

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 21st April, 2004

OA No.463/2003

K. Mohan Kumar s/o Shri Kunj Krishna, aged about 50 years, at present working on the post of Divisional Catering Inspector, O/o Divisional Commercial Manager, North Western Railway, Ajmer r/o Sai Kripa, House No. 1918, New Kayastha Colony, Lohagal Road, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, North Western Railway, Headquarters Office, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. The Divisional Commercial Manager, North Western Railway, Ajmer Division, Ajmer.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents.

CORAM:

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

HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

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

"i) by an appropriate order or directions restrain the respondents to pass any order reverting the applicant from the scale Rs. 5500-9000 and he may be

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allowed to work continuously in the pay scale of Rs. 5500-9000 and further respondents may be directed not to make recovery from the salary of the applicant;

ii) by an appropriate order or directions direct the respondents to make available a post of Catering Inspector scale Rs. 5500-9000 for Ajmer Division of North Western Railway zone.

iii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant looking to the facts and circumstances of the present case.

iv) The Original Application may kindly be allowed throughout with costs."

2. The facts of the case are that the applicant was initially appointed as substitute and was made regular Group-D employee on 28.8.1975 in catering department. In the year 1989, the applicant was promoted on the post of Catering Inspector in the pay scale of Rs. 1400-2300 and thereafter he was promoted as Catering Inspector Gr.II in the pay scale of Rs. 1600-2660 on ad-hoc basis on account of vacancy which Shri S.J.Tiwari was occupying. Copy of the said order has been placed on record as Ann.A3. The applicant was regularly promoted on the post of Catering Inspector Grade-II in the scale Rs. 5500-9000 (pre-revised scale of Rs. 1600-2660) vide Ann.A1. On promotion, the applicant was posted from Ajmer to Ratlam. However, the applicant was not relieved to join at Ratlam. It is further averred that respondent No.2 vide

letter dated 25/28 July, 2003 informed the General Manager, North Western Railway, Jaipur that a post of Catering Inspector was operating at Ajmer Division, the post was transferred to Ratlam Division in 1992. Through this letter it was also stated that vide letter dated 23.2.2002, Ajmer division requested for allotment of post of Catering Inspector scale Rs. 5500-9000 for Ajmer Division. It was further stated that two posts of Assistant Cook, one post of Store Clerk and one post of Waiter scale Rs. 2650-4000, 3200-4900 and 2610-3540 respectively can be abolished. Copy of this letter has been placed on record as Ann.A5. The applicant has further stated that one Shri Jaipal, a junior employee of Catering department approached the recognised union and claimed that despite promotion on regular basis of the applicant in the scale of Rs. 5500-9000, he has not joined at Ratlam Division. On account of this, his case has not been considered for promotion on adhoc basis for the post of Catering Inspector scale Rs. 5500-9000. The post of Catering Inspector is a Headquarter created post. In view of a need of a post of Catering Inspector in Ajmer Division, the Divisional Officer again vide letter dated 30.9.2003 requested the headquarter for allotment and to grant sanction for one post of Catering Inspector scale Rs. 5500-9000. The grievance of the applicant is that he has been continuing on the post of Catering Inspector Grade-II since 9.3.93 on ad-hoc basis and subsequently on regular basis w.e.f.

23.11.2001. However, he was not relieved to join this post at Ratlam on his promotion on regular basis. Now on the basis of an audit report (Ann.A8), the applicant apprehends that he will face reversion and the increments drawn by him on the higher post will be reduced on account of no fault on his part. Since as per the material placed on record by the respondents themselves, there is justification of the post of Catering Inspector Grade-II at Ajmer Division of North-Western Railway, the respondents may be directed to create the post of Catering Inspector Grade-II for Ajmer Division of North-Western Railway zone. It is on these facts that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the facts as stated above have not been disputed. It has further been stated that the applicant was working as Catering Inspector in the scale of Rs. 1400-2300 and he was granted officiating allowance in the scale of Rs. 1600-2660 for the period w.e.f. 1.1.92 to 9.3.1993. Subsequently, he was wrongly promoted on ad-hoc basis on the post of Catering Inspector in the scale of Rs. 1600-2660 on the basis of divisional seniority vide order dated 9.3.1993. It is further stated that the applicant was wrongly granted adhoc promotion in the scale Rs. 1600-2660/5500-9000 on account of administrative

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error because no cadre post of scale Rs. 1600-2660 was existing at Ajmer Division at the relevant time. Subsequently, Headquarter, Western Railway, Churchgate issued letter dated 23.11.2001 (Ann.A1) by which applicant was promoted on the post of Catering Manager/Inspector Gr.II in the scale of Rs. 5500-9000 on regular basis. On the said regular promotion, the applicant was posted at Ratlam. The applicant was not interested to get spared on promotion, hence he was not pressed to get relieved him for joining his duty on promotion at Ratlam in terms of order dated 23.11.2001. After passing 3 months from the issue of the order dated 23.11.2001, the respondent No.3 wrote a letter dated 23.3.2002 to CCM/Churchagate wherein the respondent No.3 made a request for transferring the element of post of Catering Inspector/Manager Gr.II in scale of Rs. 5500-9000 from Ratlam to Ajmer, but the Headquarter, Western Railway, Churchgate has not transferred the element of post of Catering Manager/Inspector from Ratlam to Ajmer. It is further stated that when order dated 23.3.02 (Ann.A2) was issued by respondent No.3, the Ajmer Division was a part of Western Railway but after 1.10.2002 the Ajmer has become a part of new zone of North Western Railway. The post of Catering Manager/Inspector Gr.II is controlled by Headquarter. The promotion, reversion, transfer of the said post has been made by the Headquarter office because the control of catering department is fully

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controlled by the headquarter office. It is further stated that after 1.10.2002, the respondent No.2 wrote a letter dated 25/28.7.2003 to Headquarter, North Western Railway i.e. General Manager, North Western Railway, Jaipur regarding sanction of cadre for the post of Catering Manager/Inspector Gr.II in scale Rs. 5500-9000 to Ajmer Division because no post in scale Rs. 5500-9000 is existing at Ajmer Division but Headquarter, Jaipur has not sanctioned the cadre for the said post. It is further stated that the audit department made an objection vide their letter dated 23.8.2002, wherein it has clearly been mentioned that the post of Catering Manager/Inspector Gr.II in scale Rs. 5500-9000 is not available at Ajmer Division. However, the applicant has continued to work on the said post on ad-hoc basis. In terms of existing rules the reversion of the applicant may be issued and recovery of the excess payment be made. As per the above audit objection, a recognised trade union has raised an objection through PNM item No. 89/2003 dated 17.7.2003 wherein they demanded to allow officiating allowance in favour of Shri Jaipal in scale Rs. 5000-8000 against the vacancy of applicant. But as per rule, no officiating allowance will be admissible to Shri Jaipal because of lien of applicant is still existing in scale Rs. 5000-8000 as such officiating allowance is not admissible. According to the respondents, there is no post in Ajmer Division in the scale of Rs. 5500-9000 as such reversion of the

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applicant and recovery of payment would be a natural consequence initiated as per audit objection (Ann.A8) but due to ex-parte ad interim order dated 8.10.2003, the action has been stopped till the vacation of ad-interim order.

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

4.1 The learned counsel for the applicant submits that at this stage he will be satisfied, if direction is issued to the respondents to create post of Catering Manager/Inspector Gr.II in the scale of Rs. 5500-9000 in Ajmer Division of North Western Railway, Jaipur as per the recommendation made by respondent No.2 and more particularly letter dated 25/28.7.2003 (Ann.A5) and till such decision is not taken by the Headquarter, North Western Railway i.e. the General Manager, North Western Railway, Jaipur regarding creation of the post, he may be allowed to continue to work on the post of Catering Inspector Gr.III in the scale of Rs. 1400-2300/5000-8000. The learned counsel for the applicant further argued that since he was allowed to work on the promoted post for no fault of him and the respondents in their reply have categorically admitted that the applicant was promoted on ad-hoc basis on the post of Catering Inspector Gr.II on the basis of divisional seniority vide order dated 9.3.93 (Ann.A3) and the said promotion was on account of

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administrative error because there exists no cadre post in the scale of Rs. 1600-2660/5500-9000 at Ajmer Division, no recovery can be effected from the applicant on this account.

4.2 We have given thoughtful consideration to the submissions made by the learned counsel for the applicant. So far as the last contention of the applicant is concerned that he was promoted as Catering Inspector in the scale Rs. 1600-2660 on the basis of divisional seniority vide letter dated 9.3.93 (Ann.A3) and continued to work as such till 8.10.2003 when he obtained ex-parte interim order from this Tribunal and the said stay is continuing till date, as such no recovery can be made, we are of the view that no finding on this point is required at this stage as the respondents have not passed any order qua this effect till date. We hope that the respondents will take note of the submission made by the learned counsel for the applicant while passing the final order on the basis of audit report Ann.A8 in accordance with law.

4.3 As regards the first submission of the learned counsel for the applicant that direction may be given to the respondents to create the post of Catering Manager/Inspector Gr.II in the scale Rs. 5500-9000 on the basis of the recommendation made by respondent No.2 vide letter datd 25/28.7.2003 (Ann.A5) and till then he may be allowed to work on the lower post of Catering Inspector Gr.III scale Rs. 5000-8000, suffice it to say that this Tribunal cannot give

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positive direction to the respondents to create a post of Catering Manager/Inspector Gr.II in the scale of Rs. 5500-9000. However, since the applicant has placed sufficient material on record that the respondent No.2 is repeatedly asking the General Manager, North Western Railway, firstly the General Manager, Western Railway, Mumbai vide letter dated 23.3.2002 for allotment of post of Catering Inspector Gr.II for Ajmer Division and subsequently on the creation of new zone with the, General Manager, North Western Railway, Jaipur vide letter dated 25/28.7.2003 (Ann.A5), justification for creation of the ~~said~~ post in Ajmer Division of North Western Railway, cannot be denied. Since the appropriate authority has not taken any decision so far and looking to the facts and circumstances of this case, we are of the view that ends of justice will be met if direction is given to the competent authority to pass appropriate order on letter dated 25/28.7.2003 and till such time the decision is not taken, the applicant who is willing to work on the lower post of Catering Inspector Gr.III in the scale of Rs. 1400-2300/5000-8000, be allowed to work at Ajmer Division in the lower scale of Rs. 1400-2300/5000-8000 as the respondents themselves have admitted in the reply that the applicant is having lien on the post of Catering Inspector Gr.III in the scale of Rs. 1400-2300/5000-8000, as such no officiating allowance can be given to Shri Jaipal.

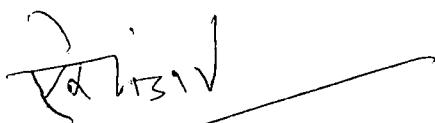
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4.4 Accordingly, the OA is disposed of in the following terms:-

- i) The respondents No.1 is directed to take decision on letter dated 25/28.7.2003 (Ann.A5) of respondent No.2 regarding creation or allotment of one post of Catering Inspector Gr.II in the scale Rs. 5500-9000. Such decision shall be taken within a period of six months and till such decision is not taken, the applicant shall be allowed to continue as Catering Inspector Gr.III in the scale of Rs. 1400-2300/5000-8000 at Ajmer Division against which post he has lien.
- ii) In case the respondent No.1 decides either to create a post or to allot a post of Catering Inspector Gr.II in Ajmer Division of North Western Railway in the scale Rs. 1600-2660/5500-9000, in that eventuality, the case of the applicant for promotion to the said post be considered in accordance with the rules.

5. With these observations, the OA is disposed of with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)