlier views of the CPD cannot itself create any infirmity in the Order of General Manager, specially when no Rules are flouted. We have also considered the argument advanced on behalf of the Applicant that the action was taken as a result of Union Pressure, and that the Exhibit R filed by Respondents

...9

Ans

relating to the views of the Union as and P & M item showed that extraneous pressure was working. The consultations with Unions having been made officially was a part of practice in the Railways. It is difficult to conclude that this kind of extraneous consideration was the factor responsible for regularisation of R-4.

16. Upon careful perusal of the papers, we are unable to discern any malice on the part of the General Manager who has taken such a decision. We do note the logic of the argument advanced on behalf of Respondents that they stood duty bound keep provide for a job, R-4 in view of his decategorisation, and that some grievance is bound to be created in whichever Cadre is fitted in. The competent authority has taken a decision which is not contrary to any Rules. Guidelines also provides for fitment of decategorised officials in other cadre and no statute or Rule or even instructions has been shown to be infringed. In view of the above discussions, no case has been made out for interference by this Tribunal.

17. In consequence, this Application is hereby dismissed. There will be no orders as to costs.

S.L. Jain
(S.L.Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur) 04/5/2000
Member (A)

sj*