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THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

O.A. No.
T.A. No.

62/2003

200

DATE OF DECISION _____

Suresh Sharma and another.

Petitioner

Mr. Vijay Mehta

Advocate for the Petitioner(s)

Versus

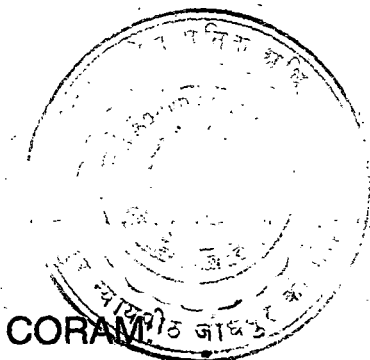
UOI and 3 others.

Respondent

Mr. Kamal Dave for Respondents 1 & 2

Advocate for the Respondents(s)


Mr. S.K. Malik for respondents 3 & 4



CORAM

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. S.K. Malhotra, Administrative Member.


(S.K. Malhotra)
Administrative Member.

(G.L.Gupta)
Vice Chairman.

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

1/9

CENTRAL ADMINISTRATIVE TRIBUNAL.

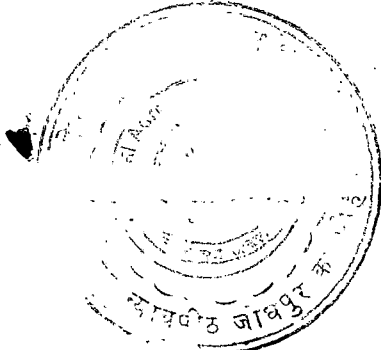
JODHPUR BENCH: JODHPUR.

O.A. No. 62/2003.

Date of decision

21.9.03

1. Suresh Sharma, S/o Shri Manohar Lal, aged 38 years, Traffic Inspector, North Western Railway, Meerta Road, r/o Quarter No. T.16, Merta Ropad, District Nagaur.
2. Satish Parmar, S/o Shri Ghendi Ram, aged 47 years Traffic Inspector, North Western Railway, Jodhpur, r/o B.261, Saraswati Nagar Jodhpur.



: Applicants.

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. Divisional Personnel Officer, North Western Railway, Jodhpur.
3. Mukesh Shrivastava, S/o Shri J.B. Lal Shrivastva, r/o A.1 Railway Colony, Barmer, Rajasthan, presently working on the post of Traffic Inspector, Barmer.
4. Gopal Lal Meena, S/o Shri Dhanna Lal, r/o Qr. No. T.5.E, Traffic Colony, Merta Road, Rajasthan presently working on the post of Traffic Inspector, Merta, Road.

Respondents.

Mr. Vijay Metha	: Counsel for the applicants.
Mr. Kamal Dave	: Counsel for respondents 1 & 2
Mr. S.K. Malik	: Counsel for the respondents 3 & 4.

CORAM:

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. S.K. Malhotra, Administrative Member.

O R D E R

Per Mr. Justice G.L.Gupta:

The orders Annex. A.1 dated 29.01.2003 and A.2 dated 03.03.2003, are under challenge in this O.A. By the Order Annex. A.2 the applicants were reverted from the grade of Rs.5500-9000 to the grade of Rs.5000-8000. Under the order Annex. A.1 dated 29.01.2003 the applicants were not called to appear in the written test for the grade of Rs.6500-10500.

2. The applicants, while they were working as Goods Guard, were selected and promoted to the post of Traffic Inspector in the grade of Rs.5000-8000 vide order dated 08.05.98. Both of them passed the TP 7 course in the first attempt in September 1998. Thereafter, they were promoted to the post of Traffic Inspector in the grade of Rs.5500-9000 vide order dated 03.11.2000. After their promotion, private respondents Shri Mukesh Srivastava and Shri Gopal Lal Meena were promoted as Traffic Inspector in the grade Rs.5500-9000 vide orders dated 29.10.2001. They passed the TP 7 course in the year 1999 and 2000.

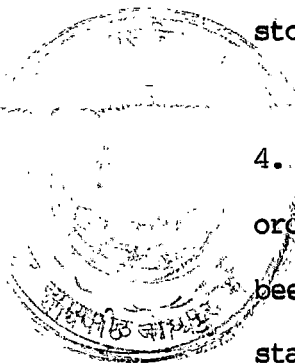
2.1. The say of the applicants is that they are senior to Shri Mukesh Srivastava and Shri Gopal Lal Meena in the grade of Rs.5500-9000 and therefore, they ought to have been called for the written test in preference to the private respondents. Instead, it is alleged, the applicants have been reverted to the grade of Rs.5000-8000 vide order Annex.A.2.

3. In the counter filed by the official respondents, it is stated that the post of Traffic Inspector in the grade of Rs.5500-9000 is required to be filled by applying the cycle of roster from the eligible categories i.e. 30% Traffic Inspectors (TI); 10% Wagon Movement Inspector (WMI); 20% Station Master (SM); 15% Section Controller (SCNL) 15% Traffic Apprentices (TA) direct recruit; 10 Departmental Graduate Traffic Apprentices direct




recruits (direct recruits). It is stated that the applicants were promoted vide order dated 03.11.2000 in the grade of Rs.5500-9000 on temporary basis on account of non-availability of candidates as per the roster cycle whereas the private respondents have been given promotion in the grade of Rs.5500-9000 against the posts reserved for the category of SCNL and WMI under the 20% quota. It is averred that the date of passing of TP 7 course is not relevant while operating the 20 point roster. It is the further case for the respondents that eligible qualified candidates from open market have been made available as TI in the grade of Rs.5500-9000 against the roster cycle of TAs and hence the applicants have been asked to go back to their substantive grade of Rs.5000-8000.

3.1 In the supplementary reply, the official respondents have stated that three direct recruits namely Shri Swapan Sinha Roy, Shiva Kant Pradeep and Vidhyanand Bhagat have joined as TI in March 2003 and the applicants stood automatically reverted in view of the order Annex. A.2.



4. In the rejoinder, the applicants have stated that the promotion order Annex.A.5 did not mention that the posts on which the applicants had been promoted were reserved for other categories. Not only that, it is stated, the order directed the applicants to give their option for fixation of the pay in terms of circular No. 9832 which is done only where the promotion to the higher post is given on regular basis. It has been stated that the respondents have not filed notings to show that the applicants had been given promotion against the quota of other stream. It has also been stated that the respondents have not given the details of appointment in the grade of Rs.5500-9000 year wise from the year 1990 and the details furnished in the reply are incorrect, in as much as three persons appointed in January 1994 were appointed against roster point No. 1 and the two traffic apprentices were appointed in 2002 whereas as per the roster points these posts ought to have been filled up long back.



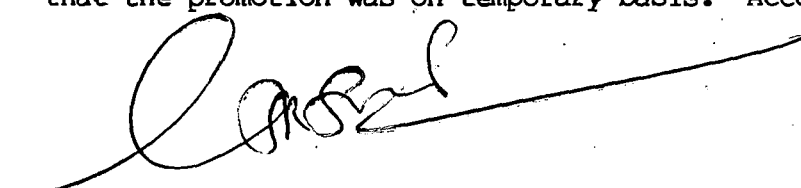
5. In the additional affidavit filed on behalf of the official respondents, it is stated that the applicants did not raise grievance when they were not called in the selection test held in August 2001 which shows that they were aware of the fact that they had not been given regular promotion. It is also stated that the applicants had been erroneously asked to exercise their option for fixation of pay that was not admissible as per rules.

6. In reply to the additional affidavit, the applicants have filed additional affidavit wherein they have stated that the respondents had not notified the selection of 2001 and in any case the applicants had not become eligible for promotion in August 2001 as they had not completed two years service on the promotional post. Some more mistakes have been pointed out in the list of candidates mentioned at para 4.4. of the reply.

7. We have heard the learned counsel for the parties and perused the documents placed on record. We have also gone through the written submissions filed by the learned counsel for the parties.

8. The main contention of the learned counsel for the applicants was that in the order Annex. A-5, it was nowhere stated that the applicants' promotion was made as a stop gap arrangement, rather applicants were asked to exercise their option for fixation of pay in terms of circular No. 9832, which is a proof of their regular promotion. His further contention was that the 20 point roster was not followed in the earlier years and, therefore, the promotion of the applicants in November 2000 should be treated as regular even if there were no vacancies available in the quota meant for them.

9. On the other hand, Mr. Dave, learned counsel for the official respondents, contended that in the order Annex A.5 it was clearly stated that the promotion was on temporary basis. According to him, a mistake was



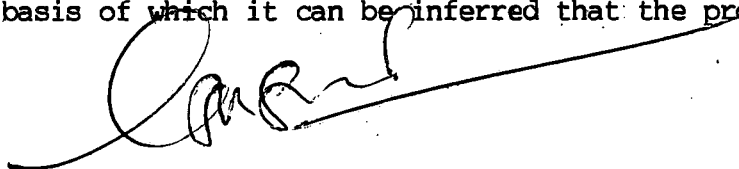
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committed in the order by directing the applicants to exercise their option in terms of Circular No. 9832. He urged that on the basis of mistake committed by the office, the applicants' promotion cannot be said to be on regular basis as there was no vacancy available in the stream in which they were working. Mr. Dave, pointing out that the mistake was detected only after the applicants filed the instant OA, submitted that his clients did not think it proper to modify the order Annex. A.5 during the pendency of the matter before this Court. His further contention was that even on assuming that some mistakes were committed while giving promotion to the grade of Rs.5500-9000 in the earlier years, the applicants cannot claim promotion as of right as the mistake cannot be allowed to perpetuate.

10. Mr. Malik, learned counsel for the private respondents adopted the arguments canvassed by Mr. Dave.

11. We have given the matter our thoughtful consideration and have also gone through the office file which contains the notings for giving promotion to the applicants vide Order Annex. A-5. It is seen from the notings that the applicants were given promotion only on temporary basis. It was reported by the office that only two employees i.e. Mr. Suresh Sharma and Mr. Satish Parmar (the applicants herein) were working in the grade of Rs.5000-8000 and they had completed two years. It was further reported that five posts were required to be filled up in the grade of Rs.5500-9000 from amongst WMI, SCNL, TAs. It was also reported that there was no candidate available in the stream of WMI, and in the stream of Traffic Apprentices candidates would be available in November 2001. Seeing the facts, the competent authority ordered the promotion of the applicants temporarily. In the order Annex. A-5, it was clearly stated that the promotion was being given on temporary basis.

11.1 The applicants have not been able to produce any document on the basis of which it can be inferred that the promotion of the applicants was



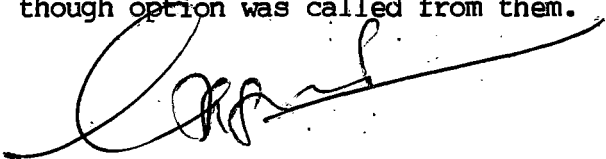
on regular basis.

12. In the order Annex. A.5, it was stated that the applicants could exercise their option in terms of the circular No. 9832. Circular No. 9832 is dated 15.03.89, wherein it was stated that the pay of an employee on promotion to the next higher grade would be fixed under Rule 2018 (B)-R.II (FR 22 -C).

12.1 FR 22-C, which is the corresponding provision of the Railway Establishment Code, says that on promotion to the higher post, which carries duties and responsibilities of greater importance as it stood prior to the amendment of FR 22, the pay shall be fixed in the manner stated therein.

12.2 The respondents' case is that when the applicants were given promotion on temporary basis no option could have been called from them. We are not required to decide this point as to whether, on promotion, on temporary basis, the applicants were entitled to the benefit of FR 22 (C). Even on assuming that mistake was committed by the respondents in calling the option from the applicants while giving them promotion vide Annex. A.5, a right did not accrue to the applicants to continue on the promoted post. The act of calling the option for fixation of pay vide order Annex. A.5 did not make the promotion of the applicants regular, since it was clearly stated in the order that the promotion was being made on temporary basis.

13. The applicants have not been able to produce any material on which it can be inferred that it was the turn of the stream to which the applicants belong, for filling up the post in question as per 20 point roster. According to the roster, it was the turn of personnel working in other streams. Therefore, the promotion of the applicants vide Annex. A.5 cannot be held to be regular promotion in the grade of Rs.5500-9000 even though option was called from them.




14. As to the contention that the 20 point roster was not followed properly, it may be stated that if any mistake was committed in the past, the Court cannot direct the authorities to repeat the mistake. It appears that the respondents have now realized that the mistakes were committed in filling up the posts on the basis of 20 point roster. Now corrective steps have been taken. There cannot be any justification on the part of this Court to direct the respondents to treat the applicants as regularly promoted persons in the grade of Rs.5500-9000.


15. The learned counsel for the applicants could not point out any rule envisaging that the passing of TP 7 test is the criteria for promotion to the higher post and that the incumbent clearing the test earlier, is entitled to promotion before the incumbent who clear the test afterwards. Therefore, on the ground that the applicants had cleared the TP test earlier it cannot be held that the applicants were given promotion on regular basis vide order Annex. A.5

16. Having considered the entire material on record, we find that the order Annex. A.2 whereby the applicants have been reverted does not suffer from any illegality. The O.A is therefore dismissed being devoid of merit.

16.1 It is, however, ordered that no recovery shall be made from the applicants on the ground of alleged wrong fixation of their pay, because, they were not at fault when the order Annex. A.5 was issued and options were called from them.

17. No order as to costs.


(S.K. Malhotra)
Administrative Member.


(G.L. Gupta)
Vice Chairman.

jsv.

R Coy
Week
R Copy 11/15/07
on 10/9/2007
Jain
CHANDRAM
Adv.

Realty
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Part II and III destroyed
in my presence on 24-7-09
under the supervision of
section officer () as per
order dated 13/2/09

Section officer (Record)