

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

Jaipur, the December 06th , 2006

ORIGINAL APPLICATION NO. 479/2002

With MA 384/2003

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. J.P. SHUKLA, MEMBER (ADMINISTRATIVE)

Shok Kumar Mathur son of Late Shri R.L. Mathur, Assistant Commercial Manager, Jaipur, Rajasthan aged about 49 years, resident of Moti Bhawan, 124/10, Civil Lines, Ajmer.

By Advocate: Mr. Nand Kishore

....Applicant

Versus

- 1 Chairman Railway Board, Rail Bhavan, New Delhi.
- 2 Union of India through the General Manager, North Western Railway, Jaipur, Rajasthan.

By Advocate: Mr. Tej Prakash Sharma

....Respondents.

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(a) Promote the applicant to Sr. Scale from the date his first junior was promoted in the Sr. scale

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with all consequential benefits as become due to the applicant.

- (b) The applicant be inducted in Group 'A' as the duties of Commercial officers are not directly connected with train working and they are not required to operate motor trolleys/trolleys independently on open line.

c) **ALTERNATIVELY**

- i) the applicant may kindly be promoted in senior scale from the date the Act the persons with disabilities (Equal opportunities, protection of rights and full participation) Act, 1995, came into force w.e.f. 7.2.1996 vide S.O. 107(E) dated 7.2.1996.
- ii) the applicant may kindly be promoted in senior scale from the date, his case was recommended by the General Manager Western Railway, Bombay to Railway Board i.e. A/5 dated 17.9.2001 or the Hon'ble Tribunal deems fit.
- d) Any other appropriate order which may be found just and proper in the facts and circumstances of the applicant."

2. The grievance of the applicant in this case is regarding promotion to the Sr. scale w.e.f. the date his first junior was promoted. The applicant was initially promoted on ad hoc basis in Group 'B' post as he was not found medically fit although his name was placed in the panel. His case for relaxation was sent to the Railway authorities who vide order dated 20.09.1988 granted promotion to the applicant to Group 'B' post on ad hoc basis on the terms & conditions which were agreeable to the applicant. This relaxation was granted by the Railway Board as a special case with relaxed standard. However,

subsequently, the ad hoc promotion of the applicant was regularized vide order dated 16.08.1993 read with Railway Board's order dated 07.12.1993 w.e.f. 21.11.1988. As per rules, a person can become eligible for promotion in Sr. scale after he has put in four years of service. In the meanwhile, person junior to the applicant was given promotion w.e.f. 18.01.1990, when the applicant was working on ad hoc basis and his services were not regularized. Now in this OA, the applicant has claimed promotion from the date his junior was promoted i.e. w.e.f. 18.01.1990.

3rd According to us, the cause of action in favour of the applicant had arisen on 18.01.1990, the date when his junior was given promotion. The applicant has also filed MA No. 384/2003 for condonation of delay thereby stating that he continued to make repeated representations to the higher authorities and his first representation was made on 22.12.1997 and thereafter on 02.06.2000 and 08.06.2000. His case was also recommended by the Divisional authorities to the General Manager who in turn recommended the same to the Railway Board. According to us, repeated representations ~~do~~ will not afford fresh cause of action. Admittedly, the first representation was made by the applicant on 12.08.1997 which was turned down by the respondents on 14.05.1998. The OA was filed in the year 2002. The applicant has not explained any reason for the delay w.e.f. 18.01.1990 till 12.08.1997. He has also not exhausted any remedy as available to him under law or by making any representation to the higher authorities especially after 07.12.1993 when his ad hoc promotion was regularized w.e.f. 21.11.1988. Further, the explanation given by the applicant that he was pursuing the remedy

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after 12.08.1997 and his case was under consideration before the authorities cannot be accepted especially when his representation was turned down by the respondents on 14.05.1998. As such, claim of the applicant for promotion from the date when his first junior was promoted i.e. 18.01.1990 cannot be entertained in view of the provisions contained in Section 21 of the Administrative Tribunal's Act, 1985. That apart, the applicant has not challenged the order dated 18.01.1990 whereby person junior to him was granted promotion in the Sr. scale. As such, validity of that order cannot be gone into and no relief can be granted to the applicant so long as the order dated 18.01.1990 is under challenge. Yet for another reason, no relief can be granted to the applicant since 18.01.1990 till filing of the OA, Not only the persons junior to the applicant who were kept in panel in the year 1988 were promoted but thereafter the Department must have promoted so many officers in the Sr. scale after holding the DPC from time to time. Thus, the persons who will be affected in case the relief is granted to the applicant have not been impleaded as respondents in this case. As such, no relief can be granted to the applicant even on this count. At this stage, learned counsel for the applicant submitted that he will be satisfied if his alternative prayer regarding granting promotion in Sr. scale is considered by the respondents in accordance with the provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, the Act 1995).

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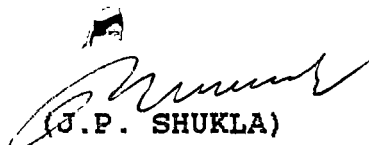
4. Learned counsel for the respondents submitted that the applicant has pleaded this alternative relief for the first time in this OA and he never raised any such grievance before the Railway authorities regarding non-consideration of his case in the light of the provisions contained in the Act, 1995, as such he is not entitled to any relief.

5. We have given due consideration to the submissions made by the learned counsel for the parties. No doubt it is true that the applicant has not represented his case before the Railway authorities in terms of the provisions contained in the Act, 1995 and this plea has been raised by the applicant for the first time in this OA, However, we are of the view that it was also the duty of the respondents to consider the case of the applicant in the light of the provisions contained in the Act, 1995 and to grant promotion to the applicant in terms of the aforesaid provisions in case the case of the applicant was governed by the aforesaid Act. Be that as it may, we do not propose to go into this aspect of the matter and we are of the view that ends of justice will be met if a suitable direction is given to the respondents to consider the case of the applicant in the light of the provisions contained in the Act, 1995 in case the applicant is able to make out a case. For that purpose, it will be open for the applicant to make appropriate representation to respondent No. 2 within a period of four weeks from today thereby making out a case for grant of relief in terms of the provisions contained in the Act, 1995. In case such representation is made within four weeks, respondent No. 2 shall decide the same by passing a reasoned and speaking order in accordance with

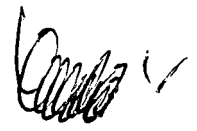
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law within a period of two months from the date of receipt of the representation.

6. With these observations, the OA as well as MA for condonation of delay stand disposed of. Needless to add that in case the applicant is still aggrieved, it will be open for him to re-agitate the matter by filing a fresh OA and it will be permissible for the respondents to raise objections, if any, in accordance with law. No order as to costs.



(J.P. SHUKLA)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

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