

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 82 OF 1997.

Date of Decision : 12.09.1998.

G. Subbiah _____ Petitioner.

Shri G. K. Masand, _____ Advocate for the
Petitioner.

VERSUS

Union Of India & Others. _____ Respondents.

Shri V. G. Rege, _____ Advocate for the
Respondents.

CORAM :

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

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the Reporter or not? NO

(ii) Whether it needs to be circulated to
other Benches of the Tribunal? NO

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 82 OF 1997

Dated the 22 nd day of September, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

G. Subbiah,
Senior Stenographer,
Central Railway,
General Manager's Office
at Mumbai.

Residing at -

59/A, Elavia Building,
L. H. Road,
Matunga Road, (W.R),
Mumbai - 400 016.

... Applicant

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Mumbai C.S.T.

... Respondents.

2. Chief Personnel Officer,
Central Railway,
Mumbai C.S.T.

(By Advocate Shri V. G. Rege)

: ORDER :

I PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed under Section 19
of the Administrative Tribunals Act. Respondents have
filed reply. We have heard the Learned Counsels appearing
on both sides.

2. The applicant is working as a Senior Stenographer in the Central Railway at Bombay. He was originally appointed as Junior Stenographer on 19.10.1981. Even at the initial stage, he had the speed of 100 w.p.m. Then it is stated that the applicant was promoted as Senior Stenographer on 06.02.1986 against a clear and non-fortuitous vacancy. The post of Senior Stenographer is a non-selection post and the only criteria for promotion is that the official must have speed of 100 w.p.m. It is also stated that the applicant was promoted on the basis of his seniority. Some other seniors of the applicant also came to be promoted as Senior Stenographers on adhoc basis, since they did not possess the qualification of 100 w.p.m., They had to pass a speed test before they are regularly promoted, but applicant need not pass any such test since he had the qualification from the beginning. There was delay on the part of the administration in holding the suitability test in speed for promotion to the post of Senior Stenographer. Due to this, there was delay in regularising the service of seniors of the applicant. But after the senior passed in the speed test, they were regularised by order dated 08.03.1991 and in that order the applicant's name was also included. According to the applicant, though the order of regularisation is dated 08.03.1991, he must be deemed to have been regularly promoted from the date of his adhoc promotion on 06.02.1986. Then it is stated that there was an advertisement for filling the post of Assistant Personnel Officer (Class-II) against 30% quota through limited departmental competitive examination.

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The applicant applied for this post. Though he was treated as an eligible candidate for appearing in the written test, subsequently his name was ~~deletd~~ and again on his representation, he was given provisional permission ^{for} to appearing in the test. But subsequently, the applicant's claim was rejected on the sole ground that he has not put in five years of service after regular promotion. Therefore, the applicant has approached this Tribunal praying for a declartion that his promotion to the post of Senior Stenographer on 06.02.1986 must be held to be a regular promotion, that the applicant has requisite qualification and experience and eligible to apply for the post of Assistant Personnel Officer and for consequential reliefs.

3. The respondents have filed a reply stating that the applicant's promotion on 06.02.1986 was purely adhoc. He came to be regularised as a Senior Stenographer alongwith others by an order dated 08.03.1991, hence the applicant is in regular service as Senior Stenographer from 08.03.1991. Since the applicant does not have requisite five years of regular service as Senior Stenographer, he was not eligible to apply for the post of Assistant Personnel Officer. Therefore, his claim was rightly rejected by letter dated 08.01.1997. The applicant's promotion on regular basis was only w.e.f. 08.03.1991 and that he is not entitled to any other reliefs.



4. In the light of the arguments addressed before us, the question for consideration is - whether the applicant's adhoc promotion from 06.02.1986 should be held to be regular promotion and that he is eligible for applying for the post of Assistant Personnel Officer or not ?

5. The applicant who is a senior Stenographer, wants to get selected as Assistant Personnel Officer (Group 'B'). The relevant clause under the Notification dated 28.12.1993, namely - clause (d) reads as follows (see page 19 of the Paper Book) -

"Stenographers of all departments except Accounts Department who are regularly promoted in Grade Rs. 1400-2300 (RPS) or in higher grade Group 'C' with 5 years, non-fortuitous service in the grade."

There is no dispute that the applicant is a Stenographer. The question is, whether he satisfies the eligibility criteria as mentioned in sub-clause (d), which is extracted above, i.e. the requirement as per the recruitment rules? There is no doubt that the applicant is now regularly promoted in the grade mentioned above. The question is, whether he has five years service in that grade which can be called as non-fortuitous service ?

What is meant by non-fortuitous service can be gathered from the Indian Railway Establishment Manual, Volume-I, 1989 Edition. Chapter-3 pertains to seniority of non-gazetted railway servants. In para 320 of the said rules, there is use of the word 'non-fortuitous', which is defined as follows :-

"Non-fortuitous Service means the service rendered after the date of regular promotion, after due process."

Therefore, the applicant has to satisfy that he was regularly promoted after due process. In addition to that, he must show that he had five years regular service in the grade in question to get eligibility for applying to the post. We are not impressed by the submission of the applicant's counsel that five years qualifies only the grade and not the word 'regular promotion'. In our view, the candidate must be a stenographer with regular service of five years in the grade to get eligibility for applying for the post in question.

6. The applicant was originally appointed as a Junior Stenographer in 1981. He came to be promoted as Senior Stenographer on adhoc basis on 06.02.1986. He was regularly promoted on 08.03.1991. The Notification in question was issued in December, 1993. Therefore, by December 1993, the applicant had only two-and-a-half years of regular service as a Senior Stenographer. But the contention of the Learned Counsel for the applicant is that the applicant's promotion right from 06.02.1986 should be held as or deemed as regular promotion and if it is so held, the applicant would have completed five years regular service before the notification in question. The main point urged is, for promotion to the post of Senior Stenographer, the only qualification was that the junior Stenographer should have minimum speed of 100 w.p.m. and since the applicant had this

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qualification even at the time of initial appointment, his promotion on 06.02.1986 must be deemed to be regular promotion, though styled as adhoc promotion. Though the argument ^{and} is argument is attractive at the first flush, we were inclined to accept it, on deeper scrutiny and examination of the relevant rules, we cannot accept the applicant's contention.

It was also argued by the Learned Counsel for the applicant that adhoc promotion has been continued for years together, which is contrary to Railway Board instructions. It is true that adhoc promotions are meant for short period and not for indefinite periods. But the fact that adhoc promotion continued for quite a long time will not make it a regular promotion unless it is as per rules. Therefore, the mere fact that adhoc promotion was continued for few years will not give any benefit to the applicant unless the adhoc promotion was as per the rules.

7. Promotion from Junior Stenographer to Senior Stenographer is by non-selection method. In a non-selection method, the procedure is - promotion on the basis of seniority cum fitness. This is not disputed and infact, admitted in the application itself. In the case of seniority-cum-fitness, every candidate has to be considered on the basis of seniority and if he is found unfit, then the next candidate must be considered. Otherwise, the promotion is only by seniority. In the case of selection method, though seniority may provide eligibility, promotion is made purely on the basis of merit.

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Since we are concerned with non-selection method, the question is, whether the applicant's promotion in 1986 can be held to be regular promotion as per rules. Admittedly and undisputedly, the applicant was not senior enough to get regular promotion on 06.02.1986. There were many seniors above him. It may be that the seniors ~~had~~ ^{must} not passed the speed test. The reason was, the department had not held the speed test for them. If the seniors had appeared for the speed test and had failed to pass the same, then a junior can be considered for regular promotion. If the senior had not yet passed the speed test and the department does not hold the test for years together, then the department makes adhoc promotion of both seniors and juniors and, therefore, the promotions must be held to be adhoc promotion only. It is only at the time of holding the speed test, some of the juniors may be exempted from appearing in the test, if they have already acquired the qualification in the speed test and they will also be considered for promotion on regular basis alongwith the seniors. Those seniors who pass in this speed test, will be granted regular promotion. If some of the seniors do not pass in the examination, then the juniors will get regular promotions if they pass in this speed test or if they are exempted from passing the speed test. In the present case, admittedly, there were number of seniors above the applicant and they were also granted adhoc promotions. The question of taking up regular promotion on the basis of seniority-cum-suitability never arose since the department did not hold the speed test for the stenographers.

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8. The Learned Counsel for the applicant rightly made a grievance that why should the applicant suffer if the department does not hold the speed test for number of years. This argument equally applies to the case of the seniors because they will also say that why should they suffer and allow the juniors to be promoted over their head if the department does not hold speed test. Therefore, this delay in holding the speed test is detrimental to both the seniors and juniors. Number of Courts and Tribunals, including the Supreme Court have severely commented on the Government delaying unnecessary holding of departmental examination like speed test, etc. but the question is, whether the applicant's promotion can be deemed to be regular when speed test is not held for all the officials, including the seniors of the applicant. The applicant's adhoc promotion cannot be held to be regular promotions unless it is done as per rules. As per non-selection process, since promotion is on the basis of seniority-cum-fitness, unless the seniors are considered and superseded, the applicant's promotion cannot be said to be regular promotion. It is nobody's case that the seniors were superseded for want of passing in the speed test or for want of speed qualification and then the applicant was promoted due to his having qualification of speed test. The admitted case is that, because the test was not held, both the seniors and juniors were being promoted from time to time on adhoc basis. The question of regular promotion arose only after the department held the speed test. Therefore, till the promotions are made on seniority-cum-fitness basis, the applicant's initial

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promotion cannot be said to be regular promotion. It is not the applicant's case that all his seniors are superseded due to delay in holding the departmental test and he was only promoted for having the speed test qualification acquired earlier.

9. The Learned Counsel for the applicant invited our attention to a case reported in 1996 (33) ATC 654 I. V. K. Arora V/s. Union Of India & Others. It is true that in that case an Executive Engineer had been promoted on adhoc basis. For promotion to the post of Superintending Engineer, it was provided that all Executive Engineers who have seven years of service at their credit, are eligible to be considered for promotion. But in that case, the applicant had only been promoted as Executive Engineer on adhoc basis. The question was, whether his seven years service on adhoc basis will give him eligibility to be considered for the post of Superintending Engineer. The Chandigarh Bench of this Tribunal in that case noticed that as per the recruitment rules, the requirement was "7 years service as an Executive Engineer" and there was no mention of regular service or regular promotion as an Executive Engineer. Therefore, the Tribunal held that since the rules do not provide regular service as an Executive Engineer, the service as an adhoc Executive Engineer will also give eligibility to the applicant in that case for being considered for promotion. In para 13 of the reported judgement, the Tribunal clearly holds that particular rule - "does not require seven years' regular service as an Executive Engineer". In view of this, they held that service as an adhoc Engineer must also hold good to give eligibility.

Then one more point to be seen is that, in that case the applicant was at Sl. No. 1 in the seniority list of Assistant Engineer and therefore, his promotion was certainly on the basis of seniority-cum-merit or seniority-cum-fitness (vide para 1 of the reported judgement). Therefore, the said judgement is distinguishable on two grounds. One is, the applicant in that case was a senior most and, therefore, his adhoc promotion in a non-selection method must be deemed to be or held to be a regular promotion. The second ground is, in that case there was no clause of regular service for ~~of~~ seven years as an Executive Engineer.

In the present case, the rule itself says that regular service in the grade of Senior Stenographer for five years. Since the word 'regular service' is used and since the applicant's promotion was not on regular basis but only on adhoc basis, he does not fulfill the requirements of eligibility criteria as per the recruitment rules.

If by chance, the applicant was senior-most, he being at sl. no. 1 and he had been promoted on adhoc basis and subsequently confirmed or regularised, since he had already obtained the qualification of speed test, then possibly, we would have agreed with the applicant's counsel that his earlier promotion should be held to be regular promotion, though styled as adhoc promotion. But on facts, we find that applicant was not the senior-most and therefore, he was not promoted on the basis of seniority-cum-merit. The seniors were not superseded on the ground of want of speed test. The seniors were also given adhoc promotion. The seniors

case for regular promotion was considered alongwith the applicant for regular promotion after the speed test. Therefore, we hold that applicant's regular promotion was only in 1991 and not in 1986.

10. It is true that applicant was earlier shown to be eligible for applying for the post. Subsequently, his name was deleted on the ground that he did not fulfill the required criteria. Subsequently, on applicant's representation, he was granted provisional permission to appear for the examination, but subsequently an order is passed that the applicant is not eligible to apply for the present post.

After considering the facts and circumstances of the case, we hold that applicant's regular promotion was only on 08.03.1991 and he did not have minimum five years service in that grade after regular promotion and, therefore, he was not eligible to apply to the post of Assistant Personnel Officer. Therefore, the respondents' order dated 08.01.1997 rejecting the claim of the applicant is perfectly justified and is according to rules. It is also true that applicant's name had been earlier shown by showing his promotion w.e.f. 06.02.1986 but subsequently it has been corrected.

11. We may also notice one of the submission of the Learned Counsel for the respondents on the question of limitation, delay and laches. The Learned Counsel for the respondents contended that promotion was shown

as regular promotion on 08.03.1991 and his name had been kept below the names of the seniors who had passed the speed test prior to the order of regularisation. He submitted that if the applicant was aggrieved of showing his promotion as regular in 1991 or showing him below other seniors, then he should have challenged the order dated 08.03.1991 by approaching the Tribunal within one year. It was, therefore, submitted that applicant's present challenge in 1997 to the order dated 08.03.1991 is barred by principles of limitation, delay and laches. The Learned Counsel for the applicant submitted that applicant had made some representation and further, his present cause of action is to challenge the order dated 08.01.1997, which rejected the claim of the applicant to apply for the post of Assistant Personnel Officer. Since on merits we have reached the conclusion that the applicant has no case, we need not examine the question of limitation, delay and laches.

Similarly, we also do not want to consider the respondents' contention that the seniors of the applicants are not made parties to this application. If the applicant's contention that he must be deemed to have been regularly promoted from 06.02.1986 is accepted, then his seniority position will be above all the seniors who get regular promotion on 08.03.1991 alongwith him. But those seniors are not made parties to this application. Even on this question, we do not want to express any final opinion, since the application has to fail on merits.

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12. Applicant has filed M.P. No. 251/98 for amending the O.A. to ask an additional relief, namely - to quash the letter dated 01.01.1997. Then one more ground is taken up to show that applicant's promotion was not adhoc. Since on merits we have reached the conclusion that applicant's promotion was against the rules and done by not following the ^{recd} ~~selection~~ ^{process}, the applicant cannot claim regular promotion w.e.f. 06.02.1986. Hence, there is no necessity to amend the O.A. to take this additional ground, which we have already taken into consideration while discussing the applicant's case. As far as the formal ~~amendment~~ to challenge the order dated 01.01.1997, we feel it is not necessary. If we had accepted the case of the applicant, we could have quashed the order dated 01.01.1997. Hence, in our view, there is no necessity for granting the amendment sought for in the M.P.

13. In the result, the application alongwith M.P. No. 251/98 is dismissed. The interim status-quo order passed in this case is hereby vacated. In the circumstances of the case there will be no order as to costs.

D. S. Bawej
(D. S. BAWEJA)

MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 57/98 IN O.A. NO.: 82/97.

Dated this Monday, the 26th day of October, 1998.

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

Hon'ble Shri D. S. Baweja, Member (A).

G. Subbiah,
Stenographer,
Central Railway,
G.M's Office, Mumbai.

... Applicant

Residing at -

59/A, Elavia Building,
L.H. Road, Matunga Road,

(By Advocate Shri G.K. Masand)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Mumbai C.S.T.

... Respondents.

2. The Chief Personnel Officer,
Central Railway,
Mumbai C.S.T.

ORDER ON CIRCULATION

(Per.: Shri R. G. Vaidyanatha, Vice-Chairman)

This is a review petition filed by the applicant seeking a review of our final order dated 25.09.1998. We have perused the records and the contents of the review petition.

2. Apart from referring to Rule 320 of the Indian Railway Establishment Manual, our main reason for rejecting the claim of the applicant was that, he

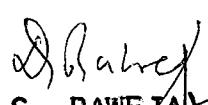
had not got regular promotion as a Stenographer. We have pointed out that as per the notification for the recruitment of Assistant Personnel Officer the essential requirement was stenographer who are regularly promoted with five years non-fortuitous service. We have pointed out that applicant's adhoc promotion cannot be said to be regular promotion for the reasons mentioned in our judgement. We have pointed out that in a case of non-selection method, unless the seniors are considered and superseded, applicant's promotion cannot be a regular promotion. We have given detailed reasons to show as to how the promotion of all the officials, including the applicant, was adhoc since no speed test was held.

3. The applicant cannot raise the same contention which he had raised in the application and at the time of arguments by way of this review petition. We do not find any apparent error on record calling for review of the judgement. We have referred to Rule 320 of I.R.E.M. only to show as to what is meant by non-fortuitous service. Even if Rule 320 is not applicable to the case of non-selection method, still our reason is that applicant's promotion was not a regular promotion since it is not a case of senior being considered and found 'not suitable' to consider the claim of the applicant. But it is a case of the applicant and all his seniors by giving adhoc promotion for not holding the speed test as required

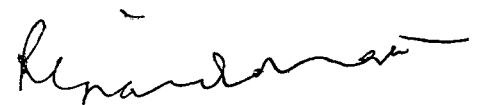
by rules.

The applicant has again relied on the judgement of the Chandigarh Bench of the Tribunal in V. K. Arora's case which we have clearly distinguished on the ground that, in that case the rules did not provide for regular service as an Executive Engineer but in the present case, the notification for recruitment clearly mentions eligibility as regularly promoted stenographers with five years service. Therefore, we do not find any merit in the review petition.

4. In the result, the review petition is rejected on circulation.

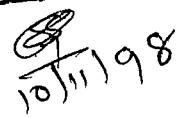

(D. S. BAWEJA)

MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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dd. 26/10/98
Order/Judgement despatched
to Applicant/Respondent(s)
on 6.11.98.


10/11/98