

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 25.9.2000

O.A. No. 244/96

Jitendra Raj Mehta son of Shri Jatan Raj Mehta, aged 52 years, resident of Jatabas, Jodhpur (Raj.), at present working as Traffic Inspector, Northern Railway, Merta Road.

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Shri S.S. Rathore, Traffic Inspector, Northern Railway, Degana, District Nagaur.
5. Shri M.R. Barde, Traffic Inspector, Northern Railway, Barmer.

... Respondents.

Mr. M.R. Singhvi, Counsel for the applicant.

Mr. Kamal Dave, Counsel for the respondents Nos. 1 to 3.

Mr. S.K. Malik, Counsel for the respondent No. 5.

None present for the respondent No. 4.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

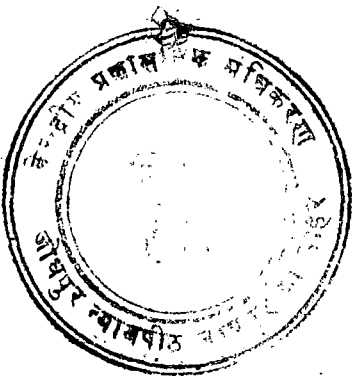
(Per Hon'ble Mr. Justice B.S. Raikote)

In this application, the applicant has prayed for effective implementation of the impugned orders dated 5.7.1995 vide Annexure A/1, dated 26.10.1995 vide Annexure A/2 and dated 15.01.1996 vide Annexure A/3 with effect from 18.8.1986, 18.8.1988 and 1.3.93 respectively. The case

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of the applicant is that earlier he was Assistant Master in the grade Rs. 425-640. With effect from 22.10.83, he was promoted to the post of Assistant Station Master in the grade of Rs. 455-700. But there is a post of Traffic Inspector with the scale of Rs. 455-700 and after the IVth Pay Commission, the said pay scale was enhanced to Rs. 550-750. Later, the pay scale of Traffic Inspector was fixed at Rs. 1400-2300 and the post of Assistant Station Master grade Rs. 1200-2040 and Guard scale Rs. 1200-2040 and Shunting Master grade Rs. 1400-2300 were made eligible for promotion to the post of Traffic Inspector grade Rs. 1400-2300 in proportion of 40%, 20% and 40% respectively, from the above categories. The further case of the applicant is that after he was promoted as Assistant Station Master, the applicant was posted on a grade equivalent to the Traffic Inspector in the grade of Rs. 1400-2300 since 18.08.84. Meanwhile, the applications were called for holding selection test for the post of Traffic Inspector for which the applicant was not called for. In those circumstances, the applicant filed an OA No. 553/89 before this Tribunal and in pursuance of the interim order of this Tribunal, the applicant was called for the necessary test for the post of Traffic Inspector and accordingly, the applicant passed the said test also. It was in those circumstances, this Tribunal vide order dated 27.05.93 passed in OA No. 553/89, observed that the applicant has been declared successful in the selection test for Traffic Inspector and therefore, he shall continue on that post with all consequential benefits. Though in pursuance of the directions of this Tribunal, the applicant was appointed as Traffic Inspector by giving seniority over and above one Shri Ramesh Choudhary. He was not given all consequential benefits, that includes his regularisation with from the year 1984 as Traffic Inspector ~~and~~ from the year 1991 and 1993, i.e. from the date his juniors have been promoted as Traffic Inspector. Therefore, the applicant submits that the reliefs as prayed for may be granted.

2. By filing reply statement, the respondents have denied the case of the applicant. In substance, they have stated that the applicant has been



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declared successful on the basis of the examination conducted for the post of Traffic Inspector for selection as per the direction issued by the Tribunal and has been promoted as Traffic Inspector by placing him over and above Shri Choudhary with effect from 29.9.91 on proforma basis and with effect from 19.10.93 on actual basis, vide Annexure A/1. They further stated ^{that} between the period 29.09.91 to 19.10.93, the applicant would not be entitled for wages or arrears on the principle of 'no work no pay'. In other words, they supported the impugned orders vide Annexures A/1, A/2 and A/3 and ultimately prayed for dismissal of this application.

3. We have heard the learned counsel for the parties.

4. Though there is some variation regarding on what date, the applicant was given promotion and on what date he should be actually promoted vide Annexures A/2 and A/3. But we note that by Annexure A/1 it is clear that the applicant was given proforma promotion between 29.09.91 to 18.10.93 and his actual promotion was with effect from 19.10.93. By the impugned letters they wanted to give actual monetary benefits only from the date he joined the duties as Traffic Inspector. His proforma promotion has been allowed with effect from 29.9.91 to 18.10.93, when the applicant's junior, Shri Ramesh Choudhary, was promoted. In these circumstances, now we have to see on what date the applicant would be entitled to promotion as Traffic Inspector either on proforma basis or on actual basis.

5. The applicant claims that on his promotion as Assistant Station Master, he worked on a post equivalent to Traffic Inspector in the grade Rs. 1400-2300 with effect from 18.08.84. The fact also remains that, actually, he was not holding the post of Traffic Inspector. In fact, it was his specific case that he should be promoted as Traffic Inspector notwithstanding the change in the promotional avenues after certain amendments to Rules. It appears that the department was contending that the applicant was not eligible for such benefits. The



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applicant was contending that he was eligible for promotion notwithstanding the change in the promotional avenues. By virtue of interim order of this Tribunal dated 12.7.89 in OA No. 553/89, the department was directed to hold the examination for the applicant for the purpose of promotion as Traffic Inspector and accordingly, examination was conducted and the applicant was declared successful in the selection test. Accordingly, this Tribunal passed an order as under:-

"9. We do not know what the respondents did in the other such case of eligible applicants but in case there were such eligible candidates and if they had applied at that time then those case will also be considered sympathetically. The result is that this O.A. succeeds and is therefore allowed. The applicant has been declared successful in the selection test for Traffic Inspector, therefore, he shall continue on that post with all consequential benefits. This disposes of the O.A. with no order as to costs."

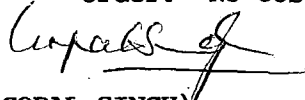
6. From the above order, it is clear that the applicant has been declared successful in the selection test for Traffic Inspector therefore, he shall continue for the post of Traffic Inspector with all consequential benefits. From this, it follows that his right of promotion as Traffic Inspector and the pay attached to the post of Traffic Inspector, he would be entitled only after qualifying the selection test and not for a period prior to that. Even if the applicant was working on the post equivalent to Traffic Inspector prior to selection test on some departmental arrangements, the applicant would not be entitled to the benefits from that date. He becomes entitled as Traffic Inspector only after he was declared successful in the selection. Therefore, his seniority, pay scale etc. required to be fixed only for the period subsequent to passing of the examination over and above his juniors. In obedience to the directions of this Tribunal in OA No. 553/89 dated 27.5.93, as extracted above, the department considered the case of the applicant for according promotion to him over and above Shri Ramesh Choudhary, his junior. His junior, Shri Ramesh Choudhary, filed an R.P. No. 36/93 in O.A. No. 553/89 and that R.P. came to be dismissed on 4.1.94 confirming the earlier order passed by this Tribunal dated 27.5.93 in O.A. No. 553/89. Therefore, keeping all these factors in view, the department



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the date
accorded promotion to the applicant with effect from/his junior, Ramesh Choudhary, was promoted. The impugned order at Annexure A/1 states that Shri Ramesh Choudhary was promoted on 29.09.91 as Traffic Inspector, therefore, the applicant was entitled to promotion with effect from that date. But the department, in view of the circular No. 2709, gave him only proforma promotion with effect from 29/09/91 to 18.10.93 and actual promotion with salary with effect from 19.10.93 in the pay scale of Rs. 1600-2660. The learned counsel for the applicant vehemently contended that in view of the judgement/order of this Tribunal in OA No. 553/89, the applicant was entitled to actual promotion with effect from 29.9.91, i.e. on the date his junior, Shri Ramesh Chandra was promoted, and giving the applicant proforma promotion was illegal. There is substance in this argument. As we have already stated above, this Tribunal while disposing of the O.A. No. 553/89, observed that the applicant was entitled to all consequential benefits as Traffic Inspector on the basis that he has been declared successful in the selection test for Traffic Inspector. From this, it follows that "all the consequential benefits" includes the actual promotion flowing from his being declared successful in the examination for Traffic Inspector. If that is so, the applicant would be entitled to actual promotion with effect from 29.09.91 with all the arrears of salary. The applicant is entitled to only so much relief what has been granted by the Tribunal in OA No. 553/89 and nothing more and nothing less. Therefore, any further events or happenings after he assumed the duty as Traffic Inspector over and above his junior by way of promotion on the basis of departmental examination, such subsequent events would not be covered in the phrase of "consequential benefits". In view of these circumstances, we pass the order as under:-

"O.A. is partly allowed and the respondents are directed to accord actual promotion with effect from 29.09.91 with all consequential benefits, like arrears of salary etc. To this extent, the impugned orders at Annexure A/1 dated 5.7.95 and Annexure A/2 dated 26.10.95 stand modified accordingly. This order shall be implemented within a period of three months from the date of receipt of a copy of this order. No costs."


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

Recd. copy for Mr. M. Singh.

Jan 27/9.

Rec



S.K. Malik
D.D.

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