

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.336/2010 with MA No.185/2010

Jodhpur this the 7th day of July, 2014

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Rishi Kant Sharma s/o Shri Jai Prakash Sharma, aged about 32 years,
resident of Qtr. No.3138 D S Colony, Jodhpur, at present employed on
the post of Junior Engineer (PLG) in DRM Office Jodhpur, NWR.

.....Applicant

By Advocate: Shri J.K.Mishra

Versus

1. Union of India through General Manager, North-Western Railway Hqrs, Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur
4. Shri Sher Mohd s/o Shri Jumradi Khan, JE (P Way), Sleeper Factory, Degana, NWR, Distt. Nagaur.
5. Shri Gheesu Lal s/o Shri Ruga Ram, JE (P Way), O/o SSE (P Way), North Western Railway, Barmer,.
6. Shri Parminder Singh Kachhawaha, Je (P Way), Marwar Mathaniya, North Western Railway
7. Shri Jabar Singh, JE (P Way) Through SSE (P Way), Jaisalmer, North Western Railway.
8. Shri Bhanwar Lal s/o Shri Ram Jeewan, JE (P Way) Baitu Through SSE (P Way), Balotra, North Western Railway.
9. Shri Jagdish Narayan Mehra, JE (P Way), MTS Through ADEN Track, Jodhpur North Western Railway.

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10. Shri Bharat Singh JE (P Way), Balotra, Through SSE (P Way) Balotra, North Western Railway.
11. Shri Ratan Singh JE (P Way), Luni, through SSE (P Way) Luni, North Western Railway.
12. Shri Bhika Ram JE (P Way), Phalodi Through SSE (P Way) Phalodi, North Western Railway.
13. Shri Hamendra Kumar, JE (P Way) Planning Engineering Branch, DRM Office, Jodhpur, North Western Railway.
14. Bhanwar Lal s/o Sh Bhagga Ram JE (P Way), Dhanera Through SSE (P Way), Dhanera, North Western Railway.
15. Shri Ramesh Chand JE (P Way), Construction, Jodhpur through Dy CE (C), Jodhpur, North Western Railway.
16. Shri Rawat Khan (P Way), Degana, Through SSE (P Way), Degana, North Western Railway.

.....Respondents

By Advocate : Shri Salil Trivedi for resp. Nos. 1 to 3

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

Heard on Misc. Application No.185/2010 for condonation of delay in filing the present OA. After considering the averments made in the MA, in the interest of justice, the same is allowed.

2. The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) That the official respondents may be directed to treat the applicant as senior in every respect to the private respondents along with 10 other promotees and assign the due seniority to applicant as per rules in force. They may be further directed to modify the impugned order dated 11.6.2008

(Annexure A/1) and also any other seniority list, if issued, after merger of the two grades of JE-I and JE-II under 6th CPC, accordingly and the applicant allowed all consequential benefits.

- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded

2. Short facts of the case, as stated by the applicant, are that pursuant to notification No.2/03 for recruiting Junior Engineer Grade-II (P Way), the applicant was selected and he was issued an offer as a Apprentice JE-II vide letter dated 11/12.08.2005 (Ann.A/3). He immediately submitted his acceptance for the same and joined his duties on 13.08.2005. The candidates belonging to his batch were sent for requisite first phase JE Apprentice Training during 11.4.2005 to 28.08.2005 and second phase training from 14.11.2005 to 30.01.2006. The applicant belonged to Jodhpur Division and he was not given offer in time and he could join only on 13.8.2005 and he was deputed for JE Apprentice Training for first phase from 3.4.2006 to 18.8.2006. His second phase training was held from 3.11.2007 and he passed the same. The applicant has further stated that had he been given offer of appointment along with his batch mates, in normal course, he would have passed the requisite training by 30.01.2006 and posted against the working post by April, 2006 after field training. In similar circumstances, five persons who were deputed for training late for the post of JE (Works) have been considered to have completed the training after one year of their joining despite the fact

that they completed the actual training in July 2006 by the Western Railway vide letter dated 21.7.2006 and they were imparted training in first phase during the period from 26.7.2005 to 26.10.2005. Their joining date fell in the year 2004. In this way, the applicant would be entitled for his seniority w.e.f. 12.8.2006 at least by treating that date as date of joining. It has been further stated that respondent No.3 issued a seniority list vide letter dated 11.06.2008 in respect of various cadres of Railway Supervisor (P Way) of Jodhpur Division of NWR.

• The name of the applicant has been shown at Sl.No.11 of the seniority list of JE-II (P Way). Further, the applicant has submitted various representations requesting the Divisional and Zonal authorities for assignment of due seniority and further benefits. He, inter alia submitted that he was from 2004 batch and persons selected in 2006 could not be treated as senior to him and that his date of completion of training should be one year from the date of joining i.e. 13.8.2006, in case it is not treated as 10.4.2006, the date of completion of training of candidates from his batch deputed for training in an earlier batch. According to the applicant, he is deemed to have completed the training on completion of one year from the date of joining in service. He joined on 13.08.2005 and completed one year on 12.8.2006. Therefore, he is entitled to get seniority from 12.8.2006 as per rules in force. Had he been assigned due seniority, he would have found place above the private respondents and 10 other promotees since they got regular promotion from 2.9.2006 after having passed the requisite training. But his case has been treated differently, therefore, action of the respondents is ex facie illegal, discriminatory and is not

sustainable in law being violative of Article 14 and 16 of the Constitution of India, hence he has filed this OA praying for the reliefs as extracted in para-2 above.

3. No reply has been filed by the private respondents. The official respondent Nos. 1 to 3 by way of filing reply have submitted that the applicant was given offer of training as soon as his pre recruitment formalities were completed, therefore, it is denied that he was not given offer in time. The applicant was given offer on 12.8.2005 which was accepted by him on the same day and consequently he was sent for field/line training because at that point of time there was no institutional training course available at Zonal Railway Training Institute, Udaipur. The first phase of institutional course was started at Zonal Railway Training Institute from 3.4.2006 and the applicant was booked for the same well in advance. The Institute issued training calendar wherein second phase of institutional training course for the candidates selected to the post of JE-II/P.Way was prescribed from 3.11.2006 to 7.1.2007, thus, there was no option left with the administration to retain him on field/line training. After second phase training at Zonal Railway Institute, the applicant reported in the office on 18.1.2007 and he was given offer of appointment in February, 2007 which he accepted on 9.2.2007. Thus, it is incorrect to contend that the applicant was not given appointment in time. Admittedly, the applicant after acceptance of the offer appointed on 9.2.2007, as such, seniority of the applicant is to be reckoned from the date his joining on regular post after completion of training i.e. 9.2.2007. It is further

submitted by the respondents that the training for JE-II/P.Way is prescribed for one year but in terms of P.S.11935 if the training continues beyond the prescribed period then it will be treated as extended training for which usual stipend is paid to such trainee. So far cases cited by the applicant regarding sending of other persons on training, the respondents have submitted that they belong to other divisions and they were sent for training by their respective divisions and not by the Jodhpur Division. The respondents have submitted that in terms of Para 302/202 of IREM Vol.I the seniority to the candidates is assigned from the date of taking over the charge after due process. Since the applicant joined working post on 9.2.2007, accordingly, in terms of para 302 of IREM Vol.I he is entitled to get seniority from 9.2.2007 and not earlier to that date.

4. The applicant has filed rejoinder to the reply filed by the respondent Nos. 1 to 3 reiterating the averments made in the OA.

5. Heard both the parties on OA. During the course of arguments, counsel for the applicant contended that the applicant has filed several representations to the official respondents which are dated 21.06.2008, 23.03.2009, 10.08.2009, 04.12.2009 and 09.02.2010. Counsel for the applicant further contended that in all these representations, the applicant requested the official respondents to correct the seniority list and assign the correct seniority to the applicant, but the respondent department instead of assigning the correct seniority to the applicant, promoted even the Track

Supervisors to the post of Junior Engineer in pay of Rs.5,000-8,000 vide Annexure-A/11 whereas they are much juniors to the applicant. Counsel for the applicant further contended that vide Annexure-A/8 the seniority of the applicant is to be decided as per para No.303 of the IREM. He further contended that by not deciding the different representations submitted by the applicant, the respondent department adversely affected the right of the applicant for promotion.

6. Per contra, counsel for the official respondents contended that the averments made regarding the Annexure-A/11 have been denied by the respondent department and the position explained in para No.10 of the reply. He further contended that vacancies for departmental selection quota were determined or assessed by the department as per para 215 (f) (i,ii) of IREM.

7. We have considered the rival contentions of both the parties. The fact of pendency of various representations is well proved as the copy of some of them has been placed in the OA itself and nothing has been averred in the reply regarding effective disposal of those representations by the respondent department. Therefore, looking into entire facts and circumstances and the averments made by both the parties, we are proposing to dispose of this OA with certain directions:

- (i) The respondent department is directed to decide the representations of the applicant at Annexure-A/17 of different dates within three months from the date of receipt of a copy of this order and communicate the same to the applicant.

- (ii) It is made clear that in the meanwhile any promotion made to the post of Junior Engineer-I shall only be provisional not creating any substantive right in favour of them and against each promotion, it will be specifically notified that it is provisional and subject to the outcome of the decision on the representations filed by the applicant.
- (iii) The respondent department is directed to decide the representations of the applicant in accordance with the rules.

8. The OA stands disposed as stated above with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C. JOSHI)
Judicial Member

R/Rss

R/c
12/2/11
R/c
11/7/14