

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order:

16.02.2007

OA No.253/95

Babu Lal Verma and Narvar Singh Jhala, both working as S.O.M. in the office of C.I.O.W.(2), Western Railway, Kota.

.. Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota.

.. Respondents

Mr. R.N.Mathur, counsel for the applicants

Mr. Anupam Agarwal, proxy counsel for Mr. Manish Phandari, counsel for the respondents

CORAM:

HON'BLE MR. S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

O R D E R

PER HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seek following reliefs:-

- i) That the impugned order dated 6/9/6.95 (Ann.A1) may kindly be set aside and quashed. The respondents may be directed to regularise services of the applicants on the post of SOM in the scale of Rs. 1400-2300 (RP).
- ii) That the respondents may be directed to pay salary to the applicants which was not paid to them for the period during which an interim order was in operation

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in the earlier O.A. No.405/92 but were reverted despite the order of the Hon'ble Tribunal.

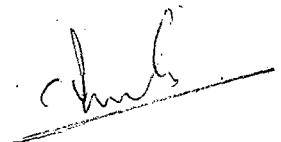
iii) That a declaration may be made that the applicants are entitled to hold the post of SOM pay scale of Rs. 1400-2300 (RP) interruptedly."

2. Applicant No.1 was appointed as Road Gangman on 28.3.79 and applicant No.2 was appointed as Khalasi on 22.4.72. Both of them, after having passed the written test for the post of SOSR Mistry held on 21.1.85, were placed on the select list vide order dated 28.5.86 (Ann.A2) with rankings 4 and 5 respectively. This order also states that promotion of the staff considered suitable will be subject to certain terms and conditions which we will an occasion to extract a little later.

It appears that thereafter the applicants were posted in Survey and Construction Department against temporary vacancies and continued to work in the said department till they were ordered to be reverted on their original post vide impugned order (Ann.A1) dated 6/9.6.95. The said reversion was stayed by order dated 10.7.95 by this Tribunal and consequently both the applicants appear to be working continuously on the post of SOM (as redesignated) till date.

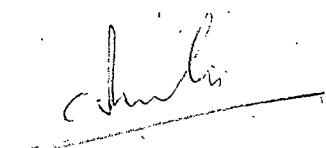
3. We have heard the learned counsel for the parties and have perused the material on record.

4. During the course of arguments, the learned counsel for the applicants brought to our notice a letter No.E/E/1025/5 Vol.I dated 8.1.2001 from DRM Kota and addressed to the General Manager (Estt), Churchgate, Mumbai which was taken on record. This letter states that applicant No.1 was selected for the post of SOM in Survey and

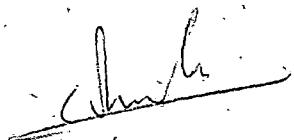


Construction Department under the conditions which have already been mentioned in the preceding paragraph as part of Ann.A2. The letter also states that the applicant No.1 had completed pre-promotion training from 13.10.86 to 12.12.86 in ZTS-UDZ and stood at merit No.1 and was posted as SOM vide letter dated 5.6.86. The letter goes on to say that the employee (applicant No.1) contends that his juniors viz. Shankar-B, working as B/Smith Gr.I under CPWI-BWN, and others are working in higher post in scale Rs. 4500-7000, he is also required to be given the same scale as per his seniority. It is also stated in the letter that on examination, it is cleared that few of the junior employees from Shri Babu Lal (applicant No.1) are working in the scale of Rs. 4500-7000 but Shri Babu Lal could not be called for suitability/trade test due to non-availability of his name in the seniority list and juniors were promoted. The letter finally seeks guidelines whether Shri Babu Lal can be promoted as SOM in the scale Rs. 4500-700 in view of his juniors having been promoted in higher grades and he not having been called due to non-availability of seniority (list) on administrative account.

5. The respondents in their reply have stated that suitable employees are posted in Survey and Constructions Department against temporary posts and as mentioned in the panel (Ann.A2) itself, on the expiry of workcharged posts, they will return to their parent category according to their position in the select list and their lien will continue to be maintained in their parent cadre and they will be eligible for all promotions as per rules in the channel of promotion where they hold lien. It is, therefore, contended on behalf of the respondents that even if the applicants have qualified the written test and were promoted to the post of SOM, then also it does not create any right in them because their lien is kept on the post of their own cadre and they have to earn their



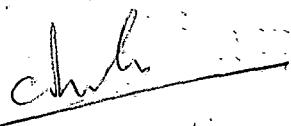
promotion in their own cadre itself. As such, on repatriation they are entitled for the same post and the seniority position and it has been further asserted that in the present case no junior person to the applicants has been promoted on a higher post. As regards the order of this Tribunal dated 5.10.95 in OA No.405/92, it has been stated by the respondents that they have already taken action in pursuance of the directions issued in the said judgment and accordingly the cases of the applicants were examined as per directions of the Hon'ble Tribunal and the same were accordingly decided. It has also been contended that applicant can get promotion in their cadre only in accordance with the avenues of promotion provided in the rules and in such eventuality the applicant are not entitled to get such promotion ignoring the seniority position of their substantive post because in such circumstances, even certain senior persons to the applicants on their substantive posts would be receiving discriminatory treatment. The respondents have also denied the averments made in Ground (D) of that OA that S/Shri Kishan Lal, Farhad, Kishori Lal, Mangia and Kana were given promotion on the post of SOM/SOSR even when they qualified the trade test only subsequently in the year 1989 and explained that in fact all the employees named are much senior to the applicants and have been given regular promotion on qualifying the trade test against the regular post. The respondents have also denied the averments made in para (E) of the OA and explained that a perusal of the said letter (Ann.A9) will show that the promotion was awarded to the said employee for the reason that there was omission on the part of administration in not granting promotion to him though he should have been regularised 8 years back on the post of PWI, whereas the case in hand is quite different because the applicants can get promotion in their own cadre as per rules and any temporary promotion in the project does not create a right to claim a regular promotion in their own cadre. The repondents have



also denied the averments made in ground (F) of the OA and have contended that there is nothing in the said order (Ann.A/10) to say that 11 employees, named in the order, were sent to the project on a higher post and further that the question of reversion from the project does not arise if an employee is kept in the same post or if as per his seniority position in his own cadre he gets a right to be promoted in the open line and thus the example quoted by the applicants has no relevance.

6. We have carefully considered the rival contentions. We are of the opinion that the controversy in this OA revolves round two basic issues. First, whether an employee who is deputed to Survey and Construction Department can claim to remain there indefinitely. Second, whether an employee who is posted to Survey and Construction Department on promotion to a higher post can claim the promoted post in his parent cadre, irrespective of whether his senior in the parent cadre have got such promotion/higher pay scale or not.

7. As regards the first issue, it has to be appreciated that the work load in Survey and Construction Department depend on the number of projects that Department is handling at a particular moment of time. The Railways have adopted a wise policy of managing the additional work load by taking officials from their parent cadres in the open line instead of recruiting such additional employees from the open market and face the demand/problems of their regularisation once work load get reduced. Against this background, we find no fault with the respondents inserting clearly certain conditions at the time of notifying the panel of employees selected for Survey and Construction Department, which include, inter-alia:

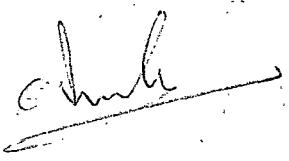


"i) The select list and promotions for the purpose of filling temporary vacancies, in the construction work of S&C Department in the jurisdiction of the division only. They will not be eligible for posting against open line vacancies on the division or on any S&C Unit out side the division.

ii) On the expiry of workcharged posts, they will return to their parent category according to their position in the select list. They will not be eligible for absorption on any project out-side this division.

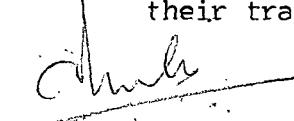
iii) Their lien will continue to be maintained in their parent cadre and they will be eligible for all promotions as per rules in the channel of promotion where they hold lien."

A plain reading of above conditions will reveal that the respondents have taken extra care to put across all the pros and cons for employees from open line joining the Survey and Construction Division. Such employees have to understand that they would be working on temporary and work-charged posts in another organisation than theirs and are liable to be reverted to their parent category on their services being no longer required in such organisation, which in effect means non-availability of such temporary and work-charged posts. They also have to understand that their lien is maintained in their parent department and their seniority will be maintained in their parent cadre, meaning thereby that their promotion in the parent cadre will depend on their seniority position in their parent cadre with requirement to go through the prescribed selection process. The applicants had also gone to Survey and Construction Department on promotion under similar conditions and no right had accrued to them to continue in Survey and Construction Department indefinitely, and this being so their services could be returned (termed repatriation in administrative parlance) to their parent cadre/post anytime, which



was what the respondents did by issuing the impugned order dated 6/9.6.1995 (Ann. A1). We, therefore, decide the first issue in the manner that no exception can be taken to Ann. A1 and there is no reason at all to quash and set-aside the impugned order at Ann. A1. However, if work is presently available for the two applicants in the Survey and Construction Division and their juniors in their parent cadre have not yet been promoted, we would expect the respondents to continue utilising the services of the applicants in the Survey and Construction Department so that the applicants do not have to face the prospects of going to a lower post in a lower pay scale on their repatriation to their parent post in the open line.

8. Coming to the second issue i.e. the question whether the applicants can carry their promotion to their parent organisation on their repatriation to open line, we are of the considered view that such a thing will be completely against the settled principles of law. If such a benefit is allowed, the system of deputation and repatriation will get topsy-turvy. A deputationist has to normally return to his parent cadre/organisation. He can be absorbed if both the lending and receiving departments agree and the employee has applied for absorption or is agreeable to such absorption. Failing absorption, such a deputationist can be repatriated by the receiving department anytime even before expiry of the term of deputation and this has been upheld by the Apex Court in AIR 1990 SC 1132, Ratilal B. Soni v. State of Gujrat. The Apex Court has held that a deputationist has no right for absorption and such absorption can take place if rules so provide (Refer Rameshwar Prasad v. U.P. Rajkiya Nirman Nigam, JT 1999(7) SC 44). In yet another case in Civil Appeal Nos. 944-46/94 arising out of S.L.P.(C) No. 8496, 10278 and 3282/1990, Union of India and ors. v. Amar Singh and ors., where certain railway employees were posted to Production Control Organisation from Shop Floor and had challenged their transfer back to Shop Floor, Hon'ble the Supreme Court held



that "the respondents continued to have their lien in the parent Shop Floor from which they were sent on deputation to the P.C.O.. The grievance made by the respondents against their reversion from deputation in P.C.O. to the Shop Floor on which their lien continued, cannot be faulted".

9. In view of above, we hold that the applicants cannot "carry" their promotion to the post of SOCR (redesignated as SOM) in the Survey and Construction Department to their parent cadre in the Open Line and their posting on their original post of Road Gangman (Applicant No.1) and Khallasi (Applicant No.2) vide the impugned order dated 6/9.6.1995 cannot be faulted.

10. In view of above discussions, the judgment of the High Court, Allahabad in the case of Pratap Singh v. State of UP, 1995(1) LLN 880 is of no help to the applicants because selection for a higher post is quite different from being sent on deputation to a foreign organisation on a higher post. We are also of the view that the decision of this Tribunal in OA No.405 of 1992 dated 5.10.1994 is also of not much help to the applicants as the alleged hostile discrimination between the applicants and certain persons named therein has been specifically denied by the respondents and this has not been controverted by the applicants by filing a rejoinder. However, this judgment is relevant to the applicants to the extent it directs the respondents to "promote the applicants on the basis of their seniority as and when due in turn" and that "the benefit of Para 226 of the Indian Railway Establishment Manual Vol.I will be given to the applicants". It has been stated on behalf of the respondents that action has been taken on the said directions of the Hon'ble Tribunal and this is why no Contempt Petition was filed by the applicants. All we can say in this regard is to reiterate that the applicants have to be considered for promotion on the post

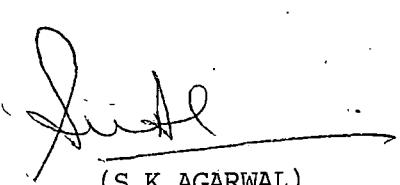
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of SOM in their own cadre on their turn as per their seniority, and if they are eligible to the benefit of Para 226 of IREM, it should also be extended to them. As regards the allegation of the applicant No.1 that he has not received the salary from 15.3.90 to 13.10.91 and of applicant No.2 that the amount paid was adjusted in leave due, the respondents have stated that the claim is time barred and, in any case, it was not due. We are of the opinion that this claim is not only time barred but also suffers from the principle of constructive res-judicata as the applicants could have taken the opportunity of pressing this claim when they filed OA after such period in 1992 (OA No. 405 of 1992). The Apex Court has been repeatedly holding that Court/Tribunal cannot help an applicant who sleeps over his grievance. As an example, in the case of P.K.Ramchandran v. State of Kerala and anr., JT 1998(9) SC 21, the Apex Court held "that the law of limitation may harshly affect a particular party but it has to be applied with full force when the statute so prescribes and Court have no power to extend the period of limitation on equitable grounds".

11. In the result, while we find no justification to quash and set-aside the impugned order dated 6/9.6.1995, we dispose of this OA with a direction to the respondents to sympathetically consider our suggestions contained in para 7 of this judgment i.e. continue to utilise the services of the applicants in the Survey and Construction Department where they are still working on the strength of the interim order of this Tribunal dated 10.7.1995, provided work can be found for them. In case, the respondents are not able to find work for the applicants in the Survey and Construction Department, they will be free to repatriate the applicants to their parent cadre in the open line and the stay granted vide order of this Tribunal dated 10.7.1995 would stand vacated.

No order as to costs.


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member