

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 29.10.02

OA No.231/2000

Sattar N Khan s/o Shri N.B.Khan r/o Nagla Malian, Islamganj, Patehpuri Sikri, District Agra, at present employed on the post of TCM Grade-III under CTCI Idgah, Western Railway, Kota Division, Kota.

.. Applicant

Versus

1. Union of India through the General Manager, Railway, Churchgate, Mumbai
2. Divisional Railway Manager (Establish), Western Railway, Kota Division, Kota.
3. Senior Divisional Signal N Telecom Engineer, Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar - counsel for the applicant

Mr. S.S. Hasan - counsel for the respondents

OA No.132/2001

Sattar N Khan s/o Shri N.B.Khan r/o Nagla Malian, Islamganj, Patehpuri Sikri, District Agra, at present employed on the post of TCM Grade-III under CTCI Idgah, Western Railway, Kota Division.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai
2. Senior Divisional Signal N Telecom Engineer, Western Railway, Kota Division, Kota.

.. Respondents

18

Mr. Shiv Kumar - counsel for the applicant

Mr. S.S. Hasan - 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, Member (Administrative)

In OA No.231/2000, the applicant is aggrieved of the order dated 19.4.2000 (Ann.A1) whereby his request for regularisation on to the post of TCM Grade-III has been rejected by the respondents. In relief, he has prayed for quashing the said order with appropriate directions to the respondents to regularise his services on to the post of TCM Grade-III carrying a pay scale of Rs. 950-1500 and also for considering him for promotion to the higher grade posts/^{of} TCM Grade-II and TCM Grade-I, with all consequential benefits.

2.0 The case of the applicant as made out in this OA, in brief, is that he was initially appointed as Khallasi in 1968 and thereafter promoted as Batterymen on 11.6.82. He was promoted to the post of TCM Grade-III vide order dated 22.3.83 (Ann.A2) and right from then he is continuing on the said post to the satisfaction of the respondents, but has not been regularised as yet. He was also not called for the tests conducted by the respondents.

2.1 The main grounds taken by the applicant are that he has been continued on to the post of TCM Grade-III since 1983 and he has not been regularised even after such a long period. No suitability test has been conducted for

regularising his services. The suitability test was required to be held at the interval, which should not be less than six months and persons who have failed in the last test should also be called for the subsequent test required to be held every six months as per the Railway Board letters dated 18.12.67 and 3.12.69. The case of the applicant has not been considered in the light of the said rules/instructions. He was neither informed if any trade test was held nor he was given any chance to appear in the trade test.

2.2 The respondents have contested this application and have submitted that the applicant was promoted as TCM Grade-III in the pay scale of Rs. 950-1500 vide order dated 22.3.83 purely on ad-hoc basis. Vide order dated 29.5.84, it was clarified that the applicant's seniority is to be maintained in the Signal Wing and his lien is also maintained in the Signal Wing. The post of TCM belongs to Telecom Wing and, therefore, he was not called for trade test for the post of TCM and only those Khallasis whose seniority is maintained in the Telecom Wing were called for the trade test. For the aforesaid reasons, the applicant was not called for the trade test and could not be regularised on the post of TCM Grade-III. The reasons for not promoting the applicant on regular basis on to the post of TCM Grade-III have been elaborated while disposing of his representation (Ann.A1) as per the directions of the Tribunal contained in their order dated 21.2.2000 in OA No.514/97. It is also clarified that when the seniority list of TCM Grade-III was issued vide orders dated 11.2.87, 25.8.90, 17.2.93, 9.12.94, 6.4.96, 18.12.98 and 25.6.99, a copy of the same was affixed on the notice

D

board. The applicant did not file any representation to include his name in the said seniority list, as such the applicant was not considered for including his name in the seniority list of TCM Grade-III. The seniority of the applicant was not maintained in the Telecom Wing but was maintained in the Signal Wing, as such he was not called for trade test in the TCM Grade-III.

3.0 In OA No.132/01, the same applicant is aggrieved of the order dated 5.3.01 (Ann.A1) whereby he is posted out by reverting him from the post of TCM Grade-III to his original post of Batteryman. In relief, he has prayed for quashing the said order alongwith appropriate directions to grant him consequential benefits, on various grounds stated therein.

3.1 Based on his interim prayer, this Tribunal vide ordersheet dated 27.3.01 stayed the impugned order.

3.2 The respondents have contested this application and have submitted that the applicant was promoted to the post of TCM Grade-III on ad-hoc basis and based on the directions of this Tribunal, his case was considered but no relief could be granted for the reason that the applicant belongs to the Signal Wing and the post of TCM Grade-III is of Telecom Wing and further that he was holding the post of TCM Grade-III on ad-hoc basis. It is also contended that no show-cause notice was necessary since the applicant has agitated his grievance and based on the directions of the Tribunal, a speaking order was passed and after the said order, the impugned posting/reversion order was issued.

B

4.0 Both the OAs were taken up together being based on similar facts and pertaining to the same applicant. Heard the learned counsel for the parties and perused the records of both the OAs.

4.1 The respondents have not annexed any order whereby it could be seen that the applicant was promoted as TCM Grade-III on ad-hoc basis. The order dated 22.3.83 (Ann.A2) does not mention that the applicant was ^{promoted} ~~on~~ on ad-hoc basis, although in case of some other employees it was specifically mentioned that their promotion was on ad-hoc basis. Vide Para 3 of the impugned order dated 19.4.2000 and in the reply of the respondents, it is stated that the seniority of the TCM Grade-III was published seven times during the period from 1987 to 1999 but the applicant neither represented nor approached ~~the~~ ^{the} administration for including his name in the seniority list. If the applicant was on ad-hoc basis as contended by the respondents, we are unable to appreciate how his name could appear in the seniority list of TCM Grade-III, since the name of ad-hoc employees are not required to be included in the seniority list. Be that as it may, the applicant himself is seeking regularisation on the post of TCM Grade-III. Therefore, we will agree with the contention of the respondents that the applicant was holding the post of TCM Grade-III on ad-hoc basis.

4.2 The stand of the respondents in the impugned order dated 19.4.2000 is that all the surplus Batterymen were called for the trade test for the post of TCM Grade-III, but the applicant did not represent for inclusion of his name in the eligibility list and hence he is not entitled for promotion to the post of TCM Grade-III.

Simultaneously, the respondents have submitted that he was not called for trade test for the post of TCM Grade-III as it was conducted only for the candidates belonging to the Telecom Wing and the applicant had his lien and seniority in the Signal Wing. We are unable to appreciate these contradictory contentions. The respondents in the MA No. 428/02 filed in OA No. 132/2001, have themselves submitted that junior to the applicant in Signal Wing i.e. Shri Vijendra Singh is working on the post of MSM Grade-I in the pay scale of Rs. 4500-7000 and the said Shri Vijendra Singh was promoted as MSM Grade-III w.e.f. 17.9.85, MSM Grade-II w.e.f. 8.10.98 and MSM Grade-I w.e.f. January, 2002. The respondents have also conceded that there was a bonafide mistake of not including the name of the applicant in the seniority list of Signal Wing after 1988. The respondents have further conceded that the applicant who belongs to Signal Wing was not considered for promotion in his cadre while his juniors got promotion upto the post of MSM Grade-I.

4.3 The net result is that neither the applicant, holding the post of TCM Grade-III on ad-hoc basis since 1983, has been regularised on this post nor he was given any opportunity to appear in the tests for the posts of MSM Grade-III, MSM Grade-II and MSM Grade-I in Signal Wing although his juniors in the Signal Wing have been promoted. There is no explanation as to why the applicant was kept on ad-hoc basis on the ex-cadre post of TCM for over 15 years. The disposal of his representation based on the direction of the Tribunal vide their order dated 19.4.2000 is without application of mind. Instead of correcting their mistakes and ordering proper relief, the respondents are claiming the applicant.

B

4.4 The learned counsel for the applicant during the course of arguments submitted that the applicant will be satisfied if he is considered for the posts of MSM Grade-III, Grade-II and Grade-I from the date his juniors in the Signal Wing were so promoted. The learned counsel for the respondents did not object to this prayer.

5.0 In the circumstances, we are of the view that the ends of justice will be met if the respondents are directed to consider the case of the applicant for promotion to the post of MSM Grade-III, Grade-II and Grade-I w.e.f. the same date his immediate junior was promoted by holding the tests as prescribed at that point of time. If the applicant qualifies the said tests, he shall be granted notional promotions from the same date his junior was promoted in the Grade of MSM Grade-III, Grade-II and Grade-I with benefit of pay fixation and seniority. However, he shall not be entitled for arrears of pay and allowances which would be available to him only when he assumes the charge of MSM Grade-III/Grade-II/Grade-I. Let this exercise be completed within 3 months from the date of receipt of this order. In case the applicant does not succeed in the prescribed test of either MSM Grade-III, Grade-II or Grade-I, the test shall be again undertaken for that grade and consequently for higher grade with respect to his next junior promoted to the said grade, within six months from the date of receipt of this order. However in these circumstances, the benefits as ordered will relate to the date of next junior. Till such time the case of the applicant is considered and decided, he shall be allowed to continue on

B

the present post. Accordingly, so ordered.

6.0 Both the OAs are disposed of with above directions. In the facts and circumstances of the case, cost of Rs. 4000/- (Four thousand only) is awarded to the applicant as cost of Petitions, which will be paid by the respondents within three months of this order.

7.0 Let the Deputy Registrar send a copy of this order to the Chairman, Railway Board, Rail Bhawan, New Delhi - 110 011 for such corrective actions, as he may consider necessary.

(M.L.CHAUHAN)

Member (Judicial)

(H.O.GUPTA)

Member (Administrative)