

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 14.01.03

OA No.408/2000

Lallu Singh s/o Shri Nand Ram, Head Telephone Operator (S&T) Deptt., C/o CTCIW Rly. (SEE Tele) D.R.M. Office, Jaipur r/o Railway Quarter No.N/4, Road No.4, Ganpati Nagar, Jaipur.

.. Applicant

VERSUS

1. Union of India acting through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur.
3. Rajan Lal Gupta, Chief Telephone Operator, House No. 118, Pratibha Marg, Vivek Vihar Colony, New Sanganer Road, Jaipur.

.. Respondents.

Mr. Nand Kishore, counsel for the applicant

Mr. R.G.Gupta, counsel for respondent Nos. 1 and 2

Mr. Vinod Goyal, proxy counsel to Mr. Virendra Lodha, counsel for respondent No.3

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 26.8.98 (Ann.A2) whereby he has been reverted from the post of Chief Telephone Operator and also the order dated 22.3.2000 (Ann.A5) whereby the respondent No.3 has been promoted in this post ignoring his claim. In relief, he has prayed for quashing the said orders and upholding his promotion order dated 31.7.97 (Ann.A1)

[Signature]

and also to continue him on ad-hoc basis till a suitable candidate is promoted by act of positive selection.

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

2.1 He was promoted to the post of Chief Telephone Operator carrying a pay scale of Rs. 1600-2660 vide order dated 31.7.97 (Ann.A1) on ad-hoc basis. He was working satisfactorily and there was no complaint against him. All of a sudden without giving any reasonable opportunity, he was reverted from the promoted post of Chief Telephone Operator to the post of Head Telephone Operator carrying a pay scale of Rs. 1400-2300 possibly because of Unions taking up the matter.

2.2 Based on his representation, the railway administration vide their letter dated 5.5.99 (Ann.A3) informed him that the ad-hoc promotion can continue only for 90 days and as such he was reverted. One Shri Rajan Lal Gupta (Respondent No.3) was promoted on ad-hoc basis vide order dated 22.3.2000 (Ann.A5) but no reversion order was issued after he completed 90 days. He again represented through his counsel on 13.4.2000 but neither the respondents are replying to his representation nor the respondent No.3 has been reverted.

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

3.1 He, being an SC candidate, was promoted as per roster point reserved for SC candidate by the railway administration vide order dated 31.7.97, but he was reverted vide impugned order dated 26.8.98 without showing any reason and without following the principles of natural justice and, therefore, the reversion order is illegal and deserves to be quashed.

3.2 Based on his representation, he was informed that the

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ad-hoc promotion orders are issued for only 90 days and there is no deficiency of SC candidate, but the respondents have issued promotion order of private respondent No.3 vide order dated 22.3.2000 (Ann.A5) on ad-hoc basis and even after completion of 90 days as per their policy, the respondent No.3 has not been reverted. Therefore, the action of the respondents is in violation of the Article 14 of the Constitution, being arbitrary and discriminatory.

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

4.1 The applicant was promoted on absolute ad-hoc basis vide order dated 31.7.97 (Ann.A1) for a period of 90 days without going through any selection process and on expiry of the said period, the applicant was reverted to his original post vide order dated 26.8.98 (Ann.A2).

4.2 Since Shri Raj Kumar (SC), Chief Telephone Operator is available, so SC candidate is also not wanted. Therefore, the applicant who has not gone through the selection process and his initial promotion to the post of Chief Telephone Operator was conditional and absolutely on ad-hoc basis for a period of 90 days, no right is accrued to him to continue on the post beyond 90 days unless it is thought highly essential by the administration to do so. The reversion is as per rules.

4.3 The post of Telephone Superintendent under the control of Head Office was temporarily down graded to that of Chief Telephone Operator and on this post the applicant was promoted on ad-hoc basis and when the said post was again upgraded by the Head Office, the ad-hoc arrangement done through the promotion of the applicant came to an end and the applicant was reverted to his original post of Head Telephone Operator. Since the promotion

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the applicant was on absolute ad-hoc basis, therefore, there is no necessity to issue any notice to him as the post itself ceased to exist.

4.4 The notice for demand of justice could not fetch him any fruit because the position had already been made clear vide letter dated 5.5.99 (Ann.A3). The post of Chief Telephone Operator prior to 1.12.96 was under the control of Head Office and two posts of Chief Telephone Operators were sanctioned at the Divisional Office on which Shri K.N.Shukla, a General candidate and Shri Raj Kumar, an SC candidate were posted, who were promoted to these posts by the Head Office. After 1.12.96, the post of Chief Telephone Operator was under the control of the Divisional Office.

4.5 Ad-hoc promotion is of course made for 90 days but in the interest of administration, it can be continued. The applicant was reverted vide order dated 26.8.98 (Ann.A2) whereas the respondent No.3 is concerned, he was promoted vide order dated 22.3.2000 (Ann.A5). The entire administration cannot be frozen for the cause of the applicant.

5. The private respondent No.3 has also contested this OA. Briefly stated, he has submitted that as per various seniority lists published, as would be relevant from Ann.R/3-1 to 4, he is senior to the applicant. Therefore, by no stretch of imagination, the applicant has any claim over him. The applicant has not been superseded in the matter of promotion vis-a-vis any person. In any case, the order dated 22.3.2000 (Ann.A5) is perfectly legal and justified and does not call for any interference from this Hon'ble Tribunal.

5.1 The applicant has now further superseded vide order dated 2.2.01 (Ann.R/3-5). The order dated 22.3.2000 has now been

superseded vide order dated 2.2.2001.

6. In rejoinder, the applicant while reiterating his earlier stand, has further submitted that the ad-hoc promotions were required to be issued in conformity with the railway rules on the subject and in accordance with the roster meant for SC and ST. The cadre is less than 14 and as such the L-type roster is required to be maintained. As per the roster, the following position emerges:-

S.No.	ST/SC Point Roster	Name	SC/ST OBC or UR	Date of promotion & appointment
1	2	3	4	5
1.	UR	Kailash Narain Shukla	UR	1.3.93
2.	UR	Raj Kumar Bairwa	SC	27.2.94
3.	UR	S.N.Sharma	UR	23.7.97
4.	SC	Rajan Lal Gupta	UR	.3.2000

From the above and also from the roster maintained by the authorities, it is evident that the roster point No.4 is reserved for SC candidate, as such, the applicant being an SC candidate, the promotion should have been ordered for him. From Ann.R/3-5 submitted by respondent No.3, it would be seen that the post in the scale of Rs. 6500-10500 was down graded to the pay scale of Rs. 5500-9000 and the posting of Shri Rajan Lal Gupta, respondent No.3, on this down graded post is against the rules since as per the roster, the vacancy should have gone to the applicant belonging to SC category, whereas the private respondent No.3 is admittedly a General candidate. In fact, there was no question of down grading of the post when the same was transferred from Bombay Central to the Jaipur Division and the seniormost an

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suitable candidate Shri Raj Kumar Bairwa was available, his posting on ad-hoc basis in accordance with the railway rules should have been done. By not promoting him, the railway administration has marred the right of his promotion and also shown him in a lower grade so that he can be counted against SC/ST percentage. Shri Raj Kumar was promoted on Headquarter quota on earlier points which were not reserved for SC, he cannot be counted against the subsequent points meant for SC. Thus, the posting of respondent No.3 is against the railway rules.

In rejoinder to the reply of official respondents, the applicant has submitted that though the respondents have contended that the ad-hoc promotion is for 90 days but the same is not being followed. They have stated that Shri Raj Kumar (SC), Chief Telephone Operator is available, so an SC candidate is not wanted. In this context, it is submitted that Shri Raj Kumar has already been promoted as Trunk Superintendent in the scale of Rs. 6500-10500 vide Ann.A7 (Ann.A7 is not annexed with the rejoinder). Thus, the post released by him should be given to the applicant. There is no word like absolute ad-hoc in the railways. The reversion of the applicant by promoting respondent No.3 on ad-hoc basis is in contravention of Rule 216 of the IREM. The right course was to hold selection. The contention of the official respondents as stated in para 4(iii) is not admitted. When there was no post, the respondent No.3 could not be promoted. Two different set of rules are being applied by reverting the applicant after completion of 90 days but continuing the respondent No.3 even after 90 days. It is pertinent to point out that if ad-hoc promotion is continued more than 90 days, sanction of the Chief Personnel Officer is to be obtained which the applicant feels has not been obtained.

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7. The private respondent No.3 has filed reply to the rejoinder filed by the applicant and has submitted that the applicant has not able to point out as to why he is challenging the issuance of the order dated 22.2.2000 by which the respondent No.3 has been promoted on the post of Chief Telephone Operator on purely ad-hoc basis. From the perusal of the aforesaid order, it is clear that no right has been infringed whatsoever of any party so as to invoke jurisdiction of the Hon'ble Tribunal. Shri Raj Kumar was promoted against the unreserved vacancy is not correct. The fact is that Shri Raj Kumar, an SC candidate, was promoted to the post of Chief Telephone Operator in the pay scale of Rs. 1600-2660 against reservation of SC/ST shortfall as would be borne out from the order dated 20.7.98 (Ann.R/3-6). He being senior to the applicant for all practical purposes, the applicant cannot challenge the order of his promotion on ad-hoc basis.

8. Heard the learned counsel for the parties and perused the record.

8.1 It is an admitted fact that the private respondent No.3 is senior to the applicant in the eligibility list for promotion to the post of Chief Telephone Operator. The applicant belongs to SC category and is seniormost eligible SC candidate, while the private respondent No.3 belongs to General category. The main controversy in this case whether the post is required to be filled by an SC candidate or by a General candidate. It is not denied by the respondents that for filling up the post even on ad-hoc basis, reservation would be applicable. The contention of the applicant is that as per the roster point, the post should have been given to an SC candidate and he being seniormost candidate, he should have been continued on the post as was given to him vide order dated 31.7.97 and that his reversion vide order dated 26.8.98 and

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subsequent promotion of private respondent No.3 vide order dated 22.3.2000, was illegal. In reply ~~of~~ ^B the respondents ~~they~~ have stated that in the order dated 31.7.97 (Ann. Al), the promotion of the applicant was on absolute ad-hoc basis for 90 days. These averments are incorrect/misleading. Firstly, because the said order nowhere mentions that the ad-hoc promotion is ordered for 90 days and secondly, the word absolute ad-hoc basis is neither relevant nor exists in the said order. We hope and believe that the respondents shall refrain from making incorrect/vague averments in future failing which the Tribunal will take a serious view. The respondents have further submitted in their reply that the applicant was reverted when the downgraded post was again upgraded by the headquarters. The respondents have not submitted any document in support of this contention. After the reversion of the applicant, the private respondent No.3 was promoted on ad-hoc basis against the downgraded post vide order dated 22.2.2000 and he was further continued in the same capacity against the downgraded post vide order dated 2.2.01. It appears to us that the official respondents have reverted the applicant as they thought the post is not to be filled up from an SC candidate. The plea taken by the respondents that the applicant had to be reverted after 90 days does not appear to be correct as the respondent No. was continued for a long period and that no order of the Headquarters is available on record from where it could be seen that the divisional authorities approached the Headquarters and the headquarters did not agree for extension of adhoc promotion to the applicant beyond 90 days.

8.2 The contention of the applicant that as per roster point, the post is required to be filled through an SC candidate has also not been convincingly controverted by the offici.

respondents through supporting documents. It is also not clear from record whether as per post based roster, the vacancy is required to be filled by SC or General candidate. In the rejoinder, the applicant has also submitted that a vacancy has arisen in the cadre of Chief Telephone Operator on promotion of Shri Raj Kumar as Trunk Superintendent and since Shri Raj Kumar has vacated an SC vacancy, as per post based roster, is required to be given to the applicant. There is also nothing on record whether the downgraded post is still continuing and if so why.

9. In view of above discussions, this OA is disposed of with a direction to respondent Nos. 1 and 2 to ensure filling up clear vacancies of Chief Telephone Operator as may be available, on regular basis and as per rules. Respondent No.1 is also directed to consider the desirability of continuance of ad-hoc arrangement by downgrading a headquarter control vacancy and operating that vacancy at divisional level. In the event, the arrangement is essential and as per rules, and also if a clear vacancy of Chief Telephone Operator is not available in the division, the respondent No.1 shall review whether the downgraded vacancy is required to be filled by a General candidate or by an SC candidate keeping in view the policy on reservation and take further necessary action as per law. The above exercise shall be completed within 4 months from today and the result of the exercise shall be communicated by respondent No.1 through a reasoned order to the applicant within the said period. No order as to costs.


(M.L. CHAUHAN)

Member (Judicial)


(H.O. GUPTA)

Member (Administrative)