

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1018/95

DATE OF DECISION: 14/7/2000

_____Shri P.L.Khanna _____Applicant.

_____Shri G.S.Walia _____Advocate for
Applicant.

Versus

_____Union of India & Anr. _____Respondents.

_____Shri S.C.Dhawan _____Advocate for
Respondents.

CORAM:

Hon'ble Shri A.V.Haridasan, Vice Chairman
Hon'ble Shri Govindan.S.Thampi, 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.

(A.V.HARIDASAN)
VICE CHAIRMAN

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ENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1018/95
DATED THE 14TH DAY OF JULY,2000

CORAM:HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI GOVINDAN.S.TAMPI, MEMBER(A)

Shri P.L.Khanna,
Working as
Asst. Comm. Manager (Catg),
DRM's Office, Central Railway,
Bombay V.T.,
Bombay - 400 001. Applicanat.

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
Secretary,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.
2. General Manager,
Central Railway,
Head Quarters Office,
Bombay V.T.,
Bombay - 400 001. Respondents.

By Advocate Shri S.C.Dhawan

(ORDER) (ORAL)

Per Shri A.V.Haridasan, Vice Chairman.

The Applicant, Shri P.L.Khanna who was initially appointed as Commercial Inspector in the scale of Rs.455-700(RP), was promoted to the next higher grade of Rs.550-750(RPS) and Rs.700-900(RP). The next post in hierarchy in the catering wing of the Commercial Department was that of Asst. Commercial Manager/ACM (Catg), which is a Group 'B' post. With a view to create a separate catering cadre, the Railway Board in its letter dated 22/9/1987 accorded sanction for creation of permanent posts one JA, 2 SS and 2 JS, in Central Railway and the said

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posts alongwith the existing posts were meant to form a separate cadre. It was also decided by the Railway Board that pending finalisation of the Recruitment Rules, the promotion would be made on adhoc basis to the newly created posts after following a regular selection process by duly constituted Departmental Promotion Committee. The Applicant was considered for appointment to the post of Assistant Catering Manager. Being successful in the Written test and Viva voce, the applicant was placed at Serial No.3 in the panel which was notified in the Gazette on 6/10/88. Though there were only two vacancies and the applicant was third in the panel since the first person in the panel had declined to accept the appointment, the applicant was appointed as ACS (Catg) on adhoc basis by order dated 4/12/1988. It was stated that the promotion was on purely adhoc basis not conferring on him any right of seniority but was made with the approval of the General Manager. The applicant was officiating as ACS (Catg) at Bhusawal. Subsequently, the applicant was considered for promotion as ACS in the General Category on the basis of his seniority and was placed at Sr.No.27 in the panel published in the Railway Gazette dated 1/12/1989 as approved by General Manager on 16/10/1989. The grievance of the applicant is that though the earlier appointment as ACS (Catg) was on adhoc basis, the promotion having been made after following a regular selection process by duly constituted Departmental Promotion Committee, in the absence of Recruitment Rule against a regular vacancy and not contravening any statutory rules, he has not been assigned seniority from the date of his adhoc promotion

though was continued uninterruptedly till he was regularly promoted as ACS in Group B. In reply to his representation claiming placement in seniority with effect from 6/10/1988 he received the letter dated 31/3/1994 Annexure Ex.-F stating that the matter has been referred to the Railway and the Ministry and the reply is awaited.

2. Finding that the matter was hanging fire and that the respondents were about to make further promotion on the basis of the existing seniority, the applicant has filed this petition seeking a direction to respondents to assign seniority to applicant in the cadre of ACS Group 'B' on the basis of his empanelment for the post of ACS vide order approved on 6/10/1988 with all consequential benefits and to consider and grant him promotion to the Senior Scale with full consequential benefits.

3. The respondents resist the claim of the applicant on the ground that promotion of the applicant made in 1988 was purely on adhoc basis as drafting of Recruitment Rules was not completed and that the appointment being made in an ex cadre post, the applicant is not entitled to claim seniority in the General Group 'B' cadre on the basis of that appointment. The respondents further contend that it was not only the applicant but there were two other officers also namely S/Shri B.V.Pathare and Hariom Dwivedi who were promoted and posted as ACS/ACM(Catg) on adhoc basis and that they have not been given benefit of seniority on account of their adhoc promotion against the posts of ACS/ACO(Catering). The respondents therefore contend that the applicant is not entitled to the relief sought.

4. We have carefully gone through the pleadings and have heard Shri G.S.Walia, learned counsel for Applicant and Shri S.C.Dhawan, Learned Counsel for Respondents. This Bench of the Tribunal had occasion to deal with an exactly identical question in OA-384/95. The applicant in that case was Baburao Vishram Pathare who was placed at Sr.No.2 in the order by which the applicant was also promoted on adhoc basis. He is the same Pathare about whose promotion, the respondents have stated in paragraphs 17 of the reply statement. The Respondents have contended in the Reply statement that Shri Pathare and Shri Hariom was similarly promoted like applicant, have also not been given the benefit of seniority on account of adhoc promotion. The Bench considered the rival contentions, held that as the adhoc promotion of Shri Pathare, the applicant in that case was made after following regular selection process, considering those who were eligible for consideration and made adhoc only for the absence of statutory recruitment rules, the promotion should be treated as regular on his regularisation on the post subsequently. The contention of the respondents that the appointment was an ex cadre post was refused on the ground that Shri Pathare was transferred from one post to another. The Bench sought support from the Ruling of Apex Court in I.K.Sukhija and Ors V/s. Union of India & Ors reported at 1997 SCC (L&S) 1512 in which the following observations were made.

"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

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applicable, what we find is that the appellants were eligible for promotions and their cases were duly considered by the DPC. They were promoted after they were found suitable by the DPC 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 adhoc basis, clear vacancies were available in the promotion quota. The only reason for making their appointments as temporary and adhoc 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."

5. The facts and circumstances in this case is almost similar to the case before the Apex Court and identical to the case before the Bench of the Tribunal in Pathare's case. We are in respectful agreement with the view taken by the Bench in Pathare's case and therefore find no reason to deviate from the view taken.

6. In the conspectus of facts and circumstances, we dispose of this application directing the respondents to treat the appointment of the applicant as ACS(Catering), Group-B w.e.f. 3.12.1988 as regular and to consider him for promotion to Senior Scale in Group A on that basis. There is no order as to costs.

(GOVINDAN S. TAMPI)
MEMBER(A)

(A.V. HARIDASAN)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO.: 5/2001 IN O.A. NO.: 1018/95.

Dated this Friday, the 15th day of June, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

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

P. L. Khanna ... Petitioner
(By Advocate Shri G. S. Walia) (Original Applicant)

VERSUS

Shri Rajendra Nath, ... Proposed Contemnor
General Manager, (Original Respondent)
Central Railway or
his successor in Office.
(By Advocate Shri M. I. Sethna
alongwith Shri S. C. Dhavan).

TRIBUNAL'S ORDER

There appears prima-facie unreasonable delay on the part of the Respondents in implementing the order. Besides General Manager of the Central Railway, the Union of India through Railway Board has also to explain the delay. This has become necessary as the Counsel for Respondents argued that the General Manager has done whatever was possible for him and the matter was placed before the Railway Board. The General Manager in his affidavit has said that he and the Railway Board have taken steps to implement the order. Without expressing any opinion at this

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stage, we would like to issue suo-moto notice to show cause to the Secretary of Railway Board as to why and how the order could not be implemented within a reasonable time and to satisfy us that inaction has not been within the ambit of "wilful disobedience."

2. The Counsel for Respondents contended that Secretary Board be not summoned. He has pointed out that the matter has been referred to the Union Public Service Commission for convening the Review D.P.C., which has been done. How and why the delay has occurred is a matter on which an explanation from the Secretary of the Railway Board has become necessary.

3. For the reasons aforesaid, we direct Shri R. K. Singh, Secretary, Railway Board, New Delhi to be personally present with relevant record on 03.07.2001.. Office will issue necessary notice to Shri R. K. Singh, Secretary, Railway Board, New Delhi.

4. Counsel for Applicant has filed a reply today to the affidavit filed by Rajendra Nath. Counsel for respondents prays that he should be permitted to file reply to the said affidavit filed on behalf of applicant. Respondents may file reply to the affidavit by 02.07.2001. In case the General Manager files reply on affidavit to the reply filed by the applicant, then he need not be present on the next date.

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

DiKshit
(B. DIKSHIT)
VICE-CHAIRMAN.