

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 410/1998

DATE OF ORDER: 17/9/2002

Nawal Kishore Agarwal son of Shri Mool Chand Agarwal, aged 39 years, Material Collector Grade II, scale Rs 950-1500 in the Welding, Tin and Copper Shop No. 11, Western Railway, Ajmer.

...APPLICANT.

versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Works Manager, Loco Workshop, Western Railway, Ajmer.

...RESPONDENTS.

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

Mr. T.P. Sharma, counsel for the respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

(per Hon'ble Mr. J.K. Kaushik, Judicial Member)

Applicant, Nawal Kishore Agarwal has filed this application u/s 19 of the Administrative Tribunals Act, 1985 and has prayed

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for the following reliefs:-

"It is, therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire record relating to this case and by an appropriate order or direction, declare the impugned orders Annexure A/1 and Annexure A/2 illegal. On the basis of the facts and grounds mentioned here-in-above the impugned orders Annexure A/1 and A/2 may be set aside. Further official respondents may kindly be directed not to revert the applicant from the post of Material Collector Grade II scale Rs 1200-1800, the post on which the applicant is working continuously since 1989.

Any other relief to which the applicant is found entitled in the facts and circumstances of the case, may also be granted.

This O.A. may kindly be allowed with costs.

2. The facts of the case, as narrated by the applicant in the O.A., are that the applicant while working on the post of Skilled Artisan in the pay scale of Rs 950-1500 appeared in the selection for the post of Material Collector vide letter dated 17.02.1989. He was found suitable and appointed on the post of Material Collector in the pay scale of Rs 1200-1800 vide order dated 8.5.1991 and since then he continues on the post of Material Collector, scale Rs 1200-1800. Thereafter vide order dated 11.5.1998 (Annexure A/1) and order dated 27.11.1998 (Annexure A/2) by which the applicant was ordered to be reverted from the post of Material Collector scale Rs 1200-1800 to the post of Welder Grade III scale Rs 950-1500.

3. It has also been submitted by the applicant that he was promoted to the post of skilled Welder Grade III vide order dated 11.9.1987 after passing the requisite selection. The volunteers from equivalent grades of Shop Floors were called for subjected to suitable tests for filling up the various grades of Material Collector but such persons were not available and the persons working in the lower grades,

scale Rs 950-1500, were considered. The applicant was subjected to said selection to the post of Material Collector II scale Rs 1200-1800. It has also been submitted that the post of Material Collector was not in the normal avenue of promotion for the post in Artisan category. The promotion vide order dated 8.5.91 from the post of Welder Grade III to Material Collector grade II was on temporary basis.

4. It has been further submitted that one post of Material Collector was surrendered in the month of October, 1992. At the relevant time several posts were also surrendered in the Shop Floor and employees were declared surplus. They were deployed in the different departments on the post, they were holding after selection. The applicant was also deployed on the post of Material Collector Grade II in ECO vide order dated 9.1.93 finding his name at Sl. No. II. He was further transferred from ECO to Blacksmith Shop and was ordered to be adjusted against the vacant post vide order dated 19.12.1996 (Annexure A/8). Thereafter he has been transferred to work on his original post i.e. Welder Grade III vide order dated 24.12.1996 (Annexure A/9). Aggrieved with this order, he submitted a representation dated 28.12.1996 (Annexure A/10) apprising the authorities that he was promoted after due selection and since 1991, he was working in the scale of Rs 1200-1800. He also submitted that as per the practice, when a person is declared surplus, his pay is to be protected by creating superannatory post. However, the applicant was allowed to continue on the post of Material Collector Grade II on a superannuity post vide letter dated 4.8.97 (Annexure A/11), and dated 21.1.1997 (Annexure A/12) but suddenly on 22.1.97, order was issued for relieving him from ECO for joining in Shop No. 11, where he joined in Shop Floor on 22.1.97 in the same scale.

5. It has been further submitted that certain employees working as skilled artisans in various grades i.e. Grade I, Grade II, Grade III, were also transferred when the post is lying vacant but they are being continued in PCO. One Shri Parasmal while working in the Material Collector II was transferred to the Fitter Grade II. He is still being continued in the PCO despite he is in excess but on the other hand, the applicant is not in excess but still he has been ordered to be reverted. Pending his representation, the impugned orders have been issued. Certain similar cases have been referred where the impugned orders have been said to be quashed. It has also been said that applicant's case is similar one where the applicant was promoted on next grade post and promotion was said to be rightly given. The judgements has been placed on record.

6. The O.A. has been filed on multiple grounds which we propose to deal at appropriate place in this order.

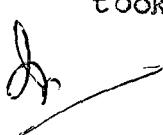
7. The respondents have filed the counter reply to the O.A. and have controverted the facts and grounds raised in the O.A. It has been submitted that the post of Material Collector is an Ex-cadre post and is also not in the channel of promotion of the applicant. Since the applicant was holding the post of Welder Grade III on substantive basis. Further, it has been submitted that the applicant was temporarily sent to the Production Control Organisation where the post of Material Collector was only of temporary nature and this fact is also mentioned in the Annexure A/6. It has also been submitted that the name of the applicant has also not been shown as surplus employee. Thus his case is distinguishable from the case of Parasmal.

Further the case of Manjeet Singh is quite different from the case of the applicant. Thus the decision of the Tribunal in Manjeet Singh cannot be applied to this case. The impugned orders has been issued after due show cause notice to applicant and following the process of natural justice. The O.A. may, therefore, be dismissed.

8. Detailed rejoinder has been filed in the matter controverting the contention of the respondents raised in the reply. The matter relating to Shri Parasmal has been reiterated and the order dated 3.8.1998 and order dated 1.9.99 (Annexure A/19) have been annexed with the rejoinder wherein it has been said that certain post of Material Collector were available and Shri Parasmal could not be spared to go back to his substantive post till the action was taken to fill up the post of Material Collector.

9. We have heard the learned counsel for the parties and have carefully perused the records of the case.

10. The primary question for determination in this case is as to whether the applicant has any vested right to hold the post of Material Collector Grade-II on which he is said to have been promoted after passing the requisite trade test/selection. The learned counsel for the applicant has vehemently argued that the applicant while working on the post of Welder Grade III was subjected to a selection for promotion to the post of Material Collector Grade II. He passed the requisite selection then only he was promoted to the said post. Thereafter he was transferred to ECO and certain subsequent transfer took place. The similarly situated persons are being continue



on the post of Material Collector Grade II. He has thus vested right to the post of Material Collector.

11. On the other hand, the learned counsel for the respondents has argued that the applicant was promoted to work on Material Collector Grade II on temporary basis and that too against the Ex-Cadre post. He was also transferred on the same post at different Shop but with the same status. The post of Material Collector Grade II is not a promotional post for the post of Welder Grade as per the avenue of promotion for the post of Welder Grade III. On the other hand, the post of Material Collector is an Ex-Cadre post which is temporary in nature. The applicant was given promotion on temporary basis after passing the trade test. This cannot give any vested right to the applicant to hold the post of Material Collector Grade II.

12. We have given our anxious consideration and thought to the issue involved in this matter. The position of rule is very clear as regards the avenue of promotion. The post of Welder has got further advancement by way of promotion to the post of Welder Grade II and Welder Grade III. Such post also falls in Artisan category. On the other hand, the post of Material Collector does not fall in the channel of promotion for the post of Welder. It is settled position of law that one can get a regular promotion only against a post, which is in the particular avenue of promotion and since the post of Material Collector is not in the avenue of promotion for the post of Welder Grade on which the applicant was holding the applicant has no right least to say vested right to hold the said post of Material Collector Grade II. Hence the issue raised in this O.A. goes against the applicant.

13. Now, the ancillary question remains to be decided is, whether the applicant who has no vested right to hold a particular post i.e. Material Collector Grade-II in the present case, can continue as a matter of right on the post of Material Collector Grade-II, while there is a vacancy in PCO for the same. The answer is negative. Since no one can have any right to hold ex-cadre post. We are aware that certain time period known as 'tenure' is prescribed for working on ex-cadre post, which is normally five years, and in the present case, that time has also expired. In this view of the matter also, the applicant's repatriation to his parent cadre and his reversion from the post of Material Collector Grade-II to the post of Welder Grade-III is, in order. The impugned orders dated 11.5.98 (Annexure A/1) and 27.11.98 (Annexure A/2) are in conformity with the rules and the contentions of the applicant do not have any force.

14. The learned counsel for the applicant has lastly argued that on reversion, at least his pay ought to have been protected. The rules position is very clear and as per Proviso (2) of 3rd Proviso to Rule 1316 (2) of the Indian Railway Establishment Code, Volume-II, one cannot be given any benefit of pay protection on his repatriation from an ex-cadre post to his substantive post in his parent department

15. In view of the foregoing discussions, the OA is meritless and the same deserves to be dismissed and the same is hereby dismissed. The Interim order granted on 1.12.1998 is hereby vacated. However, in the facts and circumstances of this case, there shall be no order as to costs.

J.K. Kaushik
(J.K. Kaushik)
Judl. Member

A.P. Nagrath
(A.P. Nagrath)
Adm. Member