

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 24.5.2002

OA 166/2001

Amar Singh Meena, Commercial Inspector Marketing O/o DRM, N/Rly, Jodhpur.

... Applicant

Versus

1. Union of India through General Manager, N/Rly, Baroda House, New Delhi.
2. Divisional Rly Manager, N/Rly, Jodhpur.
3. Chief Commercial Manager/Freight (Mktg), N/Rly, Baroda House, New Delhi.
4. Chief Personnel Officer, N/Rly, Baroda House, New Delhi.

... Respondents

CORAM:

HON'BLE MR. JUSTICE O.P. GARG, VICE CHAIRMAN

HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

For the Applicant

... Mr. S.K. Malik

For the Respondents

... Mr. Salil Trivedi

O R D E R

PER HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

The applicant was recruited as Commercial Apprentice in the year 1989. After completion of the prescribed training of two years he was posted as Head Goods Clerk at Bhagat ki Kothi, Jodhpur Division, in grade Rs.1400-2300. He joined there on 30.6.89. It is an admitted fact that from the very beginning his services have been utilised as CMI(G) and as RDI. He has filed this OA with a prayer that the respondents be directed to regularise him on the post of RDI w.e.f. 23.12.92, with all consequential benefits.

2. We have heard the learned counsel for the parties and also perused the averments in the OA and reply filed by the respondents. The applicant has also filed a rejoinder to the reply.

3. The respondents are denying regularisation of the applicant on the post of RDI on the ground that the post of RDI is a selection post and is required to be filled up in the following manner :

- a) by a positive act of selection from Research & Development Assistants grade Rs.975-1540 - 50%
- b) Through a positive act of selection from Commercial Clerks, Claim Tracers and Enquiry & Reservation Clerks of grade

Rs.1200-2040/4500-7000 with two years service and grade  
Rs.1400-2300/5000-8000 - 50%

This procedure has been stated to have come into force w.e.f. 13.5.93. The respondents have further stated that two selections were held for filling up the post of CMI (Mktg) RDI grade Rs.1400-2300/5000-8000 in the year 1994-95 and 1998-99. The applicant applied only in the year 1998-99 but he did not appear in the written test although he was called for the same. Plea of the respondents is that since the applicant, on his own volition, opted not to appear in the said selection, he could have no claim to be regularised on the post of RDI while he belongs to the cadre of Goods Clerk and is being paid the salary of Head Goods Clerk.

4. The main ground on which the learned counsel for the applicant built his case is that the applicant has all along been utilised as RDI right from the year 1992. After having worked all these years on that post, the respondents cannot deny him regularisation on the same post. This is more so, the learned counsel submitted, when the Commercial Apprentices are directly being posted as RDIs. The applicant is also a Commercial Apprentice and his regularisation cannot be denied. The learned counsel also drew our attention to the order dated 1.6.95 (Ann.A/28), which is an order of transfer and includes the name of the applicant at S.No.15. The applicant has been shown to have been posted in Bhagat ki Kothi as RDI. He further referred to the letter dated 26/29.5.89, which is a posting order of the Commercial Apprentices after the recruitment and training, which also includes the name of the applicant. The divisions and the cadre allotted to various individuals have been shown in this list. While the applicant, Amar Singh Meena, has been shown as CGC, Delhi Division, persons at S.No.6,9,10,16 & 17 have been posted as RDIs. Contention of the learned counsel was that while some of the batchmates of the applicant have been directly posted as RDIs, the department cannot insist on the applicant to appear in a selection of the same post which has been given to his batchmates from the very beginning.

5. The learned counsel for the respondents, while reiterating the stand taken by the respondents in their reply, highlighted only on this point that the applicant had in fact applied for appearing in the selection in the year 1998 but for his own reasons he did not participate in that selection. After having missed the opportunity, the learned counsel stated that the applicant has no right to claim absorption in the cadre of RDI which is essentially a selection post as per prescribed avenue of promotion. The learned counsel did concede that after having been posted

in the cadre of Goods Clerk, the applicant's services have been continuously utilised as RDI right from the year 1992.

6. We have carefully examined the facts of the case. The records make it amply clear that by virtue of the order dated 26/29.5.89 (Ann.A/4) some of the batchmates of the applicant were directly posted as RDIs. This takes away whatever weight the arguments advanced by the learned counsel for the respondents presumed to have that the post of RDI is necessarily filled up only by process of selection from amongst R&D Assistants or Commercial Clerks and Claim Tracers etc. It is admitted position that right from 23.12.92 the applicant is only working as RDI. The order issued by the DPO Jodhpur dated 1.6.95 (Ann.A/28) also indicates the applicant as having been posted in Bhagat ki Kothi to work as RDI. If the department consciously decided to use the applicant only as RDI all these years and also issued formal posting orders directing him to work as RDI, it does not lie in their mouth to say that he is not entitled to be regularised on that post. As a matter of fact in view of the action of the respondents themselves of posting some of the batchmates of the applicant as RDI from the very beginning, he could have as well been posted as RDI from day one of his joining service. But he is only claiming this benefit w.e.f. 23.12.92, from which date his services have actually been utilised as RDI. The learned counsel for the respondents at one stage said that though the applicant was being utilised as RDI but it was a local arrangement and did not carry approval of the competent authority. We do not find any force in this argument as it is not for the employee to know whether his particular posting has been done without seeking approval of the competent authority. If the respondents think that the order has been issued by a local authority beyond his jurisdiction, they are free to take action against the officers who violated the norms and instructions. It is apparent from the facts on record that no adverse view has been taken against the DCM or Sr.DCM, who decided to utilise the applicant as RDI.

7. Under the circumstances, as discussed in the preceding paragraphs, we find considerable merit in the case of the applicant and his prayer is liable to be accepted.

8. We, therefore, allow this OA and direct the respondents to consider regularisation of the applicant on the post of RDI w.e.f. 23.12.92, having regards to the view we have taken in the preceding paragraphs. The respondents shall issue orders to that effect within a period of two months from the date of receipt of a certified copy of this order. The applicant shall be entitled to all consequential benefits arising out of this order including his seniority and further advancement. Under the circumstances, the parties are left to bear their own costs.

(A.P.Nagrath)  
Adm. Member

(Justice O.P.Garg)  
Vice Chairman

Rec  
[Signature]  
10/15/50

Q. [Signature]  
[Signature]  
[Signature]

Part II and III destroyed  
in my presence on 12-3-52  
under the supervision of  
section officer ( ) as per  
order dated 11-18-52

Section officer (Record)

[Signature]

ACCORD  
10-3-52