

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CONTEMPT PETITION NO: 96/95

IN

ORIGINAL APPLICATION NO: 184/95

CORAM : HON'BLE SHRI B.S. HEGDE, MEMBER(J)

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

Shri M.P. Kamal Raj .. Applicant
(In person)

-versus-

1. Shri S.A.A. Zaidi,
Secretary,
Railway Board,
New Delhi.

2. Shri D.R. Mehra,
Under Secretary(Estt.)
Ministry of Railway,
Railway Board,
New Delhi.

.. Respondents

(Shri K.T.S. Tulsi, Additional
Solicitor General of India
along with Shri M.S. Ramamurthy)

Dated :- 15-12-95

: O R D E R :

(PER: SHRI B.S. HEGDE, MEMBER(J))

1. The applicant has filed a Contempt Petition
against the respondents stating that the respondents have
disobeyed the order of the Tribunal dt.16-06-1995. He
had filed this O.A. in February 1995 against the Union of

AS

....2/-

India praying for quashing the Railway Board order promoting one Shri V. Santhanam, Respondent no. 2 as Member (Electrical), and to direct the respondents to promote the applicant first as General Manager by virtue of his position in the 1993-94/1994-95 panels and non-promotion of any officer junior to the applicant pending his own promotion, etc.

2. The Tribunal after hearing the Learned Counsel for the parties, admitted the O.A. on 16.06.1995. Since the ~~prayed~~ in the relief clause as well as the interim relief is one and the same, considering the contention of the applicant, the Tribunal passed the following order :-

"In case his turn comes for appointment as General Manager, he may be considered for the same, if other persons having less than two years service are considered. The respondents are directed to consider the case of the applicant."

The main contention of the applicant in the C.P. is that, all officers who have been promoted as General Managers, are officers in the lower grades, however, they have been detailed to look after the current duties and two of the officers who are junior to the applicant, had balance of ~~service~~ ^{been appointed as a m-} less than two years service, etc. The C.P. was filed by the applicant on 14.07.1995. The emphasis made in the Contempt Petition is that he has been empanelled in both

1993-94 and 1994-95 panels and is senior enough to consider him to the post to look after the current duties. He has not been assigned ^{any policy} and ignored by the respondents. The respondents have filed their reply to the Contempt Petition on 21.09.1995 by the Under Secretary, Shri D.R. Mehra and reply to the O.A. has been filed by him on 21.08.1995. Having not satisfied with the reply filed by the respondents, the Tribunal vide its order dated 20.11.1995 directed the Respondent No. 1 to be present in the Court to answer any querry raised by the Bench at that time and to produce all papers and documents connected with the proposals for filling up the post of General Manager and the proceedings and minutes of the Appointing Committee of the Government, approving the change in policy regarding filling up the vacancies with reference to the date it occurred and not ~~with~~ the balance ^{of} two years service available to the officers, etc. Accordingly, the respondents complied with the directions of the Tribunal by filing an affidavit and the respondent no. 1 was present during the course of hearing. In the affidavit filed by the respondent no. 1, it is stated that they have already filed a counter reply to the O.A. on 21.08.1995 and they have also filed a Miscellaneous Petition on 15.09.1995 with reference to the interim order passed by this Tribunal on 16.06.1995, which has not yet been disposed of. It is stated in the affidavit that there are 19 posts of General Managers and equivalent on

Indian Railways out of which 9 posts of General Manager are Open Line, 5 posts in Production Units, 1 Post in Railway Staff College, 1 post in RDSO, 1 post in Metrol Railway/ Calcutta, 1 post in North east Frontier Railway (Construction) and one post in Railway Electrification. These posts are not included in any cadre or in any service and no service or members thereof has any legal right to claim appointment against these posts. These posts are filled up by selection on merit. The Selection Committee also recommends the specific type/types of assignment for which a particular officer is considered suitable. After the panel is received, the proposal for posting against individual posts are again sent to ACC for its approval. Even if an officer is empanelled, he does not have any right for appointment against these posts, due to various factors. It is further stated that the panel for filling up these posts is drawn up every year for vacancies occurring during the period from 1st July of the year till 30th June of the next year. A panel for the year 1994-95 for appointment to the post of General Managers was approved towards the end of December, 1994. Based on this approval, action was initiated for making individual postings. As there was a delay in finalising the panel for the year 1994-95 and the fact that most of the vacancies had already occurred by then it was decided by the Competent Authority that for the purpose of eligibility the two years tenure would be counted from the date of occurrence of vacancies instead of the normal 2 years as provided in the scheme so that empanelled officers who would

have otherwise been appointed as General Managers in their turn with requisite tenure are not deprived of their chance of promotion because of the delay. Proposals for appointments against the posts of General Manager and equivalent on the above basis has been approved by the Government at the highest level i.e. A.C.C. and orders have been issued on 31.10.1995. It is further submitted that the principle adopted has been applied uniformly to all the officers and no discrimination has been made in the case of the applicant. While formulating proposals for appointments to the posts of General Managers and equivalent, the case of the applicant was also duly considered. Since his date of superannuation is 31.8.1996, he was having less than two years service on the date of occurrence of vacancy falling in his turn. The vacancy occurred on 30.09.1994, therefore, the applicant was not found eligible for appointment. The case of the applicant was again considered and the matter re-examined in the light of the orders of the Hon'ble Tribunal dated 16.6.1995.

3. In the reply filed by the respondents to the O.A., para 11.1 states that the applicant fell short of two years remaining service as laid down in the resolution dated 16.07.1986 containing principles for appointment to the said post. The applicant does not fulfill this criteria even when the service was counted on the date of occurrence of vacancy in his turn.

✓ Park Department
✓ Park Services' names
✓ See Ph.D.'s car

4. The contention of the applicant is that the guidelines/scheme laid down by the Ministry of Transport, Department of Railways, dated 16.07.1986 as well as the direction of the Tribunal dated 16.06.1995 has not been followed by the respondents. Para 7.3 of the scheme reads as follows :-

"Only such of the empanelled officers would normally be appointed to posts of General Managers and equivalent as will be able to serve for atleast two years on such or higher post(s)."

According to the applicant, the scheme would apply from the date of appointment, therefore, two of his juniors who have been appointed as General Managers, if their appointment was made in accordance with the scheme, they would not have been appointed as General Manager as they are having less than two years service. The scheme envisages the period of two years service from the date a person takes charge of the post. Further, the applicant heavily relied upon the decision of the Principal Bench in D.P.S. Ahuja V/s. Union Of India 1992 (1) CAT 51 and states that the decision of the Principal Bench is binding on the respondents and the same should be extended in his case also because both Shri Bhaskaran and S. Dharni, having less than two years service and junior to the applicant have been appointed as General Managers and by changing the criteria, the

respondents have relaxed insofar as his juniors are concerned and not the applicant. In para 15 of the Ahuja's case, the Tribunal held, denial of promotion even after empanelment in the panel for the year 1990-91 to the applicant on the ground that he has less than two years to serve cannot be upheld He, therefore, cannot be denied that benefit on account of the action of the respondents which itself cannot be upheld as discussed above on the ground that he is now left with service of less than two years, etc....

5. We are of the view that there is considerable force in the contention raised by the applicant insofar as the ratio laid down in Ahuja's case. In para 4. of the reply, the respondents have stated that Shri A.S.P. Sinha alongwith others who were senior to the applicant were also not found eligible because they were having less than two year service on the date of occurrence of vacancies falling in their turn. However, on perusal of the judgement of the Allahabad Bench of the Tribunal, we find that Sinha could not be promoted to the post of General Manager because of the ceiling. In para 20 of the said judgement it is stated that the Learned Counsel for the respondents was asked to clarify if any criteria had been fixed by the respondents for computing the period of two years left for service. The Bench observed here that theoretically it could be either the date of

vacancy or the date of sending the proposal for the approval of the A.C.C. or the date of receipt of approval of the A.C.C., or the date of issuing orders of appointment on promotion or the date of actually taking over charge of the higher post. The Bench did not get any clear reply to the clarification sought by it. The Learned Senior Counsel for the respondents, however, submitted that normally, it should be the date of appointment. In this context the Division Bench made the following observation :-

"The period of two years referred to therein is for service and not for anything else. Service can be deemed to commence only from the date a person takes charge of the post."

In view of this findings, the Tribunal held that the action of the respondents in that case in not appointing the applicant to the post of General Manager was held to be both arbitrary and discriminatory. Therefore, it is not correct to state that Sinha could not be appointed on account of not having less than two years service but due to ceiling in the Cadre in which he was to be appointed. The stand of the respondents throughout is two years service from the date of appointment. However, in the present case, they have taken a decision that two years tenure would be counted from the date of occurrence of vacancy instead of two years provided in the scheme. It is clear from the above, that the respondents have been changing the stand from time to time depending upon the

condition in which they are situated. In the earlier cases, they have been taking two years period from the date of appointment i.e. two years service is required to be performed in that post in which they are appointed, which has been changed insofar as this case is concerned.

The Tribunal's direction is that - if his juniors who are having not less than two years service are considered, the applicant's case should also be considered.

Admittedly, Shri Bhaskaran and Dharni, are juniors to the applicant and if the date of appointment is to be considered, they also would have been out. However, the stand of the department is that, by changing the policy in counting the period of two years from the date of occurrence of vacancy has not harmed anyone, on the other hand, benefitted some people. Incidentally, the applicant could not have been accommodated who happened to have less than two years service. There is no doubt that the action of respondents in changing the policy in counting two years service from the date of occurrence of vacancy, which is certainly not proper during pendency of the order of the Tribunal, by which the applicant's interest has been harmed, but the question to be seen here is whether the change in the policy has resulted in wilful disobedience of the Court's order. In the Contempt of Courts Act, 1971, a contempt would arise when there is a wilful disobedience of any judgment, decree, direction, order writ or other process of a court or wilful breach of undertaking given to a court etc.



6. We have heard the arguments of the applicant in person and Shri K.T.S.Tulsi, Additional Solicitor General of India along with Shri M.S.Ramamurthy for the respondents and perused the pleadings and records. Having regard to the various contentions submitted by the learned counsel for the respondents we are satisfied that there is no willful disobedience or malafide on the part of the respondents in modifying the scheme by adopting two years service from the date of occurrence of the vacancies. It is an admitted fact that the applicant appeared on the panel both in the year 1993-94 and 1994-95 but because of the delay caused by the respondents in getting the panel approved within the specific time, the applicant could not be appointed to the post of General Manager.

The respondents in their reply have stated that the vacancy arose on 30-9-94 and the applicant was to retire on 31-8-1996 therefore he could not be considered under the modified scheme also.

7. In Allahabad Bench decision in A.S.P. A.S.P.Sinha's case it is observed that the post of General Manager is not a promotion, but would be appointment to the post of General Manager and equivalent. Therefore, one cannot claim that he should be posted as a matter of right to such post. It was further observed that except on discrimination, he cannot challenge the appointment of others, as the post of G.M. is not included in the cadre and the assumption of the applicant that he has a right to be promoted to the post is untenable. In that decision, the plea of discrimination has neither been raised nor has to be considered.

The approval of the A.C.C. to the post of G.M. was given on 28-7-94 and according to both respondent No. 3 & 4 apart from seniority in service and in the panel, they had two years of service on the date of appointment. Accordingly, they have been appointed whereas the applicant Sinha could not be appointed both on account of ceiling in the category to which he has to be appointed and having less than two years of service on the date i.e. 28-7-94. In so far as Mr. Ravindra and Mr. Bansali are concerned though they are junior to the applicant Mr. Sinha in the panel of 1993-94 they have been appointed as G.M. in 1994, both were of different service and further their appointments were not questioned by the applicant and not impleaded as party respondents. Though, legally no employee has any right to have a vacancy in the higher post filled as soon as a vacancy occurs. In the present case, the vacancy arose on 30-9-94 and thus it is apparent that applicant's date of superannuation being 31-8-1996 he would not have come within the purview of two years of service either on the date of appointment or on the date of occurrence of vacancy. Although the respondents have effected changes in the policy during the pendency of the O.A. and appointed 11 persons to the post of GM while applying the changed policy they have not made any discrimination and all the persons who have been appointed have not less than 2 years service. Applicant in person, vehemently argued that the ratio in Ahuja's case should be applied in his case also. In Ahuja's case, since five officers have been appointed who have less than

two years service as GM on the date and hence denial to the applicant, Ahuja of promotion even after the empanelment for the year 1990-91 was found to be discriminatory and non appointment of the applicant on account of having less than two years of service left by the respondent was not upheld. That is not the scenario in the case of A.P.S. Sinha. The difference between Ahuja's case and Sinha's case is that in Ahuja's case persons similarly placed have been discriminated i.e. despite the policy, those who were having less than two years of service have been appointed, whereas in Sinha's case, he could not be appointed being less than two years service and on account of ceiling in the category to which he is to be appointed.

Therefore, keeping in view of the observation of both the cases the Principal Bench in O.A. 2122/95, B.S.

Aggarwal vs. U.O.I., while declining to grant the interim order based on the Allahabad decision stated that the action taken by the respondent is neither arbitrary nor against the policy of the scheme.

What is correct decision, is a matter for final decision. The interest of the applicant can be fully protected if we declare that, if ultimately this O.A. is allowed, the applicant would be allowed full restitution in financial terms, as if he had worked on the higher post. As stated earlier no criteria has been fixed by the respondents for completion of two years of service. Learned counsel for the respondents in the earlier cases conceded normally two years service should be from the date of appointment, whereas in this case it is taken as date of occurrence of the vacancy.

However, in the absence of any clear order from the Tribunal directing the respondents that the applicant should be appointed to the post of G.M., no contempt can be said to have been committed by the respondents or its officers. Contempt proceedings are mainly to uphold the dignity and decorum of the court and not to vindicate the rights of the parties. The disobedience of injunction is a civil contempt. Every injunction of the courts order does not amount to contempt of court. It is only willful and deliberate violation of court's order and contumacious conduct, on the part of the contemner which is to be condemned in contempt proceedings. As stated above, there is no willful disobedience of the court's order and no discrimination/while appointing the persons who are eligible to be considered for the post of G.M. Since the respondents have changed the policy during the pendency of the O.A. we are satisfied, that the applicant's interest can be protected if ultimately this O.A. is allowed, the applicant would be allowed full restitution in financial terms, as if he had worked on the higher post.

8. In the result, we are satisfied that there is no contempt committed by the respondents and the C.P. is discharged accordingly.

M.R.Kothalkar
(M.R.KOTHALKAR)
Member(A)

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