

Central Administrative Tribunal, Jabalpur Bench

O.A. No.1079 of 2005

Jabalpur this the 13th day of June, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Dr. G.C. Srivastava, Vice Chairman (A)

Balan Nair
Aged about 54 years,
S/o Shri Raghavan Nair
P. Way Supervisor,
West Central Railway,
Resident of RB-II-295/4, Tagore Colony,
Behind Satpura Club,
Jabalpur (MP).

....Applicant

By Advocate: Shri L.S. Rajput.

Versus

Union of India through

1. General Manager,
West Central Railway,
Indira Market, Near Railway Station,
Jabalpur (MP)-482001.
2. Divisional Railway Manager,
West Central Railway,
Jabalpur (MP)-482001.

...Respondents

By Advocate: Shri H.B. Shrivastava.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant is assailing the order of the respondents dated 28th October, 2005 (Annexure A-1) by which debarment period of one year on refusal of promotion is directed to be counted from 6th September, 2005. He also seeks a direction to the respondents to consider him for promotion to the post of JE-II (P.Way) immediately after 13.10.2005 and post him in Jabalpur area.

2. The facts are short and simple. The applicant was working as Permanent Way Supervisor at Jabalpur. As a result of restructuring of the post of JE-II (P. Way), the applicant along with four other P. Way Supervisors by order dated 13.10.2004 (Annexure A-2) was promoted to the post of Junior Engineer (II), P. Way with immediate effect. By this combined order of promotion and posting the applicant was posted on promotional post at Bhitoni. The applicant submitted a representation dated on 25.10.2004 (Annexure A-3) expressing his inability to move out of Jabalpur and join at Bhitoni for some

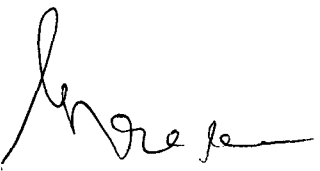
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domestic reasons etc. Since there was no response from the respondents, the applicant approached the Divisional Railway Manager for cancellation of his transfer through General Secretary, West Central Railway Employees Union. As per the allegation made in the OA thereafter the applicant was called by the subordinate staff of the respondent No.1 in the office of the SSE (P. Way), South, Jabalpur on 16.8.2005 and he was compelled to give a clear cut refusal of promotion. The applicant finding no other way, had to give in writing his refusal once again. Earlier by way of representation he had given his refusal which he believed had been accepted by the respondents. Copy of his refusal dated 16.8.2005 has been filed by the respondents as Annexure R-1. As a result the Divisional Railway Manager (P) directed the Divisional Engineer to communicate to the applicant that his refusal has been accepted by the competent authority. Pursuant to this order the Divisional Railway Manager, vide impugned letter dated 28.10.2005 (Annexure A-1) informed the applicant that his refusal to promotion had been accepted on 6.9.2005 and he is debarred from promotion for one year with effect from 6.9.2005.

3. The respondents contested the OA and they submitted that as a result of restructuring of Group 'C' and 'D' cadre with effect from 1.11.2003 the posts of PW Mistry/Supervisors were upgraded as Junior Engineer (II) in the scale of Rs.5000-8000 and considering that the applicant was working in Jabalpur since 1979, he was promoted as JE-II with effect from 1.11.2003 and was posted at Bhitone a nearby station under the territorial jurisdiction of the same officer under whom he had been working, by order dated 13.10.2004. The applicant had managed to continue at Jabalpur till 13.10.2005 but he was ^{ordered} to be relieved on transfer to Bhitoni but he gave his categorical and unconditional refusal for promotion as JE-II. There had been a vacancy of Junior Grade-II at Bhitoni which was required to be filled in for reasons of safety and smooth running of trains. The duties of JE-II require ensuring proper maintenance of Railway Tracks. The refusal of the applicant dated 16.8.2005 was accepted by the competent authority and the applicant was retained at Jabalpur itself but ^{he} ~~has~~ been deprived of promotion for a period of one year from the date of the refusal, i.e. 16.8.2005.

4. In the rejoinder the applicant has reiterated the case pleaded in the OA.

5. We have heard the learned counsel for the parties and perused the records.



6. The question that arises for determination is whether one year debarment period for future promotion of the applicant to be counted with effect from 16.8.2005 by order dated 28.10.2005 (Annexure A-1) is legal and in accordance with the instructions of the Railway Board. The instructions of the Board are contained in paragraph 224 of the IREM Volume-I. It is reproduced below:-

“224. Refusal of Promotion

I. Selection Posts

(i) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected), is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

E (NG) I -64-PM 1-66 dated 21.1.1965 & R(NG) I-71 PM 1-106 dated 15.12.1971

(ii) At the end of one year if the employee again refuses promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to out-station in the same grade. He will also have to appear again in the selection notwithstanding the fact that he in the meantime, has official non-fortuitously against short term vacancy based on his panel position.

(iii) Seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held.

E (NG) I-66 SR-6/41 dated 14.10.1966”.


7. As per the above instructions an employee on his refusal to promotion to the higher post in writing or otherwise, is debarred from future promotion for a period of one year and promotion after one year will be subject to continued validity of the panel. The special features of this Clause are (i) that the promoted Railway employees may refuse the promotion (a) expressly, i.e., in writing or (b) the refusal of promotion may be inferred by his acts and omission, e.g., when he does not join the post to which he is promoted.

8. In the present case the applicant submitted his first refusal of promotion by way of representation dated 25.10.1994 (Annexure A-3) wherein he had unequivocally told the authorities that he would not be able to go to Bhitoni to join the post of JE-(II) to which

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he was promoted. It is alleged by the applicant that he believed that the authorities had treated this representation as his refusal of the promotion but later on the subordinate officials called the applicant to the office of SSE (P. Way) south, Jabalpur on 16.8.2005 where he was compelled to give in writing his refusal once again. These allegations have been controverted by the respondents but the receipt of the first representation dated 25th October, 2004 undoubtedly show that the applicant was not willing to join the post at Bhitoni and wanted to be retained at Jabalpur. The letter of West Central Railway Employees Union dated 10th August, 2005 recommended for cancellation of the transfer of the applicant. Annexure R-I also shows that another refusal in writing was given by the applicant on 16.8.2005. There is no order of the respondents modifying the promotion order dated 13.10.2004 (Annexure A-2) and posting him at Jabalpur in place of Bhitoni or keeping the posting order in abeyance for a specified or unspecified time. There is also no request of the applicant for retaining him at Jabalpur for some time. Whether the letter dated 16.8.2005 (Annexure R-I) was written by the applicant under some pressure or that it was voluntary, is not of much relevance in this case. The question for consideration for the authorities was whether the applicant had refused the promotion 'even otherwise' by not joining the post of Junior Engineer (II) (P. Way) at Bhitoni, in compliance with the promotion order dated 13th October, 2004 (Annexure A-2)?

9. Para 224 (i) quoted above clearly spelt out that the total debarment period of Railway Employee after refusal of the promotion should not exceed one year. The crucial question is from which date this period of one year would be counted, whether it will be counted from the date of written refusal submitted by the Railway employee and accepted by the competent authority or the date on which the applicant shall be deemed to have refused the promotion by not joining the higher post. We have already noticed that Clause (i) of Para 224 of IREM provided that the refusal of promotion by the employee may be expressly, i.e. by writing or impliedly e.g. when does not joint the higher post, though it should be preferably by in writing so that there is no controversy about it later on. The refusal of the promotion by the Railway employee may thus also be inferred from his action following the promotion. We need not go far looking for the meaning of the word "otherwise" used in Clause (i) *ibid* as the clause itself has explained it as "that



he does not give in writing his refusal but also does not join the post for which he has been promoted". His representation against his posting at Bhitoni coupled with his not joining the post to which he was promoted within the time stipulated was enough to infer that he had refused the promotion.

10. In the present case the applicant by submission of his representation dated 25th October, 2004 (Annexure A-3) had made his intention clear that he would not join the post of Junior Engineer Grade-II (P. Way) at Bhitoni station. He also did not join the post at Bhitoni. He clearly intimated to the authorities that he will not be accepting the promotion order. In case authorities were doubtful and wanted the applicant to make his intentions more clear then they would have immediately asked him to comply with the order and join at Bhitoni, otherwise he would be deemed to have refused the promotion and incurred the debarment period of one year. The authorities cannot sit quite and all of a sudden act on a subsequent letter of refusal of promotion by the applicant. This refusal in writing was not a condition precedent to the imposition of the debarment period of one year for promotion on the applicant as per rules.

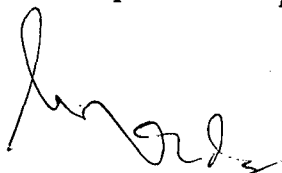
11. Whether applicant by virtue of the final upgradation under ACP Scheme was drawing the salary in the same pay scale in which he was promoted to the post of Junior Engineer (II) (P. Way) is of no relevance, as he has not joined the post of Junior Engineer (II) (P. Way). Hence, he could not be deemed to have been promoted to the post by virtue of the order dated 13th October, 2004 (Annexure A-2). His promotion to the post of Junior Engineer (II) would commence from the date on which he had joined the post at Bhitoni.

12. The promotion-cum-posting order dated 13th October, 2004 (Annexure A-2) came into effect immediately from the date of order. The applicant under the order as such was required to join the post of Junior Engineer (II) (P. Way) at Bhitoni immediately or at the most soon after the joining period admissible under the rules was over. If he did not do so the authorities would be perfectly justified in drawing an inference that he had refused the promotion. He should have been relieved of the present post. To be doubly sure they could have again asked the applicant to immediately move and join the post of Junior Engineer (II) (P. Way).

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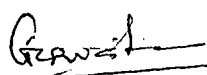
13. It may also be pertinent to note that the total period of debarment was for one year. Obviously the period of one year would start from the date on which the applicant had been promoted by the order dated 13th October, 2004 (Annexure A-2) to the post of Junior Engineer (P. Way) with immediate effect and posted at Bhitoni. The period of one year would be reckoned from the date on which he was allowed to join or the extended period on which he was allowed to join or the date on which he could have joined under the service rules. The period of debarment could not be prolonged beyond one year. The respondents by letter dated 28th October, 2005 have prolonged the debarment period of the applicant upto 5th September, 2006, though in the counter reply they have stated that it is up to 16th August, 2006. Sub Rule (ii) of Para 224 of IREM says that if the employee again refuses promotion at the out station after the end of the one year debarment period his name would be deleted from the select panel automatically. He would become liable to be transferred to outstation. Therefore, the date on which the debarment period of one year came to an end becomes crucial. Instead of one year the respondents vide order dated 28th October, 2005 have extended the debarment period of the applicant for future promotion upto 5th September, 2006, i.e., nearly for about 2 years, which is double the period which was provided in Para 224 of IREM which is not legally permissible.

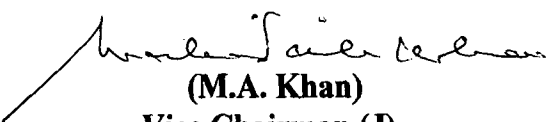
14. Having regard to the above discussion, we have no hesitation in holding that the impugned order dated 28th October, 2005 which debarred the applicant from future promotion for one year effective from 6.9.2005 is illegal and is not sustainable. The debarment period could be reckoned from the date on which the applicant had not joined the post to which he had been promoted, as per Clause (i) of Para 224 of IREM *ibid*. The transfer and posting order dated 13th October, 2004 came into effect immediately on its issue. Since the applicant had not joined the post of Junior Engineer (II) (P. Way) at *Bhitoni in compliance to the order of transfer and posting dated 13th October, 2004* it shall be deemed that the applicant had refused the promotion which he had otherwise done in his representation Annexure A-3 and it is also inferable from his not joining the promotional post at Bhitoni for a long period.



15. In the facts and circumstances of the case, it may be held that the debarment period of one year should be calculated from 13.10.2004. His further promotion should be in accordance with rules after the debarment period is over.

16. As a result the OA is allowed. The order of the respondents dated 28th October, 2005 (Annexure A-1) is quashed and it is directed that the debarment period of one year for future promotion of the applicant will be counted from 13.10.2004 and the applicant will be considered for promotion on the expiry of the aforesaid one year debarment period in accordance with rules. The parties to bear their own costs.


(Dr. G.C. Srivastava)
Vice Chairman (A)


(M.A. Khan)
Vice Chairman (J)

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पृष्ठान्त सं ओ/व्या..... जयपुर, दि.....
चलित दि.....

- (1) सचिव, उच्च न्यायालय, जयपुर
- (2) आवेदक श्री/श्रीमती.....
- (3) प्रत्यक्षी श्री/श्रीमती.....
- (4) वरिष्ठता, योगा,
सूचना एवं आवश्यक कार्रवाई हेतु

Shri L. S. Rappal JH c
Shri H. B. Shrivastava AB

20/6/06
उप रजिस्ट्रार

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