

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20th September, 2001

OA No.232/2000

Trilok Mishra s/o Shri G.N.Mishra r/o 202-B, Loco Colony, Bayana,
Distt. Bharatpur at present employed on the post of WTM Gd.I UHF,
Station Bayana, W/Rly, Kota Division.

..Applicant

Versus

1. The Union of India through General Manager, Western
Railway, Churchgate, Mumbai.
2. Sr. Divisional Signal and Telecom Engineer (Estt.),
W/Rly, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant.

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

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER


Per Hon'ble Mr. A.P.Nagrath, Administrative Member

This OA is fourth in series of OAs filed by the applicant, Trilok Mishra, in regard to his promotion to the post of W.T.M. Grade-I in scale Rs. 1320-2040. First OA No.812/92 was filed by him titled A.C. Chaturvedi and anr. v. UOI & crs. and the same was disposed of by an order dated 29.6.94 directing the respondents to give additional opportunity to the applicant for appearing in the test and that this test may be considered as examination of the year 1989 for the purpose of age relaxation. This test was conducted by the respondents in terms of letter dated 16.8.1994 and the applicant was declared successful. He submitted a representation dated 6.9.94 to the respondents to give effect to this promotion retrospectively i.e. w.e.f. 1989. He filed another OA No.671/94 which was disposed of by



the Tribunal by an order dated 11.1.1995 directing the respondents to dispose of the representation of the applicant as per rules through a speaking order within a period of 2 months from the date of receipt of copy of the order. The respondents rejected the representation of the applicant vide order dated 6.11.1995 seeking promotion w.e.f. 1989. However, promotion to the grade of WTM Gr.I was made effective from 1.3.1993 vide order dated 4.11.1997. The applicant has filed yet another OA No.476/99 seeking relief that his name be included in the panel of the year 1989. By order dated 4.2.2000 the Tribunal directed the applicant to file a representation before the competent authority. The representation of the applicant has been disposed of by order dated 24.3.2000 (Ann.A1/A). The applicant is aggrieved with this order of the respondents and has filed the present OA with the prayer that the impugned order dated 24.3.2000 (Ann.A1/A) be quashed and set aside and that name of the applicant be included in the panel for the year 1989 with all consequential benefits.


2. The learned counsel for the applicant based his entire arguments on the presumption that the post of WTM Gr.I is a selection grade post. He has stated that the respondents conducted the selection in compliance of the orders of the Tribunal in OA No. 812/92 and that he passed the same in 1994. The learned counsel contended that since as per orders of the Tribunal this was an additional opportunity granted to the applicant for the examination of the year 1989, the applicant was entitled to be placed in the panel of that year and be assigned seniority w.e.f. 1989. In support of his arguments the learned counsel placed reliance on para 224 (I) of the Indian Railway Establishment Manual (IREM for short) Vol.I. The learned counsel submitted that in the selection in 1994 the applicant was posted on promotion to Jalandri but the applicant had refused promotion and his case, as per the learned counsel, fell within the provisions of Para



224 of the IREM as applicable to the selection posts. After expiry of the period of refusal, the applicant has been posted at Devpura. His promotion order has been given effect to w.e.f. 1.3.1993, though the learned counsel contended that it should have been made effective from 1989. He assailed the action of the respondents in not granting seniority to the applicant w.e.f. 1989.

3. The learned counsel for the respondents opposed the claim of the applicant on the ground that in OA No.812/92 the Tribunal while directing the respondents to grant an additional opportunity to the applicant to appear in the test had ordered that this test, in the case of the applicant, may be considered as examination of the year 1989 for the purpose of age relaxation only and nothing else. The learned counsel stated that since the applicant himself refused to carry out the orders of promotion in 1994, he will be governed by the rules as applicable in the case of refusal of promotion in such a case. The learned counsel submitted, that there was no ground for giving any retrospective effect to the promotion of the applicant.

4. We have given careful consideration to the rival contentions as also the documents on record. We have also perused the relevant provisions of IREM. Promotion to the post of WIM Gr.I is by the process of trade test. This falls under the category of non-selection posts and thus, the understanding of the learned counsel for the applicant that this was a selection post is a case of erroneous appreciation of facts. The applicant was given an opportunity to appear in the trade test in 1994 in compliance of the orders of this Tribunal in OA No.812/92. He was declared successful and was ordered to be posted at Jalandri, on promotion. The applicant refused to carry out this promotion order and his case, obviously is governed by the provisions of Para 224 of the IREM, but as applies to non-selection




posts. The relevant provision of Para 224 (II)(i) & (ii) reads as follows:-

" II. Non-selection Posts

(i) Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable domestic reasons exists. He should again be debarred for promotion for one year in case he refuses promotion again after the first year of debarrment or refusal of promotion for second time, the Administration can however transfer him to out-station in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes.

(ii) He will rank junior to all promoted during the period he was allowed to refuse promotion irrespective of his relative seniority. He will not however lose seniority to another employee promoted to the same category during the one year period of penalty as a result of fresh suitability test subsequently held."

it
We do not consider/ necessary to interpret the order of the Tribunal in OA No.812/92 even if the applicant understood these orders to be giving him the benefit of the selection of 1989. Such benefit can be realised only if on the very first opportunity given, the applicant is successful in the test and carries out his orders. In this case the applicant's representation dated 6.9.94 which is available at Ann.A4 wherein the applicant has stated that after 1989 he was called to appear in the trade test on a number of occasions but every time on the plea that his OA was pending before the CAT, Jaipur he did not appear in these tests. As per his own admission he did not



avail of the opportunities made available to him after 1989. By further refusing to carry out his promotion in 1994, the applicant lost the right of being considered at all for any retrospective benefit. The rule of seniority as per Para 224 (II) (ii) is clear that a person who refuses promotion will rank junior to all those promoted during the period he was allowed to refuse promotion irrespective of his relative seniority. With this clear rule position, we do not find any merit in the claim of the applicant. The impugned order explains in detail the basis on which his claim for promotion w.e.f. 1989 has been denied. We do not find any fault in this impugned order and the same does not call for any interference.

5. We, therefore, dismiss this OA, but with no order as to costs.


(A.P. NAGRATH)

Adm. Member


(S.K. AGRAWAL)

Judl. Member