

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 130/95

New Delhi this the 27th day of October, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

~~Baburam~~
~~Bubudin~~

Son of Shri Ramjan
R/o Village Pali,
Tehsil Ballabgarh,
Distt. Faridabad, Harayana.

... Applicant

(By Advocate: Shri B.T. Kaul)

-versus-

1. Union of India,
Through the Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. The Superintendent Engineer,
Delhi Central Circle V,
C.P.W.D. R.K. Puram,
New Delhi-110 066.

3. The Executive Engineer,
Faridabad Central Division 1,
C.P.W.D., N.H. IV,
Faridabad (Hareyana)

4. Dharampal,
Son of Shri Anand Swaroop,
Carpenter, Faridabad
Central Division-I
CPWD, NH-IV
Faridabad.

... Respondents

(By Advocate: Shri H.K. Gangwani, proxy for
Shri KCD Gangwani)

ORDER (Oral)

By Reddy, J.

Heard the learned counsel for the applicant and the respondents.

2. The applicant was appointed as Muster Roll Carpenter on daily wages during ¹⁹⁸²~~1982~~ by the ^{C.P.W.D.}~~railways~~ and has been working since then as such. He also passed the trade test conducted by the Department for the post of Carpenter in 1986. One Shri Umed Singh, in 1986, has been appointed as Carpenter

Corrected order dated 12.12.99

on regular basis. Alleging discrimination by the Department in not regularising the services of the applicant, the applicant filed OA No. 1607/87 seeking the relief of regular appointment as Carpenter. The OA was disposed of by the judgement dated 19.3.1993 where the respondents were directed to consider the case of the applicant against the quota and in case there is no vacancy available in the direct quota, the applicant should be considered against the promotee quota. Purporting to comply with the direction of the Tribunal, the respondents had appointed the applicant on regular vacancy on 17.8.1993. The grievance of the applicant is that though Respondent No. 4 has failed in the trade test, he has been appointed in February 1993 but the applicant was appointed only in August 1993 though he had passed the trade test in 1986 itself. The learned counsel for the applicant contends that there was no reason for the respondents not to have appointed the applicant along with others in February 1993 itself on regular basis.

3. The respondents filed the counter affidavit and contested the case. It is their case that the name of the applicant came up for consideration for appointment for the post of Carpenter in February 1993 but as it was brought to the notice of the Department that he had been convicted for an offence of Gambling Act and was fined Rs. 40/-, his case was kept in abeyance and subsequently on coming to know of the orders of the Tribunal in OA No. 1607/87 dated 19.3.1993, the applicant was immediately appointed on 27.8.1993.

4. It is not in dispute that the applicant had passed the trade test as early as in 1986 and in the same examination, Respondent No. 4 had not succeeded in the trade test. It is

not clear from the counter affidavit whether Respondent No. 4 had succeeded in the trade test subsequently before he was appointed in February 1993. Though arguments have been advanced by the learned counsel for the applicant that passing of the trade test is one of the essential qualifications for the post of Carpenter, since it is not brought out clearly by the applicant that Respondent No. 4 did not pass the trade test even on the date of his promotion in February 1993, this argument loses much of its force. It should be seen that the applicant has been considered for appointment along with others in February 1993 itself. His case was, however, kept in abeyance only on the ground that he was convicted and punished under the Gambling Act by the Chief Judicial Magistrate, Faridabad. Since this fact was brought to the notice of the Department his promotion was rightly kept in abeyance till the matter was inquired into. The learned counsel for the applicant, however, contends that as he was imposed Rs. 40/- on his pleading guilty, the respondents should not have taken into consideration ~~them~~ conviction and punishment at all as the punishment cannot be treated as an embargo for considering the case of the applicant for promotion. The learned counsel cites **Pawan Kumar Vs. State of Haryana** reported in SCC 1996(4) P.17, this case pertains to the termination of service of the employee on the ground of conviction for an offence involving moral turpitude. The appellant before the Supreme Court was tried under Section 294 IPC and was sentenced to a fine of Rs. 20/- on his pleading guilty. The Supreme Court held that conviction of the appellant under Section 294 IPC was not per se established moral turpitude. In our view the facts of this case are entirely different from that of the present case. In the case before the Supreme Court, the services of the appellant who was on Class IV on ad hoc post have been

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terminated on the ground of his conviction. In the present case, when the applicant's service for regularisation have come to be considered in February 1993 for regular appointment, the conviction of the applicant was brought to the notice of the Department. Hence, his case was only kept in abeyance and final decision was taken as his eligibility for regularisation when he suffered such a punishment. Even before the Department could take a decision, the judgement of the Tribunal in OA 1607/87, which was decided on 19.3.1993 was brought to the notice of the respondents by an affidavit filed on 13.7.1993. Thereafter, without going into the question whether the applicant was entitled to be appointed as Carpenter or not the respondents had promoted the applicant on 22.8.1993. No sooner than they received the order of the Tribunal, the applicant was appointed. Hence, the conviction suffered by the applicant has gone into background. In view of this, we need not dwell upon the applicant's conviction or about the respondents action in keeping the applicant's file in abeyance on the ground of his conviction.

5. But the learned counsel for the applicant, contends that he was entitled to have been promoted w.e.f. 19.3.1993 i.e. from the date of the order in OA No. 1607/87. We find that there is substance in the judgement. As the applicant was promoted in accordance with the judgement he should have been promoted retrospectively w.e.f. the date of the judgement. The knowledge of the decision of the judgement in July 1993, cannot be a ground for denying the promotion of the applicant.

(Signature)
12-12-93

6. In the circumstances, we direct the respondent to treat the applicant as having been promoted on 19.3.1993 ^② for the post of Carpenter and fix his seniority in the post of Carpenter on the same terms by which he was appointed in the impugned order. The OA is partly allowed. No costs.

Law 7
(Mrs. Shanta Shastry)
M(A)

Am. S. Induraj
(V. Rajagopala Reddy)
VC (J)

○ *Mittal*

② Corrected vide Court's
order of 17.12.91