

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of decision: 11-08-04

OA No.169/2003

Kishan Singh s/o Shri Chittar Singh Rawat r/o Vill. Bhurabai,
Post Rasulpura, Distt. Ajmer, at present employed on the post
of Depot Store Keeper (DMS) in Store Department Ajmer, Western
Railway, Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, Northern Western
Railway, Jaipur.
2. Deputy Chief Material Manager, Western Railway, Ajmer
Division, Ajmer.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for respondents

OA No.529/2003

Kishan Singh Rawat s/o Shri Chittar Singh r/o vill. Bhuna Bai,
Post Rasulpura, Distt. Ajmer at present employed on the post
of DMS Grade III, Depot Store, Ajmer under Deputy Chief
Material Manager, Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, Northern Western
Railway, Jaipur.
2. Deputy Chief Material Manager, Northern Western Railway,
Store Department, Ajmer, Northern Western Railway.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

u/s

Mr. Virendra Dave, counsel for respondents

OA No.530/2003

Banshi Lal s/o Moti Lal r/o Naya Ghar, Gulab Badi, Ajmer at present employed on the post of Senior Clerk under Deputy Chief Material Manager, Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, Northern Western Railway, Jaipur.
2. Deputy Chief Material Manager, Northern Western Railway, Store Department Ajmer, Northern Western Railway.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. Virendra Dave, counsel for 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.

By this common order, we want to dispose of these OAs as almost identical question of facts and law is involved in these OAs.

2. OA No.169/2003 has been filed by the applicant, Kishan Singh Rawat, against the order dated 21.3.2003 (Ann.A1) whereby the order of promotion of the applicant dated 14.9.2002 was modified to the extent that the applicant shall be treated to have been promoted in the grade of Rs. 5000-8000 on ad-hoc basis instead on regular basis.

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2.1 OA Nos.529/03 and 530/03 have been filed by the applicants, Shri Kishan Singh Rawat and one Shri Banshi Lal thereby praying that the respondents be directed to regularise the services of the applicants on the post of DMS Grade-III pay scale Rs. 5000-8000 with immediate effect and further the respondents be directed to give all consequential benefits to the applicants.

3. Facts of the case are that the applicants were promoted as DMS Grade-III scale Rs. 5000-8000 on ad-hoc basis. Such order in the case of applicant Kishan Singh Rawat was issued on 20.4.2000 and he was posted at Gandhidham. The applicant vide his application dated 29.4.2000 requested the respondents that he is unable to go to Gandhidham and he may be posted against the vacancy published at Phulera. The respondents treated the application of the applicant as his unwillingness to join the post at Gandhidham and thereafter the competent authority as per the power conferred under para 9 of the Master Circular Railway Board letter 37 dated 10.10.91 debarred him for promotion for one year w.e.f. 29.4.2000. Feeling aggrieved by the action of the respondents, the applicant filed OA No.259/2000 in this Tribunal. This Tribunal vide order dated 8.1.2003 after considering the stand taken by the respondents that the order of promotion/posting of the applicant has been cancelled as the applicant showed his inability to move to the posting place Gandhidham and also after taking note of the order dated 14.9.2002 issued by the respondents whereby the applicant was shown to have been promoted on regular basis and posted as Gandhidham, the application of the applicant was disposed of. Subsequently, the respondents modified the order of promotion dated 14.9.2002 vide impugned order dated 21.3.2003 (Ann.A1) thereby

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showing the applicant as having been promoted on ad-hoc basis instead of regular basis.

In OA No.529/2003 the grievance of the applicant, Kishan Singh Rawat, is that since respondents had regularised the services of junior persons to the applicant vide order dated 21.11.2002 ignoring the case of the applicant, as such the action of the respondents promoting juniors on regular basis is illegal, arbitrary and the same is discriminatory.

In OA No.530/2003 the case of the applicant, Banshi Lal, is also identical to that of applicant Kishan Singh Rawat in OA No.529/03. In this OA the grievance of the applicant is also that persons junior to him has been promoted whereas the applicant has not been promoted on regular basis. At this stage, it may also be relevant to mention here that the applicant Banshi Lal was also given ad-hoc promotion as DMS Grade-III scale Rs. 5000-8000 vide order dated 24.3.2000. Since the applicant gave refusal to said promotion, he was debarred for promotion in terms of para 9 of the Master Circular Raiwlay Board 37 dated 10.10.91. The applicant was again considered for promotion after the expiry of one year for the post of DMS Grade-III, pay scale Rs. 5000-9000 on ad-hoc basis. He was promoted vide order dated 16.8.02. Again the applicant refused for such ad-hoc promotion and again he was debarred for further promotion for one year w.e.f. 6.9.02 vide order dated 14.9.2002.

4. Notice of these applications were given to the respondents. The respondents have filed reply. Reasons for modifying the regular promotion order of the applicant, Kishan Singh Rawat, dated 14.9.2002 vide order dated 21.3.2003 (Ann.A1) are that the order dated 14.9.2002 was having clerical error, which was corrected and rectified vide impugned order dated 21.3.2003. It is further stated in the

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reply that in the earlier OA No.259/2000 the applicant has sought relief that the impugned order dated 26.5.2000 treating the application of the applicant as refusal for promotion at Gandhidham may be declared as illegal, arbitrary and the same be quashed and the respondents be directed to give posting to the applicant in the pay scale of Rs. 5000-8000 either at Gandhidham or Phulera. According to the respondents, the applicant was earlier given promotion on ad-hoc basis and his prayer in earlier OA was also for giving posting to the applicant in the pay scale of Rs. 5000-8000 in the same capacity. The fact that the counsel for the respondents who has placed the order dated 14.9.2002 before this Tribunal for their consideration in earlier OA and the error which has crept in the said order due to typographical error by which the word 'ad-hoc' was not mentioned in the said order has not been denied. It is, however, stated that this fact was not within the knowledge of the respondents and accordingly the submission was so made by the counsel before the Tribunal. Further, according to the respondents the statement made by the counsel on the basis of the letter dated 14.9.2002 would not have affected disposal of the OA in the manner in which it has been disposed of by the Hon'ble Tribunal, as the grievance of the applicant was for redressal of earlier promotion given to him on ad-hoc basis vide order dated 20.4.2000.

The stand taken by the respondents in OA No.529/03 and 530/03 is that, no doubt, vide order dated 21.11.2002 S/Shri Chandra Shekhar Singh and N.K.Gutam were shown as having been promoted as DMS-III scale Rs. 5000-8000 on regular basis with immediate effect but the respondents have rectified this erroneous order vide order No. E/04/2004 dated 21.1.2004 whereby previous order dated 21.11.2002 has been cancelled. Copy of the order dated 21.1.2004 has been placed on record as

Ann.R1. Thus, according to the respondents, now the applicant has no case for regular promotion in comparison with his junior S/Shri Chandra Sekhar Singh and N.K.Gautam.

5. We have heard the learned counsel for the applicant and S/Shri U.D.Sharma, learned counsel for the respondents in OA No.169/03 and Shri Virendra Dave, learned counsel for the respondent in OA Nos. 529/03 and 530/03.

5.1 The fact that the applicants were initially promoted as DMS-III scale Rs. 5000-8000 on ad-hoc basis in the year 2000 and both these applicants refused the ad-hoc promotion which was treated by the respondents as their unwillingness to join their promotional post and subsequently they were debarred for promotion for one year in terms of para 9 of Master Circular Railway Board 37 dated 10.10.91 is not in dispute.

5.2 Subsequently, the applicants were again promoted vide separate orders dated 16.8.2002 and 14.9.2002. The promotion order dated 16.8.2002 pertains to applicant Banshi Lal. In that case it was mentioned that the applicant is promoted on ad-hoc basis as DMS Grade-III scale Rs. 5000-8000 and since the applicant gave refusal, he was again debarred for further promotion as per rules. Thus, the applicant, Banshi Lal, is presently working as Senior Clerk. So far as applicant, Kishan Singh Rawat is concerned, in his promotion order dated 14.9.2002 the word 'promoting him on ad-hoc basis' was missing and it was construed that he has been promoted on regular basis. On the basis of this order, he joined the earlier place of posting at Gandhidham. Since the applicant has also filed OA No.259/2000 before this Tribunal whereby his application for promotion on ad-hoc basis as DMS Grade-III scale Rs. 5000-8000 was treated as refusal and the applicant has also requested that he may be promoted in that capacity on the newly

created post at Phulera, the said OA was disposed of on the basis of the subsequent order of promotion dated 14.9.2002. The respondents in their reply filed in OA No.169/2003 have categorically stated that in the order dated 14.9.2002 clerical mistake has crept as in fact the promotion of the applicant ought to have been made on ad-hoc basis as has been done in the case of similarly situated persons. This mistake was subsequently rectified vide impugned order dated 21.3.2003 (Ann.A1). We see considerable force in the submissions made by the respondents. Admittedly, all the persons senior as well as junior to the applicant, Kishan Singh Rawat, were promoted as DMS Grade-III scale Rs. 5000-8000 on ad-hoc basis. Under these circumstances, when fresh order promoting the applicant as DMS Grade-III scale Rs. 5000-8000 was issued on 14.9.2002 the same could not have been issued on regular basis. That apart, even the case of the applicant, Kishan Singh Rawat, before this Tribunal in earlier OA No.259/2000 was also regarding giving directions to the respondents for giving him posting in the pay scale Rs. 5000-8000 either at Gandhidham or Phulera and application of the applicant dated 26.5.2000 which has been considered by the Department as refusal for promotion was also obviously for the purpose of his ad-hoc promotion in the pay scale of Rs. 5000-8000 whereby he was posted at Gandhidham vide order dated 10.6.2000. Thus, on the face of the facts as stated above, it cannot be said that the applicant vide order dated 14.9.2002 was promoted on regular basis and the version of the respondents that there was a clerical mistake which was rectified subsequently has to be accepted.

5.3 Accordingly, there is no force in OA No.169/2003 and we do not find any infirmity in the impugned order dated 21.3.2003 (Ann.A1) whereby the earlier order was modified and the applicant was stated as having been promoted to the post

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of DMS Grade-III pay scale Rs. 5000-8000 on ad-hoc basis. So far as grievance of the applicants in OA No.529/2003 and 530/2004 are concerned, since the respondents have specifically stated that the order dated 21.11.2002, whereby junior persons to the applicant were promoted on regular basis, that order has been corrected vide order No.E/04/2004 dated 21.1.2004, as such, the case of the applicants that person junior to the applicants have been regularised does not survive now. The learned counsel for the applicant has also made submission that in case the respondents intend to make regular promotion to the post of DMS Grade-III scale Rs. 5000-8000 in future, case of the applicants who are senior to S/Shri Chandra Sekhar Singh and N.K.Gautam be also considered and directions to this effect be also issued to the respondents. At this stage, suffice it to say that in case the respondents intend to fill the posts of DMS Grade-III on regular basis, we see no reason why they should not follow the rules and make regular promotion in accordance with law.

6. With these observations, there is no force in these OAs which are hereby dismissed with no order as to costs.

(A.K.BHANDARI)

Member (A)

(M.L.CHAUHAN)

Member (J)