

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

19.09.2011

OA No. 253/2008 with MA Nos. 209/2008 & 141/2011

Mr. Saugath Roy, counsel for applicant.  
Mr. Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter for further hearing on 21.09.2011 as part heard.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*K. S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

*[Signature]*

21/09/2011

OA 253/2008 with MA Nos. 209/2008 & 141/2011

Dr. Saugath Roy, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for respondents.

Heard learned counsel for the applicant assisted by the applicant present in person, as well as the learned counsel for the respondents.

The O.A. and MAs are disposed of by a separate order on the separate-sheets for the reasons recorded therein.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

*K. S. Rathore*  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 21<sup>st</sup> day of September, 2011

**Original Application No.253/2008**

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)**  
**HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

V.P.Mishra  
s/o Late Shri R.M.Mishra,  
retired Senior Mechanical Engineer (Safety),  
Western Railway, Church Gate,  
Mumbai r/o Plot No.118, Laxman Path,  
Tagore Nagar, Behind Asopa Hospital,  
Ajmer Road, Jaipur.

.. Applicant

(By Advocate: Dr.Saugath Roy along with applicant in person)

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai
2. Shri M.P.Vasudeva working as General Manager, RITES Ltd., RITES Bhawan-1, Sector 29, Gurgaon, Haryana.
3. Shri Saiyindra Mohan Sharma, Chief Rolling Stock Engineer, North Frontier Railway, Central Railway Headquarter Office, Mumbai VT CSTM, Mumbai.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER (ORAL)

The Central Administrative Tribunal, Jodhpur Bench decided TA No. 1026/86 vide order dated 15<sup>th</sup> February, 1991 which was filed by the applicant by way of Civil Suit in the Court of Munsif (East) Ajmer and the relief claimed by the applicant were as under:-

"i) a decree for declaration that the orders dated 25.11.82 and 2.5.84 passed by the General Manager order dated 25.11.84 issued under the designation of the Additional Chief Mechanical Engineer (Workshop), Ajmer's letter dated 6.12.82 are wrong, illegal, void and nonest because the plaintiff is selected Class II Asstt. Mechanical Engineer of 1975 and he holds the seniority from 1975 and is senior to those who have been promoted after his promotion in Class-II and he is also entitled to continue as a Class II being selected.

ii) A decree for declaration that the plaintiff is holder of the post of A.M.E./A.W.M. (Class II) grade Rs. 650-1200 (R) on regular basis from 6.10.1975 and has a right to be promoted in Sr. Scale Grade Rs. 1100-1600 (R) (Class-I) post and consequential seniority and confirmation in Scale Rs. 650-1200 (R).

iii) A decree for permanent mandatory injunction order restraining the defendants, their officers, employees, servants, agents, assignees etc. from reverting the plaintiff from his present post of Class II (A.M.E./A.W.M.) etc. Scale Rs. 650-1200 (R) and cancelled or removal the name of the plaintiff from the shadow panel of Class II i.e. Selection list of 1975 and asking the plaintiff to re-appear in the selection of 25% vacancies of A.M.E./A.W.M. (L.D.C.) examination to be held on 12 & 13 March, 1985 and thereafter.

iv) A decree for injunction that the plaintiff should not be transferred out of Ajmer to put him a loss of Rs. 100/- per month of special pay which he is getting at present.



v) A decree for permanent mandatory injunction order commanding defendants and its officers to give effect to the declaration decree detailed above.

vi) Any other relief which the Hon'ble Court thinks just and proper and under 7 rule 7 C.P.C."

The Jodhpur Bench of this Tribunal decided the aforesaid TA in the following terms:-

"We, therefore, deem it proper to allow this Application only to the extent that the applicant shall not be asked to appear again in the examination and that he shall not be reverted back to Class III post on the ground that he has not appeared in the test. The Application is, therefore, allowed to this extent. The rest of the pleas have been dropped by the learned counsel for the applicant and, if so advised, he can file a separate Application for them. No order as to costs."

2. Thereafter another OA No.122/1991 was preferred by the applicant before this Bench of the Tribunal submitting therein that vide order dated 15.2.1991, Jodhpur Bench directed that the applicant shall not be reverted from Class-II post on which he had been working since 1975 and he will not be asked to appear again in the selection test for appointment to that post. It is further submitted before the Tribunal that the applicant had submitted a representation for assigning him seniority in Class II on 28.2.1991 and no decision has been taken on his representation before the applicant filed OA No.122/91. Therefore, this Tribunal directed the respondents to decide the representation of the applicant dated 28.2.1991 within a period of 3 months and if the applicant is aggrieved



by the order of the respondents on the representation he will be free to file a fresh OA.

3. The applicant further filed OA No.41/1994 before this Tribunal praying that respondents may be directed to consider the applicant as having been regularly promoted in substantive capacity to Class-II post (Group-B post) w.e.f. 24.9.1975 and that he should be declared to have been promoted on regular basis in substantive capacity in senior scale of Class-I. (Group-A) w.e.f. 24.7.1982. He has further prayed that the respondents may be directed to pay him all the arrears of difference of pay to which he should be entitled on this basis after making fixation in the pay scale revised from time to time, in senior scale of Group-A, with all consequential benefits.

4. The OA No.41/1994 was decided by this Tribunal on 25.4.1997 observing as under:-

"16. Since, however, the applicant has held the Group-B post of Assistant Mechanical Engineer for a pretty long time and by the Tribunal's order Ann.A3 dated 15.2.1991 he has been treated virtually as a regular appointee to the said post (without of course assignment of any seniority to him), it would be unjust and iniquitous that he should not be considered for promotion to Group-A at all. The total length of service of the applicant in the Group-B post, reckoned from 1975, would be about 22 years as of today. In the circumstances of the present case, we, therefore, deem it appropriate to mould the relief claimed by the applicant and direct that if persons who have put in the same length of service as the applicant in the Group-B post of Assistant Mechanical Engineer or lesser length of service, on a regular basis,



have been considered for promotion and promoted to Group-A post by the respondents in accordance with the rules governing such promotion and if he is found fit he shall be promoted to Group-A post on adhoc basis, depending on the availability of vacancy without disturbing the seniority of any of the other incumbents of the Group-B or Group-A posts. Such grant of adhoc promotion to the applicant shall also not entitle him to claim any seniority over any person appointed on a regular basis to a Group-A post before or after the applicant's appointment thereto on adhoc basis and he will only be entitled to pay and allowances of Group-A post from the date he assumes charge thereof after his appointment on adhoc basis depending upon the availability of vacancy in Group-A post."

5. Aggrieved and dis-satisfied with the order dated 25.4.1997 passed by this Tribunal in OA No.41/1994, the applicant preferred Writ Petition before the Hon'ble High Court which was registered as D.B. Civil Writ Petition No.1889/1998 and the Division Bench of the High Court after having considered the submissions made on behalf of the respective parties vide its judgment dated 25.1.2006 observed as under:-

"Admittedly the promotion which was given in 1975 on officiating basis, he never challenged that ad-hoc promotion till 1985. In 1985 first time he challenged that ad hoc promotion, when he was asked to appear in the test for regular promotion on the post of Assistant Mechanical Engineer i.e. Group B post. That order was stayed and the Tribunal finally gave the direction that since he was working for a long time i.e. 16 years in Group 'B' post, he should not be asked to appear again in the test for promotion on the post of Assistant Mechanical Engineer nor he should be reverted to class-III post but nowhere the Tribunal said that his promotion be treated as promotion on regular basis."

6. After making aforesaid observation, the Hon'ble High Court found no justification to give direction to promote the



applicant on Group-A post when the ad hoc promotion was continued on Group-B post and having considered the fact that the applicant was all through on ad hoc basis on Group-B post as well as Group A post, therefore, observed that if the applicant gives representation, the Hon'ble Court left it to the administration that if some similarly situated persons are given any benefit in such case, extend the same benefit to the applicant also.

7. This observations of the Hon'ble High Court gave rise to a fresh cause to the applicant to represent before the respondent and vide Ann.A/10 dated 24.3.2006 the applicant represented before the Chairman, Railway Board, New Delhi for regularization of 42 years of service (31 years in gazetted and rest in non-gazetted) with further promotion in High grade and consequential pensionary benefits on superannuation. The said representation filed by the applicant has been rejected vide order dated 21.9.2006 (Ann.A/1). While rejecting the representation, it is made clear in the impugned order that the applicant was not empanelled in Group-B selection for the post of AME in 1975. However, the applicant was promoted as AME on ad hoc basis on 24.9.75 due to exigencies of service. It is also made clear in the order impugned that in compliance of the order dated 15.2.1991 of CAT-Jodhpur Bench in OA No.122/91, the applicant was allowed to continue in Group-B

post on adhoc basis (without being assigned any seniority in Group-B) and was not reverted to Group-C. Subsequently, in compliance with the Hon'ble Tribunal's order dated 25.4.97, the applicant was promoted to Senior Scale on adhoc basis. Thus, retention of the applicant in Group-B post on adhoc basis and further adhoc promotion to Senior Scale have been done in compliance with the orders of the Hon'ble Tribunal. Further, the regular promotion is granted only to the officers who are empanelled in Group-B selections/LDCE and further regular promotion to Group-A is granted only to the officers appointed in Group-B on regular basis. Therefore, case of the applicant cannot be compared with other cases and in view of above provisions, the Railway Board has rejected the request made by the applicant through his representation dated 24.3.2006.

8. The applicant also preferred SLP (Civil) No.9602/2006 before the Hon'ble Supreme Court and the same was dismissed vide order dated 15.2.2008 observing that representation of the petitioner has been rejected vide order dated 21.9.2006 in that view of the matter, the Hon'ble Supreme Court was of the opinion that in the event the petitioner is aggrieved by the said order, he may take recourse to such remedy as is open to him under law. With these observations, the SLP was dismissed. After dismissal of





the SLP, the present OA is preferred by the applicant to challenge the impugned order dated 21.9.2006 (Ann.A/1).

9. Having heard the applicant present in person and the learned counsel appearing for the respondents and upon careful perusal of the various orders passed by the Hon'ble Supreme Court, High Court and Jodhpur Bench and Jaipur Bench of this Tribunal and having considered the objections raised by the respondents that this OA is not maintainable on account of limitation, as the representation of the applicant was rejected on 21.9.2006 and copy of the same was sent to the applicant which was received by the applicant on 22.9.2006 but the applicant has not chosen to challenge this rejection order well within time and preferred this OA after a lapse of about 2 years. Thus, in view of the settled proposition of law, this OA deserves to be dismissed on the point of delay and laches and submitted acknowledgement receipt as Ann.MA/R1 to show that the order dated 21.9.2006 was served on the applicant on the next day i.e. on 22.9.2006.

10. It is not disputed that the applicant retired on attaining the age of superannuation and at the time of filing Civil Suit (TA No.1026/86 before the CAT-Jodhpur Bench), the applicant only prayed that since he is working as Class-II post of AME, he should not be reverted as he is continued on ad-hoc basis from 1975 to 1985. The applicant has not chosen to redress his



grievance for seeking regularization on the post which he was holding at the relevant time. He has only challenged the action of the respondents when he received a communication stating that he was again required to appear in the selection to be held in March, 1985 and aggrieved by the said communication, he has filed Civil Suit in the Court of Munsif Magistrate, Ajmer who granted interim direction to maintain status-quo and on account of interim direction the applicant continued on ad hoc basis.

11. In OA No.41//1994 filed before this Bench, this Tribunal has categorically held that such grant of adhoc promotion to the applicant shall not entitled him to claim any seniority over any person appointed on a regular basis to a Group-A post from the date he assumed charge thereof after his appointment on adhoc basis depending upon the availability of vacancy in Group-A post.

12. The applicant tried to re-open the matter pursuant to the direction issued by the Division Bench of the Hon'ble High Court wherein the Hon'ble High Court observed that if the petitioner gives representation, we left it to the administration that if some similarly situated persons are given any benefit in such case, extend the same benefit to him also. Pursuant to the direction issued by the High Court, the applicant preferred



representation dated 24.3.2006 and the same has been rejected by speaking order dated 21.9.2006 (Ann.A/1).

13. In our considered view, as discussed hereinabove, no illegality was committed by the respondents while rejecting the representation vide impugned order dated 21.9.2006 and therefore, the impugned order required no interference. Consequently, the OA being devoid of merit fails and is hereby dismissed with no order as to costs.

14. In view of the order passed in the OA, no order is required to be passed in MA No.209/2008 & 141/2011 which stand disposed of accordingly.

*Anil Kumar*  
(ANIL KUMAR)  
Admv. Member

*K. S. Rathore*  
(JUSTICE K.S.RATHORE)  
Judl. Member

R/