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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 440/1996 199
T.A. No.

DATE OF DECISION 6-3-97.

Gangadhar Meena

Petitioner

Mr. P.V.Calla

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. Manish Bhandari

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, VICE CHAIRMAN

The Hon'ble Mr. O.P. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes .
2. To be referred to the Reporter or not ? Yes .
3. Whether their Lordships wish to see the fair copy of the Judgement ? No .
4. Whether it needs to be circulated to other Benches of the Tribunal ? No .

(O.P.Sharma)

Administrative Member

Ceknire
(Gopal Krishna)

Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

OA No. 440/1996

Date of order: 6-3-97

Gangadhar Meena S/o Shri Modu Lal Meena, T.C.M. Grade III,
Scale Rs. 950-1500, Western Railway, Kota.

.. Applicant

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The D.P.M.(E), Western Railway, Kota Division, Kota.
3. The Senior D.S.T.(T), Western Railway, Kota.

.. Respondents

Mr. P.V. Calla, counsel for the applicant

Mr. Manish Bhandari, counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P. Sharma, Administrative Member

O R D E R

Per Hon'ble Mr. O.P. Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985 Shri Gangadhar Meena has prayed that order dated 5.8.1996 (Ann. A1) by which the applicant while working on the post of TCM Grade-III scale Rs. 950-1500 has been reverted to the post of Khalasi scale Rs. 750-940 may be quashed and the respondents may be directed to allow him to work on the post of TCM Grade-III scale Rs. 950-1500, treating him as a regular holder of the said post, with all benefits of seniority, fixation, increments etc.

2. The presentation of the facts by the applicant is quite confusing. However, effort has been made to glean important and relevant facts from the presentation of the applicant. The applicant's case appears to be that he
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joined the Railways as a Casual Labour in the Engineering Department in 1976 under the D.R.M.(E), Western Railway, Kota Division, Kota. W.e.f. 1.9.1981 he was taken on regular establishment as a Group-D employee. Thereafter, on being found fit through a trade test for the post of Trolleyman, he was subjected to medical examination and thereafter found suitable for appointment to the post of Trolleyman. As a Trolleyman he was posted under A.S.D., Sawai Madhopur where he joined on 30.10.1984 and became member of Telecom Department. (At this stage it may be stated that the applicant has not clarified that his posting under the A.S.D. Sawai Madhopur in the Telecom Department was in the Railway Electrification (RE) project i.e. outside the Division. This point was clarified by the learned counsel for the applicant during the arguments). While he was working on the post of Trolleyman in the RE project he appeared in the Trade Test for the post of TCM Grade-III held in 1986, in which he was declared successful. On 17.10.1986 he was appointed as TCM Grade-III scale Rs. 260-400, revised scale Rs. 950-1500, and posted at Nimoda in the RE project (Ann.A2). Although he was appointed to the said post after due process of selection, in the appointment order it was mentioned that he was appointed on purely adhoc basic. Since his promotion was on the basis of selection, he acquired a vested right to hold the said post of TCM Grade-III.

3. Further according to the applicant, he was transferred to the office of the D.S.T.E.(E), Kota sometime in July, 92, which office probably was in the Engineering Department of the Division, but he was not paid the scale of Rs. 950-1500. He was again transferred as a Khalasi/Gangman from the Engineering Department of the

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Division to the Telecom Department in the FE project vide order dated 9.2.1993. The applicant filed an OA, No. 439/1993, before this Bench of the Tribunal wherein he assailed his reversion to the lower post in the garb of transfer. On 29.7.1993 the Tribunal stayed the operation of the order dated 9.2.1993 (Ann.A3). In other words he was allowed to work on the post of TCM Grade-III by the said interim order but when the respondents did not act in accordance with the interim directions of the Tribunal, he filed Contempt Petition No. 84/1993. When notices of the Contempt Petition were sent to the respondents, the applicant was posted as TCM Grade-III on adhoc basis under T.C.I.(C), Kota, till the final outcome of the OA pending before the Tribunal, vide order dated 26.11.1993. In the final order passed by the Tribunal while disposing of the OA on 10.1.1995 (Ann.A4), the Tribunal directed the respondents to consider the applicant's case for regularisation on the post of TCM Grade.III subject to any vacancy in the said post as per rules and as per his seniority position. In view of the aforesaid judgment of the Tribunal, it was incumbent upon the respondents to consider the applicant's case for regularisation on the post of T.C.M. Grade-III, in view of the fact that he had already been selected for the said post way back in 1986. Instead, however, the vacancies in the said post were filled up by the candidates selected in a later selection.

4. The applicant's further case is that after adhoc posting as TCM Grade-III was given to the applicant in pursuance of the interim direction of the Tribunal, the respondents vide order dated 8.6.1995 relieved the applicant from the Telecom Department in the FE project and asked him to report to the D.R.M.(E), Western Railway, Kota

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(Ann.A5). (He was actually relieved on 26.7.1996 as seen from the endorsement to the order Ann.A5. The description of the date of order Ann.A5 as 3.6.1995 is doubtful, but that is not material). As seen from Ann.A6 dated 19.12.1995 a large number of vacancies of TCM Grade-III were available with the respondents. The respondents were, however, not interested in providing regular posting to the applicant on the post of TCM Grade-III scale Rs. 950-1500. Vide order Ann.A1 dated 5.8.1996 the applicant has been posted as Khalasi scale Rs. 750-940 in the Engineering Department of the Division.

5. The applicant has assailed the action taken by the respondents on the grounds, amongst others, that since he has been selected for the post of TCM Grade-III as far back as in 1986, he acquired a vested right to hold the said post, the Tribunal has already directed vide order Ann.A4 dated 10.1.1995 to consider the case of the applicant for regularisation on the post of TCM Grade-III, the applicant having been selected through an earlier selection had preferential right to be appointed to the post of TCM Grade-III on regular basis and the nature of the order issued reverting the applicant is penal and still before issuing this order no opportunity of being heard was given to the applicant. Therefore, the order passed is in violation of the principles of natural justice.

6. On 4.9.1996 the Tribunal while directing issue of notices of admission to the respondents stayed the operation of the order dated 5.8.1996 by which the applicant was transferred to the post of Khalasi scale Rs. 750-940. The interim direction is still in operation.

7. The respondents have filed their reply to the applicant's prayer for interim relief as also to the OA. The applicant has also filed a rejoinder to the reply filed

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by the respondents.

8. The respondents in their reply have stated that the post of TCM Grade-III is not in the channel of promotion from the post of Trolleyman. According to them, the applicant was working in the Engineering Department (of Kota Division) from where he was sent to the RE project and while he was on deputation to the RE project he was given the post of TCM Grade-III on adhoc basis. Therefore, his promotion to the post of TCM Grade-III was not on regular basis. On repatriation to the parent department an employee is given placement as per his original seniority position on his substantive post. The applicant cannot claim to be retained on the post of TCM Grade-III (in the Engineering Department in the Division) as a matter of right because there are many senior employees who are still awaiting promotion. The applicant's seniority is at Sl.No.249 and his case of regularisation on the said post can only be considered according to the rules and the seniority position. The Tribunal's directions in the order dated 10.1.1995 (Ann.A4) were that the applicant shall be considered as per rules and also as per his seniority position. The applicant has not furnished his seniority position in order to claim the benefits sought in the OA, although he was well aware that his seniors are awaiting promotion. The applicant was continued on the post of TCM Grade-III in view of the interim directions issued by the Tribunal. The respondents are, however, not restrained from taking action as per rules. As regards order Ann.A1 dated 5.8.1996, the applicant has been given posting keeping in view his seniority position and therefore, his grievance is without any basis. If the applicant treats the order Ann.A1 as that of reversion, he ought to have preferred an appeal

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against the said order to avail himself of the alternative remedy.

9. In the rejoinder filed by the applicant, he has, by and large, rebutted the contentions of the respondents. He has denied that the post of TCM Grade-III is not in the channel of promotion of Trolleyman. He has further claimed that he was not sent on deputation to the RE project but it was case of his transfer to the said project in the interest of administration. Further, according to him, the respondents have not made it clear who are those seniors awaiting promotion on the post of TCM Grade-III in the parent department. The applicant had not made any request for transfer from the Engineering Department to the RE project and there is no question of fixing his seniority at bottom amongst Group-D employees in the post of Khalasi.

10. During the arguments, the learned counsel for the applicant stated that since it was a case of transfer to the RE project in the interest of administration and not a case of transfer on his own request, the applicant was entitled to continue on the post of TCM Grade-III to which he has been appointed in the RE project, Telecom Department, on the basis of a regular selection, even after his transfer back to the parent department. On transfer back to the Engineering Department of the Division, which is stated to be his parent department by the respondents, he cannot be put back at a Group-D post, because the respondents have not shown that any persons senior to the applicant are still awaiting promotion to the post of TCM Grade-III. Further, according to him, in view of the order passed by the Tribunal vide Ann.A4 dated 10.1.1995, he is entitled to be considered for regularisation on the post of TCM Grade-III scale Rs. 950-1500 and, therefore, the

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respondents are not justified in not only not considering him for regularisation on the said post but reverting him to a lower post.

11. The learned counsel for the respondents stated that it is the settled position that any promotion earned by any employee in the Department to which he has been sent on deputation etc. cannot be maintained on reversion to the parent department, where he has to be placed according to his original seniority position and he has to earn promotion in accordance with his seniority position and the process of selection. According to him, the respondents have indicated the applicant's seniority position in the parent department but there is no categorical rebuttal by the applicant in the rejoinder with regard to his seniority position indicated by the respondents.

12. We have heard the learned counsel for the parties and have perused the material on record. The OA is being disposed of at the stage of admission with the consent of the parties.

13. In our view the limited question in this case is whether an employee sent to another Department on deputation or transfer and who has earned promotion in the Department to which has been transferred/deputed can retain his seniority or promotional post on being reverted back to the parent department. The applicant's case is that it was not deputation but a transfer to the RE project in the interest of administration. The description of the process of being sent from one Department (Engineering Department of the Division) to another (Telecom Department of the RE project) is immaterial. It is not the case of the applicant that he was absorbed in the Department to which he was transferred/deputed. Therefore, on reversion back to his

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parent department, he had to take his place in accordance with his original seniority position. Even if it is accepted that it was not on the applicant's own request but in the interest of administration that the applicant was sent to the RE project, the position is not materially changed because it was not a case of his permanent transfer or absorption in the Department to which he was sent. In this connection we may refer to the judgment of the Hyderabad Bench of the Tribunal in the case of G. Dayananda Rao Vs. Union of India and Ors., 1994 (1) ATJ 171. In that case the applicant while working as Highly Skilled Mechanic Grade-I on Open Line was transferred on deputation to Electrification project in the same capacity. In the Electrification project he got promotion as Chargeman-B on regular basis. After sometime he was repatriated to Open Line and posted as Chargeman-B on adhoc local arrangement. The applicant claimed regularisation of service as Chargeman-B from the date of his appointment in that post/grade in the Electrification project or atleast from the date of his repatriation to Open Line. The respondents' case was that the applicant had not yet been empanelled on the post of Chargeman-B and he was working as such on adhoc basis. The Tribunal upheld the refusal of the respondents to regularise him on the post of Chargeman-B in the Open Line, holding that benefit of promotion in Electrification project (the transferee unit) cannot be available on repatriation to the parent department. The Tribunal further held that there may have been early promotions in the transferee unit due to non-availability of seniors in that unit and the deputationists may have got early promotions there. Further, the Tribunal held, on repatriation he has to take back his seniority in the parent unit and first get

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promotion on that basis. This judgment supports the view that we are taking in the present case. The applicant here cannot claim the benefit of his promotion in the FE project on being sent back to his parent department.

14. The applicant's further case, however, is that the respondents have not indicated who are all seniors to the applicant awaiting promotion in the parent department due to which factor his appointment to the post of TCM Grade-III is being denied in the parent department. Although the respondents have indicated the applicant's seniority position in the parent department, the applicant has not categorically rebutted that position. It was, therefore, for him to unequivocally affirm that there were no seniors awaiting promotion on the said post in the parent department. As regards the Tribunal's directions for regularisation of the applicant, it appears that when the Tribunal's order was passed on 10.1.1995 (Ann.A4), the applicant was working in the FE project and the direction of the Tribunal was with regards to the applicant's consideration for regularisation on the post of TCM Grade-III in the said Department. However, we are of the view that regardless of where the applicant was working when the Tribunal issued directions vide its order Ann.A4 in OA No. 439/93, the directions for consideration of his regularisation in the post of TCM Grade-III were subject to availability of vacancy, as per rules and as per his seniority position. There was, therefore, no blanket order even for consideration of the applicant's case for regularisation in the post of TCM Grade-III. Therefore, the applicant cannot draw any sustenance from the Tribunal's order.

15. In conclusion, we hold that the applicant is not entitled to be appointed to the post of TCM Grade-III in

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the parent department on reversion to it, vide order Ann. Al dated 5.8.1996 merely because he was holding the said post in the RE project after having faced regular selection for the said post there. He shall take his place in the seniority list at a position at which he stood at the time of his transfer to the RE project. We, however, direct that if any persons junior to the applicant in his parent department i.e. the Engineering Department of the Division, have already been promoted to the post of TCM Grade-III or any other higher post than that held by the applicant at the time of his transfer to the RE project, the applicant shall also be subjected to the process of selection for the said higher post held by his juniors. Such "selection" may be on the basis of merit or seniority-cum-fitness, as may have been laid down in the rules. If he is found suitable during the said process of "selection", he shall be granted promotion w.e.f. the date from which his immediate junior has been granted promotion to a higher post. In other words, the absence of the applicant from the parent department on transfer/deputation to the RE project would not act to his dis-advantage vis-a-vis his juniors in the parent department. While giving these directions we, however, make it clear that the applicant shall have to face a fresh process of "selection" in the parent department in accordance with the laid down rules (whether it may be selection on merit or by seniority-cum-fitness) and the selection test already passed by the applicant in the RE project will not mean that he already stands selected for the post of TCM Grade-III or any other higher post in the parent department. The reason for this clarification is that he, while seeking promotion in the parent department, has to compete with those who are in the same seniority list in which the applicant has been placed

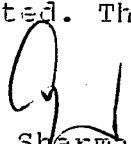
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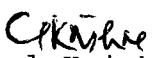
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in the parent department.

16. The OA is disposed of accordingly. The interim direction already issued by the Tribunal on 4.9.1996 stands vacated. There shall be no order as to costs.


(O.P. Sharma)

Administrative Member


(Gopal Krishna)

Vice Chairman