

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 16.02.2001

OA No.205/96

Rafiq Ahamed S/o Ismile, aged about 55 years, r/o Kota, at present employed on the post of Driver Gr.II in Kota Division at Ratlam Depct, Western Railway, Kota.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway, Kota Division, Kota.
3. Deputy Controller of Stores, Western Railway, Kota Division, Kota.
4. Shri V.N.Sivan Kutty at present employed on the post of M.C.F. in Kota, Western Railway, Kota Division, Kota.
5. Shri Munshi Lal Malviya at present employed on the post of Driver Gd.I, in Kota Division, Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. Manish Bhandari, counsel for the respondents

CORAM:

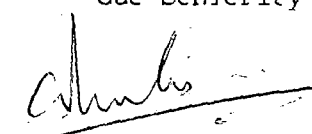
Hon'ble Justice Mr. B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant in this OA, seeks quashing both the order dated 6.4.1995 (Ann.A1) by which his claim for seniority was rejected and the seniority list at Ann.A2 which placed his juniors above him. He prays for a further direction to the respondents to grant him his due seniority with all the consequential benefits.



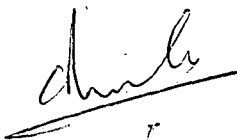
2. Some of the facts that can be stated are that the applicant was initially appointed as Khallasi on 7.5.1958. He passed trade test for the post of Motor Driver vide order dated 21.5.1973 (Ann.A4) and was placed at Sl.No. 2 of the panel. S/Shri V.N.Sivan Kutty and M.K.Malviya respondents Nos. 4 and 5 respectively, were promoted to the post of Artisan on 14.2.1974 and 29.1.1976 respectively. The applicant was suspended on 17.4.1976 on a criminal case having ^{been} instituted against him and was exonerated on 7.5.1983.

3. The contention of the applicant is that he was not promoted in time because of his being under suspension and during his suspension, his juniors were promoted and once he was exonerated of criminal charges, he was entitled for the promotion from the date his juniors respondents Nos. 4 and 5 were promoted. He filed TA No.2218/86 before this Bench of the Tribunal claiming such promotion. The said TA was disposed of on 26.7.1993 with a direction to the official respondents, inter-alia, that "we direct that (if) the juniors were promoted, the case of the applicant should also be considered according to the rules."

4. Not satisfied with the implementation of the directions given by this Tribunal in TA No.2218/86, the applicant has filed the present OA seeking reliefs as stated in the first paragraph of this order.

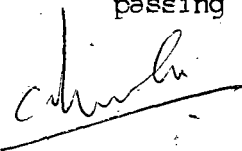
5. We have heard the learned counsel for the parties and have gone through the material on record.

6. On a careful consideration of the rival contentions, we are of the opinion that the central question to be answered in this OA

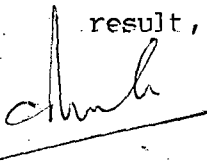


is whether the official respondents had failed to implement the directions rendered by this Tribunal in TA No.2218/86 in letter and spirit and whether the date from which the applicant has been treated to be promoted in Ann.A2 was not in consonance with the said direction.

7. The first thing we observe from the records is that the contention of the applicant that he was not promoted at the time his juniors were promoted because of his being under suspension does not appear to be correct. That the applicant was suspended w.e.f. 17.4.1976 is not disputed, in fact applicant has himself mentioned this date in his OA. It is also clear from the reply of the official respondents, and also from the seniority list at Ann.A2 that private respondents No. 4 and 5 were promoted to the post of Artisans on 14.2.1974 and 29.1.1976 respectively, whereas the applicant was placed under suspension on a later date i.e. 17.4.1976. The very basis of the case of the applicant thus collapses on this count alone. In the absence of clear pleadings from both sides, we cannot find out as to why the applicant was not promoted either alongwith respondent No.4 on 14.2.1974 or alongwith respondent No.5 on 29.1.1976. However, the fact remains that the applicant was not promoted alongwith any of the two private respondents and ~~was~~ this fact is also not disputed. Further, if the applicant felt that he was unfairly denied promotion either on 14.2.1974 or on 29.1.1976, he should have challenged such denial latest by 29.1.1977 to remain within the period of limitation stipulated under Sec. 21 of the Administrative Tribunals Act. The application is, therefore, also barred by limitation. Further, the order of this Tribunal dated 26.7.1993 in TA No.2218/86 is of no help to the applicant since the Tribunal had not directed the respondents to promote the applicant de-hors the rules i.e. without passing trade test for promotions either on 14.2.1974 or on



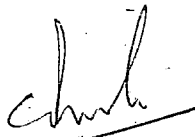
29.1.1976 and had specifically inserted "according to the rules" in its directions as can be seen from the relevant portion of the said order extracted in paragraph 2 of this order. It is not the case of the applicant that the promotion to the post of Artisan did not involve any trade test or Selection Process. On the contrary, the official respondents have specifically contended that passing of the selection test/trade test was a statutory condition before an employee could be promoted to the post of Artisan. In fact, the applicant did pass the trade test and was kept in an earlier panel for the post of Motor Driver vide order dated 21.5.1973 (Ann.A4) but it has been stated by the official respondents that the said panel had expired and the applicant could not be promoted for want of vacancies during the life time of the panel. This contention of the official respondents has also not been controverted by the applicant by filing any rejoinder. In view of this, the official respondents cannot be faulted if they could not promote the applicant on the basis of panel dated 21.5.1973 and against this background the applicant could not be promoted even on the strength of the directions of this Tribunal dated 26.7.1993 in OA No.2218/86 since it will be de-hors the rules to promote an employee on the basis of an expired panel. In the circumstances, the fact that the applicant was appointed in Group 'D' post on 7.5.1958, earlier than respondents Nos. 4 and 5 (11.5.1964 and 22.2.1972 respectively) is of no help to the applicant as the promotion to the post of Artisan is on selection basis and seniority cannot be the only factor for such promotion. We also feel that the letter dated 3.4.1995 (Ann.A5) is also of no help to the applicant since firstly, the letter is only an internal correspondence between two offices and secondly, because it only supports the fact that junior to the applicant was already promoted on 29.1.1976 while, Rafiq Ahmed, the applicant herein, was suspended much after on 17.4.1976. In the result, even Ann.A5 also does not support the applicant's




contention that he was not promoted when his juniors i.e. respondents Nos. 4 and 5 were promoted because he was under suspension.

8. In view of the discussions above, the applicant has not been able to establish his case and we find no justification to interfere with either the impugned order dated 6.4.1995 (Ann.A1) or the seniority list of Artisans (Ann.A2).

9. The OA, therefore, fails and is accordingly dismissed with no order as to costs.


(N.P.NAWANI)

Adm. Member


(B.S.RAIKOTE)
Vice Chairman