

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 05.11.2004

OA No.586/2003

Kaushal Singh s/o Shri Ganga Ram Singh, aged about 40 years,
r/o House No.159/3, Dhan Mandi, Kumhar Mohalla, Ajmer, Coupan
Clerk, Carriage Workshop Canteen, Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, North Western
Railway, Jaipur.
2. Chief Works Manager (Est.), North Western Railway,
Ajmer
3. Senior Personnel Officer, North Western Railway,
Carriage Workshop, Ajmer.

.. Respondents

Mr. N.K.Gautam, counsel for the applicant.

Mr. Anupam Agarwal, counsel for respondents

CORAM:

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

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

ORDER

Per Mr. M.L.Chauhan

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

- "i) That the order No. SEW 1030/12 dated 11.11.2003
issued by the non-applicant-respondent No.2 vide
Annex.A/10 be quashed and set aside.
- ii) That the seniority list Annex.A/9 in column No.8 the
date mention against the name of the applicant be
correct from 19.1.1998 to 27/28.12.1991.
- iii)

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2. Facts of the case are that the applicant was initially appointed on the post of Assistant Cook on 9.12.91. Thereafter he was transferred vide order dated 27/28.12.91 on the downgraded post of Coupen Clerk in the pay scale of Rs. 800-1150 (Ann.A2). The applicant claims that on account of his transfer to the downgraded post of Coupen Clerk, he was regularly working as Coupen Clerk continuously since 28.12.91. However, the applicant was promoted to the upgraded post of Coupen Clerk vide letter dated 19.1.98 (Ann.A3). Subsequently, the respondents vide letter dated 7.2.2000 (Ann.A4) issued fresh order thereby clarifying the order dated 27/28.12.91 (Ann.A2) whereby the applicant was transferred to downgraded post of Coupen Clerk to that of Assistant Cook and simultaneously also reverting the applicant from the post of Coupen Clerk to that of Assistant Cook which promotion was made vide order dated 19.8.91 (Ann.A3). Against this order, the applicant filed OA No.156/2000 before this Tribunal thereby challenging the validity of the order dated 7.2.2000 (Ann.A4) whereby the applicant was reverted from the post of Coupen Clerk to the post of Assistant Cook. From the material placed on record, it appears that this Tribunal granted interim stay in favour of the applicant on 10.4.2000 thereby directing the respondents to maintain status-quo. However, this OA was dismissed in default for non-prosecution vide order dated 27.7.2001 and the interim stay which was granted on 10.4.2000 was also vacated. Copy of this order has been placed on record as Ann.A6. Since this Tribunal has granted the order of status-quo, the name of the applicant continued to be there in the seniority list of Coupen Clerk and when the seniority list of this category was issued by the respondents

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vide letter dated 25.7.03, the name of the applicant was shown in the category of Coupen Clerk. However, subsequently when this mistake came to the notice of the respondents, the respondents immediately issued an order dated 11.11.2003 whereby the name of the applicant has been deleted from the seniority list of Coupen Clerk and added in the list of Cook Grade-II in the seniority list dated 25.7.2003. It is this order which is under challenge in this OA and the applicant has prayed for the reliefs as aforesaid.

3. The respondents have filed reply. By way of preliminary objections, the respondents have stated that the present application is hopelessly time barred. The order dated 11.11.2003 (Ann.A10) is passed on the basis of order dated 7.2.2000 against which the applicant has also preferred OA No. 156/2000 which was dismissed in default. The applicant has failed to challenge the order dated 7.2.2000 without which no relief whatsoever as prayed for can be granted. On merits, the respondents have categorically stated that the applicant was initially appointed on the post of Assistant Cook. He was never posted as Coupen Clerk vide order dated 27/28.12.91 (Ann.A2). This fact is apparent from perusal of the said order. In fact, it so happened that vide Ann.A2 it was not categorically mentioned that the applicant has been posted as Assistant Cook. Therefore, mistakenly the applicant was stated to be a Coupen Clerk in the pay scale of Rs. 800-1150 and this administrative lapse was corrected by order dated 7.2.2000. It is further stated that there is no avenue of promotion in the channel of Assistant Cook to Coupen Clerk/Assistant Canteen Manager. It was a mistake on the part of the administration to promote the applicant as Coupen Clerk vide Ann.A3 and he was wrongly treated as Coupen Clerk. Subsequently, this mistake

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was corrected vide order Ann.A4. The respondents further explained that name of the applicant found place in the seniority list of Coupen Clerk as this tribunal granted order of status-quo in favour of the applicant in the earlier OA. However, the position remained that the said OA was dismissed and the interim relief granted was vacated vide order dated 27.7.2001. The order being final upheld the validity of order dated 7.2.2000. Thus the applicant cannot be granted any relief. Subsequently, when the fact regarding dismissal of OA and inclusion of name of the applicant in the seniority list of Coupen Clerk came to the notice of the respondents, immediately order dated 11.11.2003 was passed. Thus, according to the respondents even on merits, the applicant has got no case.

4. The applicant has filed rejoinder thereby reiterating the stand taken by him in the OA. In the rejoinder, the applicant has specifically pleaded that the Tribunal has never upheld the order dated 7.2.2000 and the applicant had rightly challenged the order dated 11.11.2003. The respondents had themselves revised the order dated 7.2.2000 by issuing seniority lists dated 30.3.2001 and 25.7.2003.

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

5.1 We are of the view that the present application is misconceived and deserves outright rejection. From the material placed on record, it is apparent that the applicant was initially appointed as Assistant Cook on 9.12.1991. This fact is also not disputed by the applicant. However, vide order dated 27/28.12.91, the applicant was transferred on the downgraded post of Coupen Clerk in the scale of Rs. 800-1150.

Thus the contention of the applicant that vide letter dated 27/28.12.91. (Ann.A2) he was posted as Coupen Clerk is wholly misconceived. The fact remains that the applicant was never appointed as Coupen Clerk vide Ann.A2. However vide order dated 19.1.98 (Ann.A3) the applicant was promoted to the post of Coupen Clerk. This promotion order was modified vide order dated 7.2.2000 (Ann.A4). The order Ann.A4 contains two parts, first part relates to the clarification issued to the order dated 27/28.12.91 (Ann.A2) and it has been specifically recorded that the transfer of the applicant made vide this order should be read as transfer to the post of Assistant Cook in the scale of Rs. 800-1150 on account of downgraded post of Coupen Clerk. Thus, nothing material turns out from this para and fact remains that there is no such order whereby appointing the applicant to the post of Coupen Clerk vide Ann.A2. Vide second para of the order dated 7.2.2000 (Ann.A4) the promotion which was granted to the applicant to the post of Coupen clerk vide order dated 19.1.1998 (Ann.A3) was rectified and it was mentioned that the applicant should be treated as Assistant Cook. According to respondents, the order Ann.A3 was issued on account of administrative mistake as in the order dated 27/28.12.91 (Ann.A2) it was ^{not} specifically mentioned that the applicant has been transferred to the post of Assistant Cook which post became available on account of ~~down~~ gradation of the post of Coupen Clerk to that of Assistant Cook. The respondents have categorically stated that there is no promotional avenue available from the post of Assistant Cook to that of Coupen Clerk/Assistant Canteen Manager. This position has not been disputed by the applicant. Thus, even if the applicant has been wrongly promoted to the post of Coupen Clerk vide order dated 19.1.98 (Ann.A3) de hors the rules, that fact does not confer any right upon him to continue on the

post of Coupen Clerk and in case the respondents have subsequently rectified this mistake vide order dated 7.2.2000 (Ann.A4), no infirmity can be found in such action on the part of the respondents. Accordingly, the present OA is bereft of merit and deserves out right rejection.

5.2 Yet for another reason, the applicant is not entitled to any relief. The applicant has not challenged the order dated 7.2.2000 (Ann.A4) whereby the applicant has been again posted as Assistant Cook by rectifying order of promotion dated 19.1.98. Indeed the applicant challenged this order in earlier OA No.156/2000 which OA was dismissed in default vide order dated 27.7.2001 (Ann.A6). On the face of this order, it was not permissible for the applicant to file fresh OA especially when remedy was available to him to get the said order of dismissal set aside and to restore the OA to its original number so that the matter in controversy could have been gone into by the Tribunal in the earlier OA. Thus, action of the applicant in filing subsequent OA is definitely an abuse of the process of this court. That apart, even if the contention of the applicant that this Tribunal has not upheld the order dated 7.2.2000 and as such he can file subsequent OA is accepted, in that eventuality, the applicant should have challenged the order dated 7.2.2000 whereby the applicant has been reverted from the post of Coupen Clerk to that of Assistant Cook. The applicant has not challenged this order in this OA. Rather the applicant in the rejoinder has taken entirely an interesting plea that since the respondents have subsequently revised the seniority list dated 30.3.2001 and 25.7.2003 whereby name of the applicant has been shown in the category of Coupen Clerk, as such the order dated 7.2.2000 stands revised, cannot be accepted. The seniority list dated 30.3.2001 and 25.7.2003 whereby name of the applicant has been

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shown as Coupem Clerk cannot stand on the face of the order dated 7.2.2000 whereby the applicant stands reverted to the post of Assistant Cook. Thus, after 7.2.2000 the applicant was not a member of the cadre of Coupem Clerk, how his name could have been incorporated in seniority list dated 30.3.2001 and 25.7.2003 as Coupem clerk ? However, the respondents have given satisfactory explanation that the name of the applicant was ~~not shown~~ in the seniority list dated 30.3.2001 and 25.7.2003 as this tribunal vide order dated 10.4.2000 has granted order of status-quo in favour of the applicant and as such his name was shown in the seniority list dated 25.7.2003 ^{and}

^{Further that} the fact regarding dismissal of the OA escaped the notice of the respondents and as soon as this fact came to the notice of the respondents, they issued fresh seniority list dated 11.11.2003 whereby the name of the applicant stands deleted from the list of Coupem Clerk and the same stands inserted in the seniority list dated 25.7.2003 in the category of Cook Grade-II. Thus, we are of the view that the applicant is not entitled to any relief especially when the applicant has not challenged the order dated 7.2.2000 thereby modifying the order of promotion of the applicant as Coupem Clerk issued vide order dated 19.1.98 (Ann.A3) to that of Assistant Cook.

6. For the reasons stated above, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)