

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 12th day of April, 2002.

Original Application No.864 of 1999.

CORAM :-

Hon'ble Mrs. Meera Chhibber, J.M.

Anirudha Kumar Mishra
Son of Late Raghu Vansh Mani Mishra,
R/o 17/22, C, Beniganj, Allahabad
working as High Skilled Lineman,
Allahabad.

(Sri MK Upadhyaya, Advocate)

..... .Applicant

Versus

1. Union of India through the
Divisional Personnel Officer,
Northern Railway, Allahabad.
2. Senior Divisional Electrical
Engineer Northern Railway,
Allahabad
3. Deputy Chief Electrical Engineer
(Construction) Northern Railway,
Allahabad.

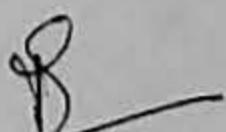
(Sri Prashant, Mathur, Advocate)

..... .Respondents

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

The grievance of the applicant in this OA is that he was eligible for appearance in the trade test for the post of highly skilled Lineman Grade I. However, he could not appear as he was not informed about the same as a result of which his juniors were promoted in the year, 1995. He was subsequently allowed to appear in the trade test in the year, 1988 and after he passed the trade test, he was promoted as highly skilled Lineman only w.e.f. 1999. The applicant states that since he



was deprived from appearing in the trade test due to non-receipt of intimation of the examination due to the fault of respondents and was given promotion subsequently after he passed the test. Therefore, he is entitled for promotion from the same date as if he had passed the examination in his turn as per Rule 316 I.R.E.M. Vol I. Rule 316 of I.R.E.M. Vol I is quoted hereinbelow for ready reference:-

"316, A railway servant who, for reason beyond his control, is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn.

NOTE:-1. The expression 'reasons beyond his control' appearing above should be interpreted to include the following:

- (i) Sickness of the railway servant supported by the medical certificate of the authorised medical attendant;
- (ii) Sickness of the members of a railway servant's family supported by the medical certificate of the authorised medical attendant, so serious that the railway servant could not be reasonably expected to take the test;
- (iii) Proved non-receipt of intimation of the examination/test owing to being on leave or on duty elsewhere than at the headquarters or for any other reasons acceptable to the administration; and
- (iv) Administration not relieving the railway servant for such examination or test.

2. This will not apply to departmental examinations prescribed in App.2 & 3 IREM!



2. The applicant has thus claimed that a direction be given to the respondents to grant promotion to the applicant as highly skilled Lineman w.e.f. 29-3-1995 and not to transfer the applicant from Allahabad to Khurja. At the outset the applicant was supplied with relief (b) if not flowing from relief (a) and in this ^{up} he gives one of the relief to the OA which will be hit by Rule 10 of the CAT(Procedure) Rules. The counsel for the applicant admits the position and prayed that the prayer (b) may be deleted and he is not pressing the same. Accordingly, prayer (b) is deleted from paragraph no.8. Therefore, the only controversy left in the case is limited to the grant of promotion w.e.f. March, 1995. The respondents have contested the claim of the applicant by stating that though the applicant has worked in construction but his lien has been maintained in Allahabad Division and since he had himself not appeared in the test inspite of notice, the question of granting retrospective promotion does not arise. They have relied upon Office Note. No.EM/(2)-TRD Trade Test/94 dated 9-3-1995, to substantiate their claim whereby number of persons were called to appear in the trade test and the applicant's name appeared at Serial No.2 in the said notice (Page 55). The respondents have also annexed the panel dated 28-2-1995 wherein the applicant has been shown as absent at Serial No.8. Therefore, the respondents ^{have} stated that the applicant cannot be granted the relief as claimed for. In the rejoinder affidavit the applicant has controverted the stand taken by the respondents by annexing a representation dated 9-8-1999 whereby he asked ^{the authority} to inform him whether the notice dated 9-1-1995 was received in his office or not and if yes why he was not informed.

S

about it, since it affects his career progress. The applicant has annexed the letter dated 25-9-1999 addressed to him by the Senior Section Engineer TRD Construction, N.R. Allahabad where it is clearly stated that as per records the letter dated 9-1-1995 was not received in the office where the applicant was working (Page 71). Thus, the applicant states that when the notice was not received by the office, it can hardly be said that the applicant was informed and as such he cannot be made to suffer for the fault of the respondents and since his juniors, namely, Shri Saligram Kushwaha, Shri Dharamvir Singh and Sri Iqbal Ahmad were promoted on 29-3-1995, he should also be promoted w.e.f. 29-3-1995.

3. I have heard counsel for the parties and perused the record as well as Rule 316 of the IREM ^{Actu} Vol I. It is ~~not~~ that the applicant has specifically averred in the OA that he was not informed about the trade test held in 1995 and has substantiated his averments by annexing the letter written by the Construction Division. It is wherein they have admitted the office notice dated 9-1-1995 was not received in their office. It goes without saying that when the office ~~itself~~ received the notice, obviously the applicant could not have been informed about it as the applicant admittedly was working in Construction Division where the said notice was not received and the notice dated 9-1-1995 was not addressed to the ^{no} individuals. Therefore, there was no way how the applicant can be said to have been informed about the trade test in the year, 1995. Since the officers in the Construction Division have made it clear that notice was not even received in their office, it is clear that the applicant would not have been informed about the trade test in 1995. Thus, as the case would be fully covered by Rule 316 I.R.E.M. Vol. I. as he could

not appear in the examination for the reasons beyond his control which is explained to include non-receipt of intimation about the examination or test. As such the applicant would be entitled to get the promotion w.e.f. 29-3-1995 when his juniors were promoted as in 1995 he was not intimated about the trade test and he passed trade test in the year, 1998. Therefore, his promotion should count from the date as if he had passed the trade test in his own turn. It is seen that the applicant has filed his rejoinder affidavit long back but the contents of the same or the letter relied upon by the applicant has not been controverted by the respondents. Even though they have sufficient time to do so. In view of the above observation, the applicant's case is fully covered by Rule 316 Vol. I. and as such the OA is allowed. The respondents are directed to grant notional promotion to the applicant as highly skilled Lineman Grade I w.e.f. 29-3-1995, the date when his juniors were promoted by passing an appropriate order within a period of two months from the date of receipt of this order and *refix his pay accordingly.*


Member (J)

Dube/