



**Central Administrative Tribunal
Principal Bench**

OA No.1157/2013

New Delhi, this the 2nd day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

Tulsi Ram
S/o Sh. Tara Chand
R/o T-35/C, Shri Ram Road Railway Colony,
Civil Lines,
Delhi-54. ... Applicant.

(By Advocate : Shri Prateek Kohli)

Vs.

1. Union of India through the
General Manager
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway, Delhi Division,
State Entry Road,
New Delhi.
3. The Asstt. Personnel Officer/Engg.
DRM's Office, Northern Railway,
State Entry Road,
New Delhi.
4. The Sr. Section Engineer (Works)
Northern Railway, Baroda House,
New Delhi. ... Respondents.

(By Advocate : Shri Kripa Shankar Prasad)

: O R D E R (ORAL) :



Justice L. Narasimha Reddy, Chairman:

One should really pity the adjudicatory system, as it exists now and the uncertainties, which it is exposed to. A small issue pertaining to the alleged failure on the part of the applicant to appear in a Trade Test has consumed the time of the Tribunal as well as the Hon'ble Delhi High Court in considerable volume.

2. The applicant was appointed as a Khallasi in the Northern Railway in the year 1981. Promotion from that post is to Massion/Artisan, on being qualified in a Trade Test. The Railways conducted tests at various intervals. One such test was held in the year 2006, and the result thereof was displayed on 03.10.2006. The applicant did not have any grievance about it, at that time. He appeared in the Trade Test in the year 2011, and is stated to have cleared it. He was also promoted. He made a representation on 30.05.2011 requesting the respondents to consider his case for promotion with effect from the date from which his juniors in the post of Khallasi were promoted. A reply was given to him on 25.07.2011 stating that a Notice proposing to



conduct the Trade Test was displayed on the Notice Board in the year 2006, and those who were qualified therein were promoted, and since he did not appear in it, his request cannot be acceded to. Thereafter, the applicant made another representation.

3. The applicant earlier filed OA No.315/2012 challenging the action of the respondents in not acceding to his request for promotion with effect from an earlier date. That, however, was withdrawn on 31.01.2012 with liberty to make a further representation.

4. This OA is filed challenging the very order dated 25.07.2011, which was challenged in OA No.315/2012. The applicant contends that the respondents did not display the notice in the year 2006 at the place where he was working, i.e, the Head Office, Northern Railway, Baroda House, New Delhi, and thereby he was prevented from appearing in the Trade Test.

5. The respondents filed counter affidavit opposing the OA. According to them, the notice was displayed and the results of the participants were declared. It is also stated that the eligible candidates



were promoted whereas the applicant did not take part in the Trade Test.

6. On 06.04.2017, the OA was allowed by taking the view that there was lapse on the part of the respondents in displaying the notice in the year 2006. It was also mentioned that since the applicant cleared the Trade Test in the year 2011, and was promoted, he may be treated as competent enough to pass the Trade Test earlier also.

7. The respondents filed RA No.224/2017 seeking review of the order dated 06.04.2017. It was stated that the notice was very much displayed at the relevant place, and the lapse was on the part of the applicant. The review was allowed and the order dated 06.04.2017 was recalled. The OA was listed thereafter. On 23.04.2019, it appears that there was a change of counsel for the applicant and there was no representation. Registry was directed to issue notice to the applicant. Thereafter, the OA was listed on 06.05.2019 and at the request of learned counsel for the respondents, it was adjourned to 22.05.2019. On that date, there was no representation for the applicant and since it was one of the oldest cases, it was dealt with as provided under Rule 15 of CAT



(Procedure) Rules, 1987. The record was perused and through order dated 22.05.2019, the OA was dismissed, on merits. The review filed by the applicant was also rejected on the ground that the contentions raised in the RA were dealt with in the OA.

8. The applicant filed W.P. No.12368/2019 before the Hon'ble Delhi High Court. The writ petition was allowed on 25.11.2019 by observing that though the OA was directed to be listed on 23.07.2019, it was listed earlier than that date, and the applicant had no opportunity of being heard. Thereafter, the OA was listed on 20.12.2019. The applicant was not ready on that day, and at his request it is adjourned for today.

9. Shri Prateek Kohli, Learned counsel for the applicant submits that his client did not have the opportunity to appear in the Trade Test held in the year 2006, because the notice was not displayed in the Head Office of Northern Railway, where he was working at that point of time. Accordingly, he prays for the relief of notional promotion with effect from the date on which his juniors were promoted.

10. Learned counsel for the respondents submits that the plea of the applicant that the notice was not



displayed in the office where the applicant was working is totally incorrect, and the very fact that many candidates have appeared and cleared the test discloses that such a notice was displayed. He further submits that the plea of the applicant that notice has not been issued cannot be accepted in view of the fact that the applicant has responded to the notice issued in the year 2011, appeared in the Trade Test, and was promoted on clearing the same. He further submits that the question of promoting any employee earlier to the date on which the applicant acquired qualification, does not arise.

12. It is just un-understandable as to how the applicant can file this OA once he has withdrawn the earlier OA, wherein, the very order was challenged. Having withdrawn the OA, with liberty to file a representation, he could have challenged, only the outcome of the representation.

13. Be that as it may, the Trade Test was held in the year 2006. In case, the applicant did not have notice about it, he could have verified from his colleagues who appeared in the Trade Test and promoted in the same year. He maintained stoic silence for a period of five years. He has taken the



shelter under the factum of the publication of a seniority list of Khallasi's in the year 2011, wherein the persons who were already promoted were shown as juniors in that list. The plea of the applicant that the Trade Test ought to have been conducted in accordance with the seniority is totally untenable.

14. Any qualifying test would be conducted by the department periodically, and it is for the concerned employee in the feeder category to appear in it. There does not exist any compulsion for any employee to appear in it. One may choose to appear in the Trade Test or not to appear in it, depending upon his preparedness. Once it emerges that the plea of the applicant that the notice was not displayed in the year 2006 is not accepted, the question of his being conferred with any notional benefit does not arise.

15. Further, the promotion is not based on the seniority alone. It is on getting qualified in a Trade Test. When the applicant cleared the Trade Test only in the year 2011, the question of his being promoted with effect from an earlier date, does not arise. This is not a case in which the applicant was overlooked for promotion on account of pendency of any disciplinary case, even while his juniors were promoted.



16. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/