
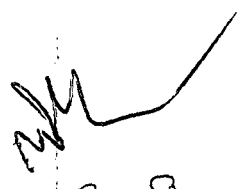



**In The Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A./T.A./M.P. No. 473/97

Mahendra Prakash Srivastava
VERSUS U.O.T. 20m

Date of Order	Orders
16-5-2002	<p>Shri C. B. Sharma Counsel for the applicant Shri R. G. Gupta Counsel for the respondent</p> <p>Arguments heard.</p> <p>Order Reserved.</p> <p> (J. K. Kamnisk) member (J)</p> <p> (M. P. Singh) member (A)</p>
20/5/02	<p>Order has been pronounced today in the open court by JSC consisting H'ble Member (A) Shri M. P. Singh and H'ble Member (J) Shri J. K. Kamnisk by whom the case was heard.</p> <p> 22/5/02</p>

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

O.A.No.473/1997

Jaipur, this 22nd May, 2002

Hon'ble Shri M.P. Singh, Member (A)
Hon'ble Shri J.K. Kaushi, Member (J)

Mahendra Prakash Srivastava
252-D, Wagon Repair Workshop Colony
Kota
(Through LR)

.. Applicant

(Shri Rajindra Soni, Advocate)

Versus

Union of India, through

1. General Manager
Western Railway
Churchgate, Mumbai
2. Chief Workshop Manager
Wagon Repair Shop
Western Railway, Kota Jn.

.. Respondents

(Shri R.G. Gupta, Advocate)

Shri J.K. Kaushik, ^{ORDER} Member (J)

Applicant has filed this OA under section 19 of the AT Act, 1985 seeking direction to the respondents to treat him as regular appointee in the post of Mistry w.e.f. 6.10.86 and further grant him promotion to the post of Junior Engineer-II (JE-II, for short) by treating him as regular Mistry w.e.f. 6.10.86 and also grant him due seniority and pay fixation at par with next junior and the impugned orders dated 29.9.97 and 13.2.96 denying him promotion to the post of JE-II be quashed and set aside.

2. During the pendency of the OA, the applicant has expired and his LR has been taken on record by Tribunal order dated 17.11.2000. The case of the deceased Govt. servant was that he was promoted to the post of Mistry (Rs.1400-2300) on 6.10.86. Though it was a non-selection post he was so appointed on the basis of his seniority as per Rules. However, he was not considered as regular Mistry on the basis of subsequent

notification dated 19.2.88 by which new Rules were introduced for recruitment to the post of Mistry. He had to rush to this Tribunal through OA 152/88 which was transferred from Jodhpur to Jaipur Bench and registered as OA 756/92, praying therein that post of Mistry came into existence prior to 19.2.88, it should be filled in accordance with the law then existing and he should not be subjected to any selection in pursuance to notification of 1988. This Tribunal disposed of the said OA vide its order dated 16.5.94 with the following observations:

'In the result, we accept this application and direct that the applicant should be continued on the post on which he has been appointed vide Annexure A-1. However, if there is any order of the Tribunal or the Supreme Court, the same will have the over-riding effect on this order, if any passed or may be passed in future.'

Thereafter, in view of the aforesaid order, the applicant continued on the post of Mistry. It was applicant's case that he was treated as ad hoc and a number of juniors to him have been promoted to the post of JE-II (Moulding Trade). Hence this application.


3. Respondents have filed detailed reply to the OA and submitted that the applicant was promoted to the post of Mistry only on ad hoc basis, without any right to hold the post vide order dated 6.10.86. He did not participate in any selection and unless one passed the selection he cannot be regularised in the post.

4. We have heard the learned counsel for the rival contesting parties and considered the records of the case. During the arguments, the learned counsel for the respondents has fairly admitted that the post of Mistry was a non-selection post at the relevant point of time and no test was required. But it has been asserted that even if the applicant is treated as regular Mistry from 6.10.86 i.e. from the date of

ad hoc promotion, he could be granted no other benefit than that of what he has got, since the next post i.e. JE-II is a selection post and he has not passed any selection for the same. As regards the benefit of the post of Mistry, the applicant has already been granted all the due benefits including that of pay fixation with due increments. Since he continued to work in the post of Mistry as per the judgement/order of this Tribunal, his family has been given all retirement benefits and this OA has become infructuous.

5. We are of the considered opinion that no cause of action survives to the legal heir of the deceased. In the facts and circumstances, this OA has therefore become infructuous and deserves to be dismissed.

6. In view of the aforesaid discussions, this OA is dismissed as having become infructuous. No costs.


(J.K. Kaushik)
Member(J)


(M.P. Singh)
Member(A)

/gtv/