

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 22.04.2003

OA No.381/98

Rajkumar Solanki s/o Shri C.L.Solanki r/o Quarter  
No.1164A, Ramganj Railway Colony, Ajmer

.. Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Electrical Engineer (Personnel), Ajmer.
3. Deputy Chief Electrical Engineer (Personnel), Western Railway, Ajmer.
4. Chief Draftsman, Western Railway, Ajmer.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents.

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

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

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the order dated 31.10.98 (Ann. Al) whereby he has been reverted from the post of Junior Draftsman to the post of Ferro Printer. In relief, he has prayed for quashing the said order and also for appropriate directions to the respondents to continue him on the post of Junior Draftsman.

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

2.1 He was promoted as Junior Draftsman on ad-hoc

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basis vide order dated 4.5.91 and since then he has been working on ad-hoc basis on the post of Junior Draftsman and that there is a clear vacancy available. His case was recommended by the respondent No.3 to respondent No.1 for issue of order for regularisation, as may be seen from letter dated 22.9.95 (Ann.A2).

2.2 After a lapse of 7 years, the respondent No.3 issued a show-cause notice to the applicant vide letter dated 13.4.98 (Ann.A3) stating therein that the applicant has been wrongly promoted two grades higher and that in the restructuring scheme effective from 1.3.93, there is no post of Junior Draftsman in Ajmer Workshop and, therefore, it has become necessary to revert him to the post of Ferro Printer in the pay scale of Rs. 800-1150/2650-4000.

2.3 He has passed intermediate grade drawing diploma which is recognised by the Maharashtra Government.

2.4 He submitted a detailed reply dated 27.4.98 (Ann.A4) to the show-cause notice but the respondents reverted him to the post of Ferro Printer through the impugned order dated 31.10.98 (Ann.A1).

3. The main grounds taken by the applicant are that:-

3.1 He was promoted on ad-hoc basis with the prior approval of the higher authorities. He has rendered satisfactory service during the last 7 years of his service as Junior Draftsman.

3.2 The respondents have failed to consider legal position that if for reasons an ad-hoc or a temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation

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provided he is eligible and qualified according to rules, his service were satisfactory and also the appointment does not run counter to the reservation policy of the State. The applicant is qualified person for the post of Junior Draftsman.

3.3 The applicant has been wrongly reverted on the ground that the post of Junior Draftsman was abolished in the year 1993. Such abolition cannot be made retrospective and the applicant cannot be reverted to the post of Ferro Printer.

3.4 Prior to 1985, the Ferro Printers were eligible for promotion to the post of Tracer. After they completed 5 years' service, they were automatically considered eligible for the post of Junior Draftsman, but due to arbitrary change in the avenue of promotions, Ferro Printers have now been given avenue to the post of Clerk but due to ban on recruitment of Clerk, a large number of staff in the category of Ferro Printer are suffering because of stagnation.

3.5 The plea of the administration, that the post is to be filled in by direct recruitment, is correct only if direct recruits are available. If direct recruits are not available and the post has been filled in by the departmental promotee by a qualified person after due selection, process of regularisation is to be restored to rather than sending the proposal of reversion.

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

4.1 The applicant has not preferred an appeal against the order of reversion from the higher post, and therefore, he has not availed the alternative efficacious

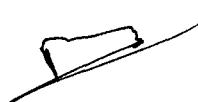
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remedy available under the rules and, therefore, the present OA is not maintainable.

4.2 The cadre of Draftsman of Electric Department including of Ajmer Workshop, from Assistant Draftsman also named as Junior Draftsman (Rs. 1200-2040) to that of Chief Draftsman (Rs. 2000-3200), is Headquarter controlled and appointment, posting, transfer etc. are made by the Headquarter, Mumbai. Besides, the post of Junior Draftsman is required to be filled up cent-percent by direct recruitment through the Railways Recruitment Board and the minimum educational qualification prescribed for the post is ITI certificate of Draftsmanship from the recognised Institution alongwith NCVT certificate in the respective discipline or equivalent course of two years duration. The engineering diploma holders in draftmanship from recognised institutions will also be eligible.

4.3 On account of ad-hoc promotion of one Junior Draftsman to the higher post of Senior Draftsman, the applicant, while holding the post of Ferro Printer even though he was not possessing the technical and educational qualification prescribed for the post of Junior Draftsman, was promoted as Junior Draftsman on purely ad-hoc and stop gap local arrangement basis on the consideration of exigencies of service by the local office of Dy. Chief Electrical Engineer, Ajmer vide order dated 4.5.91 (Ann.A2). In fact the said ad-hoc promotion was erroneous as the ad-hoc promotion could not have been given when he is not possessing the prescribed qualification. Perusal of the aforesaid order would also show that the applicant was not possessing the required qualification prescribed for the post of Junior Draftsman. It has also been stated in the said order that the applicant is liable to be reverted



to his original post of Ferro Printer at any time without notice and he will not be entitled in any manner for seniority or appointment on the said post.

4.4 The applicant was reverted in terms of condition stipulated in the order of ad-hoc promotion dated 4.5.91. Besides, he was also given a show-cause notice on 3.4.93 and his representation dated 27.4.93 was also considered before he was so reverted. The applicant was posted as Ferro Printer on 31.10.93 as per the report dated 31.10.93 (Ann.A3).

4.5 As the cadre of Junior Draftsman was a Headquarter controlled cadre, the Chief Works Manager, Ajmer was not the competent authority to accord approval for promoting the applicant even on ad-hoc basis. Further, the entire cadre of Junior Draftsman has been abolished in all the Railways vide Railway Board letter dated 28.9.93 (Ann.R5).

4.6 The letter dated 22.9.95 (Ann.A2) is an internal office correspondence and the applicant cannot derive any benefit from the said letter. Even otherwise, a perusal of the said letter would show that it contains request for posting of regular incumbent and till the regular incumbent was made available, it was suggested that the applicant may be regularised. Thus, the recommendation was only for short-term regularisation. The said request was turned down by the Headquarters office vide their letter dated 20.2.96 and direct<sup>ion</sup> was issued to initiate action for reverting the applicant to his original post of Ferro Printer by serving a show-cause notice, a copy of the said letter is annexed at Ann.R7.

4.7 AS regards the submission of the applicant that when the post of Junior Draftsman was abolished in 1993

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why he was continued on that post, it is submitted that the matter pertaining to the erroneous appointment of the applicant to the said post and proposal for his reversion to his original post was under correspondence and, thereafter the show-cause notice was issued on 13.4.98 and after considering his representation, he was reverted vide order dated 31.10.98. Simply because the applicant came to be continued on the said post even after its abolition, it will not confer any right to the applicant to hold the said post for all times. Simply because he happened to work on the said post of Junior Draftsman on ad-hoc basis for 7 years, it will not change his status in any manner and his status will remain as purely ad-hoc and it will not confer on him any right of regular appointment since the said promotion was admittedly erroneous, being contrary to the statutory provisions. The applicant has been properly reverted to his original post of Ferro Printer.

4.8 As per the avenue of promotion prescribed by Memorandum dated 12.4.88, a Ferro Printer was eligible for promotion as Gestetner Operator and then as Junior Clerk and thereafter vide memorandum dated 29.9.93, he became eligible for promotion as Head Ferro Printer/Record Sorter/Gestetner Operator/Record Clerk and then Junior Clerk, copies of the said memorandums are annexed at Ann.R8 and R9.

5. Additional submissions have been made by the respondents as well as by the applicant by filing additional affidavit/replied and MAs.

6. Heard the learned counsel for the parties and

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perused the record.

6.1 We are not inclined to agree with the contention of the respondents that this OA is not maintainable, since the applicant has not availed alternative remedy of appeal, for the reason that on the behest of the appointing authority i.e. the General Manager, the respondents have given him show-cause notice and after considering his representation on the show-cause notice, he was reverted and also that the respondents have not placed any document on record as to who will be the Appellate Authority in such cases when the reversion orders are issued on the directions of the Appointing Authority i.e. the General Manager.

6.2 The contention of the learned counsel for the applicant is that having worked for 7 years and when the lower functionary of the respondents has recommended his regularisation, the respondents ought to have considered him for regularisation instead of reverting him to his original post of Ferro Printer. He also submitted that on account of the exigency of the work, without any of his fault, the applicant was continued for 7 years and further that during this period his services were satisfactory. Accordingly, the respondents ought to have relaxed the qualification under their powers. He further submitted that if the designation of Junior Draftsman does not exist, there are posts with different designation for similar functions in the grade of Rs. 1200-2040. He finally submitted that it will seriously prejudice the applicant if after such a long time he was reverted to a lower post. The learned counsel for the applicant produced a certificate of having passed Intermediate Drawing Exam. recognised by the Maharashtra Government. On a query from the Bench, the learned counsel for the applicant submitted

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that no person junior to the applicant in the grade of Ferro Printer or equivalent has been promoted to the next higher grade.

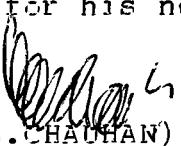
6.3 The contention of the learned counsel for the respondents is that 100% of the posts of Junior Draftsman were required to be filled through direct recruitment and the applicant does not possess the required essential qualification as per the statutory rules. The Appointing Authority has no powers to relax the essential qualifications contained in the statutory rules. The learned counsel for the respondents further submitted that the documents produced before the Tribunal with regard to the qualification is a certificate awarded by the Govt. of Maharashtra for drawing examination held in the year 1991. The drawing examination is neither ITI alongwith NCVT nor it can be said to be equivalent qualification or a diploma in Draftsmanship. He also submitted that the very appointment of the applicant was not only de-hors of rules but the order itself was issued by an incompetent authority. The appointing authority in this case was the General Manager but the appointment order was issued by a lower functionary without the approval of the General Manager. Therefore, such an order itself is illegal. The applicant also does not meet the statutory requirement of essential qualification and, therefore, he cannot be even considered for regularisation, notwithstanding the fact that the post of Junior Draftsman itself has been abolished in the year 1993. He further submitted that the applicant was holding the post of Ferro Printer in the grade of Rs. 800-1150 at the time he was appointed as Junior Draftsman, whereas the pay scale of the Junior Draftsman is Rs. 1200-2040, which is 2-3 grade higher and the

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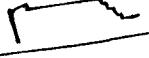
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applicant under no circumstances can be considered for regularisation in this grade. He also submitted that action is being initiated against those officials who have continued the applicant on the ad-hoc post even after the cadre was abolished, but in any case the applicant has no legal right for regularisation even if he was continued for 7 years. The applicant was paid pay and allowances attached to the post of Junior Draftsman for the period he so worked. The learned counsel for the respondents, in support of his contentions, has relied on the case of State of M.P. and Another Vs. Dharam Bir, 1993 SCC (LSC) 1459.

7. We have considered the submissions of the parties. We are of the view that since the applicant does not possess the essential qualification for holding the post of Junior Draftsman as per the statutory rules and that the said cadre stands abolished w.e.f. 1993, the applicant is not entitled for relief as prayed. Accordingly, this OA is dismissed being devoid of merit. Since the applicant has worked for about 7 years in the grade of Junior Draftsman, we hope and believe that the respondents will accord due weightage while considering him for his next promotion. No order as to costs.

  
(M.L. CHAUHAN)

Member (J)

  
(H.O. GUPTA)

Member (A)