

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 1.6.2001

OA No.493/94

Trilok Chand Mali s/o Shri Shyam Lal Mali, now-a-days r/o 772/29, Nag Bai Peepal Wala Kua, Dholakia Bhata, Ajmer, working as Record Sorter, Loco Shop No.11, Loco Workshop, Western Railway, Ajmer.

..Applicant

Versus.

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Works Manager, Loco Workshop (Estt.), Western Railway, Ajmer.

.. Respondents

Mr. S.K. Jain, counsel for the applicant

Mr. R.G.Gupta, counsel for the respondents

CORAM:

Hon'ble Mr.Justice B.S.RaiKote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

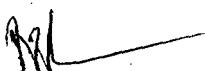
PER HON'BLE MR. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The applicant has filed the present OA as a second round of litigation practically on the same cause of action. Earlier the applicant was promoted on ad-hoc basis as Record Sorter in the year 1987. The Department conducted written test for the purpose of promotion by selection to the post of Record Sorter, which was held on 16.1.1989 and 27.2.1989. Since the applicant did not pass in the said written examination finding to be unsuitable, the respondents passed an order dated 7.4.1989 reverting the applicant to the lower Group 'D' post. The applicant challenging the said order filed OA No. 307/92 contending that the said order of reversion was illegal and applicant should have been given repeated opportunities to appear in the selection test. This Tribunal after hearing both sides passed order on

6.9.1994 as under:-

"Since the applicants have not passed the selection test, they are not entitled to continue on the post of Record Sorters. A selected candidate has a preferential right of an appointment to the post. However, till such time as selected candidates are not available to replace applicant No.2, the applicant No.2 may be continued on the post of Record Sorter. As soon as the selected candidate becomes available, the respondents shall have the right to revert the applicant No.2 to the lower post of Group 'D'".

2. From reading of the above order, it is clear that this Tribunal did not find fault with the order of reversion due to the fact that the applicant did not pass the required examination for the purpose of his regular promotion on the post of Record Sorter. Since his earlier promotion was on ad-hoc basis, this Tribunal upheld the reversion on the ground that the selected candidates have preferential right for appointment to the post. However, this Tribunal observed that till such time selected candidates are not available to replace applicant No.2, applicant No.2 could be continued on the post of Record Sorter. In that case Ram Charan was applicant No.1 and Trilok Chand, who is present applicant, was applicant No.2. In view of the observations of the Tribunal that the moment selected candidate becomes available, the respondents shall have the right to revert the applicant No.2 to the lower post of Group 'D', the respondents passed the impugned order vide Ann. Al dated 4.10.1994. It is to be noted at this stage that the said earlier OA No.307/92 was disposed of on 6.9.1994. The impugned order came to be passed on 4.10.1994 within a period of almost one month. Thereafter within a week the applicant has filed the present applicant in OA No.493/94 practically reiterating the same stand what he had taken earlier in his earlier OA No.307/92.



contending that his earlier ad-hoc promotion was based on practical test and his earlier ad-hoc promotion was, therefore, regular promotion and there could not be any reversion. He contended that he was earlier given ad-hoc promotion after passing the said practical examination and under Rule 188 of the Indian Railway Establishment Manual such passing of the practical examination is equivalent to any written examination, notwithstanding, that he failed in the written test held on 16.1.1989 and 27.2.1989 and, therefore, the applicant is not liable to be reverted. He further contended that the post of Record Sorter is promotional post but not a selection post, therefore, the selection method adopted by conducting the written examination on 16.1.1989 and 27.2.1989 itself was bad. At any rate, he contended that in other Departments like Medical Department of the Railways relaxation has been provided to certain persons and the General Manager has powers to accord relaxation under Para 114 and the said benefit could have been given to the applicant. The applicant further contended that promotion to the post of Record Sorter should have been only on the basis of seniority-cum-suitability without holding any written test as such. At any rate, he has also taken practical examination earlier to his ad-hoc promotion, that should be taken as passing written examination for the purpose of promotion on the post of Record Sorter, notwithstanding, he failed in the written test so conducted.

3. By filing an amendment application in MA No.474/96, applicant has sought amendment seeking even to quash orders dated 11.7.1987 vide Ann.A2 and dated 12.12.1987 vide Ann.A4 by which persons were invited to take the written examination for the purpose of promotion. He has also challenged Ann.A5 dated 7.4.1989 by which certain candidates were selected and promoted to the post of Record Sorter. In substance, the applicant wants to re-open the entire issue

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in the present OA even after settling the controversy by this Tribunal in the order dated 6.9.1994 in OA No.307/92, contending that his earlier ad-hoc promotion was itself to be taken as a regular promotion and he is not liable to be reverted at all.

4. By filing reply statement, the respondents have denied the case of the applicant. They have stated that the post in question was a selection post, and for this purpose written examination and viva-voce examinations were conducted, but the applicant failed in the said examination. Since his earlier promotion was only ad-hoc promotion, the applicant was rightly reverted to the lower post in terms of the order of this Tribunal dated 6.9.1994 in OA No.307/92, since by regular selection all the posts were filled up and there was no vacancy available at all for the purpose of continuing the applicant as Record Sorter on ad-hoc basis. As such, there is no illegality in the impugned order Ann.A1. They have also contended that on the basis of the examination conducted on 16.1.1989 and 27.2.1989, in which applicant failed and others passed, the results were declared on 26.8.1989 and accordingly list of 44 candidates was made available for appointment, but appointment orders could not be issued due to the interim direction of status-quo granted by Jodhpur Bench of this Tribunal in OA No.587/89. This OA was transferred to this Tribunal and numbered as OA No. 307/92 which was disposed on 6.9.1994 vide Ann.A6 rejecting the case of the applicant. After the disposal of the said OA, since there was no post available to continue the applicant on the post of Record Sorter in terms of the order of this Tribunal dated 6.9.1994 because the candidates who were selected were available to the post, the second order of reversion vide Ann.A1 was passed. Therefore, there is no illegality in the impugned order at Ann.A1 and it is in accordance with the order passed by this Tribunal on 6.9.1994 in OA No.307/92. They have also contended that in the year 1991 there



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were 31 posts and vide notification dated 26.11.1991 candidates were invited to take written test and viva-voce to fill up those 31 posts, but applicant did not apply in the said test and accordingly a panel was declared on 19.4.1993 vide Ann.F11. They have further stated that thereafter there were 23 posts as on 1.1.1994 and 39 persons were already working on those 23 posts as per the list filed at Ann.R6. In these circumstances, when the respondents found that there were no posts available for the applicant for being continued on ad-hoc basis, the applicant has been reverted back on the basis of the impugned order. They have stated that the post of Record Sorter in the pay scale Rs. 825-1200 is a selection post as per Railway Board's letter No.E(NG) 53/CPF/3 dated 24.1.1962 and another letter dated 25.1.1962 circulated by General Manager, Churchgate, Mumbai on 26.2.1962. They have contended that since the applicant had failed in the written examination, results of which was declared on 13.7.1999, the applicant is not entitled for any relief in this OA seeking either promotion to the post of Record Sorter or for continuance of his ad-hoc promotion made earlier. Accordingly, they have prayed for the dismissal of this application.

5. Heard.

6. Looking to the entire case, we find that the applicant wants to re-open the entire issue after disposal of his earlier OA No.307/92 vide order dated 6.9.1994. The very contention of the applicant that he was entitled to continue on the post of Record Sorter on the basis of ad-hoc promotion made vide order dated 7.9.1987 filed at Ann.A2 in that case, was not accepted by this Tribunal. This Tribunal found that applicant having taken the examination alongwith others for the purpose of his regular promotion to the post of Record Sorter and has failed, did find fault with the order of the

respondents dated 7.4.1989 reverting the applicant to the lower post of Group 'D'. However, on sympathetical grounds, this Tribunal observed that applicant could be continued in case regularly selected candidate was not available. From this fact, it is clear that applicant's earlier promotion which was purely on ad-hoc basis stood concluded. The post in question being the selection post and applications were called for and applicant failed in the written test, consequently he was not entitled for any relief also stood concluded by the said judgment/order. The respondents issued the impugned order vide Ann.A1 dated 4.10.1994 after finding that in terms of the order of this Tribunal dated 6.9.1994 in OA No.307/92 the applicant could not be continued due to availability of the selected candidates. Therefore, the applicant's challenge to Ann.A2 dated 11.7.1987, Ann.A4 dated 12.12.1987 and Ann.A5 dated 7.4.1989 on the basis of which the applications were called for for the purpose of conducting written examination on 16.1.1989 and 27.2.1989 and viva-voce on 19.7.1989, is not sustainable at this stage. Even if, applicant's challenging the selection made on the basis of the said examination vide Ann.A5 dated 7.4.1989 is also untenable. Proceedings were conducted, as we have already noted above, for the purpose of promotion to the post of Record Sorter and the applicant has miserably failed. Moreover, these orders have been challenged by way of amendment in MA No.474/96 filed on 20.9.1996. From this it follows that the cause, if any based on Ann.A2, Ann.A4 and Ann.A5 accruing in the year 1987, the present OA would be barred by time. If the applicant was aggrieved by these order in the year 1987, he should have agitated the same within one year, but that he has not done. Though the applicant took a contention that the respondents have not filed a separate reply to the amended OA; but in our considered view, the pleas raised in the amendment application by way of challenging Ann.A2, Ann.A4 and Ann.A5 is itself liable to be rejected on the ground of limitation only. At any, rate when the

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matter had been concluded vide the order of this Tribunal dated 6.9.1994 in OA No.307/92, which we have extracted above, the applicant could not have raised dead and gone issues. At any rate, the present OA would also be barred by the principles of res-judicata in view of this Tribunal's order/judgment dated 6.9.1994 in OA No.307/92. In terms of the order dated 6.9.1994 in OA No.307/92, the only thing required to be done by the Department, if any, was to continue the applicant until the selected candidates become available. The respondents in their reply statement stated that subsequent to the 1989 selection, in which applicant failed, a further selection was held for 31 posts in the year 1993 by conducting written and viva-voce examinations, which the applicant did not take, and accordingly a panel of 31 candidates were issued on 19.4.1993. They have contended that these 39 candidates have been working as against 23 posts as on 1.1.1994. They have also enclosed a list of 39 candidates working on the post of Record Sorter as on 4.10.1994 vide Ann.R6. On the basis of Ann.R6 dated 4.10.1994, they have contended that all the selected candidates were available and there were no vacancies. In these circumstances, in terms of the order dated 6.9.1994 of this Tribunal in OA No.307/92, the applicant has been rightly reverted by issuing the impugned order vide Ann.A1 dated 4.10.1994. From this fact, it is clear that the order of this Tribunal dated 6.9.1994 has been complied with and applicant is not entitled to any relief more than what has been granted in the order dated 6.9.1994 in OA No.307/92. Thus, we find that absolutely there are no merits in this application.

7. For the above reasons, we pass the order as under:-

"Application is dismissed with no costs".

Gopal Singh
(GOPAL SINGH)

Adm. Member

B.S.FAIKOTE
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Vice Chairman