

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 22.8.2001

OA 363/2001

Ashok Kumar Bhatnagar, CMS-II O/o Dy.CCM, Carriage Shop, Western Railway, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Mechanical Engineer, Western Railway, Churchgate, Mumbai.
3. Chief Works Manager, Western Railway, Ajmer Division, Ajmer.
4. Dy.Chief Chemist & Metallurgist, Carriage Shop, Western Railway, Ajmer.

... Respondents

CORAM:

HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

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

For the applicant ... Mr.P.V. Calla

For the Respondents ...

O R D E R

PER HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

The applicant has filed this OA with the prayer that the respondents be directed to treat him eligible to be considered for promotion to the post of CMS-I and in this respect his name may be ordered to be interpolated at a correct place in the seniority list dated 6.8.2001 (Ann.A/8) and the impugned orders Ann.A/1 & Ann.A/2 dated 17.7.2001 respectively be declared illegal. It is further prayed by

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the applicant that the respondents be directed to treat him eligible for promotion alongwith other candidates shown in Ann.A'8, if he is otherwise found suitable, and he be posted as per rules and practice prevailing in the department.

2. We have heard the learned counsel for the applicant and have gone through the case file.

3. It was argued by the learned counsel for the applicant that earlier the applicant was promoted but due to certain reasons, personal to the applicant, the applicant did not carry out the promotion order. It was also argued by the learned counsel for the applicant that the applicant also did not carry out the promotion order because his seniority was not correctly worked out in the seniority list. Now the department has further considered few candidates and promoted them ignoring the applicant. Not only this, one of the newly promoted candidates has been adjusted at Ajmer i.e. applicant's place of posting. Had the vacancies been worked out correctly in the past and the applicant had been assigned due seniority, he would have been posted and adjusted on the promotional post at Ajmer itself. Therefore, the respondents deserve to be directed, as prayed.

4. We have considered the arguments of the learned counsel for the applicant and have gone through the case file. Vide Ann.A'5 dated 22.3.2001 the applicant was promoted to the post of CMS-I in the pay scale of Rs.7450-11500 from the post of CMS-II and was posted to Abu Road. The applicant did not carry out this promotion order and was consequently debarred for promotion for one year vide Ann.A'2 dated 17.7.2001. The applicant again, after having refused to carry out the promotion order vide his

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application dated 21.4.2001, claimed to be promoted alongwith others but was informed vide Ann.A/1 dated 17.7.2001 that due to his refusal to carry out the promotion order he was debarred for being promoted as per rules.

5. In our opinion, the applicant, who was promoted, had refused to carry out the promotion order, therefore, he cannot raise grievance against the order of the respondents promoting other candidates. As per rules, refusal to carry out promotion order debars the candidate for one year from claiming promotion. Therefore, the applicant in the garb of challenging the seniority of certain other candidates cannot get the relief of being promoted on the desired post at Ajmer. If the applicant was not satisfied with his seniority position, there was no reason for him not to carry out the promotion order and then claim correction in the seniority list or re-assignment of correct seniority position. Viewed from other angle, it appears that the applicant did not want to go out of Ajmer on promotion to a place like Abu Road. It seems that the applicant thought that in near future certain more vacancies would fall vacant and he may have a chance to be adjusted at Ajmer. If he was advised properly, he could have carried out the promotion order and could have got his prayer for his adjustment at Ajmer registered and then should have pursued the matter accordingly. But he did not do so. Now, by way of this OA, he challenges his seniority position and claims to be adjusted at Ajmer on the ground that had he been assigned correct seniority position, he might have got Ajmer while being promoted. This, to our mind, is an approach to circumvent the provisions relating to debar<sup>in of</sup> promotion for one year. In fact, having once refused the promotion, the applicant cannot claim to be promoted for one year. He has

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rightly been debarred and correctly been informed. The OA, in our view, is ill-advised and deserves to be dismissed.

6. The OA is, therefore, dismissed in limine.

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(A.P.NAGEATH)

MEMBER (A)

*22/8/2001*  
(A.K.MISHRA)

MEMBER (J)