

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2236/1995

New Delhi this the 2nd day of September, 1999.

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

HON'BLE SHRI SYED KHALID IDRIS NAQVI, MEMBER (J)

J. P. Sharma S/O Rati Ram Sharma,
Compressor Driver/Electrician,
EMU Car Shed, Ghaziabad,
C/O Shri K.L. Sharma,
40, KL, Mor Sarai,
Delhi-110006.

... Applicant

(By Shri G. D. Bhandari, Advocate)

-Versus-

1. Union of India through
General Manager, Northern Railways,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

3. Sr. Divisional Electrical Engineer,
Northern Railway,
EMU Car Shed, Ghaziabad.

4. Tej Pal S/O Ramji Lal,
Motor Mech.-cum-Driver,,
EMU Car Shed,
Ghaziabad.

... Respondents

(By Shri O. P. Kshatriya, Advocate)

O R D E R

Shri Syed Khalid Idris Naqvi, JM :

Being aggrieved of the discrimination meted out to him in his promotion, Shri J. P. Sharma has come up before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. He has mentioned that he was appointed in T.R.D. Branch on 15.2.1978 whereas respondent No.4, Tej Pal, got his appointment on 7.6.1982. The applicant was promoted to grade III

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w.e.f. 19.4.1982 whereas the 4th respondent was promoted to this grade w.e.f. 14.8.1984, but the 4th respondent was given grade II w.e.f. 18.2.1986 whereas the applicant got this grade w.e.f 30.10.1986 and thereafter the 4th respondent climbed to grade I w.e.f. 22.4.1989 and to the post of MCM w.e.f. 23.5.1995 whereas the applicant is rotting at grade II, and thereby due promotions have not been allowed to him as against Tej Pal, the 4th respondent, who was much junior in service.

2. In short, the applicant has narrated the developments in his service with the mention that after his appointment as Khalasi on 19.4.1982, he was promoted to the post of Electrical Fitter in grade III. In the year 1985, in view of the expanding work in the Car Shed and due to certain administrative difficulties in obtaining requisite number of staff in certain ancillary categories, i.e., Crane Driver, Machinist, Painter, Compressor Driver, etc. the respondents invited options from the Electrical Fitters, seeking their willingness to work on the post in ancillary category and that optees would be entitled to continue to have their seniority amongst the Electrical Fitters for further promotion and all other purposes. The applicant gave his option for the purpose of Compressor Driver which was accepted by the respondents and w.e.f. 16.1.1986 the applicant though holding his lien in the cadre of Electrical Fitters was posted as Electrician-cum-Compressor Driver in the same grade. Similarly, certain other persons were

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posted as Painter, Carpenter, Compressor Driver, etc. and all these posts were called ancillary categories. It was not a change of cadre and as such it involved no loss of seniority in the substantive cadre of Electrical Fitters. The applicant has also referred to para 159 of the Indian Railway Establishment Manual (IREM) according to which the posts of Electrical Fitter, Crane Driver, Machinist, Compressor Driver and similar other allied categories are all skilled category posts falling under the head "Skilled Artisans". The applicant has compared his position with the 4th respondent mentioning that the 4th respondent was initially appointed as Khalasi in 1982 and was promoted to Electrical Fitter grade III w.e.f. 14.8.1984 while the applicant was so promoted on 19.4.1982. The 4th respondent was further promoted on 18.2.1986 in the grade of Rs.1200-1800 while the applicant was promoted on 30.10.1986, which is according to the applicant, is a glaring instance of discrimination. The applicant has vehemently pressed that his entry date into the cadre of Fitter is 19.4.1982 and for all purposes his seniority from this date has to be taken into account. If any other date of his promotion is to this cadre is mentioned, that will be another injustice to him. With these facts, the applicant has sought for a direction to the respondents to consider the applicant for due promotions and to issue an integrated seniority list of Fitter and all ancillary category posts on the date of promotion in grade III.

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3. The contention of the respondents in their reply is that change was opted for by the applicant from Electrical Fitter to Compressor Driver, which effectively changed his cadre. It is their case that separate seniority lists are maintained for various categories of employees like Electrical Fitter, Compressor Driver, Crane Driver, etc. and it is only when they obtain promotion to grade I that their seniority is re-integrated. The principle adopted for determining inter se seniority in grade I is the date of promotion to the next below grade carrying the pay scale of Rs.1200-1800. Since the 4th respondent, Tej Pal, was promoted to that grade earlier than the applicant, in the integrated seniority of grade I his name was placed above that of the applicant. On that basis, the respondents refute the allegations and claims of the applicants.

4. We have thoughtfully considered the arguments placed by Shri G. D. Bhandari, appearing on behalf of the applicant and Shri O. P. Kshatriya for respondents.

5. We notice from Annexure A-10 and A-11 that options had been invited from Khalasis for consideration against the posts of various categories including Electrical-cum-Compressor Driver, Welder, Crane Driver, Painter, Carpenter, Machinist etc. on 4.3.1986. On the other hand, the applicant who was already in the higher grade was appointed as Electrical-cum-Compressor Driver on lateral transfer.

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We find substance in the contention of the applicant that it was not a case of promotion from Khalasi to Compressor Driver but of allocation of Compressor Driver from equivalent post of Electrical Fitter grade III since suitable persons were not available for Compressor Driver. He also contended that as there ~~was~~^{ever} only 3-4 Compressor Drivers, there could be no separate cadre of Compressor Drivers. It has been pleaded on behalf of the applicant that IREM only provides for skilled artisans grade III in various Engineering Departments and their further promotion to skilled artisan grades II and I. In other words, irrespective of whether the Grade III skilled artisan is working as a Motor Driver or Compressor Driver or as an Electrical Fitter, he would have a common inter-se seniority as a skilled artisan grade III and his further promotion to grade II and I would be determined accordingly. We have gone through the reply filed on behalf of the respondents. There is nothing in the reply to show that the rule position is otherwise. In any case, a Khalasi who had been promoted to grade III in 1982 and re-designated as Compressor Driver in 1986 cannot be on the same ~~promoted~~^{appointed} footing as the Khalasi ~~promoted~~ in 1982, promoted to grade III in 1984. It has not been denied by the respondents that the number of persons in each sub category are very small. The provisional seniority list of Electrical-cum-Compressor Drivers category shows only three persons in the Electrical-com-Compressor Driver category, one in the Motor Mechanic-cum-Driver and only 2 Machinists. This list of Machinists goes upto 7.

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6. With the above discussion, we find that the applicant has a strong case and it is evident that the applicant is senior to the 4th respondent, Tej Pal

7. We, therefore, allow this O.A. and direct the respondents to issue an integrated seniority list of the incumbents to the cadre of skilled artisans as mentioned in para 159 of the IREM and then to consider the applicant for promotion as per his entitlement, as it may emerge, with all consequential benefits. The list shall be prepared within a period of four months from the date of receipt of a copy of this order.

Ricahar -
(R. K. Ahooja)
Member (A)

Syed Khalid Idris Naqvi -
(Syed Khalid Idris Naqvi)
Member (J)

/as/