

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No. 452 of 2000

Jabalpur, this the 22nd day of January, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Mukhtar Ahmed Khan, S/o. Shri
late Sher Khan, aged 41 years,
Section Engineer (Drawing),
r/o. 903, Shashtri Ward, 16,
quarters road, Jabalpur (M.P.). ... Applicant

(By Advocate - Shri V. Tripathi)

V e r s u s

1. Union of India, through
its Secretary, Ministry of
Railway, Railway Board,
New Delhi.
2. General Manager, Central
Railway, Mumbai CST.
3. Chief Personnel Officer (Engg.),
Central Railway Headquarter
Officer, Personnel Branch,
Mumbai CST.
4. K.K. Parashar, Senior Section
Engineer, through Chief Personnel
Officer, Mumbai CST.
5. R.R. Sharma, Senior Section
Engineer, C/o. Divn. Railway
Manager, Jabalpur.
6. R.M. Paul, Senior Section
Engineer, C/o. Divisional Railway
Manager, Jabalpur.
7. Divisional Railway Manager,
Jabalpur Division, Jabalpur.
8. Shri A.K. Lahoti, Reviewing
Officer, Divisional Railway
Manager Office, Bhusawal. ... Respondents

(By Advocate - Shri M.N. Banerjee for the official respondents)

O R D E R (Oral)

By M.P. Singh, Vice Chairman -

By filing this original Application the applicant has
claimed the following main reliefs :

[Signature]

"(a) Summon the entire relevant record from the respondent including DPC proceedings and ACR those years for is kind perusal;

(b) Set aside the orders dated 5-11-98, 4-1-2000, 8-10-99 and 29-11-99 Annexure A-6, Annexure A-8, Annexure A-3 and Annexure A-4 respectively.

(c) Consequent upon holding that supercession of the applicant was bad in law. Direct the respondents to convene review DPC to consider the case of the applicant as if the communication dated 5-11-98 is not in existence and; accordingly promote him to the post of Senior Section Engineer from the date his juniors have been promoted with all consequential benefits including seniority, arrears of wages, etc."

2. The brief facts of the case as stated by the applicant are that the applicant was appointed as Head Draftsman with effect from 27.01.1984 in the Railways. He was promoted to the post of Chief Draftsman with effect from November, 1989. He is now eligible for promotion to the post of Senior Section Engineer in the pay scale of Rs. 7450-11500/-. As per Railway Board letter dated 28.09.1998, 18 posts of Senior Section Engineers were created. The post of Senior Section Engineer is filled up on the basis of seniority cum suitability and this is a non-selection post. The applicant was considered for promotion to the post of Senior Section Engineer, but could not be selected. Aggrieved by this the applicant has filed this original Application claiming the aforesaid reliefs.

3. Heard both the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the applicant has submitted that the respondents in their reply have stated that the applicant could not be promoted due to adverse remarks in the Annual Confidential Report for the year 1998. He has also submitted that the adverse remark in the ACR has now been expunged vide their letter dated 15.05.2000. He has

therefore prayed that the respondents be directed to hold a review DPC to consider the case of the applicant for his promotion to the post of Senior Section Engineer with all consequential benefits.

5. on the other hand the learned counsel for the respondents stated that for the year ending 31st March, 1998, the adverse remarks in the ACR of the applicant was expunged. He has been considered by holding a review DPC but has not been found fit/suitable for promotion to the post of Senior Section Engineer as informed by the Headquarter, Central Railway Mumbai letter dated 24th January, 2001. The learned counsel for the respondents also submitted the original records relating to the selection made by the respondents after the adverse remarks of the applicant were expunged. He has also submitted CR dossiers of the applicant.

6. We have very carefully perused the original records submitted to us by the respondents and also the CR dossiers of the applicant. From the record we find that the Headquarter Central Railway vide letter dated 24th January, 2001 has informed the Divisional Railway Manager, Jabalpur that the confidential report in respect of Shri Mukhtar Ahmed Khan received on 23rd December, 2000 was put up before the competent authority for reviewing his case for promotion to the post of Senior Section Engineer (7450-11500/-). However the competent authority has not found him suitable for promotion to the post of Senior Section Engineer. We are aware of the settled legal position by the Hon'ble Supreme Court that the Tribunals/Courts cannot substitute themselves to be a selection committee and make selection. However on perusal of the confidential report, we find that the applicant has been graded in the CR, as below :

WJR

<u>Serial No.</u>	<u>Year</u>	<u>Grading/Remarks</u>
1.	1994	Good
2.	1995	Good
3.	1996	Very Good by the reporting officer, but reviewing officer has dis-agreed with the assessment and rated him as "average" because of his slow and irregular work.
4.	1997	Very Good
5.	1998	Average

Certain adverse remarks were given by the reporting officer and the reviewing officer but they have been expunged vide letter dated 15th May, 2000.

7. Since the applicant has been considered for promotion to the post of Senior Section Engineer in the year 1999 his five ACRs of the preceding years should be seen as per the DPC guidelines. This post of Senior Section Engineer is a non-selection post i.e. seniority cum suitability and the bench mark is good. We also find from the ACR that except for the ACR of 1996 and 1998 the applicant has been graded as good/very good. The adverse remark in the ACR for the year 1996 has not been communicated to the applicant to afford him an opportunity of making representations against the adverse remarks given by the reviewing ~~officer~~ officer. It is settled legal position that unless the adverse remarks are communicated to the applicant and the applicant has been given an opportunity of making representation, the same should not be taken into consideration while considering the candidate for promotion to the next higher grade. In this case the adverse remarks in the ACR of 1996 have not been communicated to the applicant. Hence the review DPC should not have taken/consideration these remarks. Since the applicant has been assessed as good or very good for three years, by any ^{stretch L} stage of imagination he



should not have been ignored for promotion to the post of Senior Section Engineer which is a non-selection post.

8. In view of the above, we direct the respondents to hold a review DPC and consider the case of the applicant for promotion to the post of Senior Section Engineer without taking into consideration the adverse remarks given by the reviewing officer in the confidential reports of the applicant for the year ending 31st March, 1996. In case the applicant is found suitable he should be given all consequential benefits with reference to the promotion of his next junior. This exercise should be completed within a period of three months from the date of receipt of copy of this order.

9. Accordingly, the original application stands disposed of. No costs.


(G. Shanthappa)
Judicial Member

MP Singh
(M.P. Singh)
Vice Chairman

"SA"

पूर्णांकन के ओ/व्यापक
एवं विविधिक

12/2/72
Vijay Tripathi
M.N. Banerjee, Aoh

~~Class 2~~
~~11-2-09~~