

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 531/95

DATE OF DECISION: 11/01/2001

Shri Yogendra Prasad Sharma

Applicant.

Shri B. Dattamoorthy

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri V. S. Masurkar

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri Kuldip Singh Member (J)

Hon'ble Smt. Shanta Shastry Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

Shanta S
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:531/95.
DATED THE 11th OF JAN. 2001

CORAM:HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Yogendra Prasad Sharma,
Yard Master, Valsad R.S.,
Bombay Division, W.Rly. ... Applicant

By Advocate Shri B.Dattamoorthy

V/s.

1. Divisional Railway Manager,
Bombay Division, W.Railway,
Bombay - 400 008.
2. Union of India, through
General Manager, W.Railway,
Churchgate, Bombay - 400 022. ... Respondents.

By Advocate Shri V.S.Masurkar

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The applicant has claimed the following reliefs in this OA.

- i) To quash and set aside the Impugned order No.E/T/121/2 Vol.III dated 20/8/91 (Annexure - 2 to application) to the extent it deprives the applicant of his right of being posted as Traffic Inspector considering the merit of the applicant and his request for the allotment to the Traffic Inspector category.
- ii) To direct the respondents to re-allot the category of the applicant as Traffic Inspector from the date of the Impugned order with all consequential benefits.

...2.

iii) To fix the pay of the applicant in the higher grade of Rs.2000-3200 (R.P) from 24/3/95 to 31/12/95 during which period he worked as Dy Station Superintendent, Surat, as also in the grade of Rs.2375-3500 (R.P.) applicable to the post of Traffic Inspector, Nandurbar in which he worked from 02.01.1996 onwards till date.

iv) Any other relief as may be appropriate in the circumstances.

2. The Applicant joined the Indian Railway on 31/8/87 after his retirement from the Airforce. He was working as Station Master. He then was selected as Traffic Apprentice and joined Western Railway on 21/8/89 in the pay scale of 1600-2660(R.P.). The Traffic Apprentices are required to undergo two years of training of Assistant Station Master, Guard, Traffic Controller, Commercial Clerk, Yard Master, Deputy Station Superintendent, Commercial Inspector, Trains Controller, etc. After successful completion of apprenticeship training, the traffic apprentices are allotted to any of the following four categories viz. (1) Traffic Inspector, (2) Dy. Station Superintendent, (3) Assistant Train Controller, (4) Yard Master in the scale of 1600-2660.

3. Prior to allotment of the category, options of the apprentices were obtained. After successful completion of his training the applicant exercised his option in the following order of preference

(1) Traffic Inspector (2) Dy. Station Superintendent,
(3) Assistant Train Controller.

4. There were two merit lists and vide letter dated 7/8/91, the applicant was allotted to Assistant Train Controller category in the second list. However, before these orders were kept in abeyance and a fresh order was issued on 20/8/91. The allotment was revised and the applicant was allotted the category of the Yard Master. Being aggrieved the applicant represented on 10/9/91 to the Divisional Railway Manager, Bombay Division, Western Railway to re-allot in the category of Deputy Station Superintendent, Traffic Inspector or Movement Inspector keeping in view his experience of working as Station Master earlier. His representation according to him was not decided. He submitted another representation on 21/1/92 to the Chief Operating Superintendent, Western Railway, Bombay requesting for change in the category allotted to him. Thereafter his batchmates who were allotted to the different categories alongwith him vide letter dated 20/8/91 secured their promotion in the scale of 2000-3200 but the applicant could not get any promotion. He once again represented on 4/2/94 seeking promotion in the grade of Rs.2000-3200 alongwith other Traffic Apprentices of his batch. According to the applicant this representation has not been decided. He ultimately represented to the General Manager(E), Western Railway, Bombay on 25/7/1994 requesting for change of category and promotion in the grade of Rs.2000-3200 as given to his batchmates.

5. In the meantime, the applicant was ordered to work as Deputy Station Superintendent, Surat vide memo dated 23/3/95. Accordingly, he worked in the said post from 23/3/95 to 31/12/95. The post carries a payscale of Rs.2000-3200. Thereafter again

the applicant was asked to work as Traffic Inspector, Nandurbar in the scale of 2000-3500 vide order dated 2/11/95. He joined as Traffic Inspector, Nandurbar on 2/1/96 and was continuously working in the said post till the date of the filing of the amended OA i.e. 18/4/2000. He however, was not granted the pay of the post of Deputy Station Superintendent or the Traffic Inspector. There was a further development and the applicant was posted to look after the work of Traffic Inspector, Nandurbar in the scale of (1600-2660) pre revised. However, this posting order was again changed on 19/2/98 posting him as CTNIC-NOB in the same scale and pay against existing vacancy.

6. It is the grievance of the applicant that he was allotted the category of Yard Master wherein there is very little scope for promotion. Yard working is greatly being reduced and the yards in several places have been closed. Also in many places work of the yard master is being performed by train clerks/Senior Train Clerks in the grade of 950-1500 and 1200-2040 respectively. He also states that while the promotional posts in the other three categories viz. Traffic Inspector, Asst. Train Controller and Dy. Station Supdt. have increased, the promotional posts in the yard masters category have considerably diminished. His representation to re-allot him to other categories went unheeded. There were six other Traffic Apprentices who were allotted to the other categories. Only the applicant was singled out in the category of yard master. This amounts to discrimination. All the apprentices from his batch have secured their promotions in the scale of Rs.2,000-3,200 with Shri Ajay Saxena getting the said grade in March, 1993. Although the respondents asked him to

look after the work of Deputy Station Superintendent and Assistant Traffic Controller, Nandurbar for some time, he has not been given the pay of these posts though he is eligible for promotion to these posts by virtue of his training and seniority in the apprentice cadre. The applicant states that he sought interviews with the Asst. Personnel Officer and the Chief Personnel Officer to represent his case.

7. The respondents submit that the applicant was selected as Traffic Apprentice and joined Western Railway on 21/8/1989. Having accepted the post of Yard Master without any demur he is estopped to claim the benefits at such a belated stage. He has approached the Tribunal after five years of his being allotted to the Yard Master category. Further, when he was posted as Yard Master on 20/8/1991, the cause of action arose. There is an unexplained delay of five years in approaching this Tribunal and therefore the application deserves to be dismissed on the ground of limitation. It is admitted that the applicant gave option for the following categories, namely Deputy Station Superintendent, Traffic Inspector and Assistant Train Controller. The allotment category is decided by the Competent Authority depending on the aptitude suitability and the requirement and the vacancy position. The reduction in yard work is in accordance with the Railway Board instructions. It is stated that the applicant's representation dated 10/9/91 is not received in the office of the respondents. The representation dated 21/1/92 was submitted to the Headquarter office directly and not through proper channel. The applicant is at Sr.No.47 in the grade of 1600-2660 (RP) as per Yard Master and he will be promoted to the next higher post

as per the selection procedure only. A reply has already been given to the applicant on 20/12/94 informing him that once a candidate is absorbed in any one of the categories, he is not permitted to change to other category subsequently and hence his request for change of category cannot be acceded to. However, the applicant is required to work in his allotted category of Yard Master.

8. In their reply to the MP filed by the applicant, the respondents have further reiterated their stand that the application is liable for dismissal because the applicant is challenging the order dated 20/8/91 on 6/1/2000. Therefore on the ground of delay, latches also the MP and OA should be dismissed.

9. Further the respondents have also produced a letter dated 6/5/2000 from the Principal of the Regional Training Centre, Udaipur to show that the applicant had obtained the lowest marks and therefore his seniority has to be reckoned at the bottom of the list. Thus, even according to merit, the applicant being the lowest in merit could not have been expected to be given posting as Traffic Inspector or Deputy Station Superintendent or Assistant Train Controller.

10. The learned counsel for the applicant produced two judgements in OA-164/92 decided on 23/8/96 in the case of Sushil Kumar Shukla V/s. Union of India and Ors. and the judgement dated 6/3/98 in OA-235/92 in the case of Mohammed Javed Iqbal V/s. Union of India & Ors in support of his contention that he should have been allotted to the category of Traffic Inspector and not Yard Master. In OA-164/92, the applicant after completion of training was posted as Assistant Yard Master in the scale of Rs.1200-2040 while the post of Assistant Train Controller

carried a higher payscale of Rs.1400-2600 and two persons who had obtained lower rank in examination in comparison were posted as Assistant Train Controllers in the same scale. None was posted as Assistant Yard Master. The applicant had claimed that he should have been posted as Assistant Train Controller not only because the post carried higher payscale but because it has better promotion chances. The OA was allowed. In OA-235/92, the applicant on completion of training was given the post of Assistant Yard Master instead of regular posting as Assistant Train Controller which carried a higher scale i.e. Rs.1400-2600., whereas the post of Yard Master carried the scale of Rs.1400-2300. The applicant was also higher in merit compared to one Shri Shivde who was also given the posting in the higher payscale. The OA was allowed.

11. The learned counsel for the applicant also drew our attention to the circular of the Railway Board dated 15/8/87 - the guidelines for recruitment of Traffic Controller Apprentice. According to para - 2 (xi), after absorption, it should be arranged by each Railway Administration partly by exchanging apprentices from one stream with those in other streams and partly by requesting for fixation in the scale of 700-900 (RS) 2000-3000 (RP) and above. Keeping this in view, change in the allotment of categories is possible and permissible and therefore also the applicant should be considered for being allotted to other categories like Traffic Inspector, Deputy Station Superintendent and Assistant Train Controller.

12. We have heard the learned counsel for both the applicant as well as the respondents and have carefully considered the arguments advanced on both sides.

13. We find that it is left to the discretion of the Competent Authority to allot the Traffic Apprentices to different categories based on their aptitude and suitability and available vacancies. Accordingly, the applicant was also allotted the category of Yard Master. The applicant if aggrieved should have approached this Tribunal immediately on the issue of the Impugned order dated 20/8/91. He however joined the duties and continued. He has approached the Tribunal in 1995 after the limitation period of one year from the date of cause of action and another six months after making representation thereafter was over. The respondents have also pointed out that the applicant was lowest in the merit list and as per the Rules once a person is allotted to a particular category no change is permissible. Clause 2(xi) quoted by the applicant from the circular of the Railway Board dated 15/8/87 only talks of giving wider exposure. It is nowhere mandatory that the allotments are liable for change. Though the applicant claims that he worked as Station Superintendent at Valsad and Assistant Train Controller at Nandurbar, the respondents have stated that these are local arrangements and not by the competent authority who had ^{not} issued the orders posting the applicant in these places. Further, the orders clearly stated that he was posted in his own payscale and not in the payscale of the post he was asked to look after.

14. The judgements cited by the learned counsel for the applicant have been perused by us. They are distinguishable. In the case of Sushil Kumar (Supra) the applicant was placed in the lower payscale compared to that of his batch mates. Also he was high in the merit list. It is not the case of the applicant that he has been placed in a lower payscale than his other Traffic

Apprentices batch mates. Therefore, this decision does not help the applicant. So also the judgment in the case of Mohammed Iqbal (supra) cannot come to the aid of the applicant in this case. In that case again, the applicant was allotted to a category carrying a lower payscale than the other categories where his batch mates were posted. In the present case again the applicant has nowhere stated that he was placed in a lower scale. Therefore both these cases cannot be made to be applicable in the case of the applicant.

13. In our view, the action of the respondents in allotting the category of yard master to the applicant cannot be said to be unjustified. Therefore we cannot interfere with the impugned order dated 20/8/91.

14. In the facts and circumstances of the case, the OA is dismissed as being devoid of merits. No costs.

Shanta S-
(SHANTA SHAstry)
MEMBER(A)

Kuldip S
(KULDIP SINGH)
MEMBER(JO)

abp