

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

04.01.2008

OA No. 681/1993

Mr. A.K. Jaiman, Proxy counsel for
Mr. R.N. Mathur, Counsel for applicant.
Mr. S.S. Hassan, Counsel for respondents.

The respondents have filed affidavit in which they have categorically stated that no vacancy was available. The fact that there is a vacancy available, which is evident from letter dated 30.10.1984, was also brought to the notice of the learned counsel for the respondents. The respondents were granted opportunity to verify this position. Still the respondents have chosen to file affidavit. This affidavit is taken on record.

Heard learned counsel for the parties.

ORDER RESERVED.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

16/1/08

order pronounced
today in the open
court by the learned
Bench

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16/1/08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day January, 2008

ORIGINAL APPLICATION No.681/1993

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Rameshwar Lal Dayma
s/o Bhanwar Lal Dayma,
presently posted as Chief Typist,
Group-I, Estt. Section,
DRM Office, Jaipur
r/o 1-C-40 Shiv Shakti Colony,
Nahari Ka Naka, Jaipur

.. Applicant

(By Advocate: Shri A.K.Jaiman, proxy counsel to Mr.
R.N.Mathur)

Versus

1. Union of India
through General Manager,
Western Railway,
Churchgate, Bombay
2. The Divisional Railway Manager,
Western Railway,
Jaipur

.. Respondents

(By Advocate: Shri S.S.Hasan)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant has filed this OA thereby
praying for the following reliefs:-

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"The respondents may be directed to produce entire record pertaining to vacancies, existing and filled in on post of Head Typist and Chief Typist in the pay scale of Rs. 425-700 (R), 550-750 and 700-900 (R). The Hon'ble Tribunal may pursue the same and after that it may be held that a vacancy on the post of Head Typist in the pay scale of Rs. 550-750 (R) and vacancy on the post of Chief Typist (R) was existing in the year 1983, 1984, 1985 and 1987 and the applicant is entitled to get promotion against these vacancies w.e.f. 15.11.83 on the post of Head Typist in the scale Rs. 550-750 (R) and in the pay scale Rs. 700-900 (R) on the post of Chief Typist w.e.f. 1987."

3. Briefly stated, facts of the case are that the applicant was initially appointed as Typist in the year 1960 in the pay scale of Rs. 260-400. He was promoted as Senior Typist in the year 1978 on a pay scale of Rs. 330-560. He was further promoted as Head Typist on 22.8.80 carrying a pay scale of Rs. 425-700. Subsequently, a post of Chief Typist was created in Jaipur Division of the Western Railway w.e.f. 1.8.83. The said post was created on account of upgradation of the post of Typist in the scale of Rs. 260-400. Against the post of Chief Typist scale Rs. 700-900 one Shri L.N.Saxena was appointed on promotion. The applicant was promoted to the post held by Shri L.N.Saxena prior to his promotion as Chief Typist. However, subsequently Headquarter of the Western Railway issued clarification vide letter dated 19.12.1983 wherein it was directed that the post of Chief Typist scale Rs. 700-900 is not admissible at Jaipur Division in accordance with the scheme of

upgradation. Accordingly, it was ordered that the post of Typist in the scale of Rs. 260-400 which was upgraded to the post of Chief Typist scale Rs. 700-900 is now upgraded to the post of Chief Typist scale Rs. 550-750 as sanctioned by the DRM. This fact is evident from the office order dated 30.10.84 which has been placed on record. However, Shri L.N.Saxena who was given promotion in the scale Rs. 700-900 was allowed to continue on the aforesaid post till the date of his retirement i.e. 31.7.84. After retirement of Shri L.N.Saxena the applicant being seniormost in the next lower scale of Rs.550-750 claimed his promotion in the pay scale of Rs. 700-900. The said claim was based on the fact that since the applicant though junior in the seniority in the grade of Rs. 425-700 of Head Typist was granted promotion in the higher pay scale of Rs. 550-750 on account of roster point. Instead of promoting the applicant in the higher pay scale of Rs. 700-900, respondent No.2 issued order dated 6.3.85 by which the applicant was reverted from the pay scale of Rs. 550-750 to the post of Head Typist scale Rs. 425-700. The applicant challenged the order of reversion dated 6.3.85 by filing civil suit. The aforesaid Civil Suit was eventually transferred to this Bench of the Tribunal and registered as TA No.1548/86 and was decided vide order dated 13.7.93, which has been placed on record as Ann.A1 with the OA and Ann.A3 with DB Writ Petition No.4014/2001. It may be relevant to

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state here that the relief sought by the applicant in TA No.1548/86 as can be seen from copy of the judgment was regarding his reversion vide impugned order dated 6.3.85 and declaration to the effect that the applicant was entitled to promotion on regular basis to the post of Chief Typist scale Rs. 550-750 w.e.f. 1.8.84 with consequential benefits. The said TA was partly allowed, as can be seen from para 5 of the judgment, relevant portion of which is reproduced hereinbelow:-

"In view of the above discussions, we allow this petition partly and direct that the applicant shall be deemed to have continued in the post of Chief Typist scale Rs. 550-750 from the date of his reversion on 6.3.85 in case a vacancy exists from this date. In case there is no vacancy in the post of Chief Typist scale Rs. 550-750 on 6.3.85, he may be promoted from the date the vacancy arose. Arrears admissible on this count if any shall be paid within 4 months of this order. Parties to bear their own costs."

It may be relevant to state here that the aforesaid relief was restricted on account of the fact that one Shri M.P.Sharma who was admittedly senior to the applicant in the grade of Rs. 425-700 and was entitled to promotion over and above the applicant, in the grade of Rs. 550-750 was granted promotion as Chief Typist against the vacancy caused on account of retirement of Shri L.N.Saxena and the applicant had not impleaded the said Shri M.P.Sharma as one of the respondent in the TA and in fact the applicant did not press claim of promotion against Shri M.P.Sharma on

the post of Chief Typist pay scale Rs. 550-750 vide order dated 6.3.85. However, his grievance was regarding his reversion order. This fact is borne out from para 4 of the judgment dated 13.7.93. It was under these circumstances that this Tribunal in the aforesaid TA has directed that the applicant shall be deemed to have continued on the post of Chief Typist scale Rs. 550-750 w.e.f. 6.3.85 in case a vacancy exists from that date and in case there was no vacancy existed in the scale of Rs. 550-750 on 6.3.85, he shall be promoted from the date the vacancy arose and not before it. Thus, in view of the finding recorded in the TA No.1548/86 as reproduced above, the claim of the applicant in the present OA that he is entitled to get promotion against the post of Head Typist in the scale Rs. 550-750 w.e.f. 15.11.83 and on the post of Chief Typist scale Rs. 700-900 w.e.f. 1987 cannot be accepted. The post of Chief Typist in the scale of Rs. 700-900 which post was created by upgradation from the post of Typist was not admissible at Jaipur Division, as can be seen from the clarification issued by the Headquarter office vide letter dated 19.12.83.

Pursuant to the order dated 13.7.93 passed in TA No.1548/86, the applicant was granted promotion in the grade of Chief Typist, scale Rs. 550-750 w.e.f. 13.3.93. Feeling aggrieved, the applicant filed OA No.681/93 before this Tribunal. The said OA was disposed of vide order dated 18.7.2000 on the ground

that the OA is barred by the principles of res-judicata as the matter stands already agitated by the applicant in TA No.1548/86. The matter was carried out to the Hon'ble High Court by filing DB Civil Writ Petition No.4014/86. The said Writ Petition was decided vide judgment dated 27.1.2006 and the Hon'ble High Court held that it is not a case of res-judicata as in the second OA the petitioner has challenged the decision of the respondents regarding the date of his promotion as decision of the Tribunal has not properly complied by the respondents and he has been promoted on later date though vacancy arises prior to that date. The matter was remanded back to this Tribunal that is how this OA has been restored for fresh consideration.

4. The question which now survives for consideration as to when the vacancy has fallen vacant in the light of the decision rendered by this Tribunal in TA No.1584/86 vide judgment dated 13.7.93 i.e. whether there existed a vacancy w.e.f. 6.3.85 in the pay scale of Rs. 550-750 against which post the applicant can be promoted w.e.f. that date or the post of Chief Typist in the scale Rs. 550-750 was available w.e.f. ~~14.7.93~~ 14.7.93 on which date the applicant has been granted promotion pursuant to the judgment dated 13.7.93 rendered in TA No.1548/96.

Before we advert to this controversy, it may be relevant to state here that prior to promotion of Shri L.N.Saxena on the post of Chief Typist in the scale Rs. 700-900, he was working as Chief Typist in the scale Rs. 550-750. Thus there existed a regular vacancy of Chief Typist in the scale of Rs. 550-750 against which Shri L.N.Saxena was working. However, Shri Saxena was granted promotion in the scale of Rs. 700-900 on account of upgradation of the post of Typist in the scale of Rs. 260-400 w.e.f. 1.8.83 which post was subsequently sanctioned in the scale of Rs. 550-750 instead of Rs. 700-900 by upgrading the post of Typist in the scale of Rs. 260-400. This fact is evident from officer order No.ED 830/3/Vol.II DRM office letter dated 30.10.1984, relevant portion of which is reproduced hereinbelow:-

"In terms of GM(E)-CCG's letter No. E(HQ). 830/37(JP) dated 19.12.83 the post of Chief Typist scale Rs. 700-900 (R) upgraded from Typist scale Rs. 260-400 (R) with effect from 1.8.82 vide this office order quotes above, was not admissible on this Division according to the percentage laid by the Board.

Accordingly, the same post of tyist scale Rs. 260-400 (R) which was previously upgraded to the post of Chief Typist scale Rs. 700-900 (R) is now upgraded to Chief Typist scale Rs. 550-750 (R) as sanctioned by DRM."

Thus, from the portion reproduced above, it is clear that there was another post of Chief Typist in the scale Rs. 550-750 (apart from the post which was being occupied by Shri L.N.Saxena) which was

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upgradated/created. It is admitted fact that Shri L.N.Saxena retired on 31.7.84. It is also admitted fact that against the post of Chief Typist scale Rs. 550-750 caused due to retirement of Shri Saxena, one Shri Mahaveer Prasad Sharma was promoted as Chief Typist in the scale Rs. 550-750 who was admittedly senior to the applicant in the grade of Rs. 425-700 and against which promotion the applicant has not sought any relief, as can be seen from para 4 of the judgment dated 13.7.93 in TA No.1584/86 and findings to this effect has attained finality. It is held that Shri M.P.Sharma was rightly promoted on the post of Chief Typist after reversion of the applicant w.e.f. 6.3.85. Further, from the material placed on record, it is also evident that there was one post of Chief Typist in the scale of Rs. 550-750 available on account of upgradation of the post of Typist scale Rs. 260-400 to that of Rs. 550-750, as can be seen from letter dated 30.10.84, relevant portion of which ^{has been} reproduced hereinabove.

5. There is nothing on record to suggest that promotion was made against this post. Thus according to us, there was a post of Chief Typist, scale Rs. 500-750 available on 6.3.85 against which post the applicant could have been given promotion in terms of decision rendered by this Tribunal in TA No. 1548/86 vide order dated 13.7.93 relevant portion of which has

been reproduced hereinabove. Thus, the contention of the respondents that post was available w.e.f. 14.7.93 in the grade of Chief Typist scale Rs. 550-750 cannot be accepted. At this stage, it may be relevant to mention here that vide order dated 17.7.2007, direction was given to the respondents to produce the vacancy chart to show that as and when the vacancy was made available to enable this Tribunal to decide the controversy involved in this case.

When the matter was listed on 2.1.2008, the respondents produced an affidavit in the court thereby stating that there was no vacancy available after reversion of the applicant in the year 1985 and the applicant was correctly promoted vide order dated 14.7.1993. Attention of the learned counsel for the applicant was drawn to the letter dated 30.10.1984 which has been reproduced in the earlier part of this judgment to the effect that one additional post of Chief Typist in the grade of Rs. 550-750 instead in the scale Rs. 700-900 was created from the post of Typist scale Rs. 260-400 which has remained unfilled as one Shri M.P.Sharma was appointed in the grade of Rs. 550-750 against the vacancy which has fallen vacant on account of retirement of Shri L.N.Sharma, and opportunity was granted to the respondents to verify this fact and the matter was adjourned to 4.1.2008. The respondents have still chosen to file affidavit thereby reiterating that there was no

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vacancy available, as such, the affidavit is taken on record. At this stage it will be useful to quota para 7 of the affidavit which thus reads:-

"7. That in the earlier OA filed by the applicant, the Hon'ble Tribunal had passed an order that the applicant shall be deemed to be continued on the post of Chief-Typist- scale Rs. 550-750 from the date of his reversion on 6.3.85 in case a vacancy exists and if in case vacancy does not exist on that date, he may be promoted from the date the vacancy arose in the scale of Rs. 550-750. As no vacancy was available after the reversion of the applicant, therefore, the applicant was correctly promoted vide order dated 14.7.93."

This affidavit has been filed by Shri D.D.Mandan, Senior Divisional Personnel Officer, Jaipur. There is a verification clause and the respondent has sworn the affidavit and reiterated that nothing material has been concealed and no part of the affidavit is false. We are constrained to observe that despite the fact that we have given opportunity to the respondents to intimate the Court the position regarding vacancy in the grade of Rs. 550-750 after 6.3.85 when the applicant was reverted, the said Shri D.D.Mandan has filed a false affidavit contrary to the material available on record. Therefore, it is a case where proceedings should be initiated against this officer for perjury but taking a lenient view we choose not to proceed further in the matter.

6. From the material placed on record it is evident that there existed another vacancy of Chief Typist in

the scale of Rs. 550-750 as can be seen from office letter dated 30.10.1984, as reproduced above, apart from the vacancy which has fallen vacant on account of retirement of Shri L.N.Saxena in the year 1984 which post was occupied by one Shri M.P.Sharma. That apart, the applicant has filed rejoinder. Alongwith the rejoinder, the applicant has also annexed copy of letter dated 3rd July, 1987 whereby the eligibility list was prepared for the purpose of selection to the post of Chief Typist scale Rs. 550-750 in which the name of Shri M.P.Sharma (Mahabir Prasad Sharma) find mention at Sl.No.1 and that of the applicant at Sl.No.2 and total number of vacancies for which selection was made has been shown as three. At this stage, it will be useful to quote relevant portion of the said letter, which thus reads:-

"Reg: Selection Board 'C' Category of staff-Chief Typist scale Rs. 550-750(R)/1600-2660 (RP).

It is proposed to hold a selection for promotion to the post of Chief Typist scale Rs. 550-750 (R)/1600-2660 (RP) Jaipur.

Total No. of assessed vacancies (existing and anticipated) is 3, which are to be filled in by the General Candidates. Selection will be held by a viva-voce.

Employees shown in the 'A' list below are eligible to appear for the above selection. They should keep themselves in readiness for appearing in the selection at a short Notice, for which the date will be advised separately.

'A' List

1.Shri Mahabir Pd. Sharma Hd.Typist Offg. as
Chief Typist on adhoc
basis in Operating
Branch.

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|------------------------------|-------------|------------------------------------|
| 2. ,, R. k .Dayma | Head Typist | Estab.Branch. |
| 3. ,, D.G.Muchrikar | ,, | Optg.Branch |
| 4. ,, G.K.Lokani | ,, | Commercial Br. |
| 5. ,, S.C.Malhotra | ,, | Works Branch |
| 6. ,, Sualal Chandel | ,, | SS/Jaipur |
| 7. ,, P.D.Gaur | Sr.Typist | Offg.as IHER on
adhoc basis. |
| 8. ,, Tarachand Daryani | Sr. Typist | Hindi Cell |
| 9. ,, R.D.Dass | Sr.Typist | General Branch"
(emphasis ours) |


From perusal of this letter, it is also evident that in the year 1987 there existed 3 vacancies in the grade of Rs. 550-750 and one Shri M.P.Sharma was already officiating in higher post of Chief Typist and the applicant was the next person in the seniority. Thus, the contention of the respondents that no vacancy was available after reversion of the applicant and, therefore, the applicant was correctly promoted vide order dated 14.7.93 is factually incorrect and this plea has been taken in order to defeat the legitimate claim of the applicant.

7. Thus, the ultimate conclusion which can be drawn is that there existed a vacancy of Chief Typist in the scale of Rs. 550-750 as on 6.3.85 on account of upgradation of the post of Typist to that of Chief Typist scale Rs. 550-750 as can be seen from the office order dated 30.10.84 which has been placed on record by the respondents with their reply.


8. Accordingly, it is held that there existed a post of Chief Typist in the scale of Rs. 550-750 and the applicant shall be deemed to have been promoted as

Chief Typist in the scale of Rs. 550-750 w.e.f. 6.3.85 against upgraded vacancy of Chief Typist in the scale of Rs. 550-750 and the applicant is entitled to all benefits in terms of para 5 of the judgment dated 13.7.93 in TA No.1548/86. The said direction shall be complied with within a period of four months from today. In the facts and circumstances, the applicant shall be entitled for the cost which is assessed as Rs. 5000/- to be paid by the respondents within the aforesaid period.

9. The OA is disposed of accordingly.


(J.P. SHUKLA)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

R/