

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 671/95

MUMBAI, THIS THE 31ST DAY OF JULY, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (J)

Shri Nirwair Singh
Retired Law Officer
Western Railway
Bombay - 400 020.

C/O G.S.Walia
Advocate, High Court
16, Maharashtra Bhavan
Bora Masjid Street
Fort, Bombay - 400 001.

...Applicant

(By Advocate Shri G.S.Walia)

V E R S U S

UNION OF INDIA : Through

1. Secretary
Railway Board
Rail Bhavan
New Delhi - 110 001.
2. The General Manager
Western Railway
Head Quarters Office
Churchgate
Bombay - 400 020.

...Respondents

(By Advocate Shri M.S.Ramamurthy)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

The applicant in this OA seeks assignment of correct seniority to him with consequential benefits including promotion.

2. Heard Shri Nirwair Singh, applicant as well as Shri G.S.Walia, learned counsel. Shri M.S.Ramamurthy, learned counsel for the respondents appeared on 19-6-2001 and argued the case partly. As required by him the hearing was adjourned to 20-6-2001, which was posted for 22-6-2001 again at his request. However, he did not turn up on 22-6-2001.

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As the applicant indicated that he had come all the way from Punjab just for this hearing, we were not inclined to give another adjournment. We are, therefore, proceeding to dispose of the OA on the basis of the evidence brought on records, as provided for, under Rule 15 of the CAT (Procedure) Rules, 1987.

3. The applicant, a retired Govt. servant of Indian Railway w.e.f. 31-3-1995, ^{and} originally a class III official became Asstt. Commercial Supdt. Group "B" in Western Railway on 24-1-1979 on ad hoc basis and on 13-4-1984 on regular basis. Though he was eligible for promotion to Sr. Scale on the completion of three years' service, he did not get the promotion in November 1982, when a few of his juniors were promoted. In between on 16-10-1982, disciplinary proceedings were initiated against him on false charges. The enquiry report dated 27-10-1984 exonerated him and following his representation dated 5-9-1986 to the Prime Minister, he was exonerated by the respondents on 5-5-1987. Thereafter, certain adverse entries were made in his confidential report for the period ending 31-3-1989. The same were expunged by the General Manager, Western Railway on 23-4-1990, following his representation. Except the above two incidents, the applicant was not aware of anything adverse ^{against him}. Nor was anything communicated to him. Though the proceedings against him had ended in exoneration there was a move to order a de-novo enquiry against him out of personal spite. In 1990, first regular promotion to Sr. Scale was ordered ignoring his claims. He had represented against it on 8-10-1989 and 8-1-1990. He was finally promoted to

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Jr. Scale in Group "A" on 22-7-1992, with his name at Sl.No.66. Thereafter he had represented to the Railway Ministry and the Railway Minister on 9-9-1992 and 16-12-1992. On 22-4-1993, the respondents informed him that from 1982-84 he was considered for ad hoc promotion, but was not found fit. In 1988, again he was considered but once again he was not assessed suitable. He made further representations on 30-4-1993 and on 7-4-1994, in reply to which he was informed that the matter was under consideration. They were finally rejected on 15-2-1995. According to the applicant his case has not been decided in the right perspective. He has suffered on account of the disciplinary proceedings and adverse entries both of which have been set at nought and, therefore, it is as if they did not exist. Therefore, they should not have been taken into consideration. Still he has been denied promotion and his juniors have gone above him. With the result they had also been promoted to Jr. Adm. Grade. The applicant should have been promoted to Sr. Scale on ad hoc basis in November 1982 ; to be promoted to Jr. Scale in Grade "A" from 22-11-1982, and to Jr. Admn. Grade on 7-3-1988 along with seniority from the relevant dates. He also states that he was entitled to have the benefit of upgradation of the post of Law Officer to Jr. Admn. Grade w.e.f. March 1992, which was denied to him. All these privations were visited upon him inspite of his meritorious record and his being from S.C.Category. Hence his prayer for relief.

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4. In the counter filed on behalf of the respondents through Shri Ramamurthy, learned counsel, it is pointed out that the application is hopelessly time barred and the same is hit by limitation in terms of Section 21 of the Administrative Tribunals Act, 1985. The applicant's juniors were indeed posted to look after senior scale post, with special pay on ad hoc basis. He was not found suitable for the same on the basis of his performance and not because of the pending proceedings. If that was the case he would have been promoted, once he was exonerated. His case was considered independent of the proceedings but he was not assessed suitable. It was wrong for the applicant to state that adverse entries in the report for the period ending 31-3-1989 were made at the behest of Shri R.K.Sharma. This was a baseless allegation. However, respondents concede that the above mentioned adverse entries were expunged by the General Manager. Period ending 31-3-1989 was not the only one during which he was adversely reported upon. Adverse remarks were recorded in the confidential rolls for the periods 31-3-1982 and 31-3-1985 also and they had been noted by the applicant. There had been no bias against him by any one in the organisation, as alleged by him. He was not found fit for promotion by the DPC's held from 1982 to 1984, and he was empanelled on 23-8-1990; when he made the grade. His case was seen by the Railway Board on the basis of his repeated representations but he was not found suitable ^{and} ~~and~~ hence not promoted. His non-selection is only on account of his unsatisfactory performance as well as other adverse entries which he had noted and accepted. As the promotion is based on over all

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adverse entry expunged subsequently and a disciplinary proceeding wherein he was ultimately discharged honourably, the respondents state that the applicant was not promoted as he was not found suitable on account of his unsatisfactory performance over the years, independent of the disciplinary case and the adverse entry during the period 31-3-1989.

7. Undisputed facts in this case are that the applicant who was promoted to a Group 'B' post on ad hoc basis in January 1979, was not elevated to the sr. scale in November 1982, when a number of others, including his juniors were so promoted. It is also on record that disciplinary proceedings initiated against him on 16-10-1982 culminated in his exoneration on 5-5-1987. Besides adverse remarks entered in his ACR for the period ending 31-3-1989, were expunged by the General Manager on 23-4-1990. It might give an impression to the uninitiated that denial of his promotion was traceable to the disciplinary proceeding and/or the adverse entry. If that exactly were the position, the applicant would have had a strong case to argue that he had been denied justice. Records, unluckily for the applicant, present a totally different picture. It is clearly brought out on record that his case was considered for promotion by the Selection Committee in its meetings held on 21-2-1982, 4-12-1982, 22-6-1984, 18-12-1984, 25-5-1987 and 30-7-1987, and thereafter on 7-11-1988 and 1-11-1989, but he was not found 'fit' for promotion. In between on account of the applications Railway Board also considered his case on 26-8-1988 but did not find him 'fit'. Finally he was approved for promotion on

performance over a long period and not dependent on a single entry in a year, or a single proceeding, the applicant with less than satisfactory performance for a long period cannot claim it as of right. The claims made by the applicant for his promotion to sr. scale in November 1982 and for promotion to J.A.G. w.e.f. 7-3-1988 were neither correct nor justified. Applicant's claim can only be for consideration for promotion and if he has been so considered when due, he can have no grievance at all and he cannot demand promotion as of right. The applicant was not at all discriminated against and any averment to the contrary was wrong.

5. Applicant and his counsel Shri Walia reiterate pleas and state that an adverse entry recorded for the period ending 31-3-1980, which was subsequently expunged and one disciplinary proceeding which finally needed in exoneration had come in the way of the applicant's promotion in time. There was nothing more against him and, therefore, he could not have been denied promotions, is their plea. They also point out that the respondents had not followed sealed cover procedure, during selection process, and therefore, the selection process was bad. In the circumstances, Tribunal should intervene and render him justice, is what they plead.

6. We have anxiously deliberated upon the rival pleadings and have also perused the evidence brought on record including the minutes of the Selection Committee. While the applicant alleges that he has been denied his due on the basis of a single

26-10-1990. Accordingly he was promoted on 5-11-1990. We note that the findings of the Selection Committee are based on the assessment of the over all performance of the applicant, as reflected in his ACRs over the periods relevant to the selection proceedings. It is true that the Selection Committee was aware of the chargesheet issued in 1982 and closed in 1987. But the pendency of the proceedings had not influenced the assessment by the Committee who have gone by the overall ratings given the ACRs without reference to the proceedings. The same cannot be, therefore, assailed in law. Similar is the case with the adverse entry in his ACR for the period ending 31-3-1989, which got expunged subsequently in April 1990. The same has also not come in the way of his promotion, as he has in fact been found fit by the Selection Committee that met in October 1990. Thus the applicants' version that the lone disciplinary proceedings and the single adverse entry have been his undoing has no legs to stand on.

3. On going through his ACR folder we observe that the applicant has been having between 1980-85 generally colourless/'average' reports except for 1980. He had also received two adverse entries in the ACRs for the periods ending 31-3-1982 and 31-3-1985. These two reports have also been duly noted by the applicant but he has not apparently represented against them, i.e. he had accepted them. Interestingly OA is silent about this, as the applicant has conveniently skipped over them. These definitely have come in the way of his overall grading being "Good" or above, enabling him to be promoted.

He has started getting "Good" reports only from 1986 and by 1990 when the effect of the second adverse entry (of 1985) also wore off he made the grade and was found "fit" for promotion by the Selection Committee. The Committee could not have come to any different decision in any manner on the facts brought on record. They have thus acted correctly and their action merits endorsement.

9. Normally the Tribunal would not have gone into the Selection Committee's proceedings and the ACR in great detail. We had to do it as the applicant has alleged malafides which we are now convinced, does not exist.

10. We would, however, like to mention that an error has been committed by the Selection Committee by not following the Sealed Cover procedure in respect of the applicant during its deliberations of 1982-87, as the Disciplinary proceedings were on. This was clearly avoidable. Still, it would not alter the result in any way, as irrespective and independent of the proceedings the applicant's over all performance had been nothing spectacular or praiseworthy, but only "average". Nothing much turns on this allegations, as no prejudice has been caused to the applicant.

11. In the above view of the matter, we have no doubt the applicant has not made out any case for our interference. The application, therefore, fails and is accordingly dismissed. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

(S.L. JAIN)
MEMBER (J)

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