

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 718/2000
T.A No.

21

Date of Decision : 17.8.2001

Harnam Singh

..Petitioner

Shri B.S. Mainee

..Advocate for the petitioner(s)

Versus

UOI & Ors.

..Respondent

Shri R.L. Dhawan

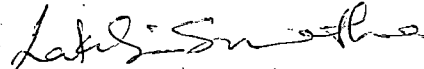
..Advocate for the Respondents

Coram:-

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

Hon'ble Shri

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 718/2000

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New Delhi, this the 17th day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Harnam Singh
S/o Shri Darshan Singh
Highly Skilled Fitter (G) Gr.I
under Electrical Engineer
(Workshop) Northern Railway
Electrical Workshop
Daya Basti
Delhi - 110 035.

...Applicant

(By Advocate Shri B.S.Maine)

V E R S U S

UNION OF INDIA : THROUGH

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Electrical Engineer
Northern Railway
Baroda House
New Delhi.
3. The Workshop Electrical Engineer
Electrical Workshop
Northern Railway
Daya Basti
Delhi - 110 035.

...Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R (ORAL)

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

This application has been filed by the applicant impugning the orders issued by the respondents dated 12-10-1999 and 18-4-2000. By another letter dated 2-7-1992, the respondents informed the applicant that a trade test will be conducted on 16-7-1992 for the post of Mistry Fitter (G) which he was required to attend.

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2. The brief relevant facts of the case are that this is the second round of litigation by the applicant, as he had filed earlier OA 2371/1992 which was disposed of by Tribunal's order dated 16-7-1999 in which one of us (Smt. Lakshmi Swaminathan, VC (J) was also a Member). By that order, it was held, inter alia, that if the applicant is eligible for promotion as Mistry (G) on the basis of his seniority, he cannot be denied promotion merely because he belongs to SC community. It was further observed that "if stand of the official respondents is to be accepted, applicant would be subject to hostile discrimination merely because he belongs to SC community which would clearly be illegal and arbitrary. In a case of this nature, applicant would be eligible for promotion not because he belongs to SC community but because he is the senior most in line for promotion" In the circumstances, the OA was allowed to the extent that official respondents were directed to consider the applicant's case for promotion to the post of Mistry (G) in accordance with rules and instructions with effect from the date his immediate junior Shri Fateh Singh respondent No.4 was considered.

3. According to the respondents, in pursuance of the aforesaid order of the Tribunal, they have taken necessary steps to implement the order including the aforesaid impugned orders were issued, calling the applicant to appear in the trade test for consideration of promotion to the post of Mistry (G). We have heard Shri B.S.Maine, learned counsel for the applicant and Shri R.L.Dhawan, learned counsel for the respondents at considerable length. Learned counsel

for the respondents has also produced the relevant records for our perusal and has submitted that there are no other records available with the Department which throws any light on the controversy raised in the present OA. After repeatedly asking the learned counsel for the respondents to produce the records to show that the competent authority has either fixed/cancelled the trade test which was scheduled to be held on 16-7-1992, the respondents have failed to do so. Learned counsel has also expressed his inability to show such a document because he says none exists in the relevant file. 2A

4. The issue in this OA is that the applicant contends that he does not have to appear in any further suitability test, as directed by the respondents in the aforesaid impugned orders as he has already appeared and passed the trade test held on 16-7-1992. This has been vehemently denied by the learned counsel for the respondents. The applicant relies on the affidavit filed by one Shri Vijay Wilfred, an employee of the Railways, who has stated, inter alia, that he had conducted the trade test on 16-7-1992 and declared the applicant passed in that test. However, it is an admitted fact that the applicant was sent by the respondents for pre-test training and free coaching classes at Electric Training Centre, Ghaziabad, which was completed on 7-12-1999 for the post of Mistry after the Tribunal's order dated 16-7-1999. This is a fact which has been relied upon by the learned counsel for the respondents to buttress his argument that the earlier trade test scheduled to be held on 16-7-1992 was pended/cancelled 12

thereafter. His main contention is that the applicant never appeared in any trade test on the relevant date i.e. 16-7-1992, let alone passing the same as no test was held on that day. 25

5. On the other hand, Shri B.S.Mainee, learned counsel has submitted that the above facts are not correct in order to arrive at a proper conclusion in the matter, namely, whether the trade test scheduled was later kept pending or cancelled. We had directed the respondents to produce the relevant records, which they have done. These records have also been shown to Shri B.S.Mainee, learned counsel.

6. Shri R.L.Dhawan, learned counsel has laid great emphasis on "a letter dated 9-10-1992 written by Shri Arun Kumar, Workshop Asstt. Elect. Engineer, Northern Railway, Dayabasti, Delhi. to one Shri Shaukat Aziz Mattoo, Presenting Officer in respect of aforesaid OA 2371/1992 in the Tribunal. He has referred to page 3 of this letter ;

"According to para 5 of the PS No. 10647 of GM/NR not more than 50 % of the quota of SC/ST can be given in any cadre. Hence the quota of 50 % of SC/ST is already exceeded in the post of Mistry as per data given above. Hence the trade test for the post of Mistry of SC candidate is pended and general candidate - Shri Fateh Singh HS II Fitter (A) Gr.I is called for the trade test of Mistry vide this office letter No. 293-E/1-EGD/PT-III dated 27-8-1992 according to para IV of PS No.10647 issued by GM (P) N.R. Baroda House, New Delhi".

According to the learned counsel for the respondents, in view of the above parawise comments given by the concerned officer who was also the competent authority to hold the trade test in this case in July, 1992, the

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applicant never appeared in the trade test which was scheduled on 16-7-1992. On perusal of the relevant records submitted by the respondents, we note that by letter dated 2-7-1992 issued by Shri Arun Kumar, the applicant was intimated to appear in the trade test to be conducted on 16-7-1992. With the assistance of the learned counsel for the respondents, who was in turn assisted by Depttl. representative Shri A.L.Grover, Office Supdt., who is present in Court, the respondents have failed to show any further letter issued by the same or any other officer, who had issued the letter dated 2-7-1992, who is stated to be the competent authority to cancel the scheduled date of test on 16-7-1992, ¹⁸ ~~by any further letter~~. In this connection, it is also relevant to note that in file No. 293-E/1-Elect/Pt-III during the period July-August, 1992, page 27 is missing between pages PP 26 and PP 28. On page PP 28 vide notings dated 28-8-1992 it has been recorded, inter alia, that the senior most SC candidate Shri Harnam Singh (Applicant) does not "stand his seniority due to jumping promotion i.e. reserved point against the SC quota". Hence, they have taken a decision that the next senior most general candidate, Shri Fateh Singh, would be eligible for promotion as Mistry Fitter (G) in his original seniority. It is relevant to note that this note has also been recorded more than a month after the scheduled date of the trade test which was to be held on 16-7-92 for which the applicant had been directed to be present. It is further noted that on page PP 26, the following is noted vide note dated 26-8-1992, "Sl.No.48 letter No. SS/WS/DBSD in regard to cancellation of trade test is put up for signature

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please". The corresponding Sl.No. 48 in the file refers to the record of trade test of one Shri Mangal Ram and not to the aforesaid note dated 26-8-1992 which has also incidentally been signed by the same officer Shri Arum Kumar. In any case from these notings in the file, it is observed that the letter which is said to have been put up to the concerned authority with regard to the cancellation of the trade test is only dated 26-8-1992 whereas the test itself was supposed to have been held on 16-7-1992 more than a month earlier. The respondents cannot take advantage of their own wrong actions and orders in not even maintaining their files/records properly so as to deny the claims of their own lowly paid employee, like a group 'C' employee and that too one who belongs to the SC community

7. The decision of the respondents to conduct the trade test vis-a-vis the applicant on the basis of Railway Board's PS No. 10647 would in the facts and circumstances of the case, also appear contrary to the observations of the Tribunal in the order dated 16-7-1999 in OA 2371/1992. Merely because the respondents had directed the applicant to appear at the pre-test training in 1999 which he also undertook, cannot be taken against the applicant when the official records produced by the respondents themselves do not clearly show that the applicant did not appear in the test on 16-7-1992 or that he had not passed either. The affidavit of Shri Vijay Wilfred has also not been successfully controverted by the respondents by any other document on record. The reliance placed by the learned counsel for the

respondents on the parawise comments prepared by the officer Shri Arun Kumar, Workshop Asstt. Elect. Engineer on 9-10-1992 is a subsequent document. With regard to the parawise comments also, the applicant had stated in paragraphs 4.10 & 4.11 of the OA (in the counter affidavit filed by the respondents in OA (2371/1992), they had not denied the fact that the trade test was held on 16-7-1992. But the result of the applicant had not been declared. The reply of the respondents to these averments are as follows :-

"4.10 & 4.11"

"In reply it is submitted that only the date of suitability test to be held on 16-7-1992 was got noted from the applicant on 2-7-1992. As submitted herein above, in the meantime the Railway Board's instructions on the subject of promotion against reserved posts circulated under N.R. Printed Serial No.10647 were received and consequentially the general community candidate Shri Fateh Singh was called to appear for the suitability test for the post of Mistry (G) which action of the Respondents was challenged by the applicant herein in OA No.2371/92 which has been disposed of by the Hon'ble Tribunal vide their judgement dated 16-7-1999 (Annexure A-4 of OA). It is further submitted that in OA No.2371/92 the respondents had also submitted that the applicant had been called to appear in the suitability test fixed for 16-7-1992 which was, however, panded on receipt of Railway Board's instructions circulated under Northern Railway printed Serial No.10647 on the subject of promotion against reserved posts and on receipt thereof the general category candidate Shri Fateh Singh was called for the suitability test."

As mentioned above, the respondents have failed to produce the particular letter or order issued by the competent authority either pending or cancelling the scheduled trade test on 16-7-1992 except the parawise comments prepared by the officer Shri Arum Kumar, Workshop (AEE) on 9-10-1992. As already noted above, the official records submitted by the learned counsel for the respondents do not have any such noting, on the

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basis of which the officer could have prepared the parawise comments. It is needless to say that the submissions made on behalf of the respondents before the Tribunal ought to be made on the basis of the official records. In the absence of any such documents on record in the Departmental file produced before us by the respondents, we are unable to agree with their contention that the applicant's claim that he had appeared in the trade test on 16-7-1992 and has been found suitable is, incorrect. 29

8. The present OA has been filed by the applicant as a sequel to the earlier OA (OA No.2371/92) filed by him, which was decided on 16-7-1999. In this OA, the main prayer of the applicant is to set aside the impugned orders with a direction to the respondents to declare the result of the trade test held on 16-7-1992 with regard to him and if he has qualified, he should be promoted from that back date with all consequential benefits. He has also prayed for exemplary costs against the respondents for their repeated illegal action against a SC employee.

9. Shri R.L.Dhawan, learned counsel has submitted that even if the applicant was directed to appear in the trade test held on 16-7-1992 in accordance with para 226 of IREM Vol.I, he has also to appear in the oral test, to be declared passed for promotion to the post of Mistry Fitter (G). In the particular facts and circumstances of the case, we are not impressed by the arguments submitted by the learned counsel for the respondents because the

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applicant could have passed the oral test only if the respondents had held the test at the proper time which again they have failed to do. In the facts of the case, we do not consider it appropriate at this stage that we should give another opportunity to the respondents to hold an oral test for the applicant, taking into account their own actions, the way they have maintained the relevant files pertaining to the trade test which they themselves had scheduled on 16-7-1992 and, in particular, with reference to a lowly paid group 'C' employee. The observations of the Tribunal in the order dated 16-7-1999 in the earlier OA filed by the applicant that "if the stand of the official respondents were to be accepted, applicant would be subject to hostile discrimination merely because he belongs to SC community, which would clearly be illegal and arbitrary" are ¹³enforced by the stand they have taken even in the present application. Therefore, taking into account the totality of the facts and circumstances of this case, including the stand taken by the respondents which are not supported by the official records maintained by themselves, this is a case where it would be in the interest of justice to allow the application and deem that the applicant has appeared and passed in the trade test held on 16-7-1992. Accordingly, we do so and the respondents shall treat the applicant as having passed the trade test in 1992 in the peculiar facts and circumstances of the case, which should, however, not be treated as a precedent.

Contd... 10.

10. In the result for the reasons given above, the OA succeeds and is allowed. In the circumstances of the case, we reiterate the earlier directions given vide order dated 16-7-1999 that the applicant shall be considered for promotion as Mistry (G) and entitled to all consequential benefits, including backwages and further promotions in accordance with law, rules and instructions. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order. (31)

11. We also consider it appropriate that cost of Rs. 5000/- (Rupees five thousand) is granted in favour of the applicant and against the respondents in view of what has been stated above.

(Govindan S. Tampi)
Member (A)

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