

(N)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 1118/92 : Date of order 13.7.95

Lalit Kumar Maurya S/o Shri Birdhi Chand Maurya resident of Chandra Nagar, Beawar Road, Ajmer. At present posted as JSS C&W, Western Railway, Ajmer.

... Applicant

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Deputy Chief Mechanical Engineer (Carriage & Wagon), Western Railway, Ajmer.

CO-RAM

Hon'ble Mr. O.P. Sharma, Member (Administrative)  
Hon'ble Mr. Rattan Prakash, Member (Judicial)

For the Applicant ... Mr. R.N. Mathur.  
For the Respondents ... Mr. S.S. Hassan.

O R D E R

(PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE))

Shri Lalit Kumar Maurya has in this application u/s 19 of the Administrative Tribunals, Act, 1985, prayed that order dated 15.10.92 (Annexure A-1) rejecting the applicant's representation against being called upon to appear in the selection test afresh, may be quashed and the respondents may be directed to treat the applicant's promotion to the post of Junior Shop Superintendent (JSS) vide the order dated 23.10.91 (Annexure A-2) on the basis of his empanelment vide an order dated 21.3.88 (Annexure A-4) with all consequential benefits.

2. The case of the applicant is that he was initially appointed as Khallasi on 5.4.72 in Ajmer Division of the Railways, was promoted as Painter and then as Senior Chargeman w.e.f. 30.6.88. The next higher post is that of JSS. This is a selection post. The respondents conducted a selection test for ascertaining suitability for promotion to the said post. The applicant was declared successful in the said selection and his name appeared at serial no. 3 in the panel vide order dated 21.3.88 (Annexure A-4). The empanelment is stated to be provisional for the limited purpose

of being subject to cases pending before various courts. Earlier before conducting the selection test for the post of JSS, two vacancies were notified which were subsequently increased to three before the panel was declared vide an order dated 21.3.88 (Annexure A-4). Although the applicant was successful in the selection test and his name was included in the selection panel, yet promotion to the post of JSS was not granted to him. The matter was raised in the PNM (Permanent Negotiating Machinery) meeting on 30.10.88, during which it was stated on behalf of the respondents that there was no vacancy against which the applicant's promotion as JSS could be considered, and that his promotion would be considered against the vacancy which was likely to arise in March, 1989.

3. Further, according to the applicant, the respondents actually surrendered one vacancy of JSS by order dated 3.4.89 (Annexure A-7). Meanwhile, however, the applicant was granted promotion as JSS on ad hoc basis vide the order dated 23.10.91 (Annexure A-2). In the PNM meeting held in December, 1991, where the matter relating to denial of promotion to the applicant also came up, the respondents stated that the applicant had been granted promotion as JSS vide order dated 22.10.91 and, therefore, the matter was treated as closed. On account of this assurance given by the respondents, an impression was created in the mind of the applicant that he would be given promotion w.e.f. 1988. Had it not been so, the matter would not have been treated as finalised in the PNM meeting held in December, 1991.

4. Further, according to the applicant, the respondents issued a notification on 29.9.92 (Annexure A-8) for holding a selection test for promotion to the post of JSS. The applicant submitted a representation on 11.8.92 (Annexure A-9) stating that since he had already qualified in the selection test, he was not required to appear therein again. It is this representation, he also drew

(3)

attention to the decision taken in the PNM meeting held in December, 1991, to which a reference has been made above. Respondent no. 2, Deputy Chief Mechanical Engineer, (Carriage & Wagon), Western Railway, Ajmer, rejected the applicant's representation vide communication dated 22.9.92 (Annexure A-3). Thereafter the applicant again raised the matter with the Union. However, the representation submitted through the Union had also been rejected vide the order dated 15.10.92.

5. According to the applicant, the denial of promotion on the post of JSS is illegal and arbitrary. The respondents committed a mistake in not filling up the three vacancies, which were notified earlier. The applicant is entitled to be promoted against the vacancy of 1988 for which he had qualified in the selection test. The respondents should have granted promotion to the applicant as they had agreed to do so in PNM meeting and their action in denying promotion is hit by doctrine of promissory estoppel.

6. The respondents in their reply have stated that there was no vacancy available against which the applicant could be promoted during the period from 1.4.88 to 18.3.90 during which the panel of JSS on which the applicant was placed was subsisting. Subsequently, a vacancy arose on retirement of one of the incumbents on 30.9.91 and this vacancy was filled in by promoting the applicant as JSS on ad hoc basis vide order dated 23.10.91 (Annexure A-2). In their reply, they have also explained the position regarding the vacancies that arose on the post of JSS in January, 1987 and November, 1987. Amongst the three posts of JSS for promotees, one was surrendered. The applicant was not entitled to be promoted against the remaining posts on the basis of his position in

1M

the select panel, during the currency of the panel. According to them, the doctrine of promissory estoppel would not be applicable in this case. No promise was in fact given regarding promotion of the applicant on the post of JSS and even if such a promise was given, it was against the legislative intent. Further, according to them, according to the Railway Board's instructions dated 27.2.86, the currency of panel would be two years from the date of approval thereof by the competent authority or till it is exhausted whichever is earlier. Since the applicant had failed to state which post of JSS had fallen vacant during 1989 against which he could be appointed, there was no question of considering him for promotion to the post of JSS during 1989.

7. The applicant has also filed a rejoinder in which he has stated, inter-alia, that a person once selected is not required to appear in the selection test again.

8. During the arguments, the learned counsel for the applicant stated that in view of the assurance given during the meeting of the respondents with the Union, the applicant was under the impression that he had been granted promotion on regular basis. Once the respondents have stated in the PNM meeting held in December, 1991 that the applicant had been granted promotion and, therefore, the matter may be treated as finalised, the respondents were not justified in treating the said promotion as ad hoc and subjecting the applicant to a fresh selection test. Further, according to him, it would be unreasonable and arbitrary on the part of the respondents to call upon the applicant to appear in the selection test again when he had already been occupying the post of JSS since 1991, though ostensibly on ad hoc basis. He has also relied upon an order of the New Delhi Bench of Tribunal in Bhim Singh Panwar Vs. Administrator of Goa & Others, 1988(2)(CAT) 561, in which according to him, the

Tribunal held that persons once granted promotion even on officiating basis on the basis of selection test passed by <sup>to</sup> them cannot be subjected to a fresh selection test.

9. The learned counsel for the respondents stated during the arguments that the applicant had passed the selection test and his name had been included in the select panel which had lasted for about two years from 1.4.88 to 18.3.90. During this period, the applicant could not be granted promotion due to non availability of vacancy. Once the applicant was not appointed on the post of JSS during the currency of the panel, he had to appear in the selection test afresh, if his name was to be included in the fresh panel to be prepared for this post. The promotion granted to the applicant vide Annexure A-2 dated 23.10.91 was not on the basis of his name being in the select panel, which had already expired on 18.3.90, but on the basis of his seniority alone. The promotion was on ad hoc basis, as was clear from the order itself. When the order passed itself stated that the promotion was ad hoc, it was not proper for the applicant to understand that the promotion had been granted on regular basis. There is no rule to support the averment of the applicant that once a person has passed the <sup>the</sup> selection test is not required to appear in the selection test again. The order of the Tribunal cited by the learned counsel for the applicant is distinguishable on facts.

10. We have heard the learned counsel for the parties and have gone through the records and the judgment cited before us. It is not disputed that the life of the panel expired on 18.3.90 and till then the applicant was not granted promotion on a regular basis. He was granted promotion by order dated 23.10.91 long after the panel had expired. The order itself states that promotion is on the basis of seniority and there

16

is no indication therein that it was on the basis of the applicant's position in the select panel. Now the question is whether the applicant can be subjected to a fresh selection test once he had already cleared in the selection test and on the basis on which his name was included in the select panel. It is admitted by counsel for the parties that JSS is a safety post. The learned counsel for the applicant was unable to show us any rule to support the averment in the rejoinder that a person once included in the select panel on the basis of passing of the selection test, is not required to appear again in the selection panel. The applicant was not granted promotion on regular basis during the currency period of the panel. He is in the same position as another official who is not in the panel and for inclusion in the panel, he has to pass the selection. We have gone through the judgment cited before us and we find that it has been rendered on the basis of the instructions cited therein. As far as the present case is concerned, the rules applicable are those of the Railways. Rule 266 of the Indian Railway Establishment Manual Volume I was cited before us to suggest that those officials who have already qualified in the suitability/trade test in projects need not be subjected to such test for the open line and that they may be promoted on the basis of their seniority. Obviously, this rule has applicability to situations contemplated therein and moreover it is applicable to non selection posts. The question of doctrine of promissory estoppel does not arise because we do not find from the minutes of the PNM meeting, reproduced in the application, that any assurance was given by the authorities that the applicant had been promoted on a regular basis or that he was not required to appear in the selection test, though he had not been promoted on a regular basis.

(P)

Since the applicant had been granted promotion as JSS on the basis of his seniority and purely on ad hoc basis, he has to appear in the selection test afresh. Singling him out for exemption from appearance in the selection test would amount to discrimination against other<sup>s</sup> who may be similarly situated.

11. In the circumstances, we are of the view that the applicant is required to appear in the selection test as this is a selection post and also in the safety category.

12. In the result, the CA is dismissed with no order as to costs.



(PATTAN PRakash)  
MEMBER (J)



(O.P. SHARMA)  
MEMBER (A)

AHQ.