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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR**

Original Application No. 262/2002

Date of Decision: 23/09/2004

The Hon' ble Mr. J K Kaushik, Judicial Member.

The Hon'ble Mr. M K Misra, Administrative Member.

Vishnu Kumar Soni. S/o Late Shri Roop Narayan Verma aged 25 years resident of 35-B, Zonal Training Centre, Sukhadia Circle, Udaipur, presently working as TCM III, New Railway City Station, Railway Telephone Exchange, Udaipur.

: Applicant.

Rep. By Mr. Swanand Jasmatiya: Counsel for the applicant.

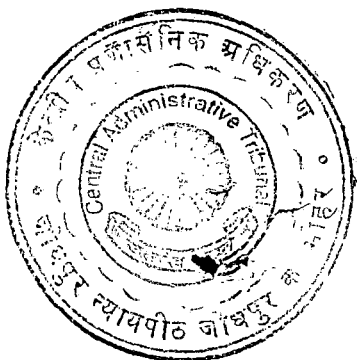
Versus

1. The Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. The Divisional Manager (E) Railway, Ajmer.
3. Senior D.S.T.E, Divisional Railway Manager's Office, Ajmer
4. Shri Devendra Singh Chauhan (TCM -II)
C/o Sr. D.S. T.E, Ajmer, W-5 Section, Divisional Railway Manager's Office Behind Roadways, Bus Stand, Ajmer.

: Respondents.

Rep by Mr. Manoj Bhandari : Counsel for respondents 1 to 3

Mr. S.K. Malik, : Counsel for respondent No. 4



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ORDER

Mr. J K Kaushik, Judicial Member.:

Shri Vishnu Kumar Soni, has inter alia assailed the seniority list dated 25.03.2001 at Annex. A-1 and has sought for placement above respondent No. 4 in the same and in addition to making payment at the rate of Rs. 3050/- per month instead of Rs. 2850/- per month and also for consideration for promotion to T.C. M Gr. II at par with respondent No. 4.

2. The Original Application was listed for admission with the consent of the parties and the same was taken up for final disposal since the pleadings are otherwise complete. We have accordingly heard the learned counsel for the parties and have very carefully considered the records of this case.

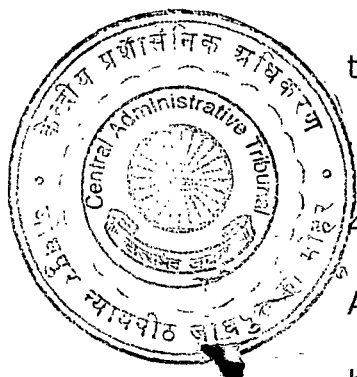


3. The material facts necessary for resolving the controversy involved in the instant case, as culled out from the pleadings of the parties are that the applicant came to be appointed on compassionate ground on 21.08.97 to the post of TCM Gr.III. He was sent for training vide letter dated 04.04.2000 on stipend of Rs. 2850/- per month. He completed the requisite training on 10.09.2000. The training was for a period of three years, but the applicant did not pass the same in the first attempt and cleared the training in the extended period of one month and in this view of the matter he completed the training in a period of three years and one month. The terms and conditions were

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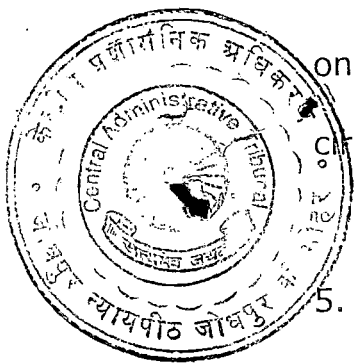
acceptable to him including the grant of stipend of Rs. 2850/-. Subsequently he has been allowed fixation of pay in the scale of pay of Rs. 3050-4590 as per the rules in force i.e. ignoring the period during which one has failed in the training. A seniority list came to be issued on 25.03.2001, in respect of various categories including TCM Gr.III and the name of the applicant has been shown at Sl. No. 34 and his date of appointment has been shown as 07.08.2000. The applicant has also got served a notice of demand for justice on the official respondents on 15.07.2002, which remains unreplied. The private respondent Shri Devendra Singh Chauhan was appointed on 28.12.97 and he completed his training in the first attempt on 23.12.98 and his name has been placed at Sl. No. 26 of the impugned seniority list. The private respondent has been further promoted to the post of TCM Gr.II after passing the trade test.



4. As far as the variances in the pleadings are concerned, Annex. A/7, dated 07.02.2000, came to be issued, vide which, it has been clarified that the training period is only one year to the posts of ESM/TSM/WTM and not three years as per para 149 and 151 of IREM Vol. I. The correct stipend of Rs. 3050 was required to be paid and a direction was given to the respondents to consider regular appointment as per the extant procedure and rules issued by the General Manager. It has been pointed out by the respondents that the aforesaid rule has no application to the case of the applicant and it is the Railway Board's circular dated 04.02.86 Annex R/2, which is to be applied in the case of

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appointment on compassionate grounds. The Official respondents have taken a specific objection of limitation and have averred that the OA is hit by law of limitation as envisaged under Sec. 21 of the Administrative Tribunals Act, 1985, and cannot be entertained as such. It is also averred that since the applicant has been given appointment on compassionate grounds, the training period of three years for him was necessary as per the policy laid down by the Railway Board and on completion of three years training and passing the same the applicant was given appointment. As far as the private respondent is concerned, it is averred that the said respondent has passed the examination in the first attempt and therefore he would be senior to the applicant since the latter has not passed the examination in first attempt. A short rejoinder has been filed controverting the ground of defence as set out in the reply and an order dated 26.03.2003 has been placed on record wherein one ESM Gr. III has been assigned seniority in the same circumstances.



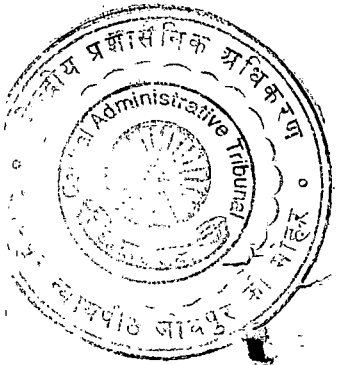
5. The learned counsel for the parties, have reiterated their respective pleadings as noticed above. As regards the factual aspect of the matter is concerned, there is absolutely no dispute. Before examining the merits of this case, we have cross the hurdle of limitation, which has been strenuously put forth on behalf of the respondents before us. The impugned seniority list admittedly came to be issued on 25.03.2001 and objections were invited within one month of its publication. The applicant

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did not submit any representation in time and even if the notice for demand of justice dated 15.07.2002 at annex. A/5 is taken as a representation still that was belated as per Sec. 21 of the Administrative Tribunals Act, 1985 this application ought to have been filed on 25.03.2002, but this OA has been filed only on 09.09.2002, i.e. after a delay of 5 ½ months and therefore the OA has certainly not been filed within the period of limitation. Unfortunately, no application for condonation of delay has been filed and it is the consistent stand of the respondents that the OA is barred by limitation.

6. The law position on this point is fairly settled by the Hon'ble Supreme Court in the case of **Ramesh Chand Sharma etc. vs. Udham Singh Kamal and others** [2000 (1) ATJ 178] wherein their Lordships were dealing with the case of promotion. In that case the Original Application was entertained on merits by the Tribunal despite the fact that there was no application for condonation of delay. Their Lordships of the Supreme Court set aside the order of the Tribunal holding that until and unless there is an application for condonation of delay and the delay is condoned, the Tribunal would not examine the case on merits. Applying the statement of law laid down by the Hon'ble Supreme Court in the case of **Ramesh Chand Sharma** (supra) to the instant case, we are left with no option except to reject this Original Application on the ground of limitation, since the same is barred by limitation. One of the claims of the applicant is also regarding the consideration of promotion to the post of TCM Gr.



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II at par with private respondent i.e. with effect from 16.03.2001. This claim is also hit by law of limitation.

7. However, there seems to be some paramount confusion on the part of the official respondents regarding the applicability of the rules to the post of TCM and the learned counsel for the official respondents has endeavored to persuade us with such an interpretation that it surpasses out. He has contented that Rule 151 of the IREM Vol. I has no application to the instant case since the appointment of the applicant was on compassionate grounds and not as a direct recruit. He has submitted that it is the Railway Board Circular dated 04.02.86 Annex. R/2, which is applicable to the instant case and not para 151 of the IREM Vol. I which applies to Direct Recruits and promotees in the ratio of 50: 50. We would like to clear the misapprehension prevailing in the minds of the respondents.



8. At the very out set, we have absolutely no hesitation in straight-away rejecting the contention of the learned counsel for the respondents that persons who is appointed on compassionate grounds will have to undergo a different period of training than the one who is appointed as direct recruit. This we are asserting on the basis of clear understanding of the very scheme of appointment on compassionate grounds read with the relevant Recruitment Rules. The appointment on compassionate grounds is given against 5% vacancies of the direct recruitment meant for the particular year of recruitment. Therefore, it is

very difficult to comprehend as to how the compassionate ground appointment can be classified as a separate class; rather the same has to be treated as direct recruitment. The Recruitment Rules also do not prescribe for any such separate class, the relevant portion of 151 of IREM Vol. I is extracted as under:

v. TELECOMMUNICATION MAINTAINER GRADE III; and WIRELESS MAINTAINER GRADE III; AND TELECOMMUNICATION MAINTAINER (LINE)

151 (1) The vacancies in these categories in scale Rs. 950-1500 will be filled as under:-

- (i) 50% by direct recruitment; and
- (ii) 50% by promotion of Departmental staff.

(2) Qualification etc, for direct recruitment are as under:

- (i) Educational: Matriculation, and (a) I.T.I Certificate in Electrical/Radio/Wireless/Telecommunication/tv trade and one year's experience as casual TCM/WM in the S7T Department or (b) must be casual TCM/WM for three years in S&T Department; or (c) a pass in plus two stage in Higher Secondary i.e. with Maths and Physics or equivalent.
- (ii) Age; Between 18 and 25 years.
- (iii) Training: One year as per schedule laid down in Board's letter No. E(NG) II/80/RR-I/39 dated 31-01.1981
- (iv) Stipend: Rs. 950.



9. On the other hand the circular dated 04.02.86 relates to the category of skilled Artisan for whom separate rule as per para 159 of the IREM has been framed, wherein the period of training is provided vide its sub para which reads as under:

Xxx	xxx	xxx
Xxx	xxx	xxx

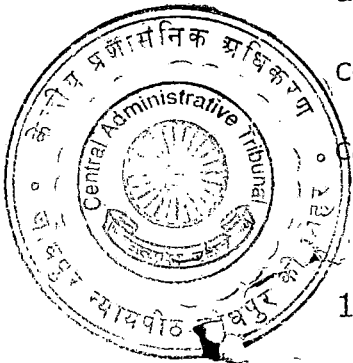
- (3) The period of training for direct recruits will vary depending on the qualifications of recruits. The same will be as under:-

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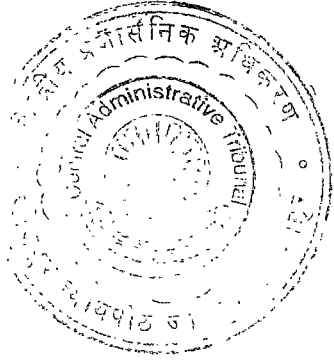
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- (i) Course completed Act Apprentices trained in Railway Establishments -- NIL
- (ii) Course completed Act Apprentices training in non-Railway Establishments-- 6 months.
- (iii) ITI passed candidates -- 6 months.
- (iv) Matriculates -- 3years.

A mere perusal of the aforesaid provision should clear the misconception of the respondents. As a matter of fact, the General Manager, vide his letter dated 07.02.2000, has specifically directed the Divisional authorities for treating the training period of ESM/TCM/WTM as one year instead of three years. But unfortunately, under the heading it is shown as ESM Gr.III, which coincides with the subsequent action of the official respondents, vide letter dated 26.03.2003 at Annex. A/2, in as much as in the similar circumstances, due seniority has been allowed to an individual relating to ESM category, but no such course of action has been found expedient in the case of TCM category.

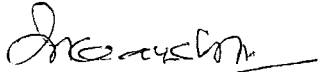


10. No doubt, we have come to the positive conclusion that this O.A is not maintainable and hit by law of limitation, it is very unfortunate, that despite that the applicant has been made a victim by applying a wrong rule, we are not in a position to grant any relief due to the technical objection of limitation even though he has a meritorious case. We can only observe that this order would not come in the way of the official respondents, in case they intend to take corrective action and grant any relief to the applicant.



11. In the premise, we are left with no option but to dismiss this O.A as hit by law of limitation; being barred by time; we do so accordingly. However, in the facts and circumstances of this case, we direct the parties to bear their own costs.


(M K Misra)
Administrative Member


(J K Kaushik)
Judicial Member.

Jsv.

R/C
on 27/9/04
6AM

(DAYARAM)
Recd copy Adv
me
24.09.04

Recd copy
Sumit 27/2/13
28-09-04
for Sumit Adv

Part II and III destroyed
in my presence on 30/10/2013
under the supervision of
section officer (I) as per
order dated 18/10/2013

P.R. Sharma
Section officer (Record) 30.10.2013