

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 06.06.2003

O.A. No. 213/2002.

Balu Singh S/o Ram Singh, age about 42 years, R/o Kewal Nagar, Station Alaniya, Heera Lal Gatewala at present employee on the post of Railpath Mistry under FWI (South) Kota Western Railway, Kota Division.

... APPLICANT.

v e r s u s

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager (Establishment), Western Railway, Kota Division, Kota.

... RESPONDENTS.

Mr. Shiv Kumar counsel for the applicant.
Mr. T. P. Sharma counsel for the respondents.

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Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. G. C. Srivastava, Administrative Member.

: O R D E R (ORAL) :
(per Hon'ble Mr. G. C. Srivastava)

The applicant who was working as a Railpath Supervisor in the pay scale of Rs.4500-7000 under the respondents, is aggrieved on account of his reversion to the post of Gangmate in the pay scale of Rs.3050-4500 issued vide order dated 2.5.2003 (Annexure A-1) and has prayed that the same be quashed and set aside and the respondents be directed to provide two additional opportunities to him to pass the promotional course as per rules.

2. The case of the applicant is that he was declared eligible for promotion to the post of Railpath Mistry for which selection was conducted on the basis of trade test/suitability test and he was declared successful vide order dated 8.9.97 where his name appears at Sl. No. 15 (Annexure A-2). He was given the posting at Mandalgarn, FWI (South), Kota, vide order dated 27.11.1997 (Annexure A-5) and since then he is discharging his duties and

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has completed more than 4½ years in that capacity. Now a show cause notice dated 30.01.2002/04.02.2002 has been issued stating that he has failed in the promotion course held on 09.04.2001 to 21.05.2001 and, therefore, it is proposed to revert him to the post of Gangmate (Annexure A-3). The applicant replied vide his letter dated 05.03.2002 (Annexure A-4). He has now come to know that the respondents have passed the order dated 02.05.2002 by which he has been ordered to be reverted to the post of Gangmate in the lower scale but the order has not been given to him so far and it has not been implemented till date and he is still working as Railpath Supervisor. Aggrieved by this he has filed the present OA.

3. The respondents have contested the OA and have filed a detailed reply.

4. We have heard Mr. Shiv Kumar and Mr. T. P. Sharma learned counsel for the applicant and respondents respectively and with their consent we are disposing of the OA at the admission stage.

5. The main ground advanced by Mr. Shiv Kumar, for the applicant, is that the applicant being eligible for the post of Railpath Supervisor had passed the examination held by the respondents and was given promotion on the post of Railpath Mistry by order dated 03.09.1997 and was given posting at Mandalgarn. According to him, the reason for the proposed reversion is that he could not pass the promotion course held on 09.04.2001 to 21.05.2001 at Udaipur. He has contended that as per Para 227 of the IREM Vol-I, three chances for passing the promotional course are required to be given, while he has been given only one chance for qualifying the promotional course and accordingly the impugned order dated 02.05.2002 is illegal, arbitrary and deserves to be quashed and set aside. According to him, he was not provided any opportunity to pass the promotional course prior to 09.04.2001 and without passing promotional course he continued for nearly a period of 4½ year and for this reason also the impugned order deserves to be quashed. He has further contended that instead of providing second chance for passing the promotional course respondents are bent upon to revert him by fair or foul means and for extraneous reasons best known to them.

6. On the other hand, Mr. T. P. Sharma, for the respondents,

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has contended that the applicant was provisionally promoted on the post of Railpath Mistry on ad hoc basis vide letter dated 27.11.1997 and since he did not pass the promotional course/training for promotion on the post of Railpath Mistry within the three chances provided to him, he is proposed to be reverted from the post after giving a show cause notice. As per the additional affidavit filed by the respondents, the applicant has been given three opportunities vide letter dated 16.06.1998, 4.4.2001 and 9.11.2002 but he appeared only in one training course in which he failed vide order dated 21.05.2001 and on other two dates he was absent. According to Mr. Sharma though he was given one more opportunity vide letter dated 02.05.2002 he did not join the said course.

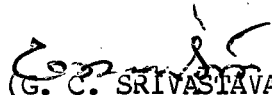
7. We have considered the rival contentions of the parties. It is not in dispute that the applicant was declared successful for promotion to the post of Railpath Supervisor in the pay scale of Rs.4500-7000 vide order dated 8.9.1997 (Annexure A-2) with his name at Sl. No. 15 and he was also promoted to the said post vide order dated 27.11.97 (Annexure A-5). The case of the respondents is that while declaring the result vide order dated 27.11.1997 it was mentioned at Note 6 that the above promotion is subject to passing the promotional course at Udaipur and that they will be eligible for further promotion only after passing the same. Mr. Sharma has submitted before us that three chances have been given to the applicant first on 16.06.1998, second on 4.4.2001 and third on 21.05.2001. Mr. Shiv Kumar has contested this submission and has pointed out that the third chance allegedly given by the respondents on 21.05.2001 is not a chance but is only a result declared by the respondents for the examination conducted for the session 09.04.2001 to 21.05.2001 and, therefore, he has contended that the applicant has been given only two chances. He has accordingly argued that the third chance is yet to be given, for which he is eligible. We find substance in the submission of Mr. Shiv Kumar. We also find that the show cause notice has been issued on 30.01.2002/04.02.2002 to which he has submitted reply vide his letter dated 05.03.2002. In the aforesaid reply, he requested to provide him another chance for appearing in the promotional course and till such time he is allowed the next opportunity, he may not be reverted. However, the respondents have issued the impugned order dated 02.05.2002 reverting him from the post of Railpath Supervisor to the post of Gangmate. We also find that the respondents informed the applicant vide letter dated 09.01.2002 about the promotional


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course scheduled to be conducted from 14.01.2002 to 13.03.2002 and advised him to be relieved for the said course. However, it is strange that the show cause notice for reversion has been issued vide letter dated 30.01.2002/4.02,2002 which is clearly prior to the commencement of the promotional course and completion thereof.

9. It is clear from the submissions made by the learned counsel for the parties that the applicant has been given only two chances so far, one on 16.06.1998 and the other on 4.4.2001 and as per rules three chances are required to be provided in such cases. Hence without providing another chance to the applicant for appearing in the promotional course, the action of the respondents reverting him to the lower post is against rules and this is not sustainable.

10. Accordingly we allow the OA and quash and set aside the order dated 02.05.2002 (Annexure A-1). We further direct that the applicant shall be restored to the post of Railpath Supervisor in the scale of Rs.4500-7000 with all consequential benefits and shall be given one more chance for appearing in the promotional course. There shall be no order as to costs.


(G. C. SRIVASTAVA)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN