

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/39/2016
with
MISC. APPLICATION NO. 291/1009/2019**

Order reserved on 05.08.2021

DATE OF ORDER: 11.08.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Nagar Mal Yadav son of Shri Onkar Mal aged around 50 years, resident of Village and Post Bhagega, Tehsil Neem Ka Thana, District Sikar (Raj.). Presently working as Trolley Man at Srimadhopur.

....Applicant

Shri Amit Mathur, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager, North Western Railway, Malviya Nagar, Jagatpura Road, Jaipur.
2. Divisional Railway Engineer (RPC), North Western Railway, Jagatpura Road, Malviya Nagar, Jaipur.

....Respondents

Shri P.K. Sharma, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the order dated 13.05.2015, (Annexure A/1), passed by respondents whereby the promotion / posting order of the applicant from the post of Gangman to Trolleyman has been cancelled. He is also challenging the order dated 23.12.2015, (Annexure A/2), whereby his representation has been rejected.

2. The brief facts of the case, as stated by the applicant, is that the applicant was initially appointed under Ex-serviceman quota and after being discharged from Army services, he was appointed in the year 2011 as Gangman. Though the posts of Gangman and Trolleyman are in the same Grade Pay i.e. Rs. 1800/-, but there is a channel of posting from the post of Gangman to Trolleyman. As per order dated 03.09.2013, (Annexure A/3), the persons having three years' experience as Gangman/Trackman, would be considered for promotion to the post of Trolleyman/Gangman. As per order dated 03.09.2014,

(Annexure A/4), the applicant was promoted as Trolleyman and was working on the said post. All of a sudden, without assigning any reason or without giving any opportunity of hearing vide order dated 13.05.2015 (Annexure A/1), the applicant was reverted to the post of Gangman and in the said order, it is stated that the order of promotion was passed due to wrong interpretation of letter dated 02.12.1996 and also that the minimum age to work on a Trolley is 45 years. But the applicant states that it is only after the age of 45 years, he was appointed as a Gangman and, therefore, after completion of 03 years as Gangman, he was rightly considered to be given posting/promotion as a Trolleyman. He had accordingly challenged the order dated 13.05.2015 before this Bench of the Tribunal by way of O.A. No. 317/2015 and this Tribunal vide order dated 29.05.2015, directed the respondents to consider the representation of the applicant and pass a reasoned and speaking order and till the said representation is decided by the respondents, the applicant will continue to work as Trolleyman. On the other hand, the representation dated 21.06.2015 was decided by the respondents vide order dated 23.12.2015,

(Annexure A/2), wherein they only stated that he was promoted due to incorrect interpretation of the order dated 03.09.2013. They have also stated that there is no provision of promotion from the post of Gangman to Trolleyman. Thus, the applicant has approached this Bench of the Tribunal against the order dated 13.05.2015, (Annexure A/1), and order dated 23.12.2015, (Annexure A/2), and that he be allowed to continue on the post of Trolleyman.

3. The respondents in their amended reply stated that the applicant was appointed as Gangman in Ex-serviceman quota in the year 2011. It was further stated that the post of Gangman and Trolleyman are now re-designated as Track Maintainer (iv) and are in the same Grade Pay of Rs. 1800/- but there is a channel of posting from the post of Gangman to Trolleyman. As per prescribed rules and instructions, those employees who are working on the post of Gangman/Track Maintainer having age below 45 years and have passed A-3 medical category along with three years' experience as Gangman/Trackman are eligible to be considered for posting to the post of Trolleyman. The respondents further added that the applicant was posted on the post of Trolleyman vide

order dated 03.09.2014 as he was having experience of 03 years but the age of the applicant was above 45 years. It is due to wrong interpretation of the guidelines regarding posting, the applicant was posted on the post of Trolleyman from the post of Gangman and when the said fact came to the knowledge of the respondents that at the time of posting of the applicant on the post of Trolleyman, he had already crossed the age of 45 years, therefore, Assistant Divisional Engineer (RPC), Jaipur, immediately vide office order dated 13.05.2015 again posted the applicant on his original post of Gangman from the post of Trolleyman. As the duty of Trolleyman comes in safety category, it is expected from the Trolleyman, that he should be physically and medically fit to perform his duties. The respondents further state that by order dated 03.09.2014, the applicant was posted on the post of Trolleyman from the post of Gangman-16 as per the willingness of the applicant and the same was not promotion but was posting of the applicant. It was further added that not only the applicant but other similar employee namely Shri Prithvi Singh, who has also been posted as Trolleyman from the post of Gangman due to wrong interpretation

of rules, was also posted back to the original post of Gangman vide order dated 12.05.2015 (Annexure R/2). Further, it is stated that in compliance of the orders of this Tribunal, reasoned and speaking order was passed and communicated to the applicant vide Annexure A/2, along with copy of relevant instructions dated 02.12.1996, but due to court orders, the applicant was retained on the post of Trolleyman till the representation was decided and, therefore, the applicant has no right to continue to hold the post beyond the rules. Thus, as the action of the respondents is according to instructions and rules issued from time to time, the O.A. filed by the applicant is not maintainable and, therefore, deserves to be dismissed.

4. The applicant has not filed any rejoinder rebutting the submissions of the respondents.

5. On the other hand, respondents filed a Misc. Application No. 291/1009/2019, for vacating the stay order dated 25.01.2016 granted by this Tribunal, stating that the applicant was posted as Trolleyman vide order dated 03.09.2014 on the basis of his own willingness, on the same pay and pay scale.

Thereafter, it was found that for the posting of Trolleyman, the eligibility criteria of age is below 45 years but due to wrong interpretation of instructions and guidelines, the applicant was wrongly posted on the post of Trolleyman. Therefore, the order dated 13.05.2015 was issued by ADEN/RPC/Jaipur whereby posting of the applicant as Trolleyman was cancelled and he was posted on his original post of Gangman in Gang No. 16 and the said order was challenged by the applicant in earlier O.A. The respondents further state that order dated 03.09.2014 is only a posting order and not a promotion order as wrongly interpreted by the applicant. Therefore, the ex-parte stay order was granted by this Tribunal vide order dated 25.01.2016 i.e. "Issue notice to respondents returnable within a period of two weeks. The service of notice on the respondents will be effected by the applicant through Hum Dust / Speed Post within three days from today and submit proof thereof in the Registry within seven days. The respondents are directed to file the reply. Adjourned the matter on 8.2.2016. There will be interim direction to the respondents that the status quo as on date may be continued till the next date." Thereafter, the matter was adjourned on several

occasions due to non-availability of Division Bench and so the interim orders were continued time and again till further orders. Therefore, respondents pray that as the posting of the applicant on the post of Trolleyman is beyond the rules/instructions, hence, in the interest of justice, the interim orders dated 25.01.2016 deserves to be vacated.

6. We have heard learned counsels for the parties at length through Video Conferencing and examined the pleadings minutely.

7. The applicant reiterated his submissions as stated earlier and added that as the applicant had completed three years of service on the post of Gangman, he has been promoted to the post of Trolleyman and the same was in accordance with the order dated 03.09.2013 and in the said order, there was no illegality or any irregularity. One of the grounds raised by the applicant is that there is no reason for the respondents to revert the applicant who was promoted to the said post only by way of an advisory. The applicant further raised the ground that the nature and duties of work performed by a Gangman are different from that of Trolleyman and that a Divisional

Engineer cannot suppress or supersede the orders of the General Manager. The Divisional Engineer has no authority to lay down the terms and conditions of appointment.

8. The respondents besides reiterating their submissions stated that the applicant was posted on the post of Trolleyman from the post of Gangman as per the willingness of the applicant. The post of Gangman as well as Trolleyman have the same Grade Pay of Rs. 1800- and only those employees having three years' work experience as Gangman and whose age is below 45 years, will be considered for posting to the post of Trolleyman and the same is not promotion but only posting. Though the age of the applicant was clearly mentioned but only due to lack of clear instructions and wrong interpretation of the letter dated 10.07.2014, the applicant was posted as Trolleyman, though he was not eligible for the post of Trolleyman as he had crossed the age of 45 years and also as per rules and instructions as well as for safety reasons. Therefore, vide order dated 13.05.2015, the applicant was posted on his original post of Gangman. He was never reverted and for Ex-serviceman, there is no separate provision to again grant any relaxation at

the time of posting as Trolleyman. The respondents further state that it is only due to the interim orders of the Tribunal, the applicant was retained on the post of Trolleyman till the decision of the representation and, therefore, the applicant has no right to continue to hold the post beyond the rules. As per letter dated 03.09.2013, (Annexure A/3), it is mentioned that in future on the post of Trolleyman who has more than 03 years' experience as Gangman be posted, also that there is no instruction/rule that at first time beyond the age of 45 years anybody be posted on the post of Trolleyman. Therefore, it is clear that the applicant in spite of being more than 45 years of age was posted as Trolleyman vide office order dated 03.09.2014 as per the willingness of the applicant. As applicant who was an Ex-serviceman is already granted relaxation at the time of appointment as Gangman and, thus, there is no provision to further grant any further relaxation though he crosses age of 45 years still he should be posted as Trolleyman as there is no exemption in this behalf. Thus, as the action of respondents is as per rules, the O.A. filed by the applicant is not maintainable and, therefore, deserves to be dismissed.

9. After hearing the parties and perusing the pleadings, the factual matrix of the case is that the applicant being an Ex-serviceman was appointed as Gangman in the Ex-serviceman quota and joined the services on 23.05.2011. On 03.09.2014, the applicant was posted on the post of Trolleyman from the post of Gangman after taking his willingness and he started working on the post of Trolleyman. It is seen that both the post of Gangman as well as Trolleyman are having the same pay as well as the same Grade Pay of Rs. 1800/- though the nature and duties of work of both the posts are different.

10. We have noticed that as per the order of General Manager dated 03.09.2013, (Annexure A/3), the employees working on the post of Gangman/Trackman having an experience of three years or more are likely to be posted on the post of Trolleyman and, accordingly, the applicant having fulfilled these conditions was posted to the post of Trolleyman. Thereafter, as per order dated 13.05.2015 (Annexure A/1), the posting order of the applicant along with others were cancelled and they were required to work on their original post of Gangman and it was made clear that in view of wrong interpretation of rules/

improper instructions for the post of Trolleyman, the applicant and other employees were wrongly posted as Trolleyman.

11. We have observed that thereafter the applicant challenged the order dated 13.05.2015 before this Bench of the Tribunal by way of O.A. No. 317/2015, wherein this Tribunal had directed the respondents to consider the representation of the applicant and pass a reasoned and speaking order. It was also mentioned in the said order that till the representation is decided by the respondents, the applicant will continue as Trolleyman. Accordingly, the applicant made a representation dated 21.06.2015 to the respondents and the said representation was decided by them vide order dated 23.12.2015, (Annexure A/2), rejecting the representation with reasoned and speaking order. The respondents have clearly mentioned that on the basis of the complaint made by an authorized Union wherein it was clearly mentioned that on the basis of Sr. DEN (HQ)-Jaipur vide letter dated 02.12.1996, Para No. 1 has not been followed by W./Sr.DEN(HQ)/JP/Mis./Dt. 02.12.1996 and on the basis of wrong interpretation of the rules and instructions pertaining to the age of Trolleyman, which were not clear, the order dated

03.09.2013 was passed. It was further clarified that accordingly order dated 13.05.2015 was passed cancelling the order of posting of the applicant on the post of Trolleyman. In the Railways, the pay and grade pay for the posts of Trolleyman/Gangman/Track Maintainer are the same and the posting of employees from one post to the other is not promotion. The Union had pointed out that as the age for appointment to the post of Trolleyman is below 45 years and as the applicant is above 45 years, therefore, he was not entitled for appointment on the post of Trolleyman. Accordingly, the respondents had passed orders in compliance to the directions of this Tribunal, which are just and legal as a mistake can always be rectified.

12. It is also noted that the ex-parte interim orders dated 25.01.2016 was with regard to grant of status quo as on the date of the order passed by this Tribunal and the same is being continued for several reasons till date and the respondents have filed a Misc. Application for vacation of the said stay granted by this Tribunal as till date the applicant is working on the post of Trolleyman. As observed by us in the earlier para, there is no illegality in the action of the

respondents in cancelling the posting order of the applicant for the post of Trolleyman and the applicant has no legal right to remain posted on the post of Trolleyman for which he is not entitled and on which by wrong interpretation of rules, he was posted. As seen, the applicant is an Ex-serviceman and by way of relaxation was appointed on the post of Gangman. At the time of said appointment, he had crossed the age of 45 years. As the post of Trolleyman requires heavy duty work, pertaining to lifting and putting the Trolley on the Railway Tracks, climbing up and down the Trolley steps a number of times each day while boarding/alighting from the Trolley and as the post of Trolleyman falls under Safety category, an employee is required to be medically fit as well as he should have a good physique, therefore, for the post of Trolleyman, the prescribed age was 45 years. Thus, keeping in view the letter pertaining to instructions dated 02.12.1996, (Annexure R/1), the applicant was not eligible for the post of Trolleyman and, therefore, vide order dated 13.05.2015, (Annexure A/1), the applicant was posted on his original post of Gangman. We do not find any illegality or irregularity in the action of the respondents in cancelling the order as

the same treatment has also been done in the case of a similarly situated employee namely Shri Prithvi Singh, who was also more than 45 years of age while posting him as Trolleyman from Gangman. We do not agree with the grounds raised by the applicant that he was promoted to the post of Trolleyman and that he cannot be reverted by an advisory order as posting of the applicant as Trolleyman cannot be said to be a promotion at all. Also all other grounds of the applicant pertaining to competency of Divisional Engineer framing guidelines cannot be accepted as these were instructions to be followed only for the safety of the employees and which should always be a priority. Thus, the interim order dated 25.01.2016 passed by this Tribunal needs to be vacated as we do not find any illegality, arbitrariness and malafides in the action of the respondents in posting the applicant to his original post of Gangman as the action of the respondents is just and proper and does not deserve any interference.

13. In view of the observations made herein-above, the Original Application filed by the applicant is devoid of merits and the same is accordingly dismissed with no order as to costs.

14. In view of dismissal of Original Application, Misc. Application No. 291/1009/2019, for vacation of stay granted by this Tribunal vide order dated 25.01.2016, is allowed. Accordingly, stay granted by this Tribunal vide order dated 25.01.2016 stands vacated.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat