

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 384 of 1995.

Dated this 30th the June day of 2000.

Baburao Vishram Pathare, Applicant.

Shri M. S. Ramamurthy, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, 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 ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.

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

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ORIGINAL APPLICATION NO.: 384 of 1995.

Dated this _____ the _____ day of _____, 2000.

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

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

Baburao Vishram Pathare,
Assistant Commercial Manager (Catering),
Under Divn1. Railway Manager,
Central Railway, Bombay V.T.

... Applicant.

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. The Union of India through
The General Manager,
Central Railway, Bombay V.T.,
Bombay - 400 001.

2. The Divn1. Railway Manager,
Central Railway, Bombay V.T.,
Bombay - 400 001.

3. The Chief Commercial Manager (C),
Central Railway, Bombay V.T.,
Bombay - 400 001.

... Respondents.

(By Advocate Shri V. S. Masurkar)

ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

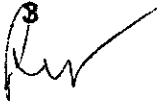
This is an application filed under Section 19 of the Administrative Tribunals Act. We have heard Mr. M. S. Ramamurthy, the Learned Counsel for the applicant and Shri V. S. Masurkar, the Learned Counsel for the respondents.

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[Signature]

2. The applicant is a Scheduled Caste candidate. He was working as an Assistant Catering Manager, which is a Group 'C' post, since 1966. Then on 28.02.1985 he was promoted as Assistant Commercial Superintendent (Catering) against a clear vacancy due to retirement of G. R. Kasar. The applicant has been working in that post since then. It is a Group 'B' post. The applicant was a senior most candidate in the catering department and hence, he was promoted as Assistant Commercial Superintendent. It was a selection post. The promotion was done by a D.P.C. However, the post was declared ~~as~~ ex-cadre post in order to see that the incumbent of the post will have special knowledge and experience in catering work. However, the promotion of the applicant was treated as ad hoc, since the recruitment rules had not yet been finalised. Even till today, the recruitment rules are not made. The applicant has not been regularised though he has put in 10 years service and still he is shown as ad hoc. Some allegations are made about confidential reports which are not necessary for our present purpose. The applicant's contention is that his service as Assistant Commercial Manager (Catering) from 28.02.1985 should be treated as regular service and on that basis he is entitled to be considered for promotion to senior scale.

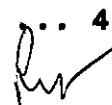
It may also be noted that during the pendency of the O.A. the applicant has been regularly promoted to Group 'B' cadre as per order dated 08.11.1996. The respondents in their reply have admitted that applicant was promoted as Assistant Commercial Manager (Catering) on an ad hoc basis, which is a ex-cadre post.

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Since the applicant's promotion was purely adhoc, he cannot get the benefit of that ad hoc service, unless he is promoted on regular basis. It is admitted that recruitment rules for this particular post are not yet finalised. The applicant has since participated in the selection process for regular promotion to Group 'B' service and the matter is under consideration. It is also admitted that the post of Assistant Commercial Manager (Catering) and other Assistant Commercial Managers are interchangeable in Group 'B' cadre. Since the applicant's promotion was on adhoc basis, he cannot be considered for promotion to Group 'A' service in the absence of three years regular service in Group 'B' Cadre. The applicant cannot get any benefit of the ad hoc service. It is, therefore, stated that applicant is not entitled to any of the reliefs prayed for.

3. In view of the pleadings and arguments at the bar and in view of the fact that applicant has since been regularly promoted as a Group 'B' Officer by order dated 08.11.1996, the short question for consideration is, whether the services of the applicant in Group 'B' post from 25.02.1985 to 08.11.1996 should be treated as regular service for the purpose of getting seniority in that cadre and for being considered for promotion to Group 'A' or not ?

4. It is common ground that applicant's promotion as Assistant Commercial Manager (Catering) was on ad hoc basis. This was in 1985. This has been continued for eleven years. Then ultimately in 1996 the applicant came to be regularly

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promoted to Group 'B' cadre. The Learned Counsel for the respondents mainly contended that since applicant's promotion was on adhoc basis, any amount of ad hoc service cannot be treated as regular service. He also contended that applicant's promotion on ad hoc basis was against ex-cadre post and that it will not give him seniority in that post. We must mention that this aspect is not pleaded in the written statement. The main plea in the written statement is, that since applicant's promotion was on ad hoc basis, he cannot get the benefit of ad hoc service for the purpose of seniority. Even this argument about ex-cadre post also does not appeal to us. It is not as if this ex-cadre post is a distinct and different post or it is an isolated post unconnected with the department of the applicant. Here is the case where the applicant belongs to Catering Department. He was working as Assistant Commercial Manager in the Catering Department. Therefore, his ex-cadre post of Assistant Commercial Manager (Catering) is a post in the same department where applicant was working in the feeder cadre. The Railway Board's circular itself points out that the intention of making it ex-cadre is to see that the officer who is posted there gets special knowledge of the catering department.

5. Before we go to the facts of the case, let us consider the question of law. There cannot be any dispute that normally ad hoc service will not count for the purpose of seniority. It is only the regular service which will count for seniority. To this general statement, there is an exception. This exception flows from number of decisions of the Apex Court where consistent

view is taken that if ad hoc service is not a stop-gap arrangement and it is not ~~make~~ contrary to the rules and it is continued for years together, then ad hoc service can be deemed as regular service and will count for the purpose of seniority.

6. The Learned Counsel for the applicant invited our attention to a case reported in 1997 SCC (L&S) 1512 (I.K. Sukhija & Others v/s. Union of India & Others) wherein an identical question arose for consideration. The question was, whether the ad hoc service will count for the purpose of seniority or not ? The Supreme Court noticed that in that case, ad hoc promotion or ad hoc appointment was not a stop-gap arrangement. The official had been promoted in the regular grade but it was shown as 'ad hoc', since the recruitment rules had not yet been finalised. Though the order of promotion mentions that it was on ad hoc basis, it was not by way of stop-gap arrangement to meet some urgent administrative exigencies. They were considered for promotion by a D.P.C. on merits. Regular vacancies were available. However, since the recruitment rules had not yet been finalised, the promotions were labelled as 'ad hoc'. Ultimately, the Supreme Court summarised its conclusion in para 14 with the following observations :

"14. What emerges from the above discussion is that the promotions of the appellants as AEs (Elect.) were not contrary to any statutory recruitment rules. Even if we proceed on the basis that in the absence of statutory rules the draft recruitment rules of 1969 were applicable, what we find is that the appellants were eligible for promotion and their cases were duly considered by the D.P.C. They were promoted after they were found suitable by the D.P.C. and their promotions were made according to their placement in the merit list and not according to

their seniority. When the appellants were promoted, though on ad hoc basis, clear vacancies were available in the promotion quota. The only reason for making their appointments as temporary and ad hoc was that the draft recruitment rules could not be finalised till 1975. There was no unusual spurt in the construction activity between 1970 and 1977 which necessitated giving of urgent temporary promotions. For all the reasons stated above, it is not possible to accept that the appointments of the appellants as AEs, though temporary and ad hoc, were by way of stop-gap arrangements only."

In our view, the above observations are directly applicable to the facts of the present case, ^{which} we will be presently consider.

7. On the other hand, the Learned Counsel for the respondents invited our attention to a recent unreported judgement of the Supreme Court dated 25.04.2000 in Civil Appeal No. 5086 of 1994 in the case of M. K. Shanmugam & Another v/s. Union of India & Others. There the question was, whether the ad hoc promotion as Executive Engineer will give the officer seniority in the cadre of Executive Engineers for the purpose of further promotion to the post of Superintending Engineer ? The Supreme Court went into the question of facts in detail and found that the promotions were done on ad hoc basis and there was no regular D.P.C., as provided under the rules. The senior list of the Assistant Engineers had not been finalised in view of pending litigations. Hence, regular D.P.C. was not held. Non-selection method was adopted for a selection post. Further, the ad hoc promotions were for a limited time, though it continued for few years. The D.P.C. should have been headed by a Member of U.P.S.C. under the rules, but it was not followed in that case. It was noted that if the ad hoc promotion is in violation of the

Ans ... 7

rules, then ad hoc promotion followed by regular promotion cannot be reckoned for the purpose of seniority. Then the Supreme Court pointed out as to what is meant by stop-gap arrangement. Then on facts, it came to the conclusion that it was ^a the case of promotion to the post of Executive Engineer de hors the rules and it was for a limited time and hence, it was a case of stop-gap arrangement and, therefore, the ad hoc service will not count for the purpose of seniority.

8. In the light of the decisions cited above, we would like to consider the facts of this case and then find out whether applicant's ad hoc service could be treated as regular service or not ?

In this case, the applicant is a Scheduled Caste candidate. He has made a specific allegation that he was promoted by a duly selected D.P.C., which has not been denied in the written statement. The applicant has specifically alleged in para 4.5 of the O.A. that he was the senior-most candidate in the Catering Department and had specialisation in the field of catering. This has been admitted in para 8 of the written statement. Then it is further seen that applicant was promoted against a regular vacancy caused by the retirement of G.R. Kasar. Further, this is not a case where the promotion was for a short period of three months or six months. The order of promotion dated 25.02.1985 does not say that the promotion of the applicant is for a limited period. Then further, the ad hoc promotion made in 1985 has continued for eleven years till he was regularised

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during the pendency of this O.A. by order dated 08.11.1996. There is neither plea nor material that this was a case of stop gap ad hoc promotion. Further, there is no allegation, much less material, to show that applicant's ad hoc promotion was contrary to any rules. On the other hand, it is an admitted case that the promotion was shown ad hoc on the ground that recruitment rules for ex-cadre post had not yet been finalised. It could be recalled that even in the case of I.K. Sukhija & Others mentioned above, the Supreme Court has noted that the promotion of Assistant Engineers were shown ad hoc because of non finalisation of the recruitment rules.

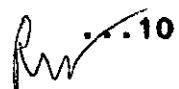
The order of promotion at page 17 of the paper book further shows that the promotion has been approved by the General Manager, who is the administrative head of Central Railway. Then one more thing could be noticed that though the applicant was promoted to an ex-cadre post, he has been sent on transfer to other posts, which are not ex-cadre post. For instance, by order dated 30.12.1994 the applicant has been transferred in the same grade as Mela Officer, Naini. Then we have one more order of transfer dated 16.02.1995 where applicant has been transferred as Assistant Commercial Manager (Ticket Collector). Therefore, this is not a case where applicant has been confined to only ex-cadre post. He is being sent on transfer in the same grade to different department. This is admitted in the written statement also. Hence, taking all the above facts into consideration, we find that this is a case where applicant has been promoted by a D.P.C. on merits and he is the senior-most candidate in the

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feeder cadre of his department and he is appointment against a regular vacancy and it is not a case of stop-gap arrangement for few months or one or two years. Then what is more, the applicant has now been regularised as Group 'B' officer in 1996, after holding written test, etc. Earlier, he was shown as ad hoc only on the ground that recruitment rules had not been finalised. Hence, taking the cumulative effect of these special facts and circumstances of this case and in view of the law laid down by the Apex Court in the two decisions cited above, we can safely hold that applicant's promotion from 28.02.1985 as Assistant Commercial Manager (Catering) should be held to be regular promotion for all practical purpose, including seniority in Group 'B' post.

9. The applicant wants a direction that he should be promoted to Group 'A'/Senior Scale on the basis of his seniority. This is a matter which the administration has to consider as per rules. Now we have held that applicant should be treated as a regular Group 'B' officer from 28.02.1985. On that basis, the administration should consider whether the applicant is entitled, fit and suitable for promotion to the post of Group 'A'/Senior Scale post.

Then there is a second prayer about some direction regarding confidential reports. The Learned Counsel for the applicant did not address any argument on this prayer. Even otherwise, the prayer is not sustainable, since no direction can be given as to how the confidential reports should be written.

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In case any adverse remarks are made against the applicant in the confidential reports, the applicant has to take appropriate action challenging the adverse remarks according the law.

10. In the result, the application is allowed partly as follows :

- (i) The applicant's prayer for regularisation in Class-II service does not survive since he has now been regularly promoted to Class-II service as per order dated 08.11.1996.
- (ii) The applicant is declared to have been promoted on regular basis as Class-II officer with effect from 28.02.1985. On that basis, the administration should consider whether he is entitled and suitable for promotion to the post of Group 'A'/Senior Scale according to rules.
- (iii) In the circumstances of the case, there will be no order as to costs.

B.Sahadev
(B.N.-BAHADUR)
MEMBER (A).

R. G. Vaidyanatha
30.6.2000
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. No. : 23/2001 in O.A. No. 384/95.

Dated this Wednesday, the 28th day of November, 2001.

CORAM : Hon'ble Shri Birendra Dikshit, Vice-Chairman.
Hon'ble Smt. Shanta Shastry, Member (A).

B. V. Pathare ... Applicant.

(By Advocate Shri M.S. Ramamurthy)

VERSUS

Union of India & Others ... Respondents.

A N D

1. Rajendra Nath,
General Manager,
Central Railway,
C.S.T., Mumbai - 400 001.

2. D. P. Tripathi,
Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001. ...

Contemnors.

(By Advocate - Shri S. B. Jaisinghani,
Additional Solicitor General with Shri
Suresh Kumar for the Respondents).

TRIBUNAL'S ORDER :

On the last occasion directions were given to issue charge memo to the Respondents/alleged contemnors, namely - R. K. Singh, Secretary, Railway Board and ^{Shri} Rajendra Nath, Former General Manager, Central Railway, Mumbai, in accordance with Rule-15 of the Contempt of Central Administrative Tribunal, "Contempt of Court Rules 1992" and the Contemnors were directed to be

present in the Court on 16.10.2001. Accordingly, a Memorandum was issued in Form 13 (b) (i) on 25.09.2001. Today, both the Contemnors are present in the Court. The Additional Solicitor General, Government of India, also appeared to assist the Court.

2. The Learned Additional Solicitor General pointed out at the outset that no contempt had been committed by the Contemnors, in that, the directions of this Tribunal dated 30.06.2000 were complied with and no specific charge has been mentioned in the charge-memo, therefore, the charge-memo is not according to rules. In this connection, he relied upon a judgement of the Allahabad High Court in Shamshul Hasan V/s. Kuber Nath (1975 C.R.I.L.J. 898). In this case, the Hon'ble High Court held that in the application and the affidavit filed alongwith it there was no date mentioned on which contempt may have been committed. Also, no specific order has been mentioned which might have been disobeyed. Similarly, no particulars of disobedience were given. Therefore, the application was dismissed. The Learned Additional Solicitor General, therefore, stated that the present charge-memo not being according to rules, needs to be discharged. // It was also pointed out that the issue raised by the Applicant is in regard to the seniority of the Applicant viz-a-viz one Shri R. K. B. Bajaj. The Tribunal had not given any directions in regard to the seniority. The only direction given by the Tribunal was that "the Applicant's prayer for regularisation in Class-II service does not survive, since he has now been regularly promoted to Class-II service as per order dated 08.11.1996. The applicant is declared to have been promoted on

regular basis as Class-II officer w.e.f. 28.02.1985. On that basis, the administration should consider whether he is entitled and suitable for promotion to the post of Group 'A'/Senior Scale according to rules." Accordingly, the Contemnors considered the applicant's case and granted him promotion to Group 'B' as Assistant Catering Manager (Catering) on regular basis w.e.f. 28.02.1985 and placed him below Shri R.K.B. Bajaj, who is at sl. no. 2 and above Shri P. L. Khanna, who has been recently included below Shri R. K. B. Bajaj and above Shri A. K. Sinha. This was issued on 20.04.2001 and also a combined Group 'B' seniority of Commercial & Traffic department which was issued and circulated was amended suitably.

3. The Learned Counsel for the applicant, Shri M.S. Ramamurthy, submitted that when the contempt petition was filed, the Contemnors had not complied with the directions of this Tribunal i.e. as on 12.04.2001, therefore, the contemnors had sought time to implement the same and were granted time till 15.06.2001 to comply with the order. Earlier, the respondents had approached the High Court as well as Supreme Court against the judgement dated 30.06.2000, however, their petitions were dismissed and finally they implemented the orders on 20.04.2001 i.e. within the extended time granted by this Tribunal. The applicant in the rejoinder took the point that though the Respondents had granted regularisation of his promotion w.e.f. 28.02.1985, it was partly complied, in that, the Applicant was not given his due seniority. He should have been granted seniority from the date his junior most person had been given

the seniority. In the instant case, Shri R. K. B. Bajaj, below whom the Applicant has been placed, was actually promoted on 24.12.1986. Considering this date, the Applicant should have been placed above Shri Bajaj and should have been considered for further promotion on the basis of this seniority. Shri Bajaj was further promoted on ad hoc basis to officiate in the senior scale ^{1990 b} from 01.03.2000 whereas the Applicant was given the said promotion from 16.05.01. Considering that the Applicant was promoted earlier than Shri Bajaj to Group 'B', the applicant should have got the promotion to the Senior Scale much earlier. Therefore, the respondents have not implemented the directions of the Tribunal fully and contempt has occurred and, therefore, the charge-memo should be proceeded with. The Applicant mentioned these details on being asked as to what is the ground he had taken in his contempt petition.

4. Learned Additional Solicitor General once again pressed that it was difficult to frame any charges as the applicant had not brought out this specifically and therefore, also the charge-memo would not survive. He further added that even otherwise the contemnors have not committed any contempt deliberately or wilfully as there is no arbitrary or capricious action on the part of the Contemnors. He drew our attention to the latest affidavit filed by the Contemnors in which the position regarding the seniority of the Applicant has been explained fully. Before the charge-memo was issued, the Respondents had been unable to explain how Shri Bajaj could be

given seniority above the Applicant. Shri Bajaj was originally promoted to Group 'B' vide Office Order dated 28.09.1983 as a result of the selection and being included in the panel of 1983. He was thereafter promoted but after having worked in the promoted post, he sought reversion on domestic ground to Group 'C' on 27.06.1984. He was repromoted on 24.12.1986 vide order dated 11.12.1986 and therefore in the seniority list of Group 'B' he was shown to have been promoted as on 24.12.1986. However, attention was drawn to para 207.3 of the I.R.E.M. which relates to the action to be taken in case of refusal to promotion. The relevant portion is reproduced below :

"207.3 of IREM : Refusal of promotion :- An employee empanelled for promotion to Group "B" refusing promotion, when his turn arises should be debarred for promotion for one year and if after one year, he refuse promotion again, his name should be deleted from the panel, when promoted, after the period for which he is debarred, seniority will be as from the date of effect of promotion and he will be junior to all employees promoted earlier than him on regular basis from the same panel but will be senior to employees from the subsequent panel, if any formed."

According to this, if a person refuses to accept promotion, he is debarred from promotion for one ^{year} week and if he refuses promotion further after one year, his name has to be deleted from the panel. When promoted after the period for which the person is debarred, seniority will be as from the date of effect of promotion and he will be junior to all employees promoted earlier than him on regular basis from the same panel but will be senior

to employees from the subsequent panel if any formed. It has been stated in the affidavit that there was no panel formed between 1983 to 1989. Therefore, the only panel was of 1983. Shri Bajaj, though reverted, was repromoted. In between he had not refused the promotion after the period of one year from the date of his reversion and as such, para 207.3 of I.R.E.M. was applicable in his case. He was, therefore, entitled to retain his seniority in the panel of 1983 but below all the employees promoted earlier than him on regular basis from the same panel. Since the applicant in the present case was not included in any panel between 1983 to 1989 he was naturally to be placed below Shri Bajaj. No satisfactory explanation was given before the issue of the charge-memo as to whether this would be the position in respect of those who had sought reversion. Now, in the latest affidavit it has been brought out that according to Rule 224 of the I.R.E.M., this Rule would apply even for reversion. The Railway Board's letter dated 22.09.1978 has clarified this position and in view of this, the action of the Contemnors in placing Shri Bajaj above the applicant is quite in order and, therefore, it cannot be said that any contempt has been committed by the Contemnors. In any case, there is no wilful disobedience of the order of the Tribunal. There may be perhaps a difference of opinion regarding the interpretation but there is no ^{by} deliberate evasion of the Contemnors in obeying the orders of the Tribunal.

5. The Learned Counsel for the applicant has again invited our attention to para 220 of the I.R.E.M. pointing out that the life of the panel is only two years and, therefore, the panel of 1983 would be valid only upto 1985 (25.08.1985). If one goes by para 207.3 of the I.R.E.M. then Shri Bajaj would have been debarred for further promotion for one year after he chose to be reverted on 27.06.1984 i.e. he would have become eligible for promotion again on 27.06.1985. By 25.08.1985 the life of the panel would have come to an end and therefore, Bajaj would not have been repromoted after two-and-a-half years i.e. on 24.12.1986. When the panel was no longer in existence, ^{he} they should have been subjected to a fresh selection and, therefore, the action of the respondents is not justified.

6. We have heard the Learned Additional Solicitor General and the Learned Counsel for the Applicant. We find that the main direction by the Tribunal regarding the regularisation in Group 'B' from 28.02.1985 in the post of Assistant Commercial Manager has been complied with by the Contemnors. In regard to the seniority, we have perused the various rules pointed out in the affidavit filed by the Contemnors. There is some grey areas in these rules, in that, on the one hand, in para 220 of the I.R.E.M. it has been clearly stated that the life of the panel is ^{only} ~~nearby~~ for two years and on the other hand, in para 224 and para 207.3 of the same Manual it has been stated that a person would not lose his seniority if he accepts the promotion after being

debarred for one year on the first refusal of the promotion. It is not clear, therefore, whether a person could be promoted after 2.1/2 years after being reverted when the panel was no longer in force. At this stage, in our considered view, we are not concerned with the details of the interpretation of these rules. What is to be seen is whether there is any wilful disobedience of the orders of this Tribunal. In our considered view, the Contemnors do not appear to have flouted the orders of the Tribunal. They have complied with the main directions and have also sincerely examined the granting of further promotion to Group 'A' and have accordingly promoted the Applicant on the relevant dates. We, therefore, have to hold that the Contemnors have not committed any wilful disobedience of the Tribunal's directions. Accordingly, we do not consider it necessary to proceed by framing detailed charges and the notice to Contemnor-Respondents is discharged. The Contempt petition is dismissed.

7. The applicant is at liberty to agitate any grievance arising out of the orders passed by the Respondents/Contemnors on 20.04.2001 and subsequently according to law and rules.

Shanta
(Smt. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN.

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