

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 23.2.2001

1. O.A. No. 425/99

with

2. M.A. No. 43/2001

3. O.A. No. 46/2001

Vijay Singh Rajput, son of Shri Amar Singh, aged about 32 years, by caste Rajput, resident of plot No. 595/16, Shiv Nagar No. 3, Top Dharan, Ajmer, now a days working as Confidential Assiatant, Divisional Electrical Engineer (EPR), Office of the Chief Works Manager, Western Railway, Ajmer Division, Ajmer.

... Applicant.

versus

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai - 20

2. Divisional Railway Manager (E), Western RAilway, Ajmer Division, Ajmer.

... Respondents in both OAs

3. Chief Works Manager (E), Western Railway, Ajmer Division, Ajmer.

... Respondent No. 3 in OA No. 46/2001.

Mr. S.K. Jain, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. N.P. Nawani, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

With the consent of both the parties, we have taken the O.A. No. 46/2001 for final disposal alongwith the O.A. No. 425/99 and the

connected MA No. 43/2001, seeking interim order, though the O.A. No. 46/2001 is in admission stage. For the sake of convenience, we refer to OA No. 425/99, for common decision.

2. This application is filed under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction that the applicant be declared to have been promoted in the pay scale of Rs. 1400-2300 (revised scale Rs. 5000-8000) with effect from April, 1991, the date on which the junior persons to the applicant were promoted, with all consequential benefits. The applicant also has sought quashing of Annexure A/1 dated 4.8.99, by which the applicant was declared to have failed in the speed test. Further prayer of the applicant is that he may be granted pay scale at Rs. 1400-2300 with effect from 11.1.88, i.e., the date he worked on higher scale Rs. 1400-2300, in accordance with the circular dated 17.3.92 vide Annexure A/10, with arrears of salary and interest @ 18% per annum.

3. The applicant contended that he was appointed on the post of Stenographer on 11.1.88. On the basis of the order dated 18.5.89 passed by the disciplinary authority, he was removed from service on a major penalty. Thereafter, he preferred an appeal and the appellate authority modified the punishment by imposing the penalty of withholding of increments for a period of 5 years with future effect, vide order Annexure A/2 dated 21.8.89. The applicant further stated that after the punishment period was over, the applicant was promoted to the post of Confidential Assistant / Stenographer grade 1400-2300 on ad hoc basis vide order dated 6.10.95. Thereafter, the applicant was due for promotion to the said post of Confidential Assistant / Stenographer grade Rs. 1400-2300, on the basis of seniority cum suitability. For the purpose of such promotion, no doubt, ~~the applicant~~ had taken the speed test in stenography, but he was

declared failed. The learned counsel for the applicant contended that passing of the speed test is not necessary for the purpose of promotion to the next grade of Confidential Assistant / Stenographer in the grade of Rs. 1400-2300. The applicant further contended that on the basis of his seniority alone, he was entitled to be promoted, but some other persons who were junior to him, namely Shri Sumant Singh Jain and 9 others, have been promoted illegally. The applicant contended that from the post of Stenographer grade 1200-2040, the next promotional post is Stenographer grade 1400-2300, and from the post of Stenographer grade 1400-2300, the next promotional post is Personal Assistant grade Rs. 2000-3200. Since the applicant was already working as Personal Assistant in the grade Rs. 2000-3200 on adhoc basis, his case should have been considered for promotion as against his juniors, notwithstanding the applicant has failed in the speed test. The applicant further contended that the post of Stenographer grade Rs. 1400-2300 is a non-selection post, for which no mode of selection is provided under Annexure A/5 dated 14.11.86. The condition of passing the prescribed speed test stipulated vide Railway Headquarters letter Annex. A/6 dated 17.07.74 stands superseded vide subsequent letter dated 14.11.86 vide Annexure A/5. In terms of the Railway Headquarters' letter dated 14.11.86, the post of Stenographer grade Rs. 1400-2300 is a non-selection post. No mode of promotion is provided, implying that whatever the mode prescribed in the Indian Railway Establishment Manual (IREM, for short), would be applicable. The learned counsel for the applicant by relying upon para 176 of IREM, contended that for such promotion of Stenographers from one grade to another, no speed test or any other test is mentioned. Therefore, on the basis of the seniority and on the basis of the service records, the applicant should have been promoted to the post of Stenographer grade Rs. 1400-2300. The learned counsel for the applicant strenuously contended that the order Annexure A/1, declaring the applicant as failed in the speed test is also

illegal, since no such test is mentioned for promotion in the IREM. Since the applicant is attached to the Senior Administrative Grade (SAG, for short) officer, he was entitled to the pay scale of Rs. 1400-2300, and in fact, he was promoted in that grade on adhoc basis, and has been working to the satisfaction of the superiors. Therefore, declaring the applicant as failed in the speed test, is illegal. He also contended that the speed test was conducted by certain persons, who had no experience in the stenographic field. Therefore, even conducting the speed test itself is illegal. By interpreting Annexures A/5 dated 14.11.86 and A/6 dated 17.07.74, he contended that Annexure A/6 stands superseded by Annexure A/5. Since Annexure A/5 covered the field regarding Stenographers grade 1400-2300, ~~xxxxxxxxxx~~ the condition of passing the prescribed speed test vide Annexure A/6 is no more in existence after the order Annexure A/5 dated 14.11.86. He further submitted that in view of the law declared by Hon'ble Supreme Court in (1997) 4 SCC 647 : Union of India vs. C. Rama Swamy & Others, (1989) 3 SCC 537 : Ratan Lal Adukia vs. Union of India, and (1999) 3 SCC 632 - Commissioner of Income Tax, Bangalore vs. Venkateswara Hatcheries (P) Limited, there is implied supersession of Annexure A/6 by Annexure A/5. According to him, the resultant position would be that passing of the speed test is not a condition precedent for such promotion, and according to the seniority and on the basis of the service records, the applicant should have been promoted from the date his juniors were promoted. As such, the application deserves to be allowed.

4. On the other hand, by filing counter, the department denied the case of the applicant. In substance, they have stated that the post of Stenographer grade Rs. 1400-2300, is a non-selection post ~~in the feeder category~~. But passing of the speed test is a prescribed condition for such promotion. They contended that the applicant's earlier ad hoc

promotion did not confer any right on the applicant. Moreover, the applicant did not join on his posting at the Divisional Engineer (South-East), Ajmer, but managed his posting in that capacity in the office of the Chief Works Manager, Ajmer, where he has been working. They have stated that this adhoc promotion was given after the applicant had undergone the punishment. But for his regular promotion in that cadre, the applicant is required to pass the speed test in terms of ~~vide~~ Annexure A/6. Earlier, the applicant was called appear for the speed test by being present on 5.9.95, but he did not take that speed test. But the applicant later appeared in the speed test held on 9.4.96, and he was declared failed in that test. The applicant was ~~again~~ asked to appear in the speed test on 19.10.95, but he failed to appear in that test. However, since a vacancy was available, he was not reverted. The applicant also had taken another speed test on 24.5.99 for the purpose of promotion, but ~~vide Annexure A/6~~ ~~dated 19.10.95~~, he was declared failed in that test. The department contended that having failed in the speed test twice, the applicant cannot seek promotion to the next cadre. In the reply, the respondents have further stated that the letter Annexure A/5 dated 20.10.86, requires to be considered with reference to the earlier instructions of the Railway Board's letter dated 6.7.94 vide Annexure A/6. Annexure A/5 is in relation to the classification of posts, whereas Annexure A/6, provides both classification as well as condition of passing speed test for promotion. Therefore, Annexures A/5 and A/6 co-exist and Annexure A/6 is not superseded by Annexure A/5. Therefore, passing of the speed test is a pre-condition for promotion. Shri U.D. Sharma, appearing for the official respondents further contended that the post of Stenographer grade 1400-2300, continues to be a non-selection post both under Annexures A/5 and A/6. But the condition of passing the speed test under Annexure A/6 for ~~such~~ promotion, continues to be a mandatory condition, and both Annexures A/5 and A/6 are to be read

together. He further contended that the interpretation should be such to make them valid rather than invalid. He submitted that the applicant also understood that the speed test is a pre-condition for such promotion, and accordingly, he appeared twice, in which he failed. Therefore, the interpretation laid by the learned counsel for the applicant that the Annexure A/6 is superseded by Annexure A/5, is not tenable. Accordingly, he submitted that there are no merits in these applications. He also stated that the applicant in this O.A. had earlier filed an M.A. No. 459/2000 in OA No. 425/99 for interim stay. But this Tribunal, vide order dated 26.12.2000, refused to grant any interim stay. And only to overcome this interim order, the applicant has filed the subsequent O.A. No. 46/2001, practically narrating the same contentions. He further submitted that in the later case, he entered into appearance, but he has not filed any reply in that case. He submitted that the reply filed in OA No. 425/99 may be taken in this case, subject to his reservation that the matters not traversed in the reply filed in 425/99, he may be given time to file separate reply in OA No. 46/2001. He further submitted that the interim prayer has already been rejected by this Tribunal on 26.12.2000 in MA No. 459/2000, therefore, further prayer for granting interim stay in the present M.A. 43/2001, would not be maintainable. Accordingly, he prayed that this application may be dismissed with costs.

5. From the pleadings of both the parties and the contentions urged by the respective sides, the short point that arises for our consideration would be whether passing of the speed test is necessary for the purpose of promotion from the post of Stenographer grade Rs. 1200-2040 to the grade Rs. 1400-2300.

6. Before we take up the point for our consideration, we think it

appropriate to note few admitted facts. That in the cadre of Stenographers, there are three grades. The basic grade being 1200-2040 (pre-revised Rs. 330-560) = Rs. 4000-6000, the next promotional post from this grade is to the post of Stenographer grade Rs. 1400-2300 (pre-revised Rs. 425-700) = Rs. 5000-8000. There are 2 more posts for further promotion, which we are not concerned in the present controversy. The issue is whether the applicant being in the grade of Rs. 1200-2040, is entitled to be promoted to the post of Stenographer grade 1400-2300, without passing the speed test. It is not disputed on either side that the promotional post in the grade of Rs. 1400-2300, is a non-selection post, both under Annexures A/5 dated 14.11.86 and A/6 dated 17.07.94. But in Annexure A/6 dated 17.7.74, we find that for the purpose of promotion from the post of Stenographer grade Rs. 1200-2040 to the next grade Rs. 1400-2300, passing of the speed test in stenography is essential. But the said condition of passing the speed test is not mentioned in Annexure A/5 dated 14.11.86. The contention of the department is that Annexure A/5 is only a letter upgrading the post of stenographer attached with the Head of the department. Another letter No. PC-IV-Imp./Schedule/1, dated 24.9.86 (Annexure R/2). ~~which~~ provides the Railway Services (Revised Pay) Rules, 1986 - (Schedules for Revised Scales of pay). The Schedule Annexure 'A' appended to the Annexure R/2, provides the present pay scale corresponding to revised pay scale. Vide item Nos. 9, 12, 14 and 16, we find that various grades of Stenographers have also been revised. The respondents heavily relied upon the note pertaining to the Stenographer under Para XI. In that Para XI, as against the Stenographers, in the existing pay scale of Rs. 550-900, the revised pay scale has been provided Rs 1640-2900. The said note further states that, the scale of Rs. 2000-3200 for the Stenographers grade Rs. 1400-2300, attached to the SAG officers may be provided by suitably upgrading the required number of posts of Stenographers from the lower

grades, and these posts in the new higher scale should be filled up by promotion, for which rules will be notified separately. The official respondents further contended that in terms of this note regarding Stenographers attached to officers of SAG, Annexure A/5 dated 14.11.86 has been issued. Therefore, the subject in Annexure A/5 specifically states that the matter is regarding upgrading the posts Stenographers attached to officers of SAG in the scale of Rs. 1400-2300. He contended that from paragraph No. 2 (vi) of Annexure A/5, makes it clear that the grade Rs. 1640-2900 is a new grade, and it is liable to be eliminated in due course of time, and for such complete elimination of this grade Rs. 1640-2900, Stenographers attached to SAG officers will be in scale at Rs. 2000-3200 and the promotions thereto on regular basis, would be made by a process of selection, as per classification indicated in item 2 (i) of Annexure A/5. There is some substance in this argument of the learned counsel for the official respondents. We find that Annexure A/5 is intended to implement the general circular dated 24.09.86 vide Annexure R/2, regarding Stenographers attached to SAG officers, and nothing more. The classification is provided in para 2 (i) of Annexure A/5 only for the sake of convenience that all the grades are mentioned, stating classification of posts of Stenographers as 'selection' and 'non-selection'. Annexure A/5 is basically regarding the Stenographers grade Rs. 1640-2900 attached to SAG officers, which is a new grade. All other Stenographers would be in the grades as mentioned in 2(i) of Annexure A/5. From this, it follows that Annexure A/6 does not stand superseded by Annexure A/5. So far as the Stenographers grade Rs. 1400-2300 is concerned, both under Annexures A/5 and A/6, the classification of the post is a non-selection post. Moreover, from reading of Annexure A/5, we find that there is no reference to Annexure A/6 dated 17.7.74, so as to construe in the manner, the learned counsel for the applicant wants / to do that Annexure A/6 is superseded by

Annexure A/5. On the other hand, Annexure A/5 specifically states in note below under item XI of Annexure 'A' appended to Annexure R/2 regarding Stenographers attached to SAG officers. Therefore, it is not possible to accept the contention of the learned counsel for the applicant that Annexure A/6 stands superseded by Annexure A/5. At the most, Annexure A/5 could be understood as a modified classification of the posts mentioned under Annexure A/6, and Annexure A/6 can not be understood as superseded by Annexure A/5, in which passing the prescribed speed test is a pre-condition for the purpose of promotion. In our opinion, both Annexures A/5 and A/6 co-exist. Annexure A/6 dated 17.7.74, refers to the classification as on that date and Annexure A/5 refers to the classification as on date in the year 1986, after IVth Pay Commission, by specifically providing classification regarding Stenographers attached to SAG officers. The construction of 2 documents should be a reasonable construction and the construction should not be such, which goes against the established principle of law. Therefore, passing of speed test under Annexure A/6 continues to exist. The objects of Annexures A/5 and A/6 are entirely different. Annexure A/6 specifically provides classification of Stenographers as in the year 1974 by prescribing even the method of promotion and the method of promotion is not the subject matter in the Annexure A/5 dated 14.11.86. Therefore, Annexure A/5 could not be taken as one occupying in the field as against Annexure A/6, as contended by the learned counsel for the applicant. The intention of Annexure A/5 appears to be that passing of the speed test continues to exist for the purpose of promotion in the grade Rs. 1400-2300. In fact, vide letter Annexure R/3 dated 4.12.90, the department itself clarified its intention that passing of prescribed speed test in stenography is an essential condition. At any rate, that controversy set at rest by the letter Annexure R/4 dated 21.1.91, by which it was made clear that the procedure of conducting the speed test for the post of Stenographer

grade Rs. 1400-2300 is being observed in all the Divisions, and the same continues to exist. Even from this letter dated 21.1.91 (Annexure R/4), it is clear that the intention of Annexures A/5 and A/6 together is one of providing an opportunity to pass the speed test, which is a pre-condition for the purpose of promotion to the next higher grade. In these circumstances, it is not possible for us to accept the contention of the learned counsel for the applicant that the condition of passing the speed test is done away with by Annexure A/5.

7. However, the learned counsel for the applicant attacking on Annexure R/4 dated 21.1.91, contended that the same was signed by some one, and it cannot be taken as the letter sent by the General Manager. We note from the zerox copy of the letter Annexure A/4 that in the end of that letter, no doubt, 'for General Manager' was written in ink. But from the reading of the said letter, it is clear that it has been issued from the Headquarters Office, Western Railway, Bombay, and it has been addressed to the General Secretary, WRMS-BCT. The official letters are presumed to be correct in accordance with the law, unless and until it is proved to the contrary. Thus, from Annexures R/3 and R/4, it is clear that the condition of passing the speed test continues to exist for the purpose of promotion to the post of Stenographers in the pay scale of Rs. 1400-2300.

8. The matter also could be considered from the different angle. The learned counsel for the applicant invited our attention to para 176 of IREM (Vol.1), which provides the mode of filling up of the post of Stenographers in the lower and higher grades. For lower grade, including Hindi Stenographer, educational qualification and professional standards have been prescribed. For promotion to higher grades, para 176 (3) is applicable. Para 176(3) of IREM, reads as under:-

"176. (3) Higher grade posts/channel of promotion :- The following higher grades posts are available to this category of staff in the normal channel of promotion by selection or non-selection, as the case may be:

Stenographer Grade Rs. 1400-2300
Stenographer Grade Rs. 1600-2660
Stenographer Grade Rs. 2000-3200

[Authority:- Railway Board's letter Nos. E(NG)III/71/ER-1 dt. 28.7.71, E(NG)I/74/PMI-102 dt. 6.7.74, E(NG)III/76/RR-1-45 dated 8.8.78 and E(NG) I/PM-4/15 dated 20.10.1986]"

9. From the reading of the above para 176, it is clear that a normal channel of promotion could be provided either by selection or non-selection, as the case may be. The said para specifically refers to the Railway Board's letter No. E(NG)I/74/PMI-102 dt. 6.7.74. This Railway Board's letter is referred to in Annexure A/6 dated 17.7.74. From this, it follows that the IREM confirms and incorporates the said letter dated 6.7.74. The further consequence would be that Annexure A/6 is in operation and continues to exist as to the mode of promotion from one grade to another grade of Stenographers. Therefore, it follows that for the purpose of promotion to the post of Stenographer Grade 1400-2300, the classification is non-selection, and passing of speed test continues to exist. It is also to be noted here that even the Railway Board's letter dated 20.10.86 referred to in Annexure A/5 also has been incorporated in 176(3). Annexure A/5 dated 14.11.86 is, only a forwarding letter of the letter dated 20.10.86 issued by the Headquarters Office, Western Railway, Bombay. From this, it also further follows that even the classification of posts of Stenographers attached to Head of departments, as provided in Annexure A/5, is approved and incorporated in the IREM. If the intention of Annexure A/5 was to repeal, implidely the earlier Railway Board's letters dated 6.7.74 and 20.10.86 both could not have been approved and continued in para 176 (3) of the IREM. From this, it follows that Annexure A/5 is not issued in supersession of Annexure A/6. In fact,

as we have already stated above, the applicant himself understood Annexure A/6 in the light we have interpreted, and he appeared the speed test twice, but failed. Being failed in the prescribed speed test, he cannot seek the relief at the hands of the Tribunal, that he should be promoted without any speed test. The contentions urged in this behalf, are liable to be rejected.

10. The third approach is possible to Annexures A/5 and A/6 for the purpose of interpretation. Under Chapter II of IREM (Vol.I), the posts are classified as 'selection' and 'non-selection' for the purpose of promotion to the next cadre. Regarding non-selection post, para 214(a) of IREM, provides as under:-

"214.(a) Non-selection posts will be filled by promotion of the senior most suitable Railway Servant suitability whether an individual or a group of Railway Servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway servant may be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered."

11. From the reading of the above paragraph, it is clear that even regarding non-selection post, promotion is to be made on the basis of seniority cum suitability, and the competent authority may determine the mode of assessing the suitability. Such suitability may be based on the record of service or department test, if necessary. In fact, the speed test is prescribed for such promotion on the basis of seniority cum suitability. It is unthinkable that a person wants to be promoted / should be promoted without being suitable in the trade. One of the modes of promotion is suitability, as assessed on the basis of suitability test. Therefore, the authority has prescribed the speed test for the purpose of promotion, and the method of assessing suitability, the same is consistent to para 214(a) of IREM. Therefore, the contention of the applicant's counsel that prescribing the speed

test by the authority as illegal, is liable to be rejected. The learned counsel for the applicant, however, contended that the persons who conducted the speed test, had no knowledge in the field, and was not competent. But the learned counsel for the respondents contended that the persons, who conducted the impugned test as well as the earlier tests, were competent, and ~~and~~ they were Stenographers. We have no reason to disbelieve this contention. In fact, the applicant also has not given the names of persons, who conducted the tests, and in the absence of such specific pleadings, we are unable to accept this contention that the persons, who conducted the tests, were incompetent. The applicant has been subjected to in the speed test, and having failed twice in the tests, he cannot now claim for promotion in that particular cadre, without passing the prescribed speed test.

12. The 2nd O.A. No. 46/2001 has/ filed by the applicant practically for the same relief, as prayed for in O.A. No. 425/99, except in the later O.A. No. 46/2001, he also has challenged the order of reversion to the lower scale vide Annexure A/A2 dated 6.1.2001. The impugned order Annexure A/1 is the same impugned order as in O.A. No. 425/99 also. The department contended that since the applicant did not pass the required speed test, he was required to be reverted. In fact, vide Annexure A/1 dated 4.8.99, the applicant was informed that he failed in the prescribed speed test. The fact that the applicant did not pass in the speed test, is not disputed in this case. If that is so, the applicant cannot continue in the higher grade on account of non-availability of post in that grade, and the department has a right to revert him back to the lower grade, and precisely, that has been done vide Annexure A/2. Annexure A/2 specifically states that due to non-availability of post in the pay scale at Rs. 5000-8000, his ad hoc promotion could not be continued, and accordingly, he was liable to be reverted. Hence, the applicant has been rightly reverted from the

grade Rs. 5000-8000, as his adhoc promotion, without passing the required speed test, does not confer any right on him to continue on the said post. Therefore, we do not find any reason to interfere with the impugned order at Annexure A/2 (in OA. No. 46/2001) dated 6.1.2001. In fact, both the counsel conceded that both the OAs could be disposed of alongwith the connected M.A. No. 42/2001. Accordingly, by this common order, we dispose of all these applications.

13. For the reasons we have stated above, we find that there are absolutely no merits in these cases. Accordingly, we pass the order as under:-

"Both the applications No. 425/99 and 46/2001 are dismissed. But in the circumstances, without costs. Consequently, the M.A. No. 43/2001 does not survive. M.A. also stands disposed of accordingly."

(N.P. NAWANI)
Adm. Member

(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.