

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.145/87.

Shri H.M.Joshi,
C/o.Shri G.S.Walia,
Advocate High Court,
89/10, Western Railway
Employees Colony,
Matunga Road,
Bombay 400 019.

... Applicant

V/s.

1. Union of India, through General Manager, Western Railway, Bombay.
2. General Manager, Western Railway, Churchgate, Bombay.
3. Chief Personnel Officer, Western Railway, Churchgate Bombay.
4. Chief Engineer, Western Railway, Churchgate, Bombay.
5. Divisional Rail Manager, Rajkot Division, at Rajkot, Western Railway.

... Respondents.

Coram: Hon'ble Member(A), Shri P.Srinivasan,
Hon'ble Member(J), Shri M.B.Mujumdar.

JUDGMENT:

(Per Shri P.Srinivasan, Member(A)) Dt. 1 FEB 1988

The applicant joined the service of the Railways in 1957. He answered an advertisement issued on behalf of the Engineering Department, Railway Technical Training Centre (R.T.T.C.), Mhow for posts of Apprentice Draughtsman/Estimators. He was interviewed along with others by the Principal of R.T.T.C. Four persons including the applicant were selected, the applicant being placed first in the list. He was deputed for training in R.T.T.C. On completion of training he was appointed as Draughtsman in the Drawing Office of the Western Railway at Rajkot on the scale of Rs.100-185. On 23.12.1958 the

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the applicant represented that he should have been appointed as an Estimator because he was the first person in the select list of four and the person at sl.no.3 had been appointed Estimator. It appears that the prospects for promotion were better for Estimators, though the pay scale of an Estimator was the same of that of a Draughtsman. In reply to this he was informed by the D.P.O. Rajkot in his letter dt. 10.2.1959 that persons working in the scale of 100-185 were eligible to appear for the suitability test prescribed for promotion as Senior Estimators and Senior Draughtsman and therefore, the question of overlooking Draughtsman in the scale of 100-185 for promotion to posts of Estimators did not arise. The applicant was content with this.

2. However, soon after, in July, 1959 two channels of promotion for drawing office staff were announced, one for Draughtsman and one for Estimators. At the same time it was announced that persons who were earlier working as Tracers and who had passed the suitability test for Draughtsman or/and Estimator in the scale of 100-185 and were officiating in either of the said posts would be given the option to choose the avenue of promotion available for Draughtsman if they were working as Estimators, since they could not hope for promotion to posts of Estimators in the scale of 150-225. It was clarified in a subsequent letter dt. 11.2.1960 issued by the Deputy Chief Personnel Officer that Tracers in the scale of Rs.60-150 promoted to the post of Draughtsman or Estimator in the scale of 100-185 would be allowed to exercise an option to choose their line of promotion either as Draughtsman or as Estimator

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as laid down in the revised channel of promotion. There was a further clarification issued by the Chief Engineer (E) on 25.11.1960. Paragraph.2 of the said letter reads as follows:

"2. The following clarification is given on the points raised above:-

Re(a): Draughtsman and Estimators at present working in scale Rs.150-225(P) and who have been promoted from rankers, may be allowed to exercise option either for the post of Draughtsman or Estimators. However, in the case of Draughtsman, who opt for the Estimators cadre, this can be allowed only, if they possess a diploma in Civil Engineering, as this has been prescribed for promotion to the posts of Estimators scale Rs.150-225.

Re(b): & (C): Draughtsman and Estimators in scale Rs.150-225, who have been directly recruited through the medium of RSC for specific posts, are not eligible to exercise an option.

3. It should also be made clear to the staff that once an option is exercised, it should be treated as final and they will seek further promotion in the cadre to which they have opted in accordance with the channels of promotion laid down.

This issues with the approval of CE".

3. Referring to the aforesaid letter of 25.11.1960 the applicant, on 10.1.1961, wrote to his superior officer viz. the Divisional Personnel Officer, Rajkot as follows:

"Sub: Promotion - channels of Class III Drawing office Option to choose line of promotion.

Ref: CE(E) CCG's letter no.E 834/40 of 25.11.60

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I hereby opt for the post of Estimator. I have been trained as Draughtsman/Estimator at Railway Technical Training Centre, Mhow.

It is deemed that this change does not affect seniority. Option may please be acknowledged".

The Divisional Personnel Officer acknowledged this

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option. Apparently, in pursuance of this option the applicant who was working as a Temporary Draughtsman was posted as temporary Estimator in the same scale (which had since been revised to Rs.150-240) "as per his option" by an order dt. 6.5.1961 issued by the Divisional Superintendent (E), Rajkot.

4. On 21.12.1961 the applicant sent an application to the Railway Service Commission for direct recruitment as Sr. Estimator (also referred to as AICW) in the pre-revised scale of Rs.150-225, subsequently revised to 205-380. The D.P.O., Rajkot declined to forward this application, stating that:

"He should seek future promotion as Estimator in his turn. As he has received special training for Estimators post. There is no justification for sending his application for AICW's post."

After further correspondence the DPO Rajkot again clarified to the applicant by letter dt. 3.1.1962 as follows:

"Direct recruitment of Sr. Estimator in scale Rs.205-280(A) is only made when suitable serving candidates are not available. You will get promotion in turn by virtue of your seniority and therefore question of direct recruitment of candidates junior to you does not arise. Your application on prescribed form for the post of Sr. Estimator is returned herewith".

5. In 1962 the applicant was promoted as Sr. Estimator in the revised scale of 205-380. In October, 1967 he was given a promotion in the line of Estimators to the post of Design Assistant at Churchgate in the scale of Rs.335-485 provisionally. The applicant was duly confirmed as Junior Estimator (the post of Estimator earlier held by the applicant seems to have been re-designated as Jr. Estimator in the revised scale of Rs.150-240 by this time) from 20.11.1969 and as

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Design Assistant w.e.f. 15.9.1972. The order on both occasions read, confirmed "in a provisional substantive capacity". The applicant was then promoted as Chief Design Assistant in the scale of Rs.700-900 on an ad hoc basis by an order dt. 8.3.1973, against a work charged post, it being clarified that the appointment was made purely on an ad hoc basis without conferring on him any right for permanent promotion. In 1980 a Selection Board seems to have been convened for regular promotion to the post of Chief Draughtsman/Chief Estimator/Chief Design Assistant in the scale of 700-900 (revised scale). The board prepared a provisional panel in which the applicant's name appeared at Sl.No.50 with the remark "outstanding". The provisional panel was made effective from 11.9.1980. By another order dt. 29.1.1981 the applicant was promoted as an Assistant Engineer(ABEN), again on an ad hoc basis.

6. In 1983 the General Manager, Western Railway, Respondent No.2, constituted a Selection Board for regular promotion to the post of Assistant Engineer. The applicant applied for selection, was admitted to the written test in which he qualified and by a Circular letter dt. 23.9.86 Respondent No.2 announced the lists of candidates for the oral test, the applicant being one of them. He was duly interviewed on 13.10.1986. Thereafter, as a result of the selection, 82 persons were given officiating promotions as Assistant Engineer by an order dt. 14.11.86; the applicant's name did not figure in that list. He made representations stating that he had done well in the viva voce test and was disappointed that he was not given promotion. In reply to his representations, he was given a reply on 14.5.1986 in which he was told that in terms of the Circular letter dt. 25.11.1960 (extracted above, particularly para.2(b) thereof) Draughtsman and Estimators recruited through RSC for specific posts were not eligible to exercise an option for the posts of Draughtsman or Estimators. The option was meant only to Tracers promoted as Draughtsman or Estimator. The applicant had been directly recruited and trained at the Mhow Training School and on completion of training had been posted as Draughtsman. He was therefore not eligible to exercise the option in terms of the Circular letter of 25.11.1960. He had been wrongly allowed ...6.

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to exercise the option ~~and~~ to come over to the category of Estimators and "in this category you were allowed to progress further". The wrong action could not be rectified earlier on account of negotiations being held with the recognised Unions. However, instructions had been issued on 6.9.1976 to the effect that seniority of Draughtsman/Estimators should be fixed ignoring the promotion or confirmation of Mhow Training candidates in wrong category for which they were not entitled. If however, any such Mhow trained candidate had been wrongly posted as Senior Estimator and confirmed in that post he would not be reverted but Junior Draughtsman/Junior Estimators not being trained in Mhow would get preference for further promotion. These instructions had remained unimplemented. However, in a Writ Petition filed in the High Court of Gujarat an undertaking had been given that the instructions of 6.9.1976 would be implemented. In view of this it had been decided to refix the applicant's seniority ignoring the option given by him to come over to the Estimator category which had been wrongly allowed to him. According to the seniority so assigned, action would be taken to delete the applicant's name from the panel of higher grades to which he was in eligible. Representations made by the applicant against the decision conveyed in the aforesaid letter dated 14.5.1986 were rejected. Hence he filed the present application.

7. Shri G.S.Walia, Learned Counsel for the applicant submitted that, in the first place, it was not right to say that the option to go over to the post of Estimator was wrongly given to the applicant and that the consequent option exercised by him in this regard on 10.1.1961 and accepted and acted upon by the respondents was wrong. The Circular

letter of 25.11.1960 clarified in paragraph 2(a) that Draughtsman and Estimators working in the scale of 150-225 and who had been promoted from rankers would be allowed the option. In sub-para(b) of para 2 it was clarified that Draughtsman and Estimators in the scale of 150-225 who had been directly recruited through the RSC for specific posts were not eligible to exercise the option. The respondents had taken the stand that the applicant fell in the second category viz., persons directly recruited as Draughtsman and Estimators. This was incorrect. The applicant had not been recruited to the scale of Rs.150-225, but only in the scale of Rs.100-185. He had not been recruited through the RSC but by the Principal of the Training School at Mhow. Moreover, when he was recruited, there was a common recruitment for posts of Draughtsman and Estimators. The applicant was the first among the four selected and he had a right to a choice of the post: he should have been appointed as an Estimator. When he complained against this, he was told that his appointment as Draughtsman would not affect his future promotion. The respondents accepted his option to become an Estimator and thereafter appointed him as an Estimator. They gave him promotions in that line from time to time, after he had passed the necessary qualifying tests, upto the post of Chief Design Assistant. Even though instructions were said to have been issued as early as 6.9.1976 stating that options given to Mhow trainees were not right, the applicant was allowed to take the test for regular promotion to the post of Chief Design Assistant, which he passed in the outstanding category. The respondents all along had acted on the basis that the option exercised by the applicant in January, 1961 was proper and valid. On the understanding that the option was valid, the applicant had worked hard,

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taken tests for promotion to different posts and passed them. In fact, the applicant was even allowed to take the written and oral test for regular promotion as Asstt. Engineer as late as in 1986 after he had been promoted to that post on ad hoc basis. The respondents could not at this stage undo all that had been done over a period of 25 years and in the process not only deny the applicant regular promotion to the post of Asstt. Engineer, but also threaten to revert him to lower posts. The respondents were bound by estoppel and they cannot now say that what they did in 1961 was a mistake, merely because of Union pressure.

Sri Kasturey, learned counsel for the respondents, refuting the contentions of Sri Walia, submitted that the option originally given was not applicable to directly recruited Draughtsman or Estimators in the scale of 100-185. It did not matter whether the recruitment was through RSC or through the Principal of the Mhow Training School. It was meant only for Tracers who were promoted to posts of Estimators or Draughtsman. The authorities had no doubt committed a mistake in allowing the applicant to exercise an option and acting in furtherance of such option. If a mistake was committed, the Respondents had every right to rectify it irrespective of the passage of time. There could be no estoppel in respect of an action which was due to an error.

We have considered the rival contentions carefully. There can be no doubt that if the authorities made a mistake, they could rectify it. In this case, did they commit a mistake ? In the letter dated 25.11.1966 which we have extracted above, ~~the~~ in regard to the ~~the~~ exercise of option, it is stated in para 2(a) that Draughtsman and Estimators working in the scale of 150-225 and who had been promoted from rankers were eligible

for option. When the applicant was recruited as Estimator in 1957 the scale of pay of the post was Rs.100-185. At that time the post of Senior Estimators carried a pay scale of Rs.150-225. The applicant was actually promoted as Sr. Estimators in 1962 after his application for direct recruitment to that post had been returned without being forwarded to the RSC. Therefore, so far as the post of Sr. Estimator in the grade of 150-225 is concerned, the applicant was indeed a promotee i.e. a ranker promoted to that post. Reading the circular letter on its plain language it cannot be said that the applicant was not eligible to exercise the option. In para 2(b), Draughtsman and Estimators in the scale of Rs.150-225 directly recruited through the RSC were declared ineligible to exercise the option. The applicant does not fall in this category not having been recruited through the RSC and in any case not having been directly recruited to the scale of Rs.150-225. Therefore, on a plain reading of the letter of 25.11.1960, a plausible view could be taken that persons like the applicant were eligible to exercise the option and the respondents accepted his option and gave him promotions accordingly. We are not able to agree that there was any mistake when the applicant was allowed to exercise the option in 1961. It appears that for the first time the respondents felt that the option given to persons like the applicant was incorrect in September, 1976. In his circular letter dated 6.9.1976 the Chief Engineer (E) Headquarters Office, Bombay stated that Draughtsman and Estimators recruited and trained in Mhow Training School were not eligible to give an option and that they should be posted back to their original category. He makes a reference to his earlier letter of 10.10.1969 in which the same position is said to have been set out, but the instructions contained therein were said to have been held in abeyance. The Chief Engineer goes on to say that the recognised Unions who were consulted did not agree to the option being given to Mhow candidates. Therefore, the seniority of Draughtsman and Estimators should be fixed

ignoring the promotions or confirmations of Mhow Trained candidates in wrong category for which they were not entitled. Now, as we have stated earlier, the original letter giving option dated 25.11.1960 does not say that Mhow recruits were not eligible for the option. We do not understand how suddenly the view could be taken that such recruits were not eligible to exercise the option. The only reason that is evident from the Chief Engineers letter of 6.9.1976 is that recognised Unions did not agree to give the option to Mhow trained candidates. This cannot make the original option given to the applicant a mistake as, on an analysis of the letter of 25.11.1960 we have already found that a reasonable interpretation of the said letter could be made to the effect that Mhow recruits were indeed eligible for the option. One could only describe the letter of 6.9.1976 as a change in the policy followed earlier and such a change cannot be given retrospective effect. What is more, even after 6.9.1976 the applicant continued to hold the post of Chief Design Assistant, he was allowed to take the test for regular appointment to that post and passed it and he was even allowed to take the ~~test for~~ ^{the M} ~~regular~~ test for promotion as Assistant Engineer. He was promoted as Assistant Engineer on ad hoc basis. On the promise, so to say, that he was rightly borne in the line of promotion of Estimators, the applicant had obviously put in considerable effort to earn good reports for promotion and to pass tests from time to time for such promotions. Ignoring all this and putting him back to a position as if all this had not happened was certainly unfair and unjustified. We have, therefore, no hesitation in quashing the letter dated 14.5.1986 issued to the applicant by the Chief Engineer (E) stating that the applicant's seniority would be refixed ignoring the option given by him.

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We direct the respondents to treat the option exercised by the applicant on 10.1.1961 as legally valid and accordingly determine his seniority as well as the question of his continuance as Assistant Engineer and further promotion to higher posts. We direct the respondents to publish the result of applicant in the written and oral test held for the post of Assistant Engineer held in September/October, 1986 and if the applicant is found to have qualified in that test to consider him for ^{regular} appointment according to his rank there.

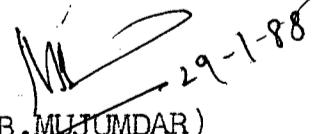
In the light of the above we:

1. Set aside the letter dt. 14.5.1986 (Ex. 14) of the Chief Engineer.
2. Direct the respondents to treat the option exercised by the applicant on 10.1.1961 as valid and regulate his seniority accordingly.
3. Declare the result of the applicant in the written and oral tests for the post of Assistant Engineer held in September/October, 1986 and consider the case of the applicant for appointment to that post on the basis of such result.

The application is allowed, but in the circumstances of the case parties to bear their own costs.



(P. SRINIVASAN)
MEMBER (A)



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(M. B. MUJUMDAR)
MEMBER (J).