

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 603 / 94

Date of Decision: 27.6.02

Narendra Kumar Jha Applicant.

Shri G. S. Walia Advocate for
Applicant.

Versus

Union of India Govt. Respondent(s)

Shri V. S. Masurkar Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. Shanker Raju - Member (J)

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

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

S. Raju
(Shanker Raju)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 603 OF 1997.

Dated this 27th day of June, 2002.

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

Hon'ble Shri Shankar Raju, Member (J).

Narendra Kumar Jha,
Residing at - Kamla Shankar
Shukla Chawl, Room No. 2,
Neat N.E. Highway,
Goofa Road, Near Cemetery,
Pratap Nagar, Jogeshwari (E).
Mumbai - 400 060.

Presently working as
Chargeman Grade - B,
Diesel Shed - Bandra, N.R.,
Bandra, Mumbai - 400 051.

Applicant.

(By Advocate - Shri G. S. Nalib)

VERSUS

1. Union of India through
The General Manager,
Headquarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division, N.R.,
Mumbai Central,
Mumbai - 400 008.

3. Divisional Mechanical Engr.
Diesel Shed - Bandra,
Western Rly., Bandra,
Mumbai - 400 051.

4. Subhash G. Nair.

5. Rajnarayan B.

6. Sudhir D.

... Respondents.

Respondent Nos. 4, 5 and 6 are working as
Chargeman Grade - B, Diesel Shed, Bandra,
Western Railway, Mumbai.

(By Advocate Shri V. S. Nasurkar)

ORDER

PER : Shanker Raju, Member (J):

Applicant in this OA has impugned the panel formed of Chargemen Grade "B" vide impugned orders dated 20.06.1997 and has sought his inclusion in the said panel and in the alternate quashing of the same.

2. During the pendency of the OA a status quo was accorded on 11.7.97 which was vacated on 3.9.97. Applicant filed MP-256/2002, seeking amendment in the OA, inter alia, bringing in the decision of the Tribunal in OA-1023/96 and adding an additional prayer of declaring the promotion of the applicant dated 29.10.95 as legal with all consequential benefits. However, by an order dated 1.5.2002 MP was directed to be placed for disposal, along with the OA.

3. In pursuance of Railway Board's letter dated 27.1.95 it has been decided to restructure certain Group 'C' and 'D' cadres, which include regular cadres in the open line establishment, including workshop and production units and the same would not apply to ex-cadre and workcharged posts. Applicant by an order dated 29.10.95 was promoted to the post of Chargeman Grade "B" and ever since he is working on the above post.

4. Respondents' by a letter dated 3.1.97 initiated selection for promotion of NG staff and for that written test was fixed on 11.1.97. Applicant objected to the same by preferring a representation and under objection participated in the written test as well as viva voce, but, however, not qualified the same.

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A penal was prepared of Chargemen Grade "B" which did not include the name of the applicant. Apprehending reversion, applicant filed the present OA.

5. During the pendency of the OA one Lal Bahadur Singh, who was promoted on re-structuring from Chargemen Grade "B" to ASF Rs.1600-2660 after being regularised as ELC's scale of Rs.1400-2300 challenged his reversion in OA-1023/96 and the coordinate Bench by an order dated 15.1.98 allowed the OA by quashing reversion order and declaring the applicant as having been regularised by order dated 29.10.93. In so far as his further promotion is concerned, respondents are accorded liberty to give him an opportunity and to pass a speaking order. It is informed that now the judgment has been complied with in letter and spirit and the applicant therein has been retained in the promotional post.

6. Learned counsel of the applicant stated by referring to the restructuring order dated 27.1.93 and referring to paragraph-4 stated that he has been promoted under the modified selection as Chargemen Grade "B" against the chain/resultant vacancy which was vacated on promotion on promotion of Lal Bahadur Singh from Chargeman Grade "B" to ASF and being the next available feeder cadre incumbent the promotion is in pursuance of the restructuring and not an isolated ad hoc promotion, as maintained by the respondents. As such he cannot be reverted and to be continued in the promotional post, deeming it to be a regular promotion under the rules. It is stated that decision in Lal Bahadur's case where the post of ELC has not been declared as regular post and appointment of the applicant therein on regular basis does not lie with the respondents to take a contrary view by stating that the post of Chargeman "B" Electrical was not incorporated in the restructuring.

7. It is further stated that the applicant should not have been subjected to the selection process as he had already qualified the modified selection and was regularly promoted as Chargeman Grade 'B' as per Railway Board's restructuring order dated 27.1.93. It is further stated that despite having no adverse record applicant who had officiated as Chargeman 'B' for three years should have been empanelled as such.

8. In so far as amendment is concerned, it is stated that having taken appropriate pleadings in the OA regarding subjecting the applicant to a modified selection as per Railway Board's letter and his promotion against regular on chain/vacancy which has fallen vacant on account of promotion of Lal Bahadur's the amendment which has brought in effect of Lal Bahadur's case on declaration in the relief clause and the applicant's promotion was legal and proper would not change the nature of suit and is consequential to the present OA, as such is perfectly in order as per order 6 rule 17 of the CPC.

9. Respondents in reply took a preliminary objection opposing the amendment and learned counsel for the respondents stated that decision in Lal Bahadur's case was available to the applicant in 1998 yet the amendment has been brought in March, 2002. As the applicant has slept over his rights the amendment which changes the course of litigation and is not consequential to the main relief of the applicant is not permissible at this stage.

10. It is further stated that the OA is barred by limitation as a judgement of coordinate Bench cannot give rise to a cause of action, as the promotion was made on 29.10.93 and the challenge of the applicant in 1997 is barred by limitation in absence of

any MA for condonation of delay each day's delay has not been explained and the OA is maintainable in view of the decision of the Apex Court in *State of Karnataka v. S.M. Kotrayya*, 1996 SCC (L&S) 1488.

11. It is further stated that the applicant having appeared in the selection and failed in the written examination but for the notional seniority he was called for *viva voce* having not succeeded in that it is not open for him to assail the selection which is barred in view of the decision of the Apex Court in *Madan Lal v. State of J & K* reported in, (1995) 3 SCC 486. It is also stated that in a judicial review it does not lie with the tribunal to sit over as an appellate authority over the decision of the selection committee and to scrutinize the relative merits of the candidates in view of the decision of the Apex Court in *Kuldip Chand v. State of Himachal Pradesh*, 1997 (4) SCC 338. It is further stated that the applicant who was given ad hoc promotion with the stipulation that the same would not bestow any right upon him to claim regular promotion he is to be reverted and if he is at all aggrieved by the order dated 20.6.97 he has to exhaust the statutory remedy of appeal envisaged under Rule 18 (iv) (a) of the *Railway Servants (Discipline & Appeal) Rules*, 1968.

12. On merits too, it is stated that in terms of Railway Board's letter dated 27.1.93 post of Chargeeman Grade 'B' on electrical side has not been upgraded and the applicant was not given benefit of promotion against restructuring.

13. We have carefully considered the rival contentions of the parties and perused the material on record. Applicant in this OA has prayed alternatively for quashing the panel or include his name in the panel, deleting the name of the juniormost. Whereas

by way of an amendment applicant on the strength of the decision in OA-1023/96 seeks to declare his promotion as regular under the modified selection procedure envisaged in the restructuring order of the respondents. In our considered view both these reliefs are not consequential to each other and by allowing the amendment the course of litigation would be changed. The aforesaid amendment in fact materially alters the cause of action as well as relief prayed for which is not permissible under order 6 Rule 18 of CPC. As such the amendment cannot be allowed. Moreover, decision in Lal Bahadur's case was delivered on 15.1.98 which was in the knowledge of the applicant but still the same has been brought in through an MP filed in March, 2002. Aforesaid amendment, which materially alters the nature of the suit without being supported by any application for condonation of delay having not explained the same suffers from delay and laches and is not permissible under Section 21 of the Administrative Tribunals Act, 1985. Being aggrieved by a panel dated 20.6.97 as envisaged under Rule 18 (iv) of Railway Servants (Discipline & Appeal) Rules, 1968, an order which varies to a disadvantage of any service conditions etc. of Railway Servant it is incumbent upon him to prefer an appeal. As the applicant has failed to prefer an appeal against this panel the OA is pre-mature and is liable to be dismissed on this ground alone.

14. In so far as contention of the applicant that in Lal Bahadur's case (supra) having held the promotion on regular basis as ELC, respondents cannot take the plea that the post of Chargeman Grade 'B' Electrical was not included in the restructuring Scheme is not well founded, as vacation of this post by promotion of the incumbent a vacancy had arisen and being the seniormost in the cadre the applicant was rightly promoted by an order dated 29.10.95 and this promotion cannot be treated as an adhoc by the respondents is concerned, we find that

the Tribunal while going into the issue of reversion of the applicant in Lal Bhadur's case (*supra*) merely on the basis that the applicant therein was working on ad hoc basis since 1991 as ELC presumed that the vacancy existed deemed the applicant as regular appointee on that post the same would not be sufficient to hold in view of a specific averment of the respondents that the chargeman grade 'B' on the electrical side has not been included in the restructuring, as such the promotion given to the applicant was purely ad hoc and not against the modified procedure. Had it been so, there would have been a mention to this effect in the order of promotion.

15. As the applicant had participated in the selection process and despite failing in written examination, counting his notional seniority marks was allowed to appear in the viva voce and thereafter as he could not qualify the same in absence of any malafide or violation of the procedural rules it is not open to the applicant to have challenged the selection process and is estopped from taking the same which is not legally sustainable in view of the decision of the Apex Court in Madan Lal's case (*supra*).

16. The promotion of the applicant as Chargeman 'B' was only a stop gap arrangement with a stipulation that this would not confer an indefeasible right upon the applicant to be regularised as the post of Chargeman 'B' undisputedly is a selection post and was to be filled up after the selection process notified by the respondents by their letter dated 3.1.97. Having failed to qualify the same has no legal right to continue as such.

17. In the result and having regard to the reasons recorded above, applicant has failed to establish a *prima facie* case for our interference. No infirmity is found in the panel prepared by the respondents. The OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

"San."

B. N. Bahadur

(B. N. Bahadur)
Member (A)

✓ ~~Opposition Dismissed~~
to ~~Opposition Dismissed~~
OA ~~81719~~

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