

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDERS OF THE TRIBUNAL

06/05/2014

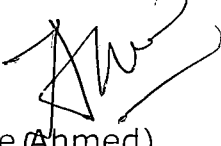
O.A. No.224/2013 with M.A. No. 291/00241/2014

Mr. C.B. Sharma counsel for the applicant.

Mr. Anupam Agarwal counsel for the respondents.

Heard the learned counsel for the parties.

Order Reserved.




(Jasmine Ahmed)
Member (J)



(Anil Kumar)
Member (A)

22.09.5.2014

Order pronounced today in the open
Court by the aforesaid Bench


09/5/14

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 224/2013

Order reserved on 6.5.2014

Date of Order: 9.5.2014

CORAM

**HON'BLE MR.ANI KUMAR,ADMINISTRATIVE MEMBER
HON'BLE MRS. JASMINE AHMED, JUDICIAL MEMBER**

Panchu Ram Bairwa son of Shri Narain, aged about 53 years, resident of Swami Narayan Bhawan, Puja Marg, Vijay Pathik Nagar, Dhollabhatta, Ajmer and presently holding the post of Junior Engineer Grade-I, after reversion from the post of Section engineer, Office of the Chief Works Manager (Loco), North Western Railway, Ajmer.

.....Applicant

(By Mr. C.B.Sharma, Counsel for the applicant)

VERSUS

1. Union of India, through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.

2. Chief Works Manager (Loco), North Western Railway, Ajmer Division, Ajmer.

3. Deputy Chief Mechanical Engineer (Loco), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Mr. Anupam Agarawal, Counsel for the respondents)

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ORDER

PER HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

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

- (i) That the entire record relating to the case be called for and after perusing the same, respondents may be directed to allow the applicant to hold the post of Section Engineer pay band Rs.9300-34800 with grade pay Rs.4600 with due benefits by quashing orders dated 21.5.2012 and 15.5.2012 (Annexure A/1 and A/2) with all consequential benefits.
- (ii) That respondent No.2 be further directed to hold good panel dated 9.10.2012 (Annexure A/4) by quashing letter dated 30.11.2006 (Annexure A/6) with the show cause notices dated 18.4.2007 and 4.5.2007 (Annexure A/7 & A/8) and to restore the position of the applicant on the post of Section Engineer with all consequential benefits.
- (iii) That respondents be further directed to treat the applicant as suitable taking into consideration of 8 years service as Section Engineer by quashing order dated 20.12.2012(Annexure A/14) and to allow proforma promotion from the date junior so allowed without applying bench mark by quashing letter dated 13.2.2013 (Annexure A/16) with all consequential benefits by protecting his pay and allowances since 2003.
- (iv) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstance of the case.
- (v) That the costs of this application may be awarded.

The brief facts of the case as stated by the learned counsel for applicant are that the applicant was initially appointed as skilled fitter. That the applicant belongs to SC category. He became due for promotion to the cadre of

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Section Engineer. He was allowed ad hoc promotion to the post of Section Engineer on the basis of seniority vide order dated 2.4.2003. Subsequently, the respondent No.2 placed the applicant on the panel against general category and the benefit of promotion was given w.e.f. 1.11.2003 vide order dated 19.10.2004 (Annexure A/4).

2. Subsequently, some of the employees questioned the selection under modified procedure on the ground of reservation and also utilization of point No.8 of roster point for ST category whereas applicant allowed promotion against the general category.

3. In the meantime the respondents further promoted certain junior persons to the applicant to the post of Section Engineer vide order dated 27.2.2007 (Annexure A/5).

4. The learned counsel for the applicant further submitted that respondent No.1 directed the respondent No.2 vide letter dated 30.11.2006 to take action for filling up the shortfall of point No.8. In pursuance of these directions, the respondent No.2 served a show cause notice dated 18.4.2007 to the effect that the decision has been taken to cancel modified panel and further to fill up shortfall of point

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No.8 of the roster in respect of ST candidate. A similar show cause notice was also issued on 4.5.2007. (Annexure A/7 and A/8).

5. That the applicant submitted effective reply on 21.5.2007 to the show cause notice dated 4.5.2007 stating therein that applicant has been rightly promoted on the post of Section Engineer(Annexure-A/9).

6. The applicant also filed an OA No.176/2007 against the letter dated 30.11.2006, show cause notices dated 18.4.2007 and dated 4.5.2007. The Tribunal vide order dated 28.9.2011 disposed of the OA with the direction to the applicant to prefer representation but applicant could not prefer the representation due to correct position of the matter. Thereafter respondent No.2 issued order dated 15.5.2012 and cancelled the panel dated 29.10.2004 and reverted the applicant to the post of Junior Engineer Grade-I.

7. The learned counsel for the applicant argued that point No.8 for ST category was already filled in the year 1997 by promoting one Shri Ram Kumar Meena and further replaced by Shri Lakhan Singh and thereafter Shri Rameshwar Prasad Meena.

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8. Subsequently, the respondents issued notification dated 29.8.2012 and 7.12.2012 and placed the name of the applicant in the eligibility list against vacant posts and forced the applicant to go through suitability test in spite of the fact that the applicant was holding the post of Section Engineer and certain junior persons to the applicant were also promoted as Section Engineer.

9. The respondents without any base declared the applicant as unsuitable vide order dated 20.12.2012(Annexure-A/14).

10. The learned counsel for the applicant submitted that from the year 2004 to 2012 persons junior to the applicant were promoted to the post of Section Engineer but the applicant's case was not considered because he was already holding post of Section engineer. However, the applicant made request in January, 2013 that he is entitled to promotion at least from the date from which his juniors were promoted and therefore, his ACR should be considered only up to that point of time when his next junior was promoted but the respondents to defeat the claim of applicant declared him as unsuitable vide order dated 13.2.2013(Annexure A/16). According to the learned counsel for the applicant his juniors were promoted in the

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year 2007 and at that time no bench mark was applicable and also suitability test not in force. The respondents denied promotion to the applicant taking into consideration of the position of 2012 in stead of 2007.

11. The learned counsel for the applicant submitted that he has been wrongly reverted from the post of Section Engineer after serving for 8 years as Section Engineer on the wrong conclusion that point No.8 for ST category has not been operated. Therefore, he argued that the OA be allowed.

12. The respondents have filed the reply. In their reply the respondents have stated that the promotion of the applicant was found to be erroneous, therefore, the applicant was served with the show cause notice dated 4.5.2007. The applicant challenged the same before the Tribunal in OA No.176/2007 wherein the Tribunal vide its order dated 28.9.2011(Annexure-A/11) directed the applicant to submit representation within a period of 15 days from the receipt of the copy of the order. It was made clear by the Tribunal that in case the applicant failed to make any representation within the specified time then the interim relief granted by the Tribunal shall stand vacated automatically. The applicant failed to submit any

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representation in pursuance thereof. As such his name was deleted from the panel and he was reverted vide order dated 15.5.2012 and posted as Junior Engineer Grade-I.(Annexure A/1).

13. The respondents further stated in their reply that the applicant has failed to find fault in the alleged impugned order in as much as he has failed to demonstrate any illegality with regard to assessment of vacancy.

14. Since the applicant failed to submit any representation to the authorities concerned even in the pursuance to the direction of the Tribunal, he could not have any grievance to be redressed against these orders before the Tribunal.

15. The respondents have further stated that his proforma promotion at par with his juniors is already under consideration and, therefore, OA has no merit and it should be dismissed.

16. The learned counsel for the respondents argued that in the year 1998 the cadre strength of Section Engineer category was 8 and the roster point at No.8 was reserved for ST candidate. Shri Ram Kumar Meena was promoted as Section Engineer against the general vacancy on

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23.12.1997 thus the roster point 8 was for ST vacancy. Therefore, it was directed to complete the shortfall. The applicant was promoted against the roster point No.8 and therefore, his promotion became erroneous. The same was corrected by the alleged impugned order (Annexure A/1). Before reverting the applicant a show cause notice was issued to the applicant to comply with the principle of natural justice, however, he failed to submit any representation even after direction of the Tribunal. Therefore, he can not raise the same grievance now before the Tribunal. In fact any request for relief is now barred by principle of waiver and principle of stopple.

17. His request for promotion at par with his junior is already under consideration and would be accorded as per rules, therefore, the present OA has no merit and it should be dismissed with costs.

18. Heard the learned counsel for parties and perused the documents on record. The respondents vide order dated 4.4.2014 were directed to produce the following information:-

1. Total cadre strength of Section Engineer as on 1.11.2003.
2. Total number of working strength of Section Engineer on 1.11.2003.

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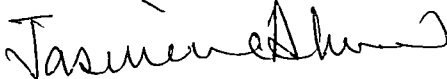
3. Category of employees in the cadre of Section Engineer and their names i.e. General, SC and ST as on 1.11.2003.
4. The last point of roster which was operated before 1.11.2003.


The respondents in compliance of this order have filed MA No.291/00241/2014 and have given the point wise reply. From the perusal of pleadings it is clear that the applicant was issued a show cause notice before being reverted on 4.5.2007 (Annexure A/8). Being aggrieved by the show cause notice the applicant filed an OA No.176/2007 before this Tribunal. The Tribunal vide its order 28.9.2011(Annexure A/11) directed the applicant to file representation against the show cause notice within a period of 15 days from the date of receipt of the copy of this order and the respondents were directed to consider the same in accordance with the provisions of law. However, it is admitted that in compliance of these directions the applicant did not file any representation. The applicant in the OA in Para 4 (viii) have stated that applicant could not prefer representation due to correct position of the matter. In the facts and circumstances as stated above we are inclined to agree with the contention of the learned counsel for respondents that the relief claimed by the applicant against his reversion is barred by the principle of waiver and the principle of stopple. Therefore, we are of the considered view that the applicant

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has failed to make out any case of interference with regard to the issuance of his order of reversion dated 21.5.2012 (Annexure A/1) from the post of Section Engineer to Junior Engineer Grade-I.

19. However, with regard to the prayer of the applicant for consideration of proforma promotion on the post of Section Engineer from the date of his junior was promoted, the respondents have stated in their reply that the proposal is under consideration and he would be accorded promotion as per rules. His unsuitability is of no consideration for the same. In view of the submissions of the respondents made in Para 4 (x) of the reply that the applicant is being considered for promotion at par with his juniors, the respondents are directed to consider the same expeditiously but not later than 3 months from the date of receipt of the copy of this order. It is made clear that the case of the applicant for proforma promotion would be considered according to the rules prevalent at the time when next junior to the applicant was promoted. With these observations and directions the OA is disposed of with no orders to costs.


(JASMINE AHMED)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER