

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . : 185 of 1995.

Dated this Friday, the 23rd. day of June, 2000.

A. Krishnamurthy Rao, Applicant.

Shri R. D. Deharia, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for the respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

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

(i) To be referred to the Reporter or not ? No.

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? No.

(iii) Library. No.

B. N. BAHADUR
MEMBER (A).

OS*

(B)

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CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

A. Krishna Murthy Rao,
Dy. Station Manager,
Central Railway,
Gulberga.

...

Applicant.

(By Advocate Shri R. D. Deharia)

VERSUS

1. *Union of India through
The General Manager,
Central Railway,
Bombay V.T. 400 001.*
2. *The Divn1. Railway Manager,
Divn1. Rly. Manager's office,
Central Railway, Solapur,
Pin Code No. 413 001.*
3. *Habib Hussain,
Dy. Station Manager,
Central Railway,
Railway Station Wadi,
Dist. Gulberga,
Karnataka.*
4. *Mohammed Issaq Saheb Naik,
Ex. Dy. Station Suptdt. HG.
House No. 8/A, Chanakayanagar,
Behind Nadigari Petrol Pump,
Bijapur Road, Solapur - 413 001.*
5. *V. S. Ambekar,
Ex-Station Supt.
Opp: Syndicate Office,
Near Post Office, WADI,
Dist. Gulberga, Karnataka.*
6. *J. B. Raut,
Station Manager, Barsi Town,
C. Railway, P.O. Barsi Town,
Dist. Solapur.*
7. *A. B. Unde,
Dy. Station Manager,
C. Railway, Ahmednagar,
P.O. & Dist. Ahmednagar.*

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JNB

8. S. S. Vaidya,
Dy. Station Manager,
Daund, P.O. Daund,
Pin - 413 801.

9. K. B. Vaidya,
Dy. Station Suptdt.
C. Railway, Daund,
P.O. Daund, Pin - 413 801.

10. G. B. Chikodikar,
Dy. Station Manager,
C. Rly., Daund,
AT & PO - Daund,
Pin: 413 801. ... Respondents.

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A)

This is an application made by Shri A. Krishnamurthy Rao, seeking the relief, in substance, for a direction to promote him to the post of Station Manager/Superintendent, etc. in the grade of Rs. 2000-3200. The applicant has a grievance that the selection made for this category of posts, in which he was excluded, be held bad in law, and seeks a direction that applicant be deemed to be promoted w.e.f. 01.03.1993 and accordingly consequential benefits.

2. The facts of this case are in a short compass, in that the applicant was working as a Deputy Station Superintendent in the grade of Rs. 1600-2660, and has the grievance that when a panel was drawn up for promotion to the grade of Rs. 2000-3200, he was not found fit and hence overlooked for promotion. It is noted that the applicant himself mentions that the post is a selection post.

3. The respondents have filed a reply in the O.A., where they deny all averments relating to malice or discrimination, and take the defence that this is a selection post and the promotion is based on the modified procedure, whereby suitability is assessed only on the basis of service records and confidential reports

Ans

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(D)

without holding any written test or viva-voce. The respondents aver that the applicant was found unsuitable in the selection process and, therefore, not promoted. Respondents' counsel has produced before us the original record relating to D.P.C. proceedings, as also the confidential rolls, of the relevant year, of the applicant.

4. We have heard the Learned Counsel on both sides. The Learned Counsel for the applicant, Shri R. D. Deharia, argued that no adverse remarks had, admittedly, been ~~every~~ communicated to the applicant and hence, he cannot be declared unfit. The Learned Counsel strenuously took us over the revised procedure, as available at Annexure-4, page 21. This is a letter from the Railway Board regarding instructions on restructuring of Group 'C' and 'D' cadres. Shri Deharia argued that in the modified procedure outlined herein, only fitness had to be seen. He stressed on paragraph 4 of this instructions to strenuously make the point that the procedure strictly followed for selection post could not be followed now, in view of the modified procedure, and only fitness or otherwise should be considered.

5. Shri Deharia also laid stress on the instructions issued vide letter of Railway Board dated 08.10.1993, a copy of which has been annexed at A-7 of the application (page 27). The Learned Counsel drew support from these instructions to state that merely because he had obtained the remark of 'average', he could not be declared 'unfit' for promotion, and hence contended that he has been wrongly overlooked.

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(11)

6. Arguing the case on behalf of the respondents, the Learned Counsel for the respondents, Shri R. K. Shetty, took the line of the arguments made in the written statement and rested his case merely on the records of D.P.C. and confidential reports produced by him. He resisted the interpretation sought to be given by the Learned Counsel for the applicant to the instructions at Annexure A-4 (regarding modified procedure) and stressed the point that the post remained a selection post as per para 4 of this instructions and hence, he contended, that it was clear from records that no discrimination was made nor any wrong procedure followed.

7. We have considered the arguments made by the Learned Counsel on either side and have perused the papers in the case including the rejoinder. We have also carefully seen the records of D.P.C. proceedings and the confidential reports.

8. The first point we note is that this post to which promotion is sought, is indeed a selection post. In this regard, the argument made by the Learned Counsel for the applicant that the instructions at para 4 of the communication dated 27.01.1993 afford him protection, do not impress us. Since reliance is placed heavily, in arguments, on this paragraph, we produce this para below :

"4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and Confidential Reports without holding any written and or viva-voce test. Similarly, for posts classified as non-selection at the time of this restructuring, the same procedure as above will be followed. Naturally under this procedure the categorisation as 'Outstanding' will not figure in

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the panels. This modified selection procedure has been decided upon by the Ministry of Railways, as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders."

It is clear from the first sentence that the existing classification does not change, i.e. since the post in question in this O.A. is a selection post; it remains as such. The only modification in selection procedure is the doing away of the normal system in which the written test and viva-voce are taken. This is replaced by the system of scrutiny of confidential reports/service records to determine suitability on promotion. This change in the procedure does not afford the applicant of the benefit that is being sought through arguments made before us. It cannot be argued that this modified procedure implies that the procedure for selection post will not be followed.

9. Similarly, as stated above, we are not impressed by the argument that the instructions at page 27 shall be deemed to imply that anyone with 'average' report has to be promoted. It is stated that Average report in itself will not mean that the person is unfit for promotion. This cannot be interpreted in the manner as sought by the Learned Counsel for the applicant.

10. Now having gone through these points, we come to the record which we have seen carefully. Without going into too many details, we see that no discrimination has been caused to the applicant. On the basis of the record, which we have seen in original, and the system followed by the D.P.C., we are convinced that no unfairness, discrimination or arbitrariness can be alleged in the selection procedure. We have also seen the method of selection and the gradation obtained by the large number of other candidates who have been either selected or overlooked. A

Ans

(12)

uniform and fair system has been followed and even the seniors of the applicant, who perhaps had a better record than him, have been overlooked on the basis of grading, as arrived at by the D.P.C.

9. The gradings given by the D.P.C. cannot be subjected, ~~to~~ ^{by} us, to a further scrutiny in individual cases, as if we were an Appellate Authority. The law settled in this regard by the Hon'ble Supreme Court is clear and we would not like to look at the procedure of selection, as if we were an appellate authority. Suffice it to say, as already discussed above, we find no discrimination, unfairness or arbitrariness in the selection procedure. We also do not find that the rules or instructions have been bypassed or wrongly interpreted. Under the circumstances, we do not find it necessary to interfere with the matter.

10. In consequence, this application is hereby dismissed. No order as to costs.

B.N. Bahadur,
(B. N. BAHAJUR)
MEMBER (A).

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*