

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10.05.2001

OA No.212/1996 and

OA No.213/1996

1. Jagesh Kumar s/o Shri Surendra Nath Chatterjee r/o Railway R.E. Colony Type III, Western Railway Kota at present employed on the post of TCM Gr.I in the office of J.En. (Auto), Western Railway, Kota Division, Kota.
2. Mohammed Yunus s/o Shri Mohd. Yusuf r/o of Railway RE Colony IIInd Storey, Quarter No. 21A, at present employed on the post of TCM Gr.I, Kota Division, Western Railway, Kota.

.. Applicants

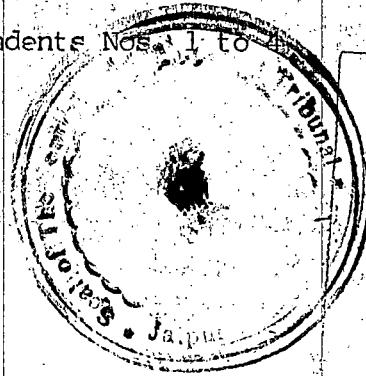
Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. The Chief Communication Inspector (M), Western Railway, Kota Division, Kota.
4. Sr. Divisional Signal and Telecommunication Engineer, Western Railway, Kota Division, Kota.
5. Shri B.Sharma, T.C.M. Gd.I (Now promoted as MCF) working in the O/o J.En. (Auto Exchange) Kota Western Railway.
6. Shri Kalyan Singh, TCM Gd.I, Western Railway working in the O/o J.En. Test Room. W.R.Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicants

Mr. Anupam Agarwal, proxy counsel to Mr. Manish Bhandari, counsel for respondents Nos. 1 to 4



None appeared for private respondents Nos. 5 and 6.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

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

ORDER

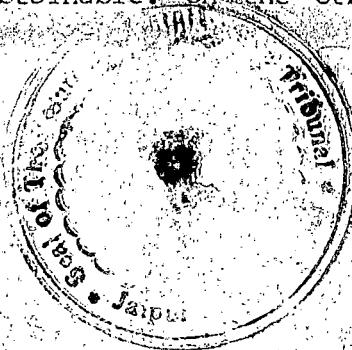
PER HON'BLE MR. N.P. NAWANI, ADMINISTRATIVE MEMBER

It is proposed to dispose of the above mentioned two OAs by this common order in view of the similar issues of law and facts involved in these two cases. For the sake of convenience reference is being made to OA No.212/96, Jagesh Kumar Vs. Union of India and ors.

2. Applicants have assailed the order dated 30.11.1995 (Ann.A1) by which seniority of the applicants in TCM Grade-III (for short, TCM Gr.III) was modified to their disadvantage and they have been further prayed that their seniority may be restored to the original position which they were enjoying prior to issuance of the impugned order Ann.A1.

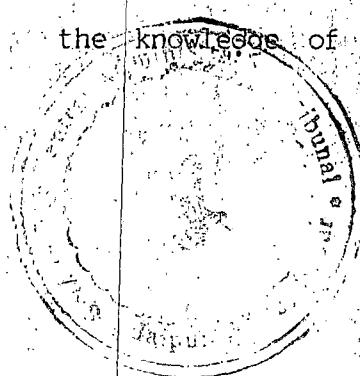
3. We have heard the learned counsel for the parties and have also perused the material on record. The learned counsel for private respondents Nos. 5 and 6 was not present and these private respondents were also not present in person. However, the reply filed by them has been taken into consideration.

4. After hearing the rival contentions, it transpires that the only controversy to be resolved in these cases is whether the applicants were regularly promoted to the post of TCM Gr.III w.e.f. 1982 or from 1986. If their regular promotion to TCM Gr.III was to be considered from 1982, the modification in their seniority as brought out by the impugned order dated 30.11.1995 (Ann.A1) would not be sustainable. On the other hand, if their regular promotion to TCM



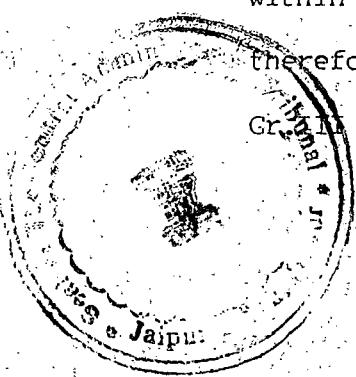
Grade III was to be from 1986 the official respondents would be within their rights to correct the mistake after duly issuing a show-cause notice to the applicants.

5. It is not disputed that a trade test for TCM Grade-III was organised in the year 1982 in which 21 candidates were declared successful, but since there were only 14 vacancies available, promotions were made in respect of only 14 officials and the balance 7 employees were promoted on work charged posts. This has been mentioned in Ann.A10 in OA No.212/96 and Ann.A9 in OA No.213/96 filed by the applicants themselves. It is not of much concern at this juncture that such a trade test was cancelled by the official respondents and on some of the employees who had passed the said trade test approaching the Jodhpur Bench of this Tribunal, the cancellation of the said trade test was set-aside vide order dated 9.12.1988 in TA No.596/86 and thus the promotions given on the basis of the said trade test remained valid. The case of the applicants is essentially based on the assertions that even though they were part of the 7 employees for whom vacancies were not available and who were posted in work-charged posts, their such promotions on the work charged posts was a regular promotion and, therefore, the seniority positions earlier accorded to them on such regular promotion could not have been modified by the official respondents after a lapse of long time. On the other hand, the learned counsel for the respondents contends that the promotion order, a copy of which has been filed by the applicants themselves as Ann.A2 clearly states that both the applicants were posted as TCM Gr.III against work charged posts purely on ad-hoc basis and, therefore, as per the well settled law the ad-hoc promotion, thus given, could not have been counted for seniority and once any mistake in according seniority on the basis of such ad-hoc promotion came to the knowledge of official respondents, they were perfectly within



their rights to modify the seniority and protect the interest of the officials who had been regularly promoted earlier to the applicants and since this was done after issuing a show-cause notices to the applicants, the applicants cannot have any grievance at all against the impugned order Ann.A1.

6. We have given our careful consideration to the rival contentions. A perusal of Ann.A2 filed by the applicants themselves makes it absolutely clear that both the applicants were posted as TCM Gr.III purely on ad-hoc basis against work charged posts. In fact, the order does not even mention of the applicants being promoted to the grade of TCM Gr.III and just states that they are posted in S&T Department (against work charged posts) for a specific period which might have been extended from time to time. The learned counsel for the respondents has shown to us an office order dated 27.3.1986, a copy of which is taken on record, which states that the applicants, ad-hoc TCM Gr.III, on passing the trade test are posted as regular TCM Gr.III. These two orders, the one dated 15/30.9.1982 (Ann.A2) and the office order dated 27.3.1986 as shown to us, make it abundantly clear that the applicants were appointed to TCM Gr.III on regular basis only vide order dated 27.3.1986 and their earlier posting on the work-charged posts of TCM Gr.III in S&T Department was on purely ad-hoc basis. Once we come to the conclusion that the applicants were promoted on regular basis only in the year 1986, it is not difficult for us to hold that they were entitled to seniority in the cadre of TCM Gr.III only from 1986. If the official respondents had wrongly accorded them seniority w.e.f. 1982 when they were posted against work charged posts in the S&T Department purely on ad-hoc basis, it was within their rights to rectify the same and the applicants cannot, therefore, be entitled to seniority from 1982 as their posting to TCM Gr.III in 1982 was de-hors the rules. They were regularly promoted



only in 1986 after passing the requisite trade test and their seniority in the cadre of TCM Gr.III has to be reckoned only from 1986. In any case, it is well settled principle in law that an illegality cannot be allowed to be perpetuated. Even though the applicants had passed the trade test in 1982, only 14 vacancies were available and the applicants unfortunately missed the bus on that occasion. The respondents Department, however, thought it fit to utilise their services in the S&T Department as TCM Gr.III on ad-hoc basis but this benefit extended to them cannot be taken as their regular promotion to the post of TCM Gr.III and, therefore, their seniority was correctly modified as from 1986 when they were regularly promoted to the post of TCM Gr.III vide order No. E/Sig/839/5/1 dated 27.3.1986 issued by the Divisional Office, Kota.

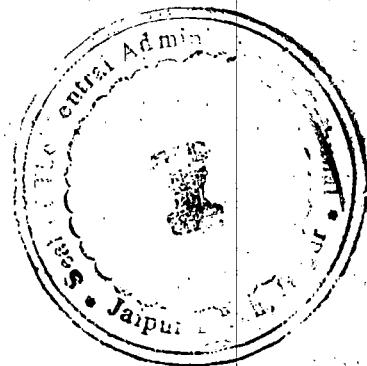
7. We, therefore, find no justification to interfere with the impugned order dated 30.11.95 (Ann. Al) and both these OAs are devoid of any merit and liable to be dismissed. The OAs are accordingly dismissed with no order as to costs.

(N.P.NAWANI)

Adm. Member

(S.K.AGARWAL)

Judl. Member



TRUE COPY ATTESTED

[Signature]
Section Officer (Judicial)
Central Administrative Tribunal
Jaipur bench, JAIPUR