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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

02.08.2012

MA 307/2011 & 308/2011 (OA No. 399/2010) with MA
239/2010

Mr. Sajid Ali, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

MA 307/2011 & MA 308/2011


These MAs have been filed for restoration of the OA as well MA. These MAs are allowed. The OA as well as MA are restored to its original number and position.


The MAs stand disposed of accordingly.

OA 399/2010 with MA 239/2010

Heard learned counsel for the parties.

The OA as well as MA are disposed of by a separate order.


(Anil Kumar)
Member (A)


(Justice K.S. Rathore)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 2nd day of August, 2012

Original Application No.399/2010

CORAM:

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

Bhag Chand Sharma
s/o Shri Mool Chand Sharma,
r/o Q.No. A-2, Railway Loco Colony,
Jaipur, presently posted as
Khalasi in C.E. Office,
N.W.R., Jaipur

.. Applicant

(By Advocate: Shri Sajid Ali)

Versus

1. Union of India
through General Manager,
North Western Railway,
Hasanpura Road,
Jaipur.
2. The Divisional Railway Manager,
Near Railway Station,
Jaipur.
3. Divisional Railway Manager,
South Central Railway,
Regional Branch,
5th Floor, Sanchalan Bhawan,
Secundarabad.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER (ORAL)

In this OA, the applicant has filed Misc. Application No. 239/2010 for condonation of delay in filing the OA. We have considered the averments made and the reply filed in this MA. In the facts and circumstances of the case, we deem proper to condone the delay in filing the OA. MA No. 239/2010 stands disposed of accordingly.

2. Brief facts of the case are that the applicant was initially appointed as substitute Khalasi in the scale of Rs. 750-940 on 10.6.1996 in T.R.S. Organisation, South Central Railway. Thereafter he was transferred from South Central Railway (SCR) to North Western Railway (NWR) on his own request on the post of Khalasi vide order dated 7.4.1997 and he joined the NWR on 11.4.1997. The lien of the applicant was maintained in SCR even after transfer of the applicant from SCR to NWR.

3. The controversy arose when certain junior persons were promoted in the Electric Wing of T.R.S. Organization of S.C. Division in the grade of Rs. 3050-4590 as Electric Fitter vide order dated 17.12.1999. Consequent upon this, the applicant submitted representation to the respondents for not calling him to appear in the Trade Test as his lien was with SCR even after his transfer from SCR to NWR. Thereafter, the applicant was allowed to appear in the trade test held subsequently vide letter dated 12.7.2002 and he was declared pass. Again the applicant was directed to appear in the



trade test for second time vide letter dated 24.6.2004 and the said test was also successfully passed by the applicant.

4. In the meantime, a seniority list came to be published by the respondents on 8.4.2004 wherein name of the applicant has been shown in the seniority list of Peon grade Rs. 2550-3200 as General Candidate against which the applicant submitted his objection stating that his name must have been shown in the cadre of Khalasi and not in the cadre of Peon, inasmuch as, he was holding the post of Khalasi since his initial appointment. Further, it was objected that he was the candidate of the O.B.C. category and not of the General Category, which must be rectified in the record.

5. Vide letter dated 1.4.2002 the SCR has admitted the fact that the applicant became eligible to be considered for promotion as Artisan Sk. Grade III in the scale of Rs. 3050-4590 on proforma basis w.e.f. 28.12.1999, the date on which his juniors were promoted in Secunderabad Division and DRM, SCR has made request to the DRM, NWR, Jaipur to consider the applicant for promotion to the post of Artisan Sk. Grade-III in scale of Rs. 3050-4590 w.e.f. 28.12.1999 on proforma basis.

6. Since the official respondents have not responded the representation filed by the applicant and not considered the case of the applicant, as admitted by the SCR, and on being aggrieved by the inaction/omission of the respondents, the applicant has



preferred this OA on the ground that the applicant has passed the trade test twice as required and sought by the department itself, as per law, then not providing the promotion without having any justified reason is contrary to the service jurisprudence. Even otherwise, the impugned order is not sustainable in the eyes of law as the lien of the applicant was maintained in the parent department while transferring him to NWR, thus the applicant is entitled to get the promotion on proforma basis when the juniors of the applicant were promoted. Therefore, by way of filing this OA, the applicant has prayed for order or direction to quash and set-aside the order/information dated 17.11.2005 (Ann.A/1) whereby official respondents have denied promotion and further prayed that appropriate order or direction be issued to be respondents to promote the applicant in Group-C staff in the pay scale of Rs. 3050-4590 w.e.f. 28.12.199 i.e. the date on which juniors to the applicant were promoted with all consequential benefits including seniority, arrears of pay etc.


7. The learned counsel appearing for the respondents in response to the submissions made on behalf of the applicant submitted that the applicant preferred OA No.269/2006 and the same was dismissed as withdrawn with liberty to file substantive OA. It is further submitted that the earlier OA has been withdrawn by the applicant with liberty reserve to him to file substantive OA thereby impleading SCR as one of the party-respondents as the SCR has not considered claim of the applicant despite of the fact that at the



relevant time, the applicant's lien was in the said railway whereas his junior persons were granted promotion in the higher scale.

8. The learned counsel appearing for the respondents referred to Rule 240 of the IREC Vol.I and submitted that a railway servant who acquired lien on a post retains the lien on that post while performing the duties on that post provided that no lien of railway servant shall be retained where he has been proceeded on immediate absorption basis to a post or service outside his service/cadre/post in the government from the date of absorption. As such, his lien stood transferred to the new post from the date on which he was relieved from the duties of the earlier post. After referring Rule 240 of the IREC Vol.I, the learned counsel submitted that the applicant is not entitled for proforma promotion on the basis of his erstwhile junior in the TRS Organisation.

9. In response to the submissions made on behalf of the applicant with regard to letter dated 1.4.2002 (Ann.A/11) wherein by this letter the Sr. D.P.O., SCR, Secunderabad has requested the Chief Personnel Officer, NWR, Jaipur to consider the applicant for promotion to the post of Artisan SK-III in the scale Rs. 3050-4590 w.e.f. 28.12.99, the date on which his immediate junior on Secunderabad division is promoted after passing the requisite trade test, if he is possessing the S.S.C. qualification, the respondents referred to letter dated 16.6.2011 (Ann.R/1) whereby the letter dated 1.4.2002 has been withdrawn.



10. Having considered the rival submissions of the respective parties and upon careful perusal of the relevant provisions as well as the material available on record, we are satisfied with the submissions made on behalf of the applicant that at the relevant point of time when the applicant was transferred to NWR, his lien was maintained at SCR and case of promotion of the applicant ought to have been considered for the post of Artisan SK-III in the scale of Rs. 3050-4590 w.e.f. 29.12.1999, the date on which his immediate junior was promoted, which is also admitted by the SCR vide letter dated 1.4.2002 issued by the Sr. DPO, SCR that the applicant's case deserves to be considered for promotion. Although after a lapse of about more than 9 years, the aforesaid letter has been withdrawn, which is of no consequence because at the relevant point of time the applicant was entitled to be considered for promotion and that too by the SCR.

11. The earlier OA was withdrawn for the reasons that the applicant in the earlier OA has not impleaded SCR as party-respondent, therefore, no direction could have been given to the SCR. In view of this fact, the applicant was allowed to withdraw his earlier OA with liberty to file substantive OA and now in the present OA, the applicant has impleaded SCR as respondent No.3. Thus, upon careful consideration of the case of the applicant, we are of the view that the applicant is able to make out a case for interference by this Tribunal and in view of this fact, we deem it



proper to direct the SCR, Secunderabad to consider case of the applicant for promotion to the post of Artisan SK-III in the scale of Rs. 3050-4590 w.e.f. 28.12.1999 as it is not disputed that the applicant has passed the trade test and having requisite eligibility for promotion to the post of Artisan SK-III. The respondents are further directed to undertake the exercise to promote the applicant to the post of Artisan SK-III on proforma basis expeditiously but, in any case, not later than 4 months from the date of passing of this Order.

12. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

J. S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/