

Central Administrative Tribunal  
Principal Bench

O.A.No.797/95

Hon'ble Shri R.K.Ahooja, Member(A)  
Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

New Delhi, this the 24th day of August, 1999

Shri Man Singh Dangi  
S.O. (R.P.S.F.)  
Sr. Divnl. Accounts Officers Office  
Northern Railway  
New Delhi  
r/o 150/2, Sadh Nagar Gali No.37  
Palam Colony  
New Delhi - 85. ... Applicant

(By Shri S.K.Sawhney, Advocate)

Vs.

1. Union of India through  
General Manager  
Northern Railway  
Baroda House  
New Delhi.
2. Financial Advisor & Chief Accounts Officer (Admn.)  
Northern Railway  
Baroda House  
New Delhi. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant qualified Appendix III-A examination held in December, 1990 for promotion to the post of SO Accounts and he also passed the said examination Appendix III-A in 1991 for promotion to the post of Inspector of Stores Accounts (hereinafter referred to as ISA) in the accounts department of the Railways. The promotion to the post of SO or ISA have to be made in terms of options to be exercised as per provisions of letter dated 10.6.1965, Annexure-A5. The applicant being qualified for both the posts under the aforesaid instructions, Annexure A5, was required to exercise his option at the time of his promotion. The applicant submits that when certain

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posts of SO Stores became available the applicant submitted a representation dated 3.1.1994, Annexure-A3 stating that he was not in a position to exercise his final option for promotion to the post of SO Stores/ISA as vacancies of ISA were not available at that time and there was thus no occasion for asking the applicant to exercise his option. The grievance of the applicant is that the respondents promoted him as SO Stores vide letter dated 10.2.1994 on an ad hoc basis and treating that as a regular promotion deemed it to be an exercise of a final option. The applicant made a representation for his option in favour of ISA post as per Annexure A7 dated 1.12.1994 which has been rejected by the impugned letter dated 16.3.1995.

2. We have heard the counsel. The learned counsel for the applicant has drawn our attention to the Railway Board instructions dated 10.6.1965, Annexure A5 which read as follows:

"Attention is invited to the Rly. Bd's letter No.E9NG)64-PMI-56 dated 10.6.1965 wherein Rly. Bd. has considered the matter at great length and has decided in view of the fact that there are now ample chances of promotion in every line, the avenue of promotion in the three groups should be separated from one another. At the time of filling up posts of Jr. Accountants/Jr. Inspector of Stores Accounts/Station A/cs, staff qualified for more than one group (App. III-A (IREM) Exam.) shall be asked to exercise one option for anyone particular group and this option, once exercised shall be final."

3. The learned counsel for the applicant contended that where a person is qualified to be promoted more than one channel he has to exercise his option at the time of regular promotion. The promotion of the applicant as SO Stores was on an ad hoc basis and therefore this could not be an occasion to exercise an option. The applicant made his

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representation when it was communicated to him that the ad hoc promotion will be converted as a regular promotion. The learned counsel also points out that in similar cases where promotions had been made on ad hoc basis the respondents allowed some of the promotees to exercise fresh options for regular promotion and in the result changes were made in the channel of promotion. This facility was denied to the applicant through a wrong interpretation of Rules and in an arbitrary manner.

4. The learned counsel for the respondents, on the other hand, pointed out that the option has to be exercised only once and is not to be repeated every time opening in different channels arise. The applicant had been duly asked to exercise his option for promotion to the post of SO Stores which was declared to be ad hoc only on account of the interim orders of this Tribunal. He also submits that nothing could be stated about the other cases which have been referred to by the learned counsel for the applicant. He submitted that even if irregularities had taken place in their case this does not give rise to a claim that the applicant should be treated similarly against the provisions of the rules.

5. We have considered the matter carefully. It is true that an option has to be exercised at the time of promotion. We are however unable to agree with the learned counsel for the applicant that such option has to be exercised every time that a vacancy arises in different channels. If the reasoning

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advanced by the learned counsel for the applicant were to be accepted it would mean that the applicant could exercise not one but three options. In this reasoning his option for the post of S.O would not have been final even if it were a regular promotion. In our understanding once the applicant had <sup>given</sup> an option to go into either of two channels, such an option would become final.

6. We notice from the copy of the representation dated 3.1.1994, Annexure-A3 that the applicant admittedly was asked to exercise his final option. However, the applicant made the following statements in his representation:

"(vi) That it is not possible to exercise final option for on group at this stage as my turn of promotion in another group i.e., I.S.A. will take about 3 or 4 years.

(vii) .....

(viii) The final option should be asked whenever the promotion in both the groups is simultaneous but in my case situation is quite different.

(ix) .....

(x) Where no final options have been asked from my other colleagues it is injustice with me to press for final option."

7. Finally, in his said representation, the applicant has stated as follows:

"Keeping in view of the above facts, I therefore request your kind honour to allow me for my promotion in first group and I assure that I will exercise my final option at the time of my promotion in II group according to the circumstances at that time." (emphasis supplied).

8. The aforesaid statements made by the applicant himself in his representation belie the argument firstly that the applicant applicant was not allowed to exercise his option, secondly, that he was

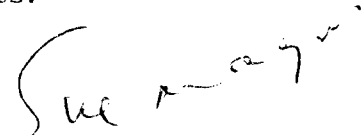
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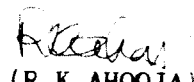
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promoted to the post of SO Stores without obtaining his option. The applicant has clearly stated that he should be allowed to be promoted in the first group. Since we have already concluded that the letter of the Railway Board dated 10.6.1965 does not imply that options have to be repeated everytime vacancies became available in different channels we cannot but come to the conclusion that applicant was promoted ~~has~~ SO Stores after exercise of his option in terms of letter dated 10.6.1965 and that was in the nature of a final option.

9. In regard to the applicant's contention that the respondents have followed a policy of pick and choose by giving some persons an opportunity to exercise second option while refusing the same facility in the case of the applicant, we are in agreement with the learned counsel for the respondents inasmuch as we cannot draw comparison between two cases unless it can be shown that the provisions of the Rules has been violated in the case of the applicant. As we have already noted, we do not find that the respondents can be considered to <sup>have</sup> ~~be~~ wrongly applied the rules in respect of the applicant in so far as these Rules are described by the letter of the Railway Board dated 10.6.1965.

10. In the result, we do not find any ground for interference. The OA is accordingly dismissed. No costs.

  
(SYED KHALID IDRIS NAQVI)  
MEMBER(J)

  
(R.K. AHOOJA)  
MEMBER(A)

/RAO/