

Central Administrative Tribunal, Jabalpur Bench, Jabalpur

ORIGINAL APPLICATION NO. 238/2000

Jabalpur, this the 19th day of February, 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN  
HON'BLE SHRI G.SHANTHAPPA, MEMBER(J)

S.D.Tripathi s/o late Deo Narayan Tripathi,  
aged 57 years, Jr. Engineer (I) under  
Carriage Wagon Superintendent,  
Central Railway,  
Jabalpur.

...Applicant

(By Advocate: None)

-versus-

1. Union of India through  
Secretary,  
Ministry of Railway,  
Railway Board,  
New Delhi.
2. General Manager,  
Central Railway,  
Chhatrapati Shivaji Terminus,  
Mumbai.
3. Divisional Rail Manager,  
Central Railway,  
Jabalpur.
4. Sr. Divisional Mechanical Engineer,  
Central Railway,  
Jabalpur.

...! Respondents

(By Advocate: Shri S.P.Sinha)

ORDER (ORAL)

By G.Shanthappa, Member (J) -

The above O.A. has been filed by the applicant seeking the relief for direction to the respondents to repost the applicant to the post of Carriage Foreman w.e.f. 22.4.1997 from the date he was illegally reverted back without any rhyme or reason best known to the respondents and further relief for direction to expunge the adverse remarks passed against the applicant vide letter dated 13.11.1995 treating him that he had

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never quarrelled with his superiors nor he is loose tempered. He has sought further relief for re-fixing the applicant's pay and seniority w.e.f. 22.4.1997 consequent of his reposting to the promotional post of Carriage Foreman.

2. The brief facts of the case are that the applicant was initially appointed in the Railway w.e.f. 12.8.1961 and was promoted to the post of Train Examiner w.e.f. 22.2.1980. He was further promoted to the post of Head Train Examiner w.e.f. 29.4.1987. The hierarchy of promotion in the cadre of Train Examiner is as under:-

- i) Train Examiner
- ii) Head Train Examiner
- iii) Carriage Foreman
- iv) Carriage Wagon Superintendent

2.1 In consequence to the Railway Board's letter dated 27.1.1993, not only the applicant's cadre was restructured but <sup>also</sup> about 10 <sup>sp.</sup> cadres of various departments were also restructured. The restructuring was implemented by the respondents vide their letter dated 16.2.1995, thus the applicant was promoted to the post of Carriage Foreman in the scale of Rs. 2000-3200 (RPS). Apart from the applicant, 14 other similarly placed persons were also promoted and they were posted at their existing place of working.

2.2 The respondents had conducted the written test examination/selection for promotion to the post of Carriage Foreman in the month of January, 1996. The employees in general opposed and protested this selection. The respondents have issued an office order dated 17.7.96 whereby promoted about 10 persons to the post of Carriage Foreman on regular permanent basis. One Shri M.Lajras, Head Train Examiner, Jabalpur, was also got promoted as Carriage Foreman without appearing in the selection.

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whereas he was commented upon adversely in his confidential reports in previous years that is why <sup>later</sup> he was not promoted to the post of Carriage Foreman vide order dated 15/16.2.1995. After getting adverse remarks the respondents in utter violation of above Railway Board's letter dated 27.1.1993, have promoted Shri M. Lajras to the post of Carriage Foreman. /Said Mr. M.Lajras <sup>The</sup> <sup>before</sup> retired from Railway service / 27.1.1993.

2.3 The applicant was served with adverse remarks vide letter dated 13.11.1995 from respondent no. 4 stating that the applicant's tact and temper is "Loose" and is not maintaining good relations with others. It is more surprising to note that this letter was served on the applicant on 8.3.1996. The respondents have not followed the procedure while issuing letter dated 13.11.1995 i.e. after a lapse of 5 1/2 months of the year of CR which is against all canons of service rules. The same is illegal and is liable to be quashed.

2.4 The applicant submitted his representation on 7.4.1996. The applicant has not received any communication from the respondents. Hence, he has approached this Tribunal for the reliefs, as prayed for. It is also submitted that after his representation, the applicant was reverted back from the post of Carriage Foreman to the post Head Train Examiner. The applicant, against his reversion made several representations but of no avail. While issuing the impugned orders, the respondents have violated the procedure and on the basis of the adverse remarks, his services has been reverted to the Head Train Examiner, which action of the respondents is illegal and is liable to be quashed.

3. The respondents have filed their reply denying the averments made in the O.A. Specific averment made by the respondents in their reply is that the applicant

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was not promoted on regular basis against the restricted post, rather he was promoted on temporary basis, on the basis of some adverse remarks in his ACRs. The applicant had filed OA No. 69/96 before this Tribunal which was dismissed on 19.8.1997. While deciding the said case, it was observed that the applicant requested for amendment, in order to challenge his supersession but the said request of the applicant was refused by the Tribunal. The respondents further submitted that the post of Carriage Foreman in the then grade of Rs. 2000-3200/- was a selection post and as the applicant did not appear in the selection conducted in the year 1996, he was reverted, to make room for the qualified employees for the post of Carriage Foreman. It is submitted that due to adverse ACRs of the applicant, he was not promoted to the post of Carriage Foreman and the applicant has already challenged the same before this Tribunal in OA No. 69/96 which was dismissed on 19.6.1997. The applicant has also suppressed the material fact in this case, hence the O.A. is liable to be dismissed on this ground alone. It is further submitted that, unless the adverse remarks entered in the Annual Confidential Reports of the applicant are expunged by the competent authority, the applicant is not entitled for the reliefs, as prayed for.

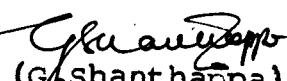
4. Since none is present on behalf of the applicant and the OA being an old one pertaining to the year 2000 we are disposing of this O.A. by invoking the provision of Rule 15 of CAT(Procedure) Rules, 1987 by hearing the learned counsel for the respondents and perusing the pleadings and other material available on record.

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5. We have perused the prayer of the applicant carefully. The prayer cannot be granted by this Tribunal. The applicant is asking this Tribunal to give certificate to treat that he had never quarrelled with his superiors and further to the effect that he is not loose tempered. Such a prayer cannot be granted by this Tribunal. It is an admitted fact that the applicant was served with adverse remarks but the said adverse remarks are ~~so~~ for minor/that applicant can make a representation to the authorities concerned for expunction of the same. The applicant has submitted his representation vide Annexure A-5 but no decision has been taken by the respondents on the said representation. The applicant had subsequently issued a legal notice dated 30.09.1999 requesting to expunge the adverse remarks. Moreover, if the applicant improves his nature, he / approaches the authority to consider his case for expunction ~~of~~ <sup>the</sup> adverse remarks instead of approaching this Tribunal for the reliefs, as prayed for.

6. According to the stand taken by the respondents, the applicant did not appear in the written examination for the post of Carriage Foreman. The applicant has nowhere stated that he was selected by the DPC. He has also admitted that he was on ad hoc promotion. Since the post of the Foreman is a selection post and the applicant was holding said post on ad hoc basis, he was reverted to make room for qualified candidates.

7. In the facts and circumstances of the case, we are of the considered view that the applicant has not made out any case for the reliefs, as prayed for, and the O.M. is accordingly dismissed. No costs.

  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman