

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1/98

Date of Decision: 8.1.1998

~~Shri B.N. Bhargava~~ Applicant.

~~Shri G.S. Walia~~ Advocate for
Applicant.

Versus

~~Union of India. through~~ Respondent(s)
~~General Manager, Western Railway.~~

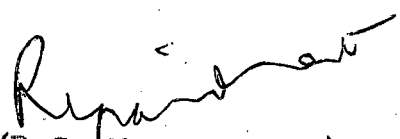
~~Shri V.S. Masurkar.~~ Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI- 1

Original Application No.1/98

Thursday the 8th day of January 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R. Kolhatkar, Member (A)

B.N. Bhargava
C/o G.S. Walia
Advocate, High Court
Industrial Traders Bldg.
Opp. Maha. State Coop. Bank
Nagindas Master Road,
Fort, Mumbai.

... Applicant.

By Advocate Shri G.S.Walia.

V/s.

Union of India, through
General Manager,
Western Railway,
Head Quarters Office
Churchgate
Mumbai.

... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant challenging the legality of the Show Cause Notice dated 11.12.1997 issued by the respondents. The learned counsel for the respondents have filed a short reply opposing admission and grant of interim relief. Heard both the sides.

2. The applicant came to be promoted to Senior scale on adhoc basis as per order dated 22.7.1996. The promotion was given by the General Manager of the Western Railway. Subsequently the General Manager confirmed the tentative promotion of the applicant as erroneous and issued the impugned Show Cause Notice, calling upon the applicant to

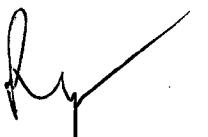
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Show Cause as to why he should not be reverted to substantive post. Being aggrieved by the Show Cause Notice, the applicant has approached this Tribunal challenging the same.

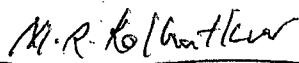
3. The only contention urged by the learned counsel for the applicant is that the General Manager has no right to issue Show Cause Notice. It is for the Railway Board to take a decision for issue of Show Cause Notice. The learned counsel for the respondents contended that decision about erroneous promotion should be taken by the Railway Board but the learned counsel for the respondents submitted that the General Manager being the appointing authority and promoting authority can also issue Show Cause Notice and there is no bar for his issuing the Show Cause Notice.

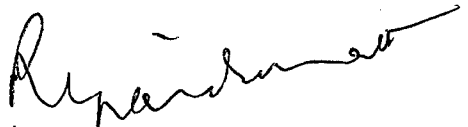
4. Having heard both the sides, in our view, this is not a fit case calling for our interference at this stage. The jurisdiction of the Tribunal is limited in so far as the Show Cause Notice is concerned. In fact one of the provisions in the Administrative Tribunals Act is that the Applicant should exhaust all the remedies on administrative side before approaching the Tribunal. The General Manager has given the Show Cause Notice rightly or wrongly. The applicant can give a reply to the same and if adverse order is passed, he is entitled to file an appeal and then approach this Tribunal. Therefore, on this short ground itself the application is liable to be rejected.



5. As far as the merits are concerned, now it is not in dispute that as per Government circular dated 31.10.63, the authority higher than the appointing authority should take a decision, whether the promotion is erroneous or not. This point is no longer in dispute and is conceded even by the learned counsel for the respondents. The General Manager has not taken any decision to revert the applicant. He has only formed a tentative opinion to issue Show Cause Notice to call upon the applicant to give his explanation. The circular of 1963 does not bar issue of Show Cause Notice by the appointing authority or by the promoting authority. It only provides about authority who has to take a decision regarding reversion. The learned counsel for the respondents submitted that after getting the reply from the applicant matter will be placed before the Railway Board for taking final decision. Therefore it is open to the applicant to give an explanation to the Show Cause Notice and then if any adverse order is passed, he is entitled to challenge the same according to law. At this stage no ground is made out for our interference.

5. In the result the application is disposed of at the admission stage and all contentions of the applicant are left open subject to above observations. Caveat filed by the respondents stands disposed of.


(M.R. Kolhatkar)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman.