

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1084/1995

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

Shri Hanuman Kamloo Applicant

(Applicant by None)

Versus

UOI & Ors. Respondents

(Respondents by Shri S.C.Dhawan, Adv.)

CORAM

HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

- (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
(Smt. Shanta Shastri)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.1084/95

CORAM: DATE OF DECISION: 15.6.2001
Hon'ble Smt. Shanta Shastry, Member (A)
Hon'ble Shri Shanker Raju, Member (J)
Mr. Hanuman Kamloo,
Permanent Way Mistry,
Under Permanent Way Inspector,
Central Railway, Vasind,
Resident of at & Post Khardi,
Taluka Shahapur, Dist. Thane. Applicant

(Applicant by None)

vs.

The Union of India,
Through the General Manager,
Central Railway, Bombay V.T.
Bombay 400 001.

The Divisional Railway Manager,
Central Railway,
Mumbai CST
Mumbai. Respondents

(Respondents by Shri S.C. Dhawan, Advocate)

O R D E R (ORAL)

[Per: Smt. Shanta Shastry, Member (A)]:

None present on behalf of the Applicant either in person or through the Advocate. Shri S.C. Dhawan for the Respondents. The case was called twice, even on second ^{date} ~~date~~, none present on behalf of the applicant. We are ^{therefore} proceeding to dispose of the Appeal on merits under Rule 15 of the CAT Procedural Rules.

2. We have perused the documents and have heard Shri S.C.Dhawan for the Respondents.

3. The Applicant has assailed the impugned order dated 3.7.1995, whereby the Applicant was reverted from the post of Permanent Way Mistry to the post of Gangman when Shri Lahoo Soma replaced the Applicant. The Applicant was initially posted as a

...2/-

Gangman in 1989. In 1989 he was given one month's training for the post of Permanent Way Mistry from 20.11.1989 to 16.12.1989. According to the Applicant he completed the training course successfully and was posted in the Grade of Rs.1400--2300/- vide order dated 14.5.1990 and he has been continuously working in the post without any complaints. After completing more than 5 years in the said post he cannot be reverted back that too by another adhoc person without following the due process of law. The Applicant has not made Lahoo Soma, who replaced the applicant, in this O.A. as a party.

4. The Respondents submit that the Applicant was required to complete one month's training course. However, he could not complete it successfully. He could not pass the pre-promotional course as required. He was again given an opportunity to undergo the training course but he had not completed the course successfully the second time also. The post of Permanent Way Mistry being a Safety category Post it is not advisable to put those who have not completed the training successfully to act even on an adhoc manner. Therefore, the Respondents reconsidered the position. The Applicant was working as a Gangman before his posting on local officiating basis. ^h ~~Mates are exempted his~~ ^{Mates are h} ~~posting on local officiating~~ ^{Gangmen h} senior to Gangmen and [^] come under the mates. The post of Permanent Way Mistry being a safety category post the respondents thought of posting senior employees i.e. mates as permanents way mistry. The Respondents submit that therefore in 1995 in order to fill up the posts of Permanent Way Mistry against the departmental quota on seniority cum suitability basis from the employees working as Mates on the

Permanent Way Side, a list of 22 eligible candidates was prepared and published. Thereafter the said employees were directed to attend the training and appear for the selection examination of Permanent Way Mistry. After completion of the training and passing the examinations successfully, these 22 employees were promoted against the Departmental quota by order dated 3.7.1995. The Applicant was not in the list of eligible employees for the post as he was junior to the said employees and was not eligible for being considered for promotion under the Departmental quota on seniority cum suitability basis. Since the Applicant did not possess the requisite qualification nor pass the requisite pre training course, the Applicant cannot now claim to continue in their local officiating post when a suitable eligible senior employee is available. Therefore, the Respondents were justified in reverting the Applicant.

5. The learned Counsel for the Respondents further submits that the Applicant has finally been promoted vide orders dated 2.1.1997 as such nothing survives now.

6. We find that the statement of the Applicant that he has been replaced by another adhoc employee does not appear to be borne out by facts. The Respondents have clearly made an averrment in their Written Statement that the post of Permanent Way Mistry being a safety category post, the Respondents thought it better to have more senior people manning these posts. Accordingly, they selected 22 employees i.e. mates who were senior to the Applicant for this purpose. This being so, it cannot be said that the applicant been replaced by another adhoc person. Even though the applicant continued on adhoc basis for 5

years so long as he does not fulfill the requisite qualification, he cannot have a right to continue in the adhoc post. It is very clear that he had not passed the requisite examination at the time he was reverted. In view of this and also now that the applicant has been promoted w.e.f. 2.1.1997, the O.A. have devoid of any merits. The same is dismissed.

7. No costs.

S. Raju
(Shanker Raju)
Member (J)
sj*

Shanta
(Smt. Shanta Shastry)
Member (A)