

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Original Application No. 394/2001.

Jaipur, this the ^{May} ~~3rd~~ day of April, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).
Hon'ble Mr. A. K. Bhandari, Member (A).

Thawar Singh,
S/o Shri Hari Singh,
Aged about 54 years,
R/o 8, Adarsh Colony,
Malaroad, Kota Junction,
Kota.

... Applicant.

Applicant present in person along with his Counsel Shri Pradeep Asthana.

Vs.

1. Union of India
Through General Manager (Establishment),
Western Railway
Churchgate, Mumbai.
2. The Divisional Railway Manager,
Western Railway,
Kota.
3. The Addl. Divisional Railway Manager,
Western Railway, District Kota.
4. The Appellate Authority -
the C.E.E. Western Railway,
Churchgate, Mumbai.

... Respondents.

By Advocate : Shri S. S. Hassan.

: O R D E R :

M. L. Chauhan, Judicial Member.

The applicant who was at the relevant time working
as SEF (P)/ SWM in Divisional Office, Kota, under Western

Railway, was retired from service in exercise of power conferred under Rule 1802 (a) and 1803(b) of Indian Railway Establishment Code Vol.II vide order dated 7.12.00 (Annexure A/1). Initially the applicant has challenged this order as well as the impugned orders of punishment dated 21.1.99 and 24.12.00 in this OA, but subsequently the applicant has prayed for deleting the prayer clause 8 (i) regarding quashing of impugned orders of punishment dated 21.1.99 and 24.12.00 and also payment of salary and allowances for the period of suspension as prayed for in Para 8 (iii) and such prayer was allowed vide this Tribunal's order dated 28.02.03. Thus, the present OA is only confined to the validity of the order of retirement dated 7.12.00 (Annexure A/1) whereby the applicant has been prematurely retired from service in terms of the aforesaid Railway Rules. This order has been challenged by the applicant on the ground that the same has not been passed by the Appointing Authority who was competent to make appointment of the applicant in the grade of Rs.2375-3500/-.

According to the applicant the Appointing Authority of the applicant is the General manager/ CEE (E)CCG and not the Additional Divisional Railway Manager (for short, ADRM) Kota, who has passed the impugned order. Thus, according to the applicant the impugned order dated 7.12.00 (Annexure A/1) is void-ab-initio and is required to be set aside on this ground alone.

2. When the matter was listed for hearing, this Tribunal vide order dated 12.5.04 has directed the respondents to file affidavit thereby explaining as to who was the Appointing Authority of the applicant in the grade of Rs.2375-3500/- and whether the order of compulsory retirement has been passed by the Authority who has granted promotion for aforesaid grade or by a person holding equivalent grade. The affidavit was required to be filed within four weeks and the matter was adjourned to 27.7.04. Thereafter, further opportunities were granted to the respondents to file additional affidavit. Respondents have filed the additional affidavit under the signature of Senior Divisional Personal Officer, Kota. In Para 3 of the additional affidavit, it has been stated that the applicant was selected through Railway Recruitment Board, Mumbai, as Apprentices Charge man and he was allotted Kota Division where he was appointed by Divisional Electrical Engineer, Kota vide order dated 1.7.69 for which offer of appointment order was given by Electrical Engineer, Kota, on 13.6.69. The respondents have placed a copy of order dated 13.6.69 and 1.7.69 on record as Annexure R/3 and R/4 respectively. It is further stated that the applicant was further promoted in the scale of Rs.2375-3500 by Sr. DEE and in the case of the applicant, it is the senior DEE who is the appointing authority.

3. Respondents have also stated that the applicant was compulsorily retired by ADRM, Kota, who being the higher

authority than the appointing authority is competent to retire the applicant compulsorily. Respondents have also placed on record extract from the Service Book of the applicant to show that it is the Sr. DEE (E), Kota, who is the appointing authority of the applicant (Annexure R/5). The applicant was also given opportunity to substantiate his claim. The respondents have also filed reply to the additional affidavit filed by the applicant as well as by way of MA NO.232/03 the applicant has also placed on record copy of the letter dated 10.12.84, in order to, show that the applicant was promoted by the Chief Electrical Engineer i.e. by a higher authority then the one who has passed the impugned order.

4. We have heard the learned counsel for the parties and have gone through the material placed on record.

5. The sole question which requires our consideration in this case is whether the impugned order Annexure A/1 thereby prematurely retiring the applicant from service on the recommendation of Review Committee has been passed by the Competent Authority. In order to, decide this point let us consider the provision of relevant Rule vis a vis public interest under which such power can be exercised in the public interest. The matter on this point is no longer res-integra and the same stand settled by various pronouncements given by the Apex Court. Hon'ble the Supreme Court has observed that the object of

Rule whether such powers are exercised in public interest in respect of employees who have attained the age of 55 years or completed 30 years of service qualifying for pension, is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services/Railway Services. The Apex Court has further observed that it is not necessary that a good officer may continue to be efficient for all time to come. It may be that there may be some officers who may possess a better administrative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such circumstances, compulsory retirement of an officer who fulfils the conditions of Rules is undoubtedly in public interest and is not passed by way of punishment. The Apex Court has further observed that the compulsory retirement contemplated by the rules is designed to infuse the administration with initiative.....so as to meet the expanding needs of the nation which require exploration of 'fields and pastures anew'. Such a retirement involves no strain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a retired employee and maintenance of top efficiency in the diverse activities of administration. The Apex court in the case of Union of India vs. Col. J. N. sinha and another [1971 (1) SCR 791] made the following observations :-

"In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood."

Thus, from the principle as culled out above, it will be seen that the judicial pronouncements are clearly to the effect that premature retirement is not a punishment, does not involve a stain or stigma and that it is in the public interest to retire a person in order to maintain efficiency in service. It is not sufficient if a government servant having reached the present level, functions only as passenger, with performance that is just satisfactory. However, it is not possible to lay down any elaborate guidelines regarding the manner in which the performance of a Government servant is to be assessed, since the requirements of a particular position occupied by a Government servant will only be known better to the Department concerned and these requirements will vary from one position to another. The position of the relevant rules/instructions on the point also makes it clear that the Competent Authority is entitled to take into consideration the entire history of the person including that part of it prior to his promotion and previous history of a government servant cannot be completely ignored, even if, he is promoted irregularly. Sometimes past event may help to assess present conduct.

But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, there is no justification for needless digging into the past. Thus, from what has been stated above, the position emerges is that the period immediately preceding the review (which may be taken as five years) or the period after promotion or crossing of efficiency bar would be of utmost importance. However, if during the aforesaid period of review, there is evidence of deterioration in efficiency or unsatisfactory performance then it would be in order for the Review Committee to examine the entire service record to arrive at a total picture about the suitability or otherwise of the officer for further retention in service.

6. Viewing the matter from the aforesaid legal position vis a vis rule position, it cannot be said that the record of the applicant for the last five years immediately preceding the passing of the order is such which requires his further retention in service. We have gone through the record of the Review Committee on the basis of which the applicant was not recommended for further retention in service. Such finding was accepted by the ADRM, Kota. From the proceeding of the Review Committee, it is clear that the applicant was awarded minor penalty in the year 1973-74. The applicant was also suspended on the basis of mis-behaviour with office staff in the year 1978. In the year 1984, the applicant was awarded penalty of withholding of promotion for two

years without future effect vide SF (i) issued on 30.9.84. If these penalties of the past years (though the applicant was promoted in the year 1993) is viewed with the subsequent entries after his promotion in the year 93, it would be seen that there is evidence of deterioration in efficiency or respective performance and the applicant was also reverted to the lower time scale at a basic pay of Rs.1030/- for a period of two years with future effect vide NIP dated 21.1.99. In the history sheet recorded by the Review Committee, it has further been mentioned that the applicant was suspended on 11.8.96 due to man-handling with TT staff and he was again suspended on 24.4.00 due to mis behaviour with Senior DEE (TRS) TKD and SF-5 was issued by ADRM Kota. Apart from the aforesaid service record, the Confidential Report of the applicant for the year 1995 to 1999 were taken into consideration and in all these ACRs the performance of the applicant is 'Average or below Average' with adverse remarks throughout and it has also been recorded that the applicant is hot tempered, consuming alcohol during office hours, not efficient and need to improve his habit of sincerity. Thus, on the basis of the entire history of the applicant as recorded by the Review Committee, it cannot be said that the finding recorded by the Committee that the applicant is not fit for retention in service any more and he should be given premature retirement as per Railway Board Letter dated 10.1.90' cannot be said to be perverse and without any basis. Thus, the record of the applicant prior to

his promotion in the year 1993 when seen with the record after promotion till date of review, it is clear that there is evidence of deterioration in efficiency of the applicant and his performance was unsatisfactory and Review Committee after examining the entire service record recorded the finding that applicant is not fit for further retention in service. Even otherwise also, the applicant has not been able to substantiate the finding recorded by the Appointing Authority while passing the impugned order on the basis of the recommendation of the Review committee on merit as perverse or arbitrary. As already stated above, the only attempt of the applicant for quashing the impugned order is that the same has been passed by the authority subordinate to the Appointing Authority and as such, the said order is void-ab-intio. In order to substantiate this plea the applicant has drawn our attention to the letter dated 1.7.69 (Annexure A/3) issued by the Divisional Electrical Engineer and another letter dated 10.12.84 Annexure MA/4, which letter was placed by the applicant subsequently by way of MA. We have perused these two documents. The letter dated 1.7.69 has been issued by the Divisional office, Kota and has been signed by Divisional Electrical Engineer, Kota. This letter reveals that the applicant selected candidate for the post of App. Elc. is allotted to Kota Division under CEE (E) CCG's letter dated 12.5.69. Thus, this letter cannot be termed to be an appointment letter issued either by the General Manager or by the CEE(E) CCG's, Head Quarter office, Churchgate, Mumbai. At the

most, what can be gathered from this letter is that after selection of the applicant, he was allotted to Kota Division by the CEE(E) CCG, Head Quarter Churchgate, Mumbai, and mere allocation of the applicant by the said authority does not make the CEE as appointing Authority of the applicant on the post of Apprentice Electrical.

7. On the contrary, the respondents have placed on record the offer of appointment letter dated 12.6.69 issued by the Divisional Office, Kota and signed by Divisional Superintendent, Kota whereby the offer of appointment as Apprentice Electrical Charge-man at Rs.205 per month was issued, followed by appointment order dated 1.7.69 in the aforesaid scale by DEE (E) Kota. Thus, the contention of the applicant that he was appointed by CEE(E)CCG or General Manager, Churchgate, Mumbai, is wholly misconceived and without any substance.

8. Now let us examine the letter dated 10.12.84 (Annexure MA/4) on which much emphasis has been placed by the applicant to show that he was promoted in the grade of Rs.700-900 on approval of the Competent Authority and the said letter has been signed on behalf of CEE (E) CCG. We have perused the said letter. Para 2 of the said letter is in the following terms :-

" 2. The following persons considered suitable for promotion to Gr. Rs.700-900 ® may be promoted to officiate as SEF/ASS Gr. Rs.700-900 ® on provisional basis against the upgraded posts in this grade and chain vacancies vice employees in scale Rs.700-900 ®

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promoted as S.S. Gr. Rs.840-1040 @ vide this office letter No.E/EL/839/7/37 Vol.000 dt. 31.10.84"

Para 2 is followed by the approval for promotion of certain persons in as many as 13 Units/Divisions under the Western Railway such as BCT Division, BRC Division, RTF Division, KTT Division, AII Division, JP Division etc. etc. The case of the applicant was considered under KTT Division. In KTT Division one additional post in the grade of Rs.700-900 was upgraded and allocated to that Division whereas 3 vacancies in the grade of Rs.700-900 became available on account of promotion of the officials in the higher scale of Rs.840-1040. Against the total strength of four posts which became available in the grade of Rs.700-900, Headquarter Office of the Western Railway conveyed the approval of four persons including the applicant for promotion to officiate SCF on provisional basis. The said order was necessarily to be issued by the Headquarter office as it was not permissible for the different division/unit to create additional post(s) in the grade of Rs.700-900 and then subsequently allocating the same to different division/unit. Thus, we are of the view that this so called provisional promotion order thereby conveying the approval of the Headquarter office to create additional post and also recommending a person for promotion in the grade of Rs.700-900 cannot be termed as appointment order issued by the Appointing Authority especially when it is clear from Para 2 of this letter that the respective unit has been authorized to promote person(s) mentioned

therein on provisional basis against the upgraded post. Thus, at the most it can be said that the Headquarter office has given approval for appointment of persons mentioned therein in the grade of Rs.700-900 and necessary order of promotion has to be issued by the Appointing Authority. The approval granted by the Headquarter office for effecting promotion in the grade of Rs.700-900/- cannot make the Head office as appointing authority. On the contrary, the respondents have also placed on record further promotion ^{to Order} of the applicant in the scale of Rs.2375-3500/-, which post the applicant was holding prior to his compulsory retirement vide impugned order Annexure A/1. Even the applicant has placed a copy of the letter dated 21.9.93 as Annexure MA/2. This letter has been issued by the Headquarter office, Churchgate, Mumbai and has been signed on behalf of General Manager (E). This letter reveals that the competent authority CESE-CCG after reviewing the confidential reports, has considered the following SEF/scale Rs.2000-3200 (RP) suitable for promotion as CEF/Scale Rs.2375-3500/-. On the basis of this letter, it was argued that the Competent Authority namely CESE has reviewed the confidential report of the applicant and other persons and he has been found suitable for promotion by the said authority, as such, it is the CESE-CCG which is the appointing authority of the applicant and not the Senior DEE. The Respondents have relied upon the subsequent letter dated 21.10.93 which was issued on the basis of the recommendation made vide letter dated

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21.9.93. This letter has been signed on behalf of Senior Divisional Electrical Engineer, Kota. A perusal of this letter shows that four persons have been promoted on the scale of Rs.2000-3200 to the upgraded scale of Rs.2375-3500/- and on such promotion they have been posted as Chief Divisional Electrical Forum against the post mentioned against their name. The name of the applicant find mentioned in the said letter. Thus, from the material placed on record, it is seen that on the basis of the recommendation made by the CESE-CCG, Headquarter office, Mumbai vide letter dated 21.9.93, in fact, the promotion order was issued by the Sr. DEE, Kota. Thus, we are of the firm view that it is only Sr. DEE(E) Kota which is the appointing authority of the applicant. It is not disputed that the order of compulsory retirement has been passed by the ADRM, Kota. Admittedly, ADRM, Kota, is higher authority than the Sr. DEE (E) Kota. As such, it cannot be concluded that order of compulsory retirement has been passed by the authority which is subordinate to the appointing authority.

9. Learned Counsel for the applicant has also placed reliance on Rule 4 (A) of Schedule of Powers Delegated by the General Manager to Heads of Department and other officials, Para 'A' (Establishment matters) 1994 Edition, in which it has been stated that the Headquarter office is competent to make promotion of staff to non Gazetted post which are controlled by them and as such it is the Headquarter office who is the appointing authority for

that purpose. The reliance has been placed on Note below Item No.4 of Rule 4(A) which is in the following terms :-

S.No	Nature of powers	Extent to which powers are delegated to AGM/PHOD/Co-ordinating HOD	Extent to which powers are delegated to DRMs/ADRMAs/ S AG Officers in independent charge	Extent to which powers are delegated to Sr. Divisional Officer/ Dy. HODs	Extent to which powers are delegated to Sr. Scale and Asstt. Officer	Remarks
1.	2.	3.	4.	5.	6.	7
4(A)	--	--	DRMs/ADRMAs/CWMs (SAG) have powers to make promotion of staff to all non-gazetted posts in their respective divisions/ workshops. <u>Note: Where promotion is made on the basis of whole railway or for a smaller unit alongwith the power of promotion may be vested in the DRMs/Dy. HODs of Departments/ Divl. / District Officers/ Asstt. Officers the actual order of promotion should be signed and issued by the DRMs/ Dy. HODs of departments/ Divl/ District Officers/Asstt. Officers over his own designation on the name of the employee eligible for promotion being intimated by the Headquarters office.</u>	--	--	--

10. We have given thoughtful consideration to the aforesaid rules and note appended thereto. From the conjoint reading of this provision, it is clear that before making promotion of staff to non gazetted post, the actual order of promotion should be signed and issued by the DRMs/Deputy HOD of the Department in support of those employees whose name for promotion has been intimated by the Headquarter office. Thus, from the portion as quoted above, it is evident that only approval has to be obtained for promotion of non gazetted officer which are controlled by the Head of the Department/authorities whom the power has been delegated by the General Manager in their respective departments for the purpose of issuing

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a promotion order which further suggests that the appointing authority will be the officer to whom such a power has been delegated by subsequent order passed in that behalf by the General Manager or the Railway Board. Further the matter in this behalf is no longer res-integra. The same stand concluded by the decision rendered by the Apex Court in the case of Smt. Kanta Devi vs. Union of India & anr. 2003 (2) AISLJ (SC) 213. It was a case where the order of dismissal was passed by the DIG - There was provision in the relevant rules which require approval of I.G. for every appointment and promotion. The Apex Court held that a bare reading of the provisions show that while for the purpose of appointment the approval of DIG or the IG, as the case may be, is required to be obtained, that does not make the IG, the appointing authority. It was further observed that under Item No.1 in Rule 27, Subedar can be dismissed or removed from the Force by the Deputy Inspector General of Police, who is higher in rank than the Commandant. It was further observed that even when prior recommendation is necessary, it does not make the recommending/approving authority the appointing authority. Thus, in Para 7 of the judgement, it was held that mere approval of any authority does not make the authority as the appointing authority. The ratio of this judgment is squarely applicable to the facts of this case.

11. Thus, we are of the view that the impugned order dated 7.12.00 (Annexure A/1) has been passed by the competent authority. Accordingly, the OA is dismissed without any order as to costs.

~~(A. K. BHANDARI)~~

ADMN. MEMBER

~~(M. L. CHAUHAN)~~

JUDL. MEMBER

P.C./