

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 767 of 1999

Jabalpur, this the 7th day of February, 2003.

Hon'ble Mr. Justice N.M. Singh- Vice Chairman
Hon'ble Mr. R.K. Upadhyaya- Member (Admn.)

Nav Ratan Upadhyay, aged about 33 years,
S/o Shri P.N. Upadhyay, Senior Lineman,
Station Vikramgarh Alore, District
Ratlam, Division Kota, Western Railway.

-APPLICANT

(By Advocate- Mr. S. Nagu)

Versus

1. Union of India through its
Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. Divisional Railway Manager,
Western Railway, Kota
Division (Rajasthan)
3. Senior Divisional Electrical Engineer
(Traction & Distribution), Kota
Division, Western Railway.
4. Chetan Khan M.,
Lineman, Traction Distribution Depot,
Distt. Sawai Madhopur, Rajasthan.
5. Anwar Hussain,
Lineman, Traction Distribution Depot,
Shyamgarh, Distt. Garot.
6. Krishna Kumar,
Lineman Gr.I, TTD Depot, Bharatpur,
near FCI Godown, Bharatpur, Rajasthan.

-RESPONDENTS

(By Advocate- Mr. S.P. Sinha for official
respondents)

O R D E R

By R.K. Upadhyaya, Member (Admn.):

This application was filed claiming promotion as Lineman Grade-I from Lineman Grade-II with effect from 1.3.1993. This Tribunal by an order dated 8.2.2000 had decided the O.A. as follows:-

"7. Based on the above orders of the Ministry of Railways, the applicant having complete one year service as Lineman Grade-II was required to be promoted as Lineman Grade-I w.e.f. 1.3.1993. The

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contention of the respondents that Trade Test was necessary in such cases as per the clarification of Headquarters office dated 22/23.2.1993, is rejected as the same were not enclosed with the return and further even if the same existed, such clarification cannot override the basic orders of Ministry of Railways, where such conditions did not exist. Also the Ministry of Railways orders were applicable to persons who retired after 1.3.1993 but before actual implementation these persons could not have been subjected to Trade Test based on the clarificatory order of the Headquarters dated 23.2.1993. In these circumstances, we are of the view that the applicant is entitled to promotion on completion of one year and as such O.A. stands partly allowed with the following directions:-

2.1 The applicant should be given promotion to the post of Lineman Grade-I w.e.f. 1.3.1993 provided disciplinary proceedings were not pending against the applicant at the relevant point of time. He should be also given notional seniority to the post of Lineman Grade-I. Further, he shall be entitled to arrears of pay after his pay has been fixed on the post of Lineman Grade-I w.e.f. 1.3.1993".

1.1 Aggrieved by the said order of this Tribunal, the respondents had filed Writ Petition No.280/2001 before the Hon'ble High Court of Madhya Pradesh. By an order dated 2.5.2001, the Hon'ble High Court has held as follows:-

" It is common ground that the Tribunal, while passing the impugned order did not take into consideration letter dated 22/23.2.1993 (Annexure P/4), which has bearing on the case. Learned counsels for the parties consent that the order of the Tribunal may be set aside and the matter may be remitted back to it for reconsideration, taking into consideration the aforesaid letter, in accordance with law.

In view of the agreement arrived at between the parties, the impugned order is set aside and the matter is remitted back to the Tribunal for reconsideration in accordance with law.

It is made clear that we have not expressed any opinion on the merits of the case of the parties. There shall be no order as to cost."

2. The learned counsel for the applicant invited attention to the Railway Board circular order dated 27.1.1993 (Annexure A-10), wherein it is provided as under:-

"4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be remain unchanged. However,

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for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and Confidential Reports without holding any written and/or viva voce test. Similarly for post Classified as non-selection at the time of his restructuring the same procedure as above will be followed. Naturally under this procedure the categorisation, as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders.

4.1 Vacancies existing on 1.3.93 except direct recruitment quota and those arising on that date from this Cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

(i) from panels approved on or before 1.3.93 and current on that date; (ii) and the balance in the manner indicated in para 4 above.

4.2 Such selections which have not been finalised by 1.3.93 should be cancelled/abandoned.

4.3 All vacancies arising from 2.3.93 will be filled by normal selection procedure."

The learned counsel of the applicant stated that the above provision clearly states that the selection will be based only on scrutiny of service records and Confidential Reports. Therefore, insistence of the respondents of passing the trade test by the applicant is against the instructions dated 27.1.1993 of the Railway Board.

2.1 The learned counsel of the applicant further stated that reliance on the letter dated 22/23.2.1993 (Annexure R-1) of the General Manager, which provides for trade test in skilled category is contrary to the instructions contained in Railway Board circular dated 27.1.1993. The learned counsel stated that the General Manager could not supersede or modify the instructions of the superior authority viz. Railway Board. He also stated that Railway Board circular dated 18.3.1993 (Annexure X-2) filed by the respondents

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with M.A.No.152/2003 is also not applicable on the facts of this case. This circular dated 18.3.93 contains clarifications on Cadre restructuring of Grade C&D employees and provides as under:

"(ii) Filling up of vacancies where no restructured posts are available-

Doubt has been raised in cases where percentages have been reduced in the lower grade and no new posts become available as a result of restructuring but existing vacancies are available as on 1.3.93 whether such vacancies also be filled up by modified selection procedure. It is clarified that in such cases vacancies existing on 1.3.93 should not be filled up by modified selection procedure."

The learned counsel stated that the clarification that existing vacancies available on 1.3.93 should not be filled up by the modified selection procedure, ^{only} in those cases where no new posts become available as a result of restructuring. In the present case, ~~seven~~ new posts have been added to the cadre of Lineman Grade-I. Therefore, this circular of Railway Board does not apply ~~anywhere~~ on the facts of this case.

2.2 The learned counsel referred to Railway Board's circular letter dated 30.3.1995, on which reliance has been placed by the respondents for the proposition that the trade test prescribed by the General Manager is as per authority given to him by the Railway Board. This circular letter dated 30.3.1995 (Annexure R-VI) of the Railway Board reads as follows:

"Sub: Trade Test for promotion of the Artisan Staff against the upgraded posts in terms of Board's letter dated 27.1.93 (Bahri's RBO 1993-I, P 30)

Reference Board's restructuring orders issued under their letter No. PG-III/91/CRC/1 dated 27.1.93 (Bahri's RBO 1993-I, P 30) vide para 4 and sub para 4.1 to 4.4 of the letter instructions have been issued prescribing the method to be adopted for filling up of the restructured vacancies. For promotion of the Artisan Staff against the restructured vacancies Board's letter dated 27.1.93 was silent as to whether the promotion is to be given after conducting trade test or otherwise.

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2. During the cadre restructuring committee consisting of representative of federation and official side, a consensus was reached that the Zonal Railways at the local level may decide about trade test or otherwise keeping in view:-

(i) The procedure adopted last time for implementing restructuring, and

(ii) Reassessment of need for holding trade test in view of the changing scenario because of modernisation and technological developments.

The above is to confirm the instructions already given to Zonal Railways over phone to decide on the course of action based on points given above at (i) & (ii)."

According to the learned counsel for the applicant, this circular letter dated 30.3.1995 is merely a device to regularise irregularities committed by the sub-ordinate offices of the Railway Board. The restructuring circular was issued on 27.1.1993 and this instruction dated 30.3.95 is merely "to confirm the instructions already given to Zonal Railways over phone...." According to him, this is contrary to the provisions contained in basic circular dated 27.1.1993 on some wrong assumption. The learned counsel states that as a matter of fact, this clarification dated 30.3.1995 was only prospective, as can be seen from the letter dated 13.7.1995 (Annexure R-III), which reads as follows:

"....Reference Bd's order dt. 30.3.95 on the above cited subject, in continuation of the orders, it is further again advised that henceforth no promotion of the Artisan Staff against the restructured as well as normal vacancies should be given without holding the Trade Test except for promotion from unskilled in semiskilled categories. Zonal Railways may take action."

2.3 The learned counsel for the applicant further invited attention to the order of Jaipur Bench of this Tribunal in the case of Mohd. Idoo Vs. Union of India & others (O.A.No.542/1993) dated 26.7.1995, wherein similar question was considered by the Jaipur Bench of this Tribunal. The

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Tribunal held that vacancies as available on 1.3.93 could be filled-up without holding any trade test. This order of the Tribunal was subsequently followed in another case of R.K.Nahawar and others Vs. Union of India & another (O.A.No.297/1995) by an order dated 1.6.2001. This Tribunal in that case ordered that the applicants were entitled to promotion or upgradation on restructuring, in terms of the Railway Board's order dated 27.1.1993, without holding of trade test. The learned counsel further informs that the orders of the Tribunal have been implemented by the Railway Authorities.

3. The learned counsel for the respondents stated that the circular letter dated 22/23.2.1993 clearly stipulates that promotion under cadre restructuring of skilled category will be based on trade test. He stated that the assumption that the instructions of General Manager dated 22/23.2.1993 (Annexure R-1) cannot override, Railway Board's circular dated 27.1.1993 (Annexure A-10) is mis-placed. According to the learned counsel, the Railway Board's circular dated 27.1.93 provides for promotion based on selection procedure and states that written test and viva voce test will be dispensed with as one time measure. It does not talk of exemption of trade test in respect of promotion to skilled category. It was, in this context, that the order dated 22/23.2.1993 (Annexure R-1) was issued by ~~General Manager~~ as the Railway Board had authorised the zonal Managers for filling the skilled posts. The authorisation given to zonal Managers of the Railways have been confirmed by the order of the Railway Board as contained in the letter of the Railway Board dated 18.3.1993 (Annexure X-2) and Railway Board's

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letter dated 30.3.1995 (Annexure R-VI). Railway Board's letter dated 30.3.1995 (Annexure R-VI) specifically provides that "The above is to confirm the instructions already given to Zonal Railways over phone.....". Regarding the orders referred to by the learned counsel of the applicant in the case of Mohd. Iqbal, O.A. No.542/1993 dated 26.7.1995 and in the case of R.K. Mahawar and others Vs. Union of India & another, OA No.297/1995 dated 1.6.2001, it is stated that the Tribunal has passed those orders, because the subsequent circulars of Railway Board confirming the instructions on the basis of which General Manager's circular letter, which was issued on 22/23.2.1993 was not placed for their consideration. It was also urged by the learned counsel of the respondents that no junior person to the applicant has been promoted to the post of Lineman Grade-I without passing a trade test. According to him, passing of trade test is mandatory in the case of skilled category workers. The applicant had appeared for such trade test, subsequently more than once, but has not been able to pass the trade test. Therefore, he cannot be allowed to be promoted without passing the trade test.

4. We have heard the learned counsel of both the parties, and have perused the material available on record.

5. The limited issue for consideration before us is with reference to the order dated 2.5.2001 of Hon'ble High Court of Madhya Pradesh in W.P.No.280/2001. The Hon'ble High Court has observed that while passing the order on 8.2.2000, this Tribunal did not take into consideration letter dated 22/23.2.1993, which has bearing on the case. That order dated 8.2.2000 was set-aside with the consent of the parties "for re-consideration, taking into consideration the aforesaid letter...". There is no doubt that the

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Railway Board's circular dated 27.1.1993 has dispensed with
of
the holding of the written test and viva voce for the purpose
of promotion as a one measure. In our opinion, trade test
is also included in such selection procedure describe
as written test and viva voce. Therefore, we are not
convinced that the applicant was not eligible for getting
the benefit extended by the Railway Board by their circular
letter dated 27.1.1993 (Annexure A-10). We are also of
the view that the General Manager's letter dated 22/23.2.93
prescribing trade test is against the spirit and orders
of the Railway Board as contained in Railway Board's
circular dated 27.1.1993 (Annexure A-10). The subsequent
declaration by the Railway Board by their letter dated
30.3.1995 (Annexure R-VI) appears to be an attempt to
regularise the action taken by the Zonal Managers. It
confirms the instructions already given to zonal Railways
over phone. The subsequent circular of the Railway Board
dated 13.7.1995 clearly states that "it is further again
advised that henceforth no promotion of the Artisan Staff
against the restructured as well as normal vacancies
should be given without holding the trade test....". In
our opinion, this appears to be correct instruction as
the decision for holding trade test before promotion can
be only prospective in nature. Therefore, even the letter
dated 30.3.1995 on which reliance has been placed to
justify the order of General Manager dated 22/23.2.1993
(Annexure R-1) can also only be prospective in nature.
In the present case, the applicant was due for promotion
as Lineman Grade-I as per his seniority. It is claimed
that there were 44 sanctioned posts before restructuring
w.e.f. 1.3.1993. Against those posts, only 10 persons
were already working. There were seven extra posts

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sanctioned w.e.f. 1.3.1993 because of restructuring. Therefore, there were $44+7=51-10=41$ posts to be filled-in as on 1.3.1993. Admittedly, the name of the applicant was within this number in view of his revised seniority as Lineman Grade-II. It has been admitted that he was placed above Umesh Kumar Nema and below Virendra Kumar. Shri Virendra Kumar was shown at Sl.No.37 of the seniority list of Lineman Grade-II. Therefore, he was within the ~~zone~~ of consideration. As per order dated 26.7.1997, Jaipur Bench of this Tribunal in the case of Mohd. Idoo (Supra) has held that the employees of skilled category for promotion in terms of Railway Board's order dated 27.1.1993 were entitled for promotion or upgradation on re-structuring without holding the trade test. This judgement has been subsequently followed in the case of R.K. Mahawar (supra) by Jaipur Bench of this Tribunal as per order dated 1.6.2001. The respondents/railway authorities have also implemented the orders in respect of the applicants in those O.A.s. Respectfully following the decision of Jaipur Bench of this Tribunal in those cases and also for the reasons stated earlier, we are of the view that the applicant should be considered for promotion to the post of Lineman Grade-I in terms of the modified procedure as per Railway Board's circular dated 27.1.1993 within three months from the date of receipt of copy of this order. *con*

6. In the result, this application is allowed without any order as to costs.

(Signature)
(R.K.Upadhyaya)
Member (Admnv.)

(Signature)
(N.N.Singh)
Vice Chairman

'MA'

पूर्वांकन सं. ओ/व्या..... जबलपुर. दि.....
प्रतिलिपि अबो दित:-

(1) सरिन, उद्य व्यापालय पर प्राप्ति वाले जबलपुर
के काउसल के काउसल

(2) जारेक ली/रीमरी/इ

(3) रायक ली/रीमरी/इ

(4) वायल, लोपां, ज. ००८ ज. ००८

दूसरा एवं आवश्यक काउसल है

S. M. Aga / Adv.

S. P. Singh & Ade.

J. H. Patel

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