

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1632/2000

New Delhi this the 11th day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri V.K. Majotra, Member(A).

In the matter of:

Yogender Kumar Pathak,
S/o Kishan Chand Pathak,
R/o 104/B-1, Western Railway
Colony, Tughlakabad,
New Delhi-110 044.

... Applicant.

(By Advocate Shri K.K. Patel)

Versus

1. General Manager,
Western Railway,
Church Gate,
Bombay.
2. Divisional Railway Manager,
Kota Division,
Western Railway,
Kota Div.
3. Sr. Divisional Electrical Manager,
Electric Loco Shed Electrical
Engineer,
TRS Tughlakabad.
4. Shri Sunil Kumar B. Jas (M.C.F.),
Electric Loco Shed Electrical
Engineer, TRS
Tughlakabad.
5. Shri Raj Singh Rawal,
working under Chief Project Manager,
Railway Electrification,
Northern Railway,
Ambala.

... Respondents.

(By Advocate Shri V.S.R. Krishna)

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

In this application, the applicant has sought the following main reliefs, as given in paragraph 8 (a) and (b):

"(a) Issue appropriate writ or direction or appropriate orders directing the respondents to assign the seniority position of the petitioner as has been done in similarly situated railway employees i.e. respondent no. 4 to 7, who joined the Electric Loco Shed, Tughlakabad from other seniority Units without discrimination.

(b) Issue appropriate writ or direction or appropriate orders directing the respondents to consider the petitioner for the post of Electric Fitter Grade-II from the date his juniors have been promoted along with consequential benefits:

2. The applicant had filed an earlier O.A. (O.A.1723/91), which was disposed of by Tribunal's order dated 1.10.1996. The relevant portion of this order reads as follows:

"2. Sh. Relan's contention is that the impugned order dated 19.2.91 has since been cancelled by the respondents, by their subsequent order dated 21.8.91 (Annexure AA-4 to the rejoinder) and the applicant has subsequently been selected for promotion as ELF-II, but the respondents are not granting him the promotion because of the pendency of the present O.A.

3. If the present O.A. stands in the way of the applicant's promotion, we dispose of the O.A. with a direction to the respondents to consider promotion of the applicant to ELF Grade-II in accordance with the extant rules and regulations on the subject".

3. Shri K.K. Patel, learned counsel for the applicant, had very strenuously argued that in the impugned order, the respondents have not considered the applicant's seniority, even if it is taken that he has come on bottom seniority on transfer on request from Divisional Office,

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Ratlam to DRM's Office, Kota, Tuglakabad, by taking into account his previous service. He has relied on the Full Bench judgement of the Tribunal (Madras Bench) in K.A. Balasubramanian Vs. Union of India & Ors. (1987 (4) ATC 805). He has contended that after his transfer to Tuglakabad Division, persons junior to him have been promoted to the post of Electrical Light Fitter Grade-II (ELF-II) and some of them even to the higher post of ELF-I, ignoring the applicant's claims.

4. The above averments have been controverted by the respondents and we have also heard Shri V.S.R. Krishna, learned counsel. They have submitted that the applicant had been transferred to Tuglakabad Loco Shed on his own request at bottom seniority in the scale of Rs.750-940 as Khalasi. He had also joined in that post vide his letter dated 19.1.1989 (Annexure R-V) and it was only later, on 20.11.1990 that he gave his representation for being given seniority in the scale of Rs.800-1150. Learned counsel has also referred to the earlier application filed by the applicant (OA 1723/1991) and has submitted that the respondents have considered the applicant's claim for promotion in accordance with the extant rules and regulations, which has been reflected in the order issued by them dated 23.12.1996, which has been impugned in this O.A. In the circumstances, learned counsel has contended that the applicant is not entitled to any relief.

5. Shri K.K. Patel, learned counsel in rejoinder has submitted that a number of persons who are junior to the applicant have been promoted to the post of ELF-II and his

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claim is that the applicant's case should also be considered for similar promotion from the date his juniors were promoted. After perusal of the relevant records as pointed out by Shri K.K. Patel, learned counsel, that is Annexure-6, pages 5 and 6 of the additional documents filed by him on 3.9.2002, we reject his contention that the applicant is similarly situated as private respondents 5,6 and 7. This is so because the private respondents have been transferred to Tuglakabad Loco Shed after they had exercised the option to be posted there in the same posts they were holding earlier, unlike the applicant who was posted on the lower post of Khalasi in the pay scale of Rs.750-940. Therefore, the claim of the applicant in paragraph 8 (a) of the O.A. for being assigned the seniority vis-a-vis those respondents is rejected.

6. However, with regard to the claim of the applicant for a direction to the respondents to consider his claim for promotion to the post of ELF-II from the date his juniors have been promoted, the learned counsel for the applicant has relied on the seniority list dated 09.2.1990 issued by the respondents office, Kota, Tuglakabad, which he has annexed to the documents filed by him on 3.9.2002. He has submitted that the applicant's name appears at serial no. 25 and he is shown to have entered service w.e.f. 16.6.1980. He has further submitted that S/Shri Hari Prasad and Rakesh Kumar whose names appear at serial nos.39 and 40 have been promoted who are juniors to the applicant as per this seniority list. As rightly pointed by the

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learned counsel for the respondents, these documents have been brought on record by the learned counsel for the applicant much after the O.A. has been filed, which the respondents have to consider. The applicant has submitted that he has been called for the test for ELF-II and has also passed the same. In the facts and circumstances of the cases, we consider it fit to dispose of the O.A. with the following directions:

Respondents to consider the claims of the applicant for promotions to the posts of ELF-II and ELF-I from the dates his juniors were promoted, taking into account the relevant seniority list issued by them after his transfer to Kota, Tuglakabad Division. This shall be done within two months from the date of receipt of a copy of this order with intimation to the applicant. If he is found fit for promotions in accordance with the relevant rules and instructions, he will be entitled to consequential benefits, including the differences in the higher pay. No order as to costs.

V. K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'