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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 480/2016

Date of Decision:- 05.08.19

CORAM: R. VIJAYKUMAR, MEMBER(A)
RAVINDER KAUR, MEMBER (J)

Uttam Kisan Pandey,
Age 54 years,
Working
Central Railway,
residing at Om Shatkti,
Row House NO.17,
Siddeshwar Nagar,
Dashak Jail Road,
as Pointsman 'A',
Nasik Road, Nasik. 422101.

... *Applicant*

(By Advocate Shri Vicky Nagrani)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
Head Quarters Office,
C.S.T., Mumbai.

2. Divisional Railway Manager (P),
Bhusawal Division
Central Railway,
Bhusawal. 425201.

... *Respondents*

(By Advocate Shri R. R. Shetty)

Reserved on: 18.12.2018

ORDER

PER: RAVINDER KAUR, MEMBER (J)

The present OA has been filed by the applicant claiming the following reliefs:

- a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the, impugned panel dated 03.11.2014 and impugned promotion order dated 18.12.2014 and 27.11.2015 to the extent of non-promotion of the Applicant to the post of Shunting Grade II with all consequential benefits.
- b. This Hon'ble Tribunal may further be pleased to direct the Respondents to include the name of the Applicant in the panel dated 03.11.2014 and accordingly promote him to the post of Shunting Grade II with effect from 18.12.2014 with all consequential benefits.
- c. Cost of the application be provided for.
- d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The facts are that the applicant was appointed in the Central Railway as Casual Labour on 03.04.1981 and was declared MRCL(Engineer Dept.) on 01.08.1983. His services were regularized w.e.f. 03.05.1990. He was posted as Operating on 19.07.1994. He was promoted to the post of Asst. Pointsman on 16.05.2000 and thereafter to the post of Pointsman A on 05.07.2007.

3. It is stated by the applicant that vide notification dated 09.08.2012(Annex A-5), the respondent no. 2 conveyed selection for total 18 vacancies(14 general category, 2 SC category, 2 ST category) for promotion to the post of Shunting Master Gr. II. The name of the

applicant was also included in the list of eligible candidates. The applicant appeared for the written test conducted on 09.11.2013 and 16.11.2013 respectively. The result was declared on 02.04.2014 (Annex A-6) wherein the name of the applicant is shown at Sr. No. 24.

4. The applicant further states that after the result of the written test, the candidates were awarded marks for Service Record (SR). The marks for record of service were added to the marks of written exam of successful candidates and published panel dated 03.11.2014, wherein the name of the applicant was not included. It is stated that in the said panel there were only 14 general vacancies which were all filled. The respondent no. 2 selected those candidates also who were facing departmental proceedings and were undergoing punishments. The applicant claims that he understood that he was placed at Sr. No. 15 in the list of selected candidates and since the respondent no. 2 had decided to fill all the 14 vacancies as per the published panel, the name of the applicant was not included therein. It is the panel dated 03.11.2014 (Annex A-1) which has been challenged

by the applicant vide present OA. The applicant has further challenged the order dated 18.12.2014 issued by respondent no. 2 in respect of promotion and postings of the 14 employees referred in panel dated 03.11.2014.

5. The applicant made representation dated 11.11.2014 to Labour Enforcement Officer against the orders referred above but he did not receive any reply. He made another representation dated 21.01.2015 and thereafter on 26.06.2015 but again did not receive any reply from the respondents. Consequently, he filed OA No. 609/2015 which was disposed off vide order dated 28.10.2015 directing the respondents to consider and pass the reasoned and speaking order on his representation dated 26.06.2015. The respondents thereafter passed order dated 27.11.2015 rejecting the request of the applicant for inclusion of his name in the aforesaid panel. The applicant has also impugned order dated 27.11.2015 vide present OA.

6. It is stated by the applicant that since there were vacancies which were not filled earlier, the respondents have now issued a fresh notification dated 18.12.2015 (Annex A-10) for

selection to the post of Shunting Master Gr. II including the vacancies which were not filled earlier, therefore, one post therein can be kept vacant.

7. The applicant has challenged the propriety, legality and constitutional validity of the impugned panel dated 03.11.2014, impugned promotion order dated 18.12.2014 and 27.11.2015 respectively on the grounds that the same are illegal and void to the extent of non promotion of the applicant. The procedure followed by the respondents is not as per rules as the respondent no. 2 illegally promoted one Shri Kiran Ratan Salunke against whom SF5 was pending and facing disciplinary proceedings for major panelty. Instead of promoting Shri Kiran Ratan Salunke, the applicant could be granted provisional promotion at the time of declaration of panel and his promotion would have attained finality on imposition of panelty on the aforesaid employee. The applicant is relying upon the Railway Board instructions dated 29.01.1993 governing **Promotions of Railway Servants against whom disciplinary proceedings are pending.** It is stated that as per these

instructions, the name of the employees undergoing disciplinary proceedings requires to be excluded from the panel.

8. Vide present OA the applicant is seeking relief to be placed at the bottom of the panel dated 03.11.2014. He is relying upon the Judgment of Hon'ble Apex Court in the case of **Union of India and Others v. K.V. Janakiraman and Others** [(1991) 4 SCC 109] and DOPT Circular dated 14.09.1992 providing for sealed cover procedure in various departments and Ministries of Govt. of India and has stated that there cannot be two different procedures in Railway Administration and any other department of Govt of India with regard to sealed cover procedure and has termed the language of Railway Board Circular dated 29.01.1993 as ambiguous.

9. The applicant has also agitated that he was illegally and arbitrarily awarded only 18 marks on the basis of service record despite the fact he is awarded with cash award number of times and certificate of Appreciation (Annex A-4). It is also stated that the respondents have illegally and arbitrarily awarded 25-30 marks to the candidates who are either undergoing

punishment or facing disciplinary proceedings for major panelty.

10. The respondents have filed detailed affidavit in reply and have denied the adverse averments against them in the OA.

11. We have heard arguments addressed by learned counsel for both the parties and have carefully gone through the record.

12. Learned counsel for the applicant has argued that when his name did not appear in the panel dated 03.11.2014, he was under the impression that his name would be at Sr. No. 15 in the list of qualified candidates. But, surprisingly, his name was found to be at Sr. NO. 24. It is argued that there was manipulation by the respondents in awarding the marks to the candidates on the basis of SR. Further, these marks were awarded arbitrarily as to some of the candidates, 25 to 30 marks were given despite the fact they were facing disciplinary proceedings. Further it is argued that the applicant was awarded number of times with cash awards and certificate of appreciation but still he was given only 18 marks as per the SR.

It is further argued that Kiran Ratan Salunke whose name finds mention at Sr. no. 1 in the promotion order dated 18/19.12.2014 against whom the departmental proceedings for major penalty were pending, therefore, the applicant could have been granted provisional promotion at the time of declaration of panel. It is further contended that respondents could not have promoted the candidates who were undergoing departmental proceedings as it is violative of Railway Board instructions dated 29.01.2013 which prescribes that the names of the employees undergoing disciplinary proceedings should be excluded from the panel and that the post cannot be reserved in respect of these employees. The next selected person is required to be provisionally promoted. He has laid stress on DOPT circular dated 14.09.1992 to the effect that sealed cover procedure ought have been adopted in case of such employees who were facing disciplinary proceedings. It is argued that including the earlier vacancies in the notification dated 18.12.2015 is also against the rules. It is in these circumstances the applicant seeks quashing of impugned panel

dated 03.11.2014, impugned promotion order dated 18.12.2014 and 27.11.2015 to the extent of non promotion of the applicant to the post of Shunting Gr. II by including his name in the panel dated 03.11.2014 and to promote him to the post of Shunting Gr II w.e.f. 18.12.2014 with all the consequential benefits.

13. On the other hand, Ld. counsel for respondents has argued that notification dated 09.08.2012 was issued for the promotional post of Shunting II PB I + GP Rs. 2400 for 18 posts (UR-14, SC-2 and ST-2). After completing all selection formalities ie. written examination, assessment of SR/working report, panel was declared on 03.11.2014 (Annex A-1) and office order dated 18/19.12.2014 (Annex A-2) was issued in which names of Shri Santosh Guman Singh (Sr. No. 1, Merit No. 1-UR), Shri Tryambak Keshav Lindhate (Sr. No. 15, Merit-1-SC) and Shri Shabbir Nawab Tadvī (Sr. No. 17, Merit-1-ST) were not included as these three employees refused promotion being already selected for the post of Goods Guard (GP-2800). The name of Shri Govind Gunda (Sr. No. 18, Merit No. 2-ST) was also not included in the office order dated

18/19.12.2014 (Annex A-2) as he was undergoing punishment.

Learned counsel for respondents has drawn our attention to IREM Volume I para 224 (Annex R-1) which deals with the subject of refusal of promotions in selection post. As per the same, the employee refusing promotion is eligible for the promotion subject to continued validity of the panel in which he is borne. Learned counsel has argued that after issuance of panel, the post remaining vacant due to the refusal of the employee selected in the panel cannot be treated as a clear vacancy till the currency of the panel. If the posts which are kept vacant due to refusal of concerned employees, are still remaining vacant up to expiry of currency of panel, such posts are considered for assessment of formation of next / new panel.

He has further argued that since there was no such vacancy in existence after declaration of promotion panel dated 03.11.2014 and office order dated 18/19.12.2004, therefore, the contention of the applicant that all the posts of Shunting Gr. II have not been filled

up, is incorrect. Further that though there is interim order dated 27.06.2016 of this Tribunal to keep one vacancy for general category as vacant but in fact there exists no such vacancy in the panel under consideration.

Learned counsel for respondents has further argued that the order dated 18/19.12.2015 was passed after following all the norms and required procedure. The applicant was not found eligible to be considered in the said panel on the basis of merits. He has further demonstrated that the last selected candidate in the panel is Shri Sadashiv Gaikwad(UR) who got only 48.5 marks whereas the applicant only got 48 marks. It is also shown that there are four other employees who got 48.5 marks ie. more than the applicant and 8 employees who got 48 marks as applicant but none of these employees were selected in the panel despite the fact that they are senior to the applicant. It is noticed that none of these employees have challenged the final panel dated 03.11.2014.

14. After hearing the submissions of both the parties, we have carefully gone through the

material available on record, law points and rival contentions of the parties.

15. The respondents have placed on record the list of suitable candidates dated 29.10.2014 as Annex R-2 which clearly shows that there are 13 employees who are above applicant and could not be promoted despite the fact that they were senior and higher in rank than the present applicant. Regarding the challenge to Notification dated 18.12.2014 by the applicant, learned counsel for the respondents has submitted that the said Notification for filling vacancy of Shunting Gr. II including the vacancy which remained vacant for earlier selection is as per rules. He has brought to our notice para 1 of IREM Vol I, which deals with the subject of refusal of promotion in selection post. Learned counsel for the respondents argued that the employee refusing promotion is eligible for promotion subject to the continued validity of the panel in which he is borne. Para 24 in IREM Vol. I is relevant which is reproduced as under:

"224. Refusal of Promotion I. Selection Posts (i) The employee refusing promotion expressly or otherwise (i.e. not only he does not give in writing his refusal but also does not join the post for which he has been selected) is debarred for future promotion for one year but he is allowed to be retained at the same station in the

same post. Promotion after one year will be subject to continued validity of the panel in which he is borne, otherwise he will have to appear again in the selection."

16. Learned counsel for the respondents has explained that after issuance of panel, if there is any post vacant due to refusal of the employee selected in the panel, the said vacant post cannot be treated as a clear vacancy till the currency of the panel. Further, if such post is still remaining vacant upto expiry of the panel, the same is considered for assessment of formation of the next panel. In the present case, since three of the employees referred above had refused promotion, therefore, though, three posts were vacant, but the same cannot be treated as clear vacancies during the currency of the panel in question and accordingly the applicant or any other employee could not have been accommodated in the said panel even if he had been number 1 in the waiting list. The applicant is at Sr. No. 24 of the said list. The respondents have categorically stated that there was no employee against whom departmental proceedings were pending and was considered for promotion.

17. Learned counsel for respondents has

drawn our attention to RBE NO. 13/1993 dated 21.01.1993 (Annex A-3) dealing with the subject "Promotion of Railway Servants who were under suspension or against whom the departmental proceedings/prosecutions have been initiated- Procedure and guidelines to be followed-Cases of promotion of Group 'D' & Group 'C' Railway Servants." . This document (Annex R-3) has also been relied upon by the applicant. The following are the relevant paragraphs of these instructions:

**"GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)**

RBE No. 13/1993

No. E(D&A)92 RG 6-149(A) dated 21-01-1993

Subject :- Promotion of Railway servants who are under suspension or against whom departmental proceedings/ prosecutions have been initiated - Procedure and guidelines to be followed - Cases of promotion of Group 'D' & Group 'C' Railway servants.

In super session of earlier instructions on the subject, Railway Board's letters No. E(D&A)88 RG 6-21 dated 21.09.1988 (R.B.E. No. 211/88), it has been decided that the procedure laid down below shall be followed in the matter of promotion of Group 'D' and Group 'C' Railway servants against whom disciplinary/court proceedings are pending. These instructions shall apply to-

- a. Promotions from Group 'D' to Group 'C', within Group 'C' and from Group 'C' to Group 'B' to selection posts, and
 - b. Promotions within Group 'D', from Group 'D' to Group 'C' and within Group 'C' to non-selection posts.
- 2. Cases of Railway servants to whom the procedure will be applicable -**
The procedure given below shall be applicable to: -
- i. Railway servants under suspension;
 - ii. Railway servants in respect of whom a charge sheet for major penalty has been issued and the disciplinary proceedings are pending; and
 - iii. Railway servants in respect of whom prosecution for a criminal charge pending.

3.1 Procedure to be followed - Such a Railway servant shall not be promoted even if already borne on a selection panel/ suitability list till after the results of the proceeding against him are known. There is, however, no objection to promote him if he is not under suspension and the proceedings already initiated are for the imposition of only a minor panelty.

3.2 Such a Railway servant as aforesaid, if not, already borne on a selection panel/ suitability list, should be called along with other eligible candidates to appear at the written trade/suitability test before the selection committee or the selection board. His suitability for promotion as also his position in the selection panel/ suitability list should be assessed as in the ordinary course.

3.3 On the basis of position assigned in the selection panel/ suitability list, a list of qualified persons should be prepared keeping in view the following-

a. It should exclude the names of those mentioned in items (i) to (iii) of para2 above.

b. It should include the names of those who are not under suspension and against whom disciplinary proceedings for the imposition of only a minor panelty have been initiated."

18. The respondents have contended that the name of the candidates facing Departmental proceedings and undergoing punishment can be considered for promotion only in terms of letter dated 21.01.1993(Annex R-3). As per the above referred procedure and guidelines, a Railway Servant against whom a chargesheet for major panelty has been issued and disciplinary proceedings are pending, he shall not be promoted even if his name appears on the Selection Panel/Suitability List till the conclusion of the proceedings pending against him. It also clarifies that there is no objection to promote a Railway Servant if he is not under suspension and the proceedings

initiated against him are only for imposition of minor panelty. Further para 3.3 of these guidelines also clarifies that the list of qualified persons should be prepared on the basis of the position assigned in the Selection Panel/Suitability List, keeping in view that it should exclude the names of those Railway servants who are either under suspension or against whom chargesheet for major panelty has been issued and the Disciplinary Proceedings are pending as well as those Railway Servants against whom prosecution for a criminal charge is pending. However, it is the case of the respondents that as on the date of promotion order dated 18/19.12.2014, none of the Railway Employees mentioned therein were facing any departmental proceedings. This fact has not been rebutted by the applicant in any manner. The promotion order clearly finds mention as below:

"The promotion of the staff of Sr. NO. 1-14 of part 'B' above as Shunting Master Gr. II Rs. 5200-20200+GP 2400/- is provisional and subject to the following conditions that-

- 1 They are not under suspension.**
- 2 They are not undergoing any effective punishment.**
- 3 No. DAR/SPE/VIG cases are pending or contemplated against them.**
- 4 The promotion of SC/ST employees subject to**

verification of Cast certificate issued from Issuing Authority."

19. Hence, when we look at the Selection Panel dated 30.10.2014/03.11.2011, it finds mention the name of Govind Dunda, however, in the promotion order, his name does not find mention and it has been clarified by learned counsel for the respondents that since he was undergoing punishment for this reason, his name was not included in the promotion order dated 18/19.12.2014. This itself shows that the respondents were fair in the issuance of this order and had complied with all the rules and regulations.

20. Regarding the argument of the applicant that the respondents have arbitrarily awarded 25 to 30 marks to some of the candidates on the basis of their service record, though they were facing departmental proceedings, the respondents have produced the office record in sealed cover which we have perused carefully. Learned counsel for the respondents has also brought to our notice the office letter dated 02.04.2014 (Annex A-6). As per this letter, the DRM(P)BSL called from all TIS/SMS of DSL division, the working

reports of the employees as per list of qualified employees who were working under them during the last three years ie. 2010-11, 2011-12 and 2012-13. Thereafter, on the basis of their report, the impugned order of promotion was issued. The record further shows that the panel dated 30.10.2014/03.11.2013 for the post of Shunting Master GR. II PB-I + GP 2400 was prepared by selection committee. The screening of service record, working reports etc. of the candidates who qualified in the written test was done by the Selection Committee. Thereafter, as per merit, the candidates who secured 60% of marks in aggregate ie. marks obtained in written test and service record were recommended to be kept on the panel.

21. Regarding the contention of the learned counsel for applicant that some of the candidates facing departmental proceedings were included in the panel, the respondents have stated on Affidavit that none of the candidates were facing departmental proceedings.

22. With regard to the contention of the applicant that he was awarded number of times with cash award and certificate of appreciation

but still he was given only 18 marks on the basis of SR, learned counsel for the respondents has brought to our notice that awarding of grading on the basis of SR is within the discretionary power of the competent authority and that performance report of last three years ie. 2010-11, 2011-12 and 2012-13 were taken into consideration, whereas the applicant was awarded for specific good work in the year 2003 and it has no bearing in the present case. The averments made by the applicant that all those candidates who were awarded 25-30 marks on the basis of service record and working reports were facing departmental proceedings does not find support from any material on record and is thus of no consequence. Admittedly, the applicant was awarded for good work in the year 2003 and it has no bearing upon his work performance for the years 2010-11, 2011-12 and 2012-13. He has failed to demonstrate as to how he too was entitled to get 25-30 marks on the basis of the service record.

23. In view of the above discussion, we do not find any infirmity in the impugned orders. Hence, the OA is without any merits, hence, the

same is dismissed. No orders as to costs. /

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

gm.

JJ
16/8/17