

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 350 of 1999

Jabalpur, this the 4<sup>th</sup> day of September, 2003.

Hon'ble Mr. D.C. Verma, Vice Chairman(Judicial)  
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Nathoo - Aman S/o Shri Aman Diwan  
aged about 59 years, retired Office-Supdtt,  
Central Railway, resident of Nai-Basti,  
Bhagwanganj - Saugor (M.P.)

APPLICANT

(By Advocate - Shri L.S. Rajput)

VERSUS

1. The General Manager,  
Central Railway, Mumbai CST  
(Maharashtra)
2. The Divisional Railway Manager,  
Central Railway, Jabalpur (M.P.)
3. The Assistant Engineer (M),  
Saugor (M.P.)

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R

By D.C. Verma, Vice Chairman (Judicial) -

By this Original Application the applicant has claimed fixation of his pay in the grade of Office Superintendent Grade-I Rs.2000-3200 (Rs.6500-10500) with effect from 24.11.1994 and consequential fixation of his pension with all arrears of salary and pension and other retiral benerits.

2. The briet facts of the case is that the applicant has been working as Office Superintendent Grade-II (for short 'OS-II') under Inspector of Works, Sagar, in the scale of Rs.1600-2660. He was promoted vide order dated 24.11.1994 (Annexure-A-1) to the post of Office Superintendent Grade-I (for short 'OS-I') in the scale of Rs.2000-3200 under Assistant Engineer, Beohari against

a vacant post. The applicant was, however, not relieved so he could not join the transferred place. The applicant wrote to the department also for getting relieved for joining the promotional post but the seniors to the applicant did not relieve the applicant as there was no reliever. Finally, when the order dated 26.2.1998 (Annexure-A-3(b)) was issued posting the applicant as OS-I under AEN Sagar, in a vacant post, the applicant was relieved and he joined. The applicant, however, superannuated from service on 31.3.1998.

3. The grievance of the applicant is that when he was promoted in 1994, the promotion be taken from that date and the applicant be given all benefits including salary and pension be fixed accordingly.

4. The respondents' case is that though the applicant was promoted vide order dated 24.11.1994, the applicant was not interested to shift from Sagar, so he made a representation which was forwarded by the AEN through a communication dated 28.10.1995 (Annexure-A-9). Thus, the applicant himself is responsible for not joining the promotional post. Consequently, it is submitted that the applicant is not entitled to the scale of OS-I prior to his promotion vide order dated 26.2.1998.

5. Counsel for the parties have been heard at length.

6. Learned counsel for the applicant submitted that vide order dated 24.11.1994 the applicant and one R.K.Biltharia were promoted as OS-I. The applicant was not relieved. R.K.Biltharia was relieved and he joined the promoted post. The applicant on 15.12.1994

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wrote to the AEN Central Railway, Sagar, copy at Annexure-A-4, requesting him to arrange a reliever so that the charge of the stores be taken from the applicant and he be relieved to join the promotion post. The AEN with his forwarding letter, copy Annexure-A-5 dated 15.12.1994 wrote to the DRM(P) Jabalpur that no reliever to take charge from the applicant Shri Nathoo Aman has been posted, Hence, reliever be posted so that charge from Shri Nathoo Aman be taken. On 31.5.1995, copy Annexure-A-8, the Assistant Engineer again wrote to the Senior DEN that though OS-II Stores i.e. the applicant, has been transferred but his incumbent has not been posted, therefore, the applicant could not be relieved, as the applicant has, in his charge, a huge quantity of stores items and daily transaction cannot be recorded and maintained in absence of stores clerk, as no material clerk is also there. Again on 28.10.1995, the AEN wrote to the Senior D.E.N. that Nathoo Aman could not be relieved due to non-posting of his incumbent and Nathoo Aman has now given a representation to be retained at Sagar which has been forwarded to the Senior DEN Shri K.M.Tripathi with forwarding letter dated 18.8.1995. The orders thereon were solicited by the AEN. Subsequently, vide Annexure-A-10 dated 4.1.1996 the AEN Shri R.K.Dixit informed the Senior DEN to appoint the applicant in the office of AEN Sagar vice Shri B.M.Mandloi who was to retire. Again in February, 1996 (copy Annexure-A-11) the Chief Works Inspector Shri A.K.Porbal wrote for arranging a reliever, in absence of which Nathoo Aman could not be relieved. Shri A.K.Porbal also informed that

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in absence of a reliever it is not possible to relieve Shri Nathoo Aman, who is incharge of the stores and day to day working would get affected. Similar letters were sent on 10.2.1996(Annexure-A-12), 22.4.1996 (Annexure-A-14). On 10.6.1996 one Shri K.R.Agrawal, AEN(M)Sagar also wrote to Shri T.G.Parate,Senior D.E.N. Jabalpur vide Annexure-A-16 to post reliever of Nathoo Aman. He also informed the Sr.DEN that Nathoo Aman could not be relieved as he had been dealing with day to day management and requested for retransfer of one post of OS-I from Jabalpur to Sagar, so that the good services of Nathoo Aman may be utilised for efficient management of Sagar Sub Division. Vide Annexure-A-18 dated 23.6.1997 the AEN Sagar again informed that he would not be able to relieve Shri Nathoo Aman,OS-II as various other posts like UDCs,Typists,OS-II are already vacant since long for filling of which correspondence is going on. It was only on 4.10.1997 (Annexure-A-20) that AEN(M)Sagar wrote to DRM,Jabalpur that Nathoo Aman would be relieved after his charge is given to one Shri Pritamsingh. Pritamsingh did not take over. Consequently, one Shri A.B.Qureshi was posted but he also proceeded on sick leave. So, the applicant vide Annexure-A-21 dated 18.12.1997 wrote to the AEN for getting relieved early to join the promotion post, but this also proved to be a fruitless effort. On 5.1.1998 the applicant directly wrote to the DRM (copy Annexure-A-22) informing him that he has left with 79 days of service as he was to retire on 31.3.1998 but still he was not being relieved to join the transferred place. He again sent a letter(copy Annexure-A-23) to the Sr.DPO when left with 32 days of service only. It was thereafter that he was promoted and posted at

Sagar itself where he joined in February, 1998.

7. The learned counsel of the applicant has placed reliance on various decisions which provide for payment of back wages in case the employee could not join the promotion post due to administrative lapses or administrative exigencies. The submission of the learned counsel of the applicant is that all the documents which have been brought on record would show that the applicant has been making efforts for joining the promotion post and he has been making representations to various higher authorities but he was not relieved because of interest of the work and because no reliever was posted to take charge of the store.

8. The submission of the learned counsel of the respondents, on the other hand, is that the applicant was himself not interested in getting relieved from Sagar where he has been working since 1982. The submission is that the applicant himself made the representation for being posted to Sagar. Consequently he secured the help of one AEN to enter into correspondence and in spite of the instructions dated 22.5.1995 (Annexure-A-7) the charge from the applicant was not taken over to relieve the applicant. The submission is that the applicant is not entitled to benefit of promotion with effect from 24.11.1994 or the arrears therefrom.

9. The documents which have been referred to above show that the applicant himself wrote Annexure-A-4 dated 15.12.1994, Annexure-A-13 dated 17.4.1995, Annexure-A-21 dated 18.12.1997, and Annexure-A-22 dated 5.1.1998 for getting relieved to join the transferred

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place. The record also show that the respondents wanted in writing from the applicant that he is not interested to go on transfer but the applicant did not agree to give anything in writing. By Annexure-A-14 dated 22.4.1996 the IOW informed the AEN that Nathoo Aman is not ready to give the refusal and wanted to go on promotion. The IOW also informed that as none other is available, hence it is just impossible to relieve Nathoo Aman without reliever. Vide Annexure-A-15 dated 22.4.1996 the AEN also informed that the applicant is willing to go ~~supernumerary~~ to join the transferred place on promotion. The documents also show that other two relievers were posted to take over charge from the applicant but one Pritam Singh did not join and Shri Qureshi proceeded on sick leave. The learned counsel of the respondents has also referred to communication dated 9.5.1995 (Annexure-R-III) by which IOW(M)Sagar was directed by Shri R.K.Dixit, Assistant Engineer(M)Sagar to take over charge from Shri Nathoo Aman. All these documents have already been referred by us above and it has been noticed that though there are some orders to relieve the applicant, but the applicant was actually not relieved. The applicant was holding the charge of big store and he could not have himself left every thing in lurch to proceed to the transferred place. As a responsible store incharge it was his duty to hand over charge to an authorised person of all store materials and thereafter to proceed to take over charge on the transferred place. The responsibility of proper handing over of store material lies on the person who holds the charge of the store. If proper charge is not handed over, the applicant would have

been held responsible for the same. Consequently, unless a proper reliever comes to take over charge and the charge is actually taken over by such authorised person, the applicant cannot be held responsible for not handing over the charge of the store material. So, even if there be some orders to relieve the applicant but in case he has not been actually relieved, the fault cannot be thrown on the applicant.

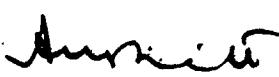
10. The applicant was actually promoted on 24.11.1994. That order still stands. That was never cancelled though two other orders dated 10.6.1997 (Annexure-A-2) and 26.2.1998(Annexure-A-3(b)) were passed subsequently posting the applicant to Katni and then under AEN Sagar. As has been found above the applicant cannot be blamed for not joining the promotional post, hence he is entitled for the benefit of promotion with effect from 24.11.1994 - the date of the initial order of promotion. The junior to the applicant was promoted and relieved to take over the transferred place. Consequently, such relief cannot be denied to the applicant.

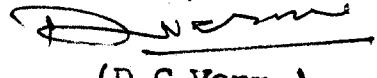
11. The learned counsel of the respondents has drawn our attention to Annexure-R-V dated 1.10.1994 sent by one B.M.Mandloji,OS-I mentioning therein that the charge of OS-I has not been handed over to him by Nathoo Aman, who has been looking after the work of OS-I on retirement of Mr.Ansari with effect from 31.3.1994. In our view Annexure-R-5 has no much relevance to the relief claimed in the present OA. Annexure-R-V is with respect to the post of OS-I and not of the post of OS-II which the

applicant was holding. The question in the present OA is with regard to the charge of OS-II which was to be handed over by the applicant to some authorised person who may take over the charge of store so that the applicant may proceed to the place of posting as OS-I. Thus, Annexure-R-V is not of much relevance.

12. It is seen that though the applicant was promoted vide order dated 24.11.1994 and was not relieved for one reason or the other especially because of getting no reliever but the applicant never approached the judicial forum for getting a relief. This OA was filed in the year 1999 only after the applicant superannuated on 31.3.1998.

13. Accordingly, the OA is allowed with a direction to the respondents to treat the applicant as notionally promoted to the post of OS-I with effect from 24.11.1994 till the date of retirement with all consequential benefits, except the arrears of pay which will be admissible to the applicant only for a period of one year before the date of retirement. For purpose of pensionary benefits etc, the date of promotion of the applicant would be 24.11.1994 and all his pensionary benefits shall be fixed accordingly. The compliance of the order be made within a period of three months from the date of receipt of a copy of this order. In case the compliance is not made within the aforesaid period of three months, the applicant shall be entitled to interest at the rate of 10% (Ten percent) per annum on the amount so calculated as above with effect from the date of expiry of the three months' period till the date of payment. Costs easy.

  
(Anand Kumar Bhatt)  
Administrative Member

  
(D.C. Verma)  
Vice Chairman, Judicia