

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/591/93

Date of Decision: 20.09.2000

Shri B.R.Khira

Petitioner (s)

Mr. Y.V.Shah

Advocate for the petitioner(s)

Versus

Union of India & Ors.

Respondent(s)

Mr.N.S.Shevde

Advocate for the Respondent(s)

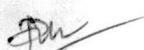
CORAM

The Hon'ble Mr.V.Ramakrishnan : Vice Chairman

The Hon'ble Mr.P.C.Kannan : Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?



Shri B. R. Khira,
Sub-Overseer Mistry,
Western Railway,
At Kalol-382 721
Dist. Mehsana

: Applicant

Advocate: Mr. Y. V. Shah

Versus

1. Union of India,
Through: The General Manager,
Western Railway,
Churchgate,
Bombay-20.
2. Chief Administrative Officer,
Western Railway,
Churchgate,
Bombay-20.
3. Divisional Railway Manager,
Western Railway,
Rajkot.
4. Mr. K. H. Talati
I.O.W. Grade-III,
C/o. Chief Engineer ©,
Western Railway,
Station Building,
Ahmedabad-2.
5. Mr. B. B. Morval,
I.O.W. Grade-I,
C/o. Divisional Railway Manager,
Western Railway,
Baroda.
6. Amarnath Sharma,
I.O.W. Grade-I,
Western Railway,
Dwarka.

: Respondents.

PN
Advocate: N. S. Shevde

Per: Hon'ble Mr.P.C.Kannan

: Member (J)

This is the second round of litigation. Earlier the applicant who was working as I.O.W. Grade II in the scale of Rs.550-900 challenged his order of reversion to IOW Grade III in O.A. No.403 of 1986 in this Tribunal. This Tribunal after hearing both sides, dismissed the O.A. vide its judgment dated 29.9.89 (Annexure R-1) with the following observations:-

" The respondents have produced seniority list notified in the year 1972, 1975 and 1983. The name of the petitioner does not find a place therein because of his relevant position in the Division-wise seniority list, where he is only a Sub-Overseer Mistry, in the scale of Rs.380-560 (Rs.) The respondents-Railway Administration has committed no error in posting the petitioner as IOW Grade-III as M.S.H. Scale Rs.425-700 (R) purely on ad hoc basis, in light of his own request and the applications made by him. "

The applicant was further reverted to the lowest post of S.O.M. by the order dated 4/7-9-92 which was further modified by the order dated 29.9.92 (Annexure A-6) . The applicant being aggrieved with the action of the Respondents, seeks the following reliefs:-

" (A) Be pleased to quash and set aside the reversion order and declare that the applicant is eligible to be regularised as IOW Grade-III from the date of his selection with all consequential benefits of further promotions including arrears of wages, above his juniors who are respondents Nos.4,5 and 6.

(B) Be pleased to direct the respondent Railway administration to fix his pay on par with his juniors."

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2. The case of the applicant is that he was initially selected as Works Mistry re-designated as S.O.M. and after due training as apprentice Works ,Ministry was appointed as S.O.M. from 9.1.1958. Thereafter he was promoted as A.I.O.W. w.e.f. 21.4.1962 and was selected as A.I.O.W. and placed at Sl.No.12 in the selection panel dated 11.9.1962 (Annexure A-2).

The applicant states that he was reverted as S.O.M. on the ground of surplusage w.e.f. 9.9.1966 but thereafter was promoted as I.O.W. with effect from 21.1.1973. The applicant was however again reverted as A.I.O.W. w.e.f. 13.11.1973 on the ground of surplusage and therefore he had filed S.C.A. 162/74 in the Hon'ble Gujarat High Court which was dismissed on the ground that the posts of IOWs and AIOWs are merged as IOW and therefore there was no question of reversion. The applicant was again reverted as SOM by orders dated 7.1.1974 and 8.7.1974 but effected from 31.7.76 and therefore was constrained to challenge the order of reversion before the Gujarat High Court in SCA No.715/76. This petition was allowed in favour of the petitioner (Annexure A-3). The applicant was re-promoted as IOW Grade III w.e.f. 20.3.1978 and was further promoted as IOW Grade II w.e.f. 4.12.78.

The applicant was again reverted as IOW Grade III w.e.f. 18.11.1985 and the applicant again challenged his reversion in this Tribunal in O.A. No.403/86 which was rejected by the judgment dated 29.9.1989 (Annexure R-I) . He was further reverted as SOM by order dated 4/7-9-1992 and modified by the order dated 29.9.1992 (Annexure A-6).

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The applicant submits that the posts SOM, IOW (Gr.III) and IOW Grade II are transferable and absorbable from one division to another and from one project to another and from open line to construction and vice versa. The applicant submits that one seniority list was prepared for the posts of SOM, IOW (Grade.III) and IOW (Grade II) for the entire Western Railway upto 1984 and as the said seniority list, the applicant was duly selected as AIOW and was empanelled at Sr.No.12 of the selection panel. The applicant therefore, contends that he cannot be treated as Adhoc/Officiating /Temporary subsequently.

The applicant submits that the reversion order under the impugned order at Annexure A-6 to the lowest post of SOM after 36 years of service is nothing but wilful breach of the Supreme Court judgment in Civil Appeal No.745/78 (Annexure A-7) and the judgments reported in AIR 1986 SC 638 and AIR 1992 SC 1574 and also violative of Articles 14 and 16 of the Constitution of India.

The applicant also contends that General Manager in accordance with the Railway Board's order dated 15.6.1968, instructed that ad hoc promotion beyond 3 months should be avoided (Annexure A-8). However, the applicant was given adhoc promotion for a number of years even though he was duly selected. The applicant also contented that in terms of Railway Board's order combined seniority at zonal level was required to be prepared and given promotions. However, General Manager subsequently issued order for decentralisation at the Division level for the posts up to

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the scale of Rs.550-700. The applicant submits that several of his juniors like S/Shri B.R.Khira, K.H.Talati, B.B.Morval, Amarnath Sharma were given promotion to higher grades. However, the applicant was ignored. The applicant's representation dated 5/3/93 (Annexure A-11) was also not responded. The applicant therefore, filed the present OA.

4. The Respondents in their reply have denied the various allegations and stated that the O.A. is clearly barred by the principle of resjudicata as the issues raised in this OA are substantially the same as in the earlier OA No.403/86 filed before this Tribunal which was dismissed after hearing both sides on merits (Annexure R-I) and the applicant did not challenge the order of this Tribunal in higher forum. The Respondents have stated that the applicant joined as SOM in open line in Rajkot Division and he was transferred to construction deptt. (S & C) and in the Construction, he was promoted on ad hoc basis as AIOW from 21.4.1962 and later on he cleared the selection as AIOW and was placed on the Panel, which was valid only for S & C deptt. In the said department, he was reverted as SOM from 9.9.66. However, he was again promoted as AIOW Grade from 21.1.1973 and was further promoted as IOW Grade II from 4.2.78. He was transferred and posted as IOW Grade III under Executive Engineer, Kota and subsequently permitted him to join Railway Electrification Project (REP) at Baroda. In his application to REP, the applicant declared that upon his transfer, he will sever his connection with construction (S & C) deptt. and consequently his name was deleted

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from the seniority list of IOWs maintained in the S & C Deptt. on and from 7.12.81. The applicant was repatriated from Railway Electrification Project and was posted S & C Deptt. from 21.2.83. He was subsequently declared surplus and therefore posted at Godhra. The applicant applied for posting at Jamnagar or Rajkot in S & C Deptt. or in the alternative request for placing him in his parent deptt. at Rajkot.

The Respondents further stated that IOW Grade III is a selection post and the applicant was called for selection for promotion to IOW Grade III in the years 1983-84, 1989-90 and 1991. The applicant appeared in the selection held in the year 1983 -84 and 1989-90 but could not clear the selection. In the year 1990-91, he did not appear in the selection. As the applicant did not clear the selection he was given promotion as IOW Grade III purely on ad hoc basis and subsequently he was reverted to his substantive post of SOM to make room to post the candidates selected by RRB against 75% quota to be filled in by direct recruitment.

The Respondents denied that the posts of SOM, IOW Grade III and Grade II are transferable and absorbable from one division to another; one project to another; and from open line to construction and vice versa as contended by the applicant only transfer of an employee is permissible in such cases in the same scale only if there is an element of direct recruitment in that category by accepting the bottom seniority. With regard to the contention of the applicant that he was empanelled at Sr.No. 12 of the Selection

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Panel in the Construction (S & C) Deptt. for the post of IOW Gr.III, the Respondents have stated that the applicant had suppressed the material fact that the selection was only provisional and valid for promotion only in the Construction Deptt. The Respondents enclosed the copy of the letter dated 27.9.1962 (Annexure R-II). The relevant portion of the remarks of the selection Board reads as follows:-

" This panel is provisional and valid for promotion in the S & C Department only and does not exempt the staff for appearing from the selection which might be held subsequently by the open line. Staff concerned shall be apprised of this."

The Respondents further stated that the applicant was transferred to S & C Deptt. earlier and subsequently he severed his connection with S & C Deptt. and was transferred to Railway Electrification Deptt. In the circumstances, it is stated that the applicant cannot claim the benefit which others got in the S & C Deptt. The applicant maintained his lien in open line, Rajkot Division in his substantive position as SOM.

With regard to the preparation of combined seniority list, the Respondents have stated that due to certain court orders, the said list could not be published immediately after the issue of instructions of the Railway Board. However, after the disposal of Court case, such a combined seniority list was published from time to time and the last seniority list was published on 1.10.1992 in the case of IOW Grade II and on 22.1.91 in the case of IOW Grade I. The said seniority list was applicable only to ^{the} staff working in the S & C Dept. As the applicant has severed his connection

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with the S & C Dept. and is not a substantive holder of the post of IOW in his parent cadre, the Respondents submitted that his name was not included in the said seniority list.

The Respondents further stated that names of certain officers referred to by the applicant were officers working in S & C Deptt. or in other divisions and therefore, the same have no relevance to the case of the applicant. The Respondents further contended that the applicant's name cannot be interpolated in the seniority list of IOW Grade III in the year 1962, as the promotion granted to him in S & C Deptt. was not valid in the open line of Rajkot Division and also of the fact that such promotion in S & C Deptt. was purely provisional. In the facts and circumstances ,the Respondents submitted that the OA is devoid of any merit.

5. We have heard Mr.Y.V.Shah counsel for the applicant and Mr.N.S.Shevde counsel for the respondents. Mr.Shah submitted that the Respondents had not prepared the combined seniority list of both S & C Deptt. and open line staff in terms of the Railway Board's directions. As the applicant is senior to several others in S & C Deptt., he is entitled to regularisation as IOW Grade III and further promotions to IOW Grade II & Gr.I . The next contention of Mr.Shah is that in terms of the judgment of the Calcutta Bench of CAT in the case of Ashoke Kumar Roy Chaudhry vs. Union of India 1997 (35) ATC 172, requirement to pass again the examination by the applicant for empanelment as IOW Grade III in open line is not required as the applicant had passed such examination in S & C Deptt. in 1962 (Annexure R-II). Mr.Shevde, submitted that

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identical issues were raised earlier by the applicant in OA/403 of 1986 before this Tribunal and after hearing both sides, the said OA was dismissed. He further submitted that during the pendency of the OA, the applicant was promoted as IOW (Grade III) on regular basis vide order dated 28.10.95 and the applicant retired from service on 30.6.96.

6. We have considered the rival contentions and examined the pleadings.

6. The applicant who holds his lien as Sub-Overseer Mistry (SOM) in Rajkot Division, had earlier filed OA 403/86 and challenged: (i) the order of reversion dated 31.10.85 reverting him from the post of IOW (Grade II) which he was holding in S & C Deptt. to the parent cadre; and (ii) order dated 26.11.1985 passed by the DRM, Rajkot posting the applicant in open line as IOW (Grade III) purely on ad hoc basis. The issues involved in the said OA are as follows:- (1) Whether the applicant was reverted arbitrarily from S & C Deptt.; and (ii) whether the applicant has a right to be promoted as IOW (Grade II) in the scale of Rs.550-750 in open line. This Tribunal after hearing both sides, rejected both the claims of the applicant ^{on} ~~and~~ on the basis of certain findings. The relevant portion of the same are as follows:-

" In the matter of promotion, the staff of open line when placed on panel in the Survey & Construction Department or they have been put to officiate in a higher grade in the Survey & Construction Dept, it has been made amply clear that it will not give them the right to be borne on the corresponding panel on the Open Line of the Region from which they have been transferred. Staff who have lincs on their permanent post on the

open line will continue to be borne on their original seniority lists on the open line and will not loose their chances of permanent promotions, increments, etc. on the open line as due to them according to their channels of promotion, but they will continue to work in the Survey & Construction Department.

It is thus quite evident that the petitioner is a substantive holder of the post of S.O. Mistry, on Rajkot Division as per the seniority list, enclosed along with the letter dated 11.8.1975, (Annexure 'E'). Now, as per the said seniority list, it is undisputed that S/Shri H.T.Dalwani, M.J.Abraham, M.R.Vyas, S.B. Nigam, and A.N.Deshmukh are senior to the petitioner, as they rank at Sr.No.7 to 11 respectively, where as the petitioner ranks at Sr.No.12. The aforesaid employees to whom the petitioner regards as juniors, on the basis of the position in the seniority list, they are placed on provisional panel of IOW Grade III, scale Rs.425-700 (R). in the open line vide Annexure 'F'. Admittedly, the petitioner has not been placed on panel of IOW Grade III, scale Rs.425-700 (R) in the "Open line". Therefore, he cannot be allowed to complain if the aforesaid employees are either retained, in Grade-III, or promoted to a higher post on the basis of their position on the panel of "Open Line".

It is true that the petitioner was granted promotion to the post of IOW Grade-III, in the scale of Rs.425-700 (RS), and further to the grade of Rs.550-750(RS) in the Survey and Construction Department, during the period when he remained transferred to the said department. However, this promotion are purely on ad hoc basis and on officiating capacity which would not confer any right on the petitioner to steal a merit over his seniors either in the open line or in Survey & Construction Department. It is not established that any one of his juniors has been retained in grade Rs.550-750(RS), while the petitioner is posted to officiate as IOW Grade III in scale Rs.425-700 (RS), in open line or in the Survey & Construction Department. The petitioner referred to Railway Board's letter dated 13.3.1972, 5.10.1972 and 14.2.1974 stating that the rules dated 16/17th May, 1956 are superseded or repealed with a view to remove disparity in the prospects for promotion. He had also made a reference to one decision of the Bombay High Court. However, none of them are placed on record. The reliance however was placed at Annexure -B , a letter of the General Manager, dated .6.2.1985, which makes a reference of the decision of placing the post of PWI and IOW up to scale of Rs.550-750 (R) under the control of the Divisions and further promotions to scale Rs.700-900 [R] and the seniority will be combined on whole Railway basis for further promotion to scale Rs.700-900 [R] with effect from 1.4.1985. This decision does not affect in any manner, the case of the petitioner as the petitioner had already severed his relations with Survey & Construction Department.

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The respondents have produced seniority list notified in the year 1972, 1975 and 1983. The name of the petitioner does not find a place therein because of this relevant position in the Division-wise seniority list where he is only a Sub Overseer Mistry, in the scale of Rs.380-560 (RS). The Respondents-Railway Administration has committed no error in posting the petitioner as IOW Grade -III as M.S.H. scale Rs.425-700 (R) purely on ad hoc basis, in light of his own request and the applications made by him".

6. We have also perused the judgment of the Calcutta Bench of this Tribunal in the case of Ashoke Kumar Roy Chaudhary referred to supra. The facts of that case shows^{Par} that the applicant had appeared in the written test in the construction wing and qualified in the same. It was also proved that the standard of selection examination and syllabus were identical with that of the open line. In the light of these facts, the Calcutta Bench of this Tribunal held that the applicant will be exempted from appearing in fresh selection test in open line. The facts in the present OA, however, ~~is~~^{Par} not identical. The letter dated 27.9.1962 (Annexure R-II) which contain the decision of Selection Board clearly shows that the promotion of the applicant to the post of IOW is provisional and valid for promotion only in S &C Deptt. and does not exempt him from appearing in the selection that may be held in open line. In the light of the above, we hold that judgment in Ashoke Kumar Roy Choudhary case would not apply to the facts in the present O.A.

7. The applicant also referred to the judgment of this Tribunal in OA/339/93 dated 27.10.94 in the case of N.C.Dayani vs. Union of India . The facts of that case show that the applicant was appointed in S & C Deptt. and continued through out in that Deptt. In our opinion the said judgment has no application to the facts in the present O.A.

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8. We have examined the various contentions raised. The main issue in this OA is that the applicant is eligible for promotion on regular basis in the Open Line in Rajkot Division to the post of IOW (Grade III) on the basis of his selection and promotion in the S & C Deptt. in 1962. The applicant has not ~~raised~~ ^{placed} any material to show that the standard of selection examination and syllabus in S & C Deptt. were identical with that of the open line. The Respondents on the other hand has shown with the order dated 27.9.1962 (Annexure R-II) which contain the decision of the Selection Board the promotion of the applicant to the post of IOW is provisional and valid only in S & C Deptt. and does not exempt the applicant from appearing in the selection that may be held in open line. The respondents have further stated that the applicant in fact was called for selection, ^{in open line} in the years 1983-84 and 1989-90 and 91. The applicant had appeared in the selection held in 1983-84 and 1989-90 but could not clear the selection. In the year 1990-91, the applicant did not appear in the selection. In the facts and circumstances, we reject the contention of the applicant that he is entitled to promotion for the post of IOW (Grade III) in the year 1962 on the basis of his selection in the S & C Deptt. in 1962. The applicant also raised certain contentions like : (i) the posts of SOM, IOW Grade III, II and I are transferrable and absorbable from one division to another division or from one project to another or from open line to construction and vice versa; (ii) the order dated 29.09.92 (Annexure A-6) reverting the applicant to the post of S.O.M. as wilful breach of Supreme Court judgments ; (iii) the applicant is entitled to promotions in the higher grade on the basis

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of the combined seniority list prepared by the S & C Deptt, ^{and} (iv) the General Manager cannot give ad hoc promotion for more than 3 months. These contentions have been considered by this Tribunal in the earlier O.A. No.403/1986 (Annexure R-I) .

In the light of the findings of this Tribunal in the said OA, we reject the other contentions of the applicant.

9. The O.A. therefore, fails and accordingly dismissed. No costs.

Ram
(P.C.Kannan)
Member (J)

V.Ramakrishnan
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(V.Ramakrishnan)
Vice Chairman

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