


NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

07.03.2007OA 568/2005

Present : Mr. C.B. Sharma, counsel for applicant.
None for respondents.

This case has been listed before the Deputy Registrar due to non-availability of Division Bench. Be listed before the Hon'ble Bench on 18.05.2007.

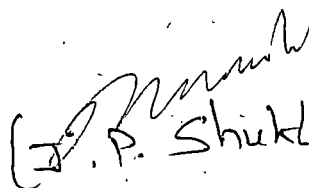

(GURMIT SINGH)
DEPUTY REGISTRAR


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18.5.2007

Mr. C.B. Sharma, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondent

Heard. The OA is disposed of by
a separate order, for the reasons recorded
therein


(J.P. Shukla)
M(A)


(Kuldip Singh)
V.C.

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.568/2005.

Jaipur, this the 18th day of May, 2007.

CORAM : Hon'ble Mr. Kuldip Singh, Vice Chairman.
Hon'ble Mr. J. P. Shukla, Administrative Member.

John K.K.
S/o Shri Kunchandry,
Aged about 52 years,
R/o 159 A, Railway Workshop Colony,
Kota Junction,
Kota.

... Applicant.

By Advocate : Mr. C. B. Sharma.

Vs.

1. Union of India through
General Manager,
Western Central Zone,
West Central Railway,
Jabalpur (MP).
2. Chief Works Manager
(Wagon & Repair)
West Central Railway,
Kota Division,
Kota.

... Respondents.

By Advocate : Shri Anupam Agarwal.

: O R D E R (ORAL) :

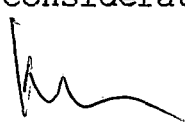
The applicant has filed this OA assailing order Annexure A/1 vide which he has been reverted from the post of SSE (Paint) in the pay scale of Rs.7450-11500/- to the post of SE (Paint) in the pay scale of Rs.6500-10500. The reason given in the impugned order is that one Shri Suresh Kumar Mehta had filed an OA before this Tribunal for expunging of his reverse ACRs. The said OA is stated to have been allowed and because of that the

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applicant had been reverted. In the impugned order itself a show cause notice was also given to the applicant that in case he wants to make any representation he may make the same within 15 days.

2. The facts in brief as alleged by the applicant are that the applicant was initially appointed as Khallasi on 13.1.1981. Thereafter he became Section Engineer w.e.f. 1.7.1996 and further his services were regularised as Section Engineer in the year 2002 and presently he is working as Senior Section Engineer (Paint), for which he was posted after selection. The applicant was also allowed regular promotion in the scale of Rs.7450-11500 on the post of Senior Section Engineer.

3. Further it is submitted that one Shri Suresh Kumar Mehta had approached this Tribunal by filing OA No.346/2003 against adverse entries in his ACRs. The said OA is stated to have been decided on 3.2.2005 and after the decision of the Tribunal the respondents taking into consideration the order passed by the Tribunal decided to ~~undo~~ regular promotion to be allowed to the applicant and decided to allow promotion to Shri Sunil Kumar Mehta as SSE. Hence, the impugned order was issued. Though, in the impugned order a clause pertaining to the show cause notice was also stated but it cannot be accepted as a show cause notice since the respondents had also taken into consideration the



reversion of the applicant as SE. It is further stated that the applicant is due eligible for promotion to the vacant post of SSE. So it is stated that the respondents cannot pass the reversion order and cannot take up the benefit which has occurred to the applicant during the pendency of the matter filed by Shri Mehta. So it is stated that the impugned order be quashed and the applicant should be treated as SSE.


4. Respondents have contested the OA. The respondents admit that the applicant was posted to the post of SSE but the post being a non selection post he is senior most amongst the SE and entitled to hold that post and since Shri Mehta was found unsuitable so the applicant being next person in the seniority was adjudged as suitable candidate. So he was placed in the select list and when the OA of Shri Mehta was allowed by the Tribunal his disqualification regarding non suitability had overcome and he became entitled.


5. We have heard the Learned Counsel for the parties and gone through the material placed on record. At the outset, we may mention that the applicant is still working on the post of SSE and it is stated at the Bar by the parties counsel that later on Shri Mehta had taken voluntary retirement. Besides it, Learned Counsel for the applicant submitted that since a decision had already been taken vide impugned order ^{purporting to} reverting the applicant.

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and show cause notice is just a formality. However, from the perusal of the impugned order we find that it simply says that there was a proposal to revert the applicant and that is why a show cause notice had been issued. But dwelling on the subsequent facts that Shri Mehta had also retired and it is case of the respondents itself that the post of SSE is a non selection post and the applicant was promoted to the said post because at that time Shri Mehta was ^{adjudged} not suitable to hold the post because of adverse entry in his ACRs. Now since Shri Mehta has taken voluntary retirement and again the applicant is senior most person to hold the said post and he had already been working on the said post, so reverting him would just be a formality because ultimately it is he who is entitled to the said post and it would be a futile exercise to revert him and again post him as SE. So we find that there are sufficient merits in the OA and the same deserves to be allowed as the applicant is the senior most person now and entitled to hold the post of SSE.

6. Accordingly, the impugned order is quashed. Respondents are directed to allow the applicant to continue to work on the post of SSE. No order as to costs.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(KULDIP SINGH)
VICE CHAIRMAN