

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 22nd day of February, 2010

OA No.333/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Nand Lal
s/o Shri Chaturbhuj,
r/o HS Colony,
Julmi Road, Ramaganj Mandi,
Kota, presently working as PWS
Ramganj Mandi, Kota.

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. The Union of India through General Manager, West Central Railway, Jabalpur, M.P.
2. The Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Sr. Divisional Personal Officer (Establishment/Engineering), West Central Railway, Kota Division, Kota.
4. Sh. Vinay Pratap, presently working as JE-II, DRM, Kota.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER (ORAL)

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

- (i) The original application preferred by the applicant may kindly be allowed and the order annexure A/3 and A/4 may kindly be quash and set set aside. Respondents may be directed to promote the applicant on the post of JE-II after assigning him the correct seniority.
- (ii) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of applicant.
- (iii) Cost of the original application be awarded in favour of humble applicant.

As can be seen from the prayer clause, the grievance of the applicant is regarding the impugned seniority list dated 27.5.2005 in the cadre of P.Way Supervisor (PWS) whereby the date of appointment of the applicant in the said cadre has been shown as 18.3.99/21.11.2002 and order dated 11.2.2005 whereby panel was prepared and promotion orders were issued on that date whereby name of respondent No.4 Shri Vinay Pratap Singh find mention at Sl.No.14.

2. Brief facts, so far as relevant for the purpose of deciding the aforesaid issue, are that the applicant was promoted as Mate vide order dated 18/19.12.1996 vide Ann.A/5. Subsequently, the respondents conducted departmental examination for promotion to the post of PWS. For that purpose, eligibility list dated 22.9.1997 was prepared for appearing in the written examination. However,

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the written examination was only conducted on 18.10.1997 and result was declared on 28.11.1997. The applicant was declared successful in the examination and his name appeared at Sl.No.25 as can be seen from Ann.A/6. Since the applicant has not put in two years of service in the feeder grade, as such, he was provisionally promoted vide order dated 5.3.1999 (Ann.R/1). The grievance of the applicant is that his seniority should have been determined from the date when he has qualified the examination and not from the date of appointment in the cadre of PWS w.e.f. 18.3.1999 as done by the respondents vide Ann.A/3. Further grievance of the applicant is that in case the applicant is assigned seniority w.e.f. declaration of result i.e. 28.11.1997, he is senior to respondent No.4 and consequently, he is entitled for promotion to the post of JE-II under modified restructuring scheme.

3. Notice of this application was given to the respondents. Respondents have filed reply. The facts, as stated above, have not been disputed by the respondents. The stand taken by the respondents is that applicant was provisionally promoted vide order dated 5.3.1999 (Ann.R/1) when the applicant has completed two years of service in the grade of Rs. 3050-4590 which was mandatory condition in terms of rules. It is further stated that thereafter the applicant was asked to undergo training during the period 9.4.2002 to 21.5.2001 at Regional Training Institute, Udaipur. The applicant was declared fail in it and, therefore, he was reverted to the original post of Gangmate in the scale of Rs. 3050-4590. Copy of the show-cause notice dated 8.1.2002 whereby the applicant was granted

opportunity that as to why he should not be reverted to the post of Gangmate and final order dated 21.1.2002 pursuant to the show-cause notice has been placed on record as Ann.R/2. The respondents have further stated that the applicant was again sent for training from 27.6.2002 to 19.8.2002 which training he qualified and subsequently vide order dated 21.11.2002 the applicant was regularly promoted as PWS in the scale of Rs. 4500-7000 (Ann.R/3). According to the official respondents, respondent No.4 Shri Vinay Pratap Singh who was directly recruited as PWS on 18.7.1997 and has qualified the training was regularly appointed on 8.5.98, whereas the applicant was regularly appointed in the said capacity vide order dated 21.11.2002, as such, the applicant cannot be said senior to respondent No.4. On the basis of these averments, the respondents have defended granting of higher scale to respondent No.4 on the post of JE-II on account of modified selection scheme pursuant to restructuring of the cadre. Thus, according to respondents, the applicant has got no case whatsoever.

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

5. The rule governing promotion of Group-C staff is contained under Chapter-2 Section-B of the IREM, Vol.II, 1989 Edition. Perusal of the relevant rules i.e. Rule 214 which deal with promotion in respect of non-selection posts and Rule 215 which deal with promotion to selection posts stipulate that staff in immediately lower grade with a minimum of two years of service in the grade will only be eligible for promotion. The rule further stipulates that condition of two years

service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. Admittedly, the applicant was promoted as Mate in the scale of Rs. 950-1500 subsequently revised to Rs. 3050-4590 vide order dated 18/19.12.1996 (Ann.A/5). The applicant has not completed two years of service when result was declared on 28.11.1997, as such, in terms of the provisions contained in the relevant rules, the applicant could not have been promoted w.e.f. 28.11.1997. The applicant was promoted as PWS after completion of two years of service vide order dated 5.3.1999 (Ann.R/1), as such, he cannot claim seniority from a date prior to his appointment, as contended by him.

6. That apart, the applicant was promoted PWS vide order dated 5.3.1999 and he has to undergo training. It is only after completion of training that the official has to be given regular appointment and it is the said date, after completion of training, which is relevant for determination of seniority. In the instant case, provisional appointment given to the applicant vide Ann.R/1 was cancelled when he was reverted to the lower post of Gangmate on account of failure in the prescribed training. He was subsequently promoted as Gangmate vide order dated 21.11.2002 (Ann.R/3) when ^{he} has qualified the prescribed training. Thus, according to us, the respondents have committed no infirmity whereby the date of promotion of the applicant on the post of PWS vide Ann.A/3 has been mentioned as 18.3.99/21.11.2002. On the contrary, respondent No.4 was appointed on the aforesaid post of PWS after completion of training on 8.5.1998. Thus, admittedly, respondent No.4 was

senior to the applicant who was regularly appointed vide order dated 21.11.2002. Thus, respondent No.4 being senior to the applicant, he was rightly promoted to the post of JE-II consequent upon introduction of cadre restructuring wherein modified selection procedure was adopted to prepare the panel and to grant promotion based on that panel. Thus, the applicant has not made out any case for grant of relief.

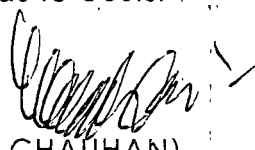
7. Yet for another reason the applicant is not entitled to any relief. Admittedly, the applicant was promoted as PWS vide order dated 5.3.1999 (Ann.R/1). Subsequently he was reverted as he did not qualify the training and further he was granted regular promotion vide order dated 21.12.2002 when he qualified the training. The applicant has not challenged validity of this promotion orders. The seniority has to be determined on the basis of promotion order. Since the applicant has not challenged the basic order of promotion, as such, he cannot be granted consequential relief of seniority based on such promotion order. Even on this ground, the applicant is not entitled to any relief.

8. Thus, viewing the matter from any angle, we find no merit in this OA, which is accordingly dismissed with no order as to costs.


(B.L.KHATRI)

Admv. Member

R/


(M.L.CHAUHAN)

Judl. Member