

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 01.10.2002

OA No.22/96

1. Yatendra Kumar s/o Shri Lakhan Singh Verma r/o H.No.544, Shanti Nagar, Behind Emmanuel School, Dadwara, Kota. Jn., presently posted as Chief Draftsman, Engineering Drawing Section, DRM Office, Kota.
2. Arvind Kumar s/o Shri Mami Chand Gupta, r/o Chaupara Farm, Dadwara, Kota Jn., presently posted as Chief Estimator, AEn. (Works), DRM Office, Kota.
3. Ramesh Chandra s/o Shri Garib Dasji r/o Western Railway Colony, Tuglakabad, New Delhi, presently posted as Head Draftsman, Electrical Locoshed, Tuglakabad (New Delhi).

.. Applicants

Versus

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

.. Respondents

Mr. P.P.Mathur - counsel for the applicants

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. H.O.Gupta, Member (Administrative)

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

Applicants are aggrieved of the order dated 22.12.95 (Ann.A1) whereby the Divisional Railway Manager, Kota has cancelled the promotion as was accorded to them in the pay scale of Rs. 1600-2660. In relief, they have prayed for appropriate

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directions to the respondents not to revert them from their post of Chief Draftsman/Chief Estimator carrying the pay scale of Rs. 2000-3200, on the basis of the order dated 22.12.95. It is further prayed to stay the order dated 22.12.95.

2. The case of the applicants as made out, in brief, is that:-

2.1 They were initially appointed on to the post of Apprentice Senior Draftsman/Apprentice Senior Estimator in the then prevailing pay scale of Rs. 425-700 which got revised to Rs. 1400-2300 based on the 4th Central Pay Commission recommendations. They were appointed after their selection through Railway Selection Commission, which is now known as Railway Recruitment Board vide order dated 18.12.84 (Ann.A2). They were kept on probation. Although the word 'Apprentice' has been used, but in the order of appointing them as Apprentice, it is stated that their services shall be regularised after completion of the period of training. Therefore, it may be safely stated that they were appointed on probation. Apprentice Sr. Draftsman/Sr. Estimator is a post in a regular cadre. After completing the period of probation, they were appointed on the post of Sr. Draftsman/Sr. Estimator vide order dated 21.3.86 (Ann.A3).

2.2 In accordance with the prevalent rules, every railway employee, who is appointed for any project or for any scheme is posted against the post of a railway division. Thus, a lien is kept in one of the railway division. Their lien were kept in Kota Division of the Western Railway vide order dated 28.11.81 (Ann.A4).

2.3 They were subsequently promoted in the pay scale of Rs 1600-2660 vide order dated 15.2.90 on the post of Head Draftsman/Head Estimator, which is filled on the basis of

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seniority. Since they were senior and were found suitable to hold the post of Head Draftsman/Head Estimator, they were repatriated from Railway Electrification (RE) to the Division they were holding the lien vide order dated 24.11.94 (Ann.A5). After their repatriation, their seniority was not properly determined in the Division. When they were in the RE project, persons junior to them were given promotion. S/Shri Faizullah Khan, H.K.Chaturvedi, M.S.Mehra, M.G.Kale and certain other persons who belong to same category were given promotion in the pay scale of Rs. 1600-2660. The applicant Nos. 1 and 2 filed OA No. 6/91 which was decided vide order dated 22.8.94 (Ann.A6). The Hon'ble Tribunal issued directions to the respondents for assigning appropriate seniority to the applicants within a period of 3 months. Directions were also issued to adhere to the principles of 'last come first go' and also to grant benefit, if available, to the applicants on the basis of seniority. The respondents did not comply with the directions of assigning seniority within the period of 3 months. However, the respondent No.2 issued an order dated 26/27.10.94 (Ann.A7) by which all the applicants were given proforma promotion in the scale of Rs. 1600-2660 w.e.f. 2.3.1986. In the aforesaid order, it is clearly stated that after repatriation to Kota Division and after clarification on the point of lien in the Division, the applicants are fixed in the pay scale of Rs. 1600-2660 and paper promotion is given to them. The aforesaid order was passed since the applicants were entitled to get promotion on the basis of their seniority. During the pendency of the OA No.6/95, the respondent No.2 issued an order dated 30.6.94 (Ann.A8) whereby the applicants and one Shri Tika Ram were given proforma promotion w.e.f. 2.3.1986 in the scale of Rs. 1600-2660 on the basis that one Shri Faizulla Khan was given proforma fixation in the aforesaid scale on that date and Shri Faizulla Khan is junior to

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the applicants. Thus, the basis of the order dated 26/27.10.94 is the personal seniority of the applicants whereas the basis of the order dated 3.6.94 is comparison of the seniority position of the applicants with that of Shri Faizulla Khan.

2.4 The respondent No.2 issued a seniority list of Head Draftsman/Head Estimator in the scale of Rs. 1600-2660 on 21.6.95 (Ann.A9). In the said seniority list, name of applicant No.1,2 and 3 find place at Sl.No. 11,8 and 9 respectively. Name of Shri Faizullah Khan finds place at Sl.No.18. Shri Faizulla Khan was appointed in the pay scale of Rs. 1400-2300 against promotion quota. He is admittedly junior to the applicants. They made representations and one such representation submitted by the applicant No.1 is marked as Ann.A10. The applicant No.1 was given promotion to the post of Chief Draftsman/Chief Estimator in the pay scale of Rs. 2000-3200 vide order dated 26.4.95 (Ann.A11) issued by respondent No.1. Applicant No.2 and 3 were given promotion to the said post vide orders at Ann.A12 and A13. The post of Chief Draftsman/Chief Estimator is filled on zonal basis and the post is controlled by the headquarter of the Zonal Railway. For the purpose of promotion to the said post, a common seniority list of all Head Draftsman/Head Estimator working in all Divisions of the Western Railway is prepared. The respondent No.1 issued the said combined seniority list dated 27.11.95 (Ann.A14). In the said seniority list, the name of the applicants find place at Sl.No.89, 90 and 91 and that of Shri Faizulla Khan finds place at Sl.No.231.

2.5 The promotion of the applicants in the scale Rs. 2000-3200 is on substantive basis. The persons junior to the applicants were given promotion on to the post of Head Draftsman/Head Estimator when the applicants were working in the RE project. The applicants were given promotion in the scale of Rs. 1600-2660

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w.e.f. 2.3.86. The respondent No.2 issued order dated 5.5.86 (Ann.A15) by which one Shri Faizulla Khan was given promotion to the aforesaid scale w.e.f. 2.3.86.

2.6 The respondent No.2 without any reason or rhyme issued a notice to the applicants on 21.6.95 (Ann.A16) stating that they were wrongly given promotion in the pay scale of Rs. 1600-2660. The applicant No.1 submitted a representation dated 6.7.95 (Ann.A17) but the respondent No.2 without application of mind has issued the impugned order.

3. The respondents have contested this application. Briefly stated, they have submitted that :-

3.1 The applicants were selected for the post of Apprentice Senior Draftsman/Senior Estimator in the scale of Rs. 425-700/1400-2300 by the Railway Recruitment Board and, were posted in RE project under Chief Project Manager (RE) Kota. They were directed to undergo one year's training before appointment to the working post, on a stipend of Rs. 425/- p.m., vide GM (E) letter dated 18.12.84. As per pre-recruitment condition, a candidate is required to undergo one year's training before appointment to the post. On successful completion of training, the appointment is to be regularised. Accordingly, on successful completion of prescribed training and having passed the final retention test, they were appointed and absorbed as Temporary Sr. Draftsman/Sr. Estimator in the pay scale of Rs. 425-700 at a pay of Rs. 425/- p.m. vide CPM (RE), Kota letter dated 21.3.86 (Ann.A3) and regularised them from the date shown against each in the order.

3.2 The post of apprentice is not against the cadre post and, therefore, apprentices are regularised against the cadre post on completion of the prescribed training and on passing the final retention test. The RE is a project and it has no concerned with

the division. The applicants were recruited by RE project for their requirement and not against the cadre post of Kota Division. It is a fact that the applicants were given lien in Kota Division vide GM (E) letter dated 20.3.85. The applicants were promoted as Head Draftsman in the pay scale of Rs. 1600-2660 purely on ad-hoc basis in RE project vide order dated 15.2.90 and regularised in the pay scale of Rs. 1600-2660 vide order dated 21.2.92 and 14.12.93. S/Shri Faizulla Khan, M.S.Mehra and M.G.Kale were junior to the applicants but were regularised in the pay scale of Rs. 425-700/1400-2300 vide order dated 15.7.85. However, this order was subsequently cancelled vide order dated 7/10.12.90. Based on the order of the Tribunal dated 22.8.94, the seniority was notified on 21.6.95. The applicants were given promotion in the pay scale of Rs. 1600-2660 w.e.f. 2.3.86 vide order dated 26/27.10.94 with the clear understanding that their promotion is on proforma basis w.e.f. 2.3.86. Shri Tika Ram was also given proforma promotion w.e.f. 2.3.86 as his junior, Shri Fazulla Khan was given promotion w.e.f. 2.3.86 purely on ad-hoc basis. In view of this, the promotion of the applicants deemed to have been purely on ad-hoc basis and could only be considered for regularisation against the post of Head Draftsman/Estimator in scale of Rs. 1600-2660 w.e.f. 21.2.92 and 14.12.93.

3.3 As per Paras 306 and 320 of the IREM, only non-fortuitous (regular promotion after due process) services should be taken into account for the purpose of seniority. Shri Faizulla Khan was promoted as Head Draftsman vide order dated 5.5.86 w.e.f. 2.3.86 purely on ad-hoc basis with the clear understanding that his promotion was purely on ad-hoc basis and he has no right to claim permanent retention on the post nor he is placed on the panel. The applicants were regularised in the pay scale of Rs. 1400-2300 w.e.f. 25.1.96, 19.1.86 and 28.1.86 respectively. They

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were not due for promotion in scale of Rs. 1600-2660. They were promoted purely on ad-hoc basis. They had not completed two years service in the pay scale of Rs. 1400-2300. The next below rule cannot be applied in such circumstances as the promotion of Shri Faizulla Khan was purely on ad-hoc basis. The proforma promotion extended to the applicants w.e.f. 2.3.86 was not in order and contrary to the extant rules. Therefore, to withdraw the above benefit, a show cause notice was issued to the applicants vide letter dated 21.6.95 and after considering their reply, orders were issued. The applicants became eligible for regularisation in the scale of Rs. 1600-2660 w.e.f. 21.2.92 and 14.12.93. As per the extant rules contained in Paras 306 and 320 of the IREM, the seniority has been assigned and notified vide office letter dated 21.6.95.

4. In rejoinder, the applicants while reiterating most of the earlier contentions have further submitted that the post of Apprentice Sr. Draftsman/Sr. Estimator is a cadre post. From the very beginning, it was clear that the applicants were having lien in Kota Division. They were senior to Shri M.G.Kale and Shri M.S.Mehra, who were promoted w.e.f. the year 1986 vide order dated 15.10.86 (Ann.A18). It was only because of a dispute in the minds of the respondents with regard to the lien of the applicants in Kota Division that they were not considered for promotion in their parent unit whereas Shri M.G.Kale and Shri M.S.Mehra, who were junior to them, were considered and promoted to the post of Head Draftsman/Estimator in the pay scale of Rs. 550-750/1600-2660. The dispute regarding the lien at Kota Division has been resolved and even the respondents have admitted that the lien of the applicants is in Kota Division and therefore, their case was rightly considered and they were correctly regularised w.e.f. 2.3.86. It

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was not only because of the case of Shri Faizulla Khan that the date of regularisation was corrected as 2.3.86 but it was for many other reasons including the reason of seniority. S/Shri Faizulla Khan, M.S.Mehra and M.G.Kale were regularised in the pay scale of Rs. 425-700/1400-2300 vide order dated 15.7.85. It is absolutely wrong averment on behalf of the respondents that these orders have been cancelled vide some other order dated 7/10.12.1990. Copy of such order has not been produced by the respondents. Be that as it may, these orders were never implemented and the present position is that S/Shri M.S.Mehra and M.G.Kale have already been retired. It is reiterated that the case of the applicants is covered not only of the reason that Shri Faizulla Khan was given the grade of Rs. 1600-2660 w.e.f. 2.3.86 but the same is also acuated by the assignment of seniority position. The case of Shri Faizulla Khan was that he was appointed in the pay scale of Rs. 1400-2300 on ad-hoc basis and having been confirmed on such post was asked to perform the duties of the grade Rs. 1600-2660 on ad-hoc basis. The respondents in the guise of Shri Faizulla Khan are trying to take benefit given to the applicants after assignment of seniority whereas the factual position is that the case of Shri Faizulla Khan is not comparable to that of the applicants. The benefit given to S/Shri M.S.Mehra and M.G.Kale was never taken back and this being the position, the applicants have priority claim for promotion in their parent department, which was not accorded to. It is admitted by the respondents that the applicants are having their lien in Kota Division since 1985. Therefore, the claim for the scale Rs. 1600-2660 has to be given to them from the date S/Shri M.G.Kale and M.S.Mehra were given this grade. Further, persons of the same batch that of the applicants have been given such benefits despite the fact that they have not completed 2 years of service in the grade of Rs. 1400-2300. Since there were

vacant posts in the grade of Rs. 1600-2660 at the relevant time, the same benefit should have been given to the applicants. Shri Sudhir Kumar Tiwari and Shri Kailash Negi were given the benefit of the scale of Rs. 1600-2660 w.e.f. 1.4.86 without completing two years service, as may be seen from the order dated 3.12.93 (Ann.A19). The applicants ought to have been given regular promotion as given to S/Shri Tiwari and Negi.

5. Based on the interim prayer of the applicants, this Tribunal vide ordersheet dated 12.1.96, directed the respondents to maintain status-quo as on date in respect of the applicants.

6. Heard the learned counsel for the parties and perused the record.

6.1 As seen from the order dated 22.8.94 (Ann.A6) in OA No.6/91, one of the applicants agitated his grievance for non-fixing of his seniority in the Kota Division. This Tribunal while disposing of the OA, directed the respondents to fix his seniority within 3 months and after fixing the seniority, to accord benefit to the applicant as may be available to him. The respondents, during the pendency of the OA No.6/91, issued order dated 30.6.94 (Ann.A8), according proforma promotion to the applicants from 2.3.86, the date of promotion of Shri Faizulla Khan, junior to the applicants in Kota Division. The same respondent also issued another order dated 26/27.10.94 (Ann.A7) granting proforma promotion to the applicants w.e.f. 2.3.86 and fixing their lien finally in Kota Division.

6.2 During the course of arguments, the learned counsel for the applicants submitted that the applicants were rightly given proforma fixation vide order dated 30.6.94 (Ann.A8) w.e.f. 2.3.86 in the pay scale of Rs. 1600-2660 i.e. the date from which their junior Shri Faizulla Khan was promoted to the said grade and

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therefore, their promotion could not be cancelled through the impugned order. The contention of the respondents is that Shri Faizulla Khan was given ad-hoc promotion w.e.f. 2.3.86 and the applicants were incorrectly accorded pay fixation from that date. Since the applicants were posted on ex-cadre post, they could not be given proforma fixation as per rules, since such proforma pay fixation or proforma promotion has to be given only when their juniors are regularly promoted and accordingly, based on the inquiry in the matter, it was found that they were not eligible for such proforma promotion, therefore, the impugned order dated 22.12.95 (Ann.A1) was issued. We agree with the contention of the respondents. In case of promotion of juniors on ad-hoc basis, the employees on deputation or holding ex-cadre posts, cannot have a right for proforma promotion made on ad-hoc basis from the date their juniors were so promoted on ad-hoc basis. They have only the right for consideration in such cases, if they opt for reversion. However, there is no such pleadings notwithstanding the fact that such pleas cannot be taken at this point of time. The next submission of the learned counsel for the applicants is that vide order dated 26/27.10.94 (Ann.A7), the applicants were accorded proforma promotion based on the final decision on their seniority in the Kota Division, in the grade of Rs. 1600-2660 w.e.f. 2.3.86. He further submitted that there is no reference of Shri Faizulla Khan in this order. It was issued after the question of cadre was finally decided. The contention of the respondents is that this order was also cancelled vide impugned order dated 22.12.95 (Ann.A1) since the pay fixation w.e.f. 2.3.96 was not admissible as per rules. The learned counsel for the applicants submitted that juniors to the applicants i.e. S/Shri M.S.Mehra and M.G.Kale were regularised vide order dated 15.10.85 w.e.f. 2.3.86 and accordingly, proforma promotion granted to the applicants from



2.3.86 i.e. the date their juniors were so regularly promoted was in order. The respondents have submitted that subsequently this order was cancelled vide their order No. E/D/839/10 Vol.IV (Loose) dated 7/11.12.90. In view of this specific averment of the respondents in their reply, we do not think that any relief can be considered on this account.

The last submission of the learned counsel for the applicants is that since the order dated 26/27.10.94 (Ann.A7) whereby they were given proforma pay fixation w.e.f. 2.3.86 in the pay scale of Rs. 1600-2660 does not contain any reference to the juniors or that their promotions were made on ad-hoc basis, the minimum requirement of qualifying service of two years deemed to have been relaxed by the respondents. He further submitted that persons of the same batch who had not been completed two years service in the grade of 1400-2300 were also given promotion in the grade of Rs. 1600-2660 w.e.f. 1.4.86. Name of two such persons are S/Shri Sudhir Kumar Tiwari and Kailash Negi who were given paper promotion w.e.f. 1.4.86 vide order dated 3.12.93 (Ann.A19). This plea is taken by the applicants for the first time in the rejoinder filed. Further, there are also no details with regard to the appointment of these two persons in the previous grade i.e. in the scale Rs. 1400-2300. It is also not on record under what circumstances they were granted relaxation in qualifying service of two years. The applicants should have taken this plea in his application with necessary details or by filing an amendment application so as to give opportunity to the respondents. The applicants cannot take up such grounds in the rejoinder. Further the learned counsel for the applicants, during the course of arguments, conceded that these two persons are senior to the applicants. Since no junior person of the applicants has been given these concessions as admitted by the learned counsel for the

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applicants, the applicants cannot claim similar concession when none of their juniors were given such concession.

7. In view of above discussions, this OA is devoid of merit and accordingly dismissed with no order as to costs.

  
(M.L.CHAUHAN)

Member (Judicial)

  
(H.O.GUPTA)

Member (Administrative)