

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 279/97

DATE OF ORDER : 6-1-2003

Ajay Kumar Gupta son of Shri B.L. Gupta aged around 40 years, resident of Gupta Cottage, Near Post Office, Kota Jun. Presently posted as Chief Telephone Operator, Railway Micro Station, Western Railway, Kota, Junction.

....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota.
3. Shri Khusiram meena, holding the post Head Telephone Operator through Divisional Railway Manager, Western Railway, Ratlam.
4. Shri Shiv Kumar B. Chief Telephone Operator through Divisional Railway Manager, Western Railway, Ratlam.
5. Shri Dinesh Chand, Chief Telephone Operator, through Divisional Railway Manager, Western Railway, Ratlam.
6. Shri Mahendra Singh, holding the post of Head Telephone Operator through DRM, Western Railway, Ratlam.
7. Shri Chandra Mohan holding the post of Head Telephone Operator through DRM, Western Railway, Ratlam.

....Respondents.

Mr. P.P. Mathur, Counsel for the applicant.

Mr. Manish Bhandari, counsel for the respondents Nos. 1 & 2.

None for Respondents Nos. 3 to 7.

CORAM

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

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

ORDER (ORAL)

PER HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

This application is against the order dated 6.9.95 (Annexure A/2) whereby provisional ~~of~~ panel for promotion to the post of Chief Telephone Operator was prepared which does not include the name of the applicant and also the order dated 13/16.5.97 (Annexure A/1) whereby the respondent No. 3 was promoted as Chief Telephone Operator. The applicant has also further averred that this petition is against all such orders by which respondents Nos. 3 to 7 have been placed above the applicant in the seniority list of Sr. Telephone Operator and Head Telephone Operator and has prayed for the following reliefs :-

- i) That the order dated 13/16.5.97 (Annexure A/1) may be set aside to the extent it grants promotion to the private respondents on the post of Chief Telephone Operator;
- ii) That official respondents may be directed to give promotion to the applicant with effect from a date prior to the promotion to the private respondents;
- iii) That the official respondents may also be further directed to issue orders to fill in the post of Chief Telephone Operator on divisional basis only;
- iv) That the respondents may be directed to treat applicant senior in comparison to the private respondents on

the post of Head Telephone Operator, Sr. Telephone Operator and also on the post of Chief Telephone Operator;

v) That the official respondents may be directed to give promotion to the applicant on the post of Chief Telephone Operator on substantive basis.

vi) That the official respondents may be directed not to compel applicant for appearing in the written test for promotion on the post of Chief Telephone Operator because the post of Chief Telephone Operator is to be filled in on the basis of service record only;

vii) Any other appropriate order or direction which the Hon'ble court thinks just and proper in the facts and circumstances of the case even the same has been not specifically prayed for but which is necessary to secure ends of justice may kindly also be passed.

2. Now few facts may be noticed. The applicant was initially appointed as Asstt. Telephone operator in Kota Division of Railways on 1.3.82. Cadre of Telephone Operator consists of Assistant Telephone Operator, Sr. Telephone Operator (scale Rs. 1200-2040), Head Telephone Operator (scale Rs. 1400-2300), Chief Telephone Operator (scale Rs. 1600-2660). It is not disputed that the respondent nos. 3 to 7 were appointed as Assistant Telephone Operator earlier to the applicant and were further promoted as Sr. Telephone Operator, Head Telephone Operator earlier to the applicant and they were shown senior in the seniority list notified by the Railway authorities from time to time. Even the applicant has admitted that respondents nos. 3 to 7 were appointed as Assistant Telephone Operator between 1971 to 1980 and they were promoted as Sr. Telephone Operator on ad-hoc basis in

62

September/November 1984. They were however promoted as Sr. Telephone Operator on regular basis vide order dated 13.3.1989 (Annexure A/5) with immediate effect. The applicant was promoted as Sr. Telephone Operator vide order dated 5.7.90 (Annexure A/3) consequent upon select list prepared on 25.5.89 with effect from 1.4.1988 and subsequently the date of promotion w.e.f. 1.4.88 was modified to that of 1.10.88 vide order dated 13.1.97 (Annexure A/6).

The case of the applicant is that though the respondents nos. 3 to 7 were promoted as Sr. Telephone Operator on ad-hoc basis in September/November, 1984 much earlier to the applicant but their service were regularised vide order dated 13.3.1989 with immediate effect whereas the applicant was assigned seniority to the post of Sr. Telephone operator w.e.f. 1.4.1988 which date was subsequently modified as 1.10.1988. As such according to the applicant, he was senior to respondents nos. 3 to 7 as the service rendered on ad hoc basis cannot be taken into account for the purpose of seniority in terms of Para 302 of Indian Railway Establishment Manual (IREM) Vol. I Edition 1989. Further case of the applicant is that though he was assigned seniority to the post of Sr. Telephone Operator w.e.f. 25.5.89 as per seniority list notified on 7.1.93 and against this seniority, he has filed representation and his representation was accepted and subsequently, he was assigned seniority w.e.f. 1.10.88. Thus according to the applicant, he was assigned seniority w.e.f. 1.10.88, as such he was senior to respondents nos. 3 to 7 whose services were regularised as Sr. Telephone Operator w.e.f. 13.3.89 and ad hoc services rendered by them in the cadre of Sr. Telephone Operator cannot be counted for seniority in terms of Para 302 of IREM. As such the applicant was entitled for seniority in the

62

cadre of head Telephone Operator, Chief Telephone Operator above private respondents nos. 3 to 7. Thus the official respondents have committed illegality in not including the name of the applicant in the provisional panel prepared vide order dated 6.9.95 (Annexure A/2) in which the name of private respondents figured at sl. nos. 13 to 17 and subsequently not promoting the applicant vide order dated 13/16.5.1997 (Annexure A/1) whereby respondent No. 3 has been promoted as Chief Telephone Operator.

3. The official respondents have contested the case by filing detailed reply. It has been stated in the reply that the private respondents nos. 3 to 7 were appointed as Assistant Telephone Operator much prior to the appointment of the applicant, further their ad-hoc promotion to the post of Sr. Telephone Operator was also made almost four years prior to the date of promotion of the applicant on the said post. It is further stated that on representation from the employees, it was noticed by the Administration that suitability test was delayed for several years and it was decided by the competent authority to assign seniority from the date of continuous officiation so that no injustice is done to anyone. The final seniority of 7.1.93 was issued keeping in view the date of officiation on regular basis. The applicant was initially assigned seniority to the post of Sr. Telephone Operator w.e.f. 23.5.1989 vide letter dated 7.1.93. The applicant continuously represented against the seniority of Sr. Telephone Operator as assigned to him vide letter dated 7.1.93 and subsequently it was decided that the applicant be shown to have been promoted as Sr. Telephone Operator w.e.f. 1.10.88 instead of 23.5.89 as shown in the final seniority

WJ

list issued on 7.1.93. Based on these facts, a show cause notice was issued proposing to revise the seniority of Sr. Telephone Operator notified on 7.1.93 and the revised seniority position of the applicant in the said show cause notice was changed from sl. No. 54 to 49 and objections were also invited from the concerned staff within one month of the issue of the notice. A copy of the said letter has been placed alongwith MA 552/2002 at Annexure R/2. The respondents have further submitted that the date of promotion of the applicant from 1.4.88 was changed to 1.10.88 pursuant to Railway Board's letter dated 17.5.71 vide Annexure A/6 wherein it was given that where the cadre review is delayed, the promotion of the staff in question shall be made w.e.f. 1st October of the year and the present case is covered by the said circular, rather the promotion to the applicant was an out come of the cadre review. However, due to the delay, the promotion was lately given and thus it was to be made effectived from 1st October of the year i.e. when the post was taken as vacant.

4. The applicant has filed a rejoinder whereby reiterating that the seniority of Sr. Telephone Operator was not finalised till the year 1997 and that once the date of promotion of the applicant was antedated w.e.f. 1.10.88 vide order dated 13.1.97 (Annexure A/6) then entry into grade on regular basis should be taken as 1.10.88. The seniority is to be determined with regard to provision of 302 of IRFM. The benefit of ad-hoc services is not granted in the Railways automatically. Moment the seniority was granted as on 1.10.88, the applicant become senior to the respondents nos. 3 to 7 whose services were regularised vide order dated

13.3.89. Consequently, the case of the case of the applicant should have been considered for promotion on the post of Head Telephone Operator from the date his junior was given such promotion and also an opportunity should be granted to the applicant to appear in the Select/Suitability test for the post of Chief Telephone Operator from the date the person who would become junior to the applicant has been granted such promotion after assigning revised seniority position on the post of Head Telephone Operator.

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

6. The main contention of the learned counsel for the applicant is that applicant having been promoted to the post of Sr. Telephone Operator w.e.f. 1.10.88 could not be shown junior to private respondents nos. 3 to 7 whose services were regularised as Sr. Telephone Operator w.e.f. 13.3.89 as according to Para 302 of IREM, the date of seniority in the grade is the date of appointment in that grade after due process of selection and ad-hoc promotion of the respondents cannot be held to be regular promotion so as to enable them entitled for seniority in term of Para 302 of IREM. Thus according to the learned counsel for the applicant, he being senior to the private respondents nos. 3 to 7, the applicant's name has wrongly been excluded in the provisional panel prepared for promotion to the post of Chief Telephone Operator (Annexure A/2). The respondent No. 3 was wrongly promoted as Chief Telephone Operator vide order dated 13/16.5.97 (Annexure A/1) being junior to the applicant.

6/2

7. We have considered the submissions made by the learned counsel for the applicant. We are of the view that the applicant is not entitled for any relief for the reasons stated herein below.

8. It is not disputed that the inter-se seniority of the candidates is regulated under Para 302 of IREM Vol. I, Revised Edition 1989, which reads as under -

"302. Seniority in initial recruitment grades.- Unless specifically stated otherwise the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of post partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after the process in the case of promotee and the date of joining the working post after due process in the case of direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority of each group."

68



9. From the provision, as quoted above, it is clear that the date of seniority in the grade is the date of appointment to a post in that grade. The grant of higher pay as a rule does not confer the existing incumbent above those regularly appointed to the post amongst direct recruitees and promotees. The date of joining the working post is the date for direct recruitees and the date of regular promotion after completion of process is the date for the promotees.

Now the question which requires for consideration is what is the date of regular promotion after completion of the process in terms of Para 302 of IREM in the case of the applicant and the private to respondents nos. 3 to 7 for the purpose of seniority in the cadre of Sr. Telephone Operator. In order to determine as to what is the regular date of promotion of the applicant, it is useful to extract the order dated 5.7.90 (Annexure A/3) whereby the applicant was promoted as Sr. Telephone Operator.

"Sub: Promotion/Reversion/Transfer of Class III staff Telephone operator Telecom, deptt. Kota devision.

Consequent upon the placement on the select list for promotion to the post of Sr. Telephone Operators scale Rs. 1200/2040(RP) vide office order No. E/Tele/1026/1 dated 25.5.89. The following Telephone Operators of scale Rs. 1200/2040 (RP) are eligible to get the benefit of upgraded posts of Senior Telephone Operators scale Rs. 1200/2040 (RP) with effect from 1.4.1988 occurred against annual review of cadre of telephone operators w.e.f. 1.4.88 as advised by CCE(E)CCG No. E/HQ/830/37/3 dated 18.1.89.

- |    |                       |      |
|----|-----------------------|------|
| 1. | Shri Khusi Ram        | Kota |
| 2. | Shri Govind Lal       | AF   |
| 3. | Shri Ajay Kumar Gupta | Kota |
| 4. | Shri Prakash Chand    | Kota |

Accordingly the above Senior Telephone operators of scale Rs. 1200/2040(RP) are eligible to have the benefit of proforma fixation with effect from 1.4.1988."

The date of 1.4.1988 was subsequently substituted/modified to 1.10.1988 vide order dated 13.1.97 (Annexure A/6)

From the portion quoted above, it is seen that though the applicant was placed on the select list for promotion to the post of Sr. Telephone Operator vide order dated 25.5.89 by process of selection but he was given benefit of proforma fixation w.e.f. 1.4.1988. Thus according to us, the applicant can get seniority not from the date of his initial appointment viz. 1.4.1988 and subsequently modified to 1.10.1988 but from the date on which he was actually selected and appointed in accordance with rules by the Selection Committee on 25.5.89 and his seniority would take effect from the date of selection after due completion of the process in terms of Para 302 of IREM, as reproduced above. Similarly, the respondents nos. 3 to 7 though promoted on ad-hoc basis as Sr. Telephone Operator w.e.f. September/November, 1984 but they were regularised with immediate effect vide order dated

6/2

13.3.1989 (Annexure A/5). Thus in their case, the date of seniority in the grade would be 13.3.89 in terms of Para 302 as they have been appointed in accordance with rules from the date of selection after due completion of process only in March, 1989 when their services were regularised.

When the matter is viewed from the angle, as stated, it would be seen that respondents nos. 3 to 7 who were regularised vide order dated 13.3.89 with immediate effect are senior to the applicant who was selected and placed on the panel of Sr. Telephone Operator vide order dated 25.5.89 after regularisation of the services of respondents nos. 3 to 7. Thus it cannot be said that applicant is senior to respondents nos. 3 to 7 in the cadre of Sr. Telephone Operator. The respondent authority granted the benefit of ad-hoc promotion to the respondents nos. 3 to 7 after considering the representation from the employees whereby it was stated that the suitability tests were delayed for several years by the Administration and seniority should be assigned to the employees from the date of continuous officiation so that no injustice is done to them. Similarly the applicant was also assigned seniority subsequently w.e.f. 1.10.88 instead of 25.5.89, pursuant to Railway Board's order dated 17.5.71 whereby it was given that where cadre review is delayed, the promotion of the staff in question would be made from 1st October of the year. Thus the applicant though appointed as Sr. Telephone Operator after 1.10.88 by the Selection Committee, he would not get seniority from the proforma date 1.10.88 but only from the date of his actual appointment/promotion as Sr. Telephone Operator after 1.10,.88. Thus the respondents authorities could not have taken into account the services rendered on ad hoc basis for the purpose of seniority in terms of Para 302 of IREM in

66

the case of respondents nos. 3 to 7 and similarly they could not have taken into account the date of proforma promotion as 1.10.88 for the purpose of seniority in the case of the applicant. Thus Railway authorities were not right in antedating the seniority of applicant as well as Respondents nos. 3 to 7 from back date taking into account date of proforma fixation in the case of applicant and continuous officiation in the case of respondents nos. 3 to 7, in disregard to Para 302 of IREM. Since the specific issue in the present case is whether the applicant can be said to senior to respondents nos. 3 to 7 in the cadre of Sr. Telephone Operator and whether he was wrongly excluded from the panel prepared for promotion to the post of Chief Telephone Operator vide Annexure A/2 and further he was entitled for promotion as Chief Telephone Operator prior to the private respondents nos. 3 to 7 vide Annexure A/1, as such we are not directly concerned regarding the issue of seniority in the cadre of Sr. Telephone Operators which seniority list has not been <sup>challenged</sup> changed. The aforesaid observations have been made incidently for the purpose of arriving at a decision whether the applicant can be said to be senior to respondents nos. 3 to 7 in the cadre of Sr. Telephone Operator so as to enable him for further promotion to the post of Chief Telephone Operator in case he is ultimately found to be senior to respondents nos. 3 to 7. Since we have held that respondents nos. 3 to 7 are senior to the applicant in the cadre of Sr. Telephone Operator, as such we find no illegality in the provisional panel prepared vide Annexure A/2 whereby the name of respondents nos. 3 to 7 have been shown at sl. nos. 13 to 17. Similarly we see no ground to interfere the order dated 13/16.5.97 whereby the respondent no. 3 was promoted as Chief Telephone Operator


62


being senior to the applicant in lower cadre. At this stage, it will be relevant to quote the decision of the Apex Court in the case of Swapan Kumar Pal and others vs. Samitabhar Chakraborty and others, 2001 SCC (L&S) 880 whereby the Apex Court has held that where the suitability test has not been held and persons are promoted on the basis of their seniority on ad-hoc basis, such ad-hoc promotion by no stretch of imagination can be held to regular promotion after due process of selection in terms of Para 302 of TREM and seniority in the cadre can be granted only from the date of regular promotion after due process of selection. It is further held that where service conditions are governed by said rules, in the absence of any rules, it is difficult to hold that regular promotion would date back of date of the ad-hoc promotion itself.

10. For the reasons stated above, we are of the view that the applicant has not made out any case to show that he was senior to respondents nos. 3 to 7 in the cadre of Telephone Operator whereas there is material available on record which suggests that the respondents nos. 3 to 7 were inducted in the Telephone department much earlier to the applicant and they were also promoted to the next higher post prior to the applicant. As such it would be wholly unjustified to hold that the applicant is senior to private respondents nos. 3 to 7 and thus entitled for promotion to the post of Head Telephone Operator and also to Chief Telephone Operator prior to respondents nos. 3 to 7.

62

11. Resultantly, this OA fails and is accordingly dismissed with no order as to costs.

  
(M.L. CHAUHAN)  
MEMBER (J)

  
(H.O. GUPTA)  
MEMBER (A)

AHQ