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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.1336/89
New Delhi, this the 25th of March, 1994

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri Lakhmi Chand,
S/o Shri Kiddu Ram,
Chargeman No.6966526 Part II Cadre,
Central Ordnance Depot,
DELHI CANTT.

.....Applicant

Advocate : Shri Sant Lal

VERSUS

1. UNION OF INDIA, THROUGH
The Secretary,
Ministry of Defence,
Defence Headquarters,
NEW DELHI-110011.
2. The Officer Incharge,
Army Headquarters Corps Records,
Trimulgherry Post,
Secunderabad (A.P.)500015.
3. The Administrative Officer,
Central Ordnance Depot,
Delhi Cantt.110010. Respondents

Advocate : None

ORDER (ORAL)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicant was originally engaged as carpenter (Civilian) in December, 1962 in E.M.E. Workshop, Delhi Cantt, under the Ministry of Defence. He was transferred to Air Force Station Kanpur on 16-12-1965 and thereafter to Command Hospital, Central Command, Lucknow on 22.04.1969. He was transferred to Shakurbasti Ordnance Depot on 16.06.1979 on his own request. He was given promotion of Chargeman Grade-II w.e.f. 27th September 1985 and was placed on probation for 2 years and thereafter, by the order dt 5th December, 1988 he was confirmed in his appointment as Chargeman Grade II, w.e.f. 27th September, 1987.

2. The respondents issued a Show-Cause Notice to the applicant on 13.03.89 whereby he was asked to explain as to why the confirmation Order as well as Order of promotion dt 27th September, 1987 and 27th Sept., 1985 respectively should not be cancelled. It was stated in the notice that the orders of promotion and confirmation were ab initio void. The applicant made a representation stating that he passed the test which was required under the extant rules and he was found suitable in the year 1980 and, he got the chance of promotion in 1985. He, therefore, prayed for the withdrawing of the show-cause-notice. The respondents, however, by the Impugned Order dt 13.01.89 exercising the power under O.M. of the Ministry of Defence dt 13.02.1965 withdrawing confirmation and promotion of the applicant to the post of Chargeman Grade-II and, he was placed on the original post of carpenter w.e.f. 27th September, 1985. Aggrieved by the aforesaid order, the present application has been filed on 6th July, 1989.

3. The applicant has prayed for the grant of relief that the impugned order dt 13th June, 1989 and 28th June, 1989 and the Show-Cause Notice dt 13th March, 1989 be quashed and set aside and the applicant be allowed to continue on a substantive basis on the post of Chargeman Grade-II along with his seniority.

4. The Bench by its order dt 7th July, 1979 ordered that the status quo be maintained with

regard to the applicant and that order of status quo was made obsolete by the Order dt 21.08.1989.

5. A notice was issued to the respondents who filed the reply opposing the grant of the relief on the ground that the applicant on transfer from the Army Medical Corps to Ordnance Depot, Shakurbasti on 16.06.1969 got his seniority depressed according to CPR 73/73 11 of 75 and his seniority on the post of carpenter is to be reckoned from the date of joining of transfer to Shakurbasti w.e.f. 16.06.1979. This fact was not within the knowledge of the authorities when the applicant was given promotion to the post of Chargeman Grade-II w.e.f. 27th September, 1985. When this mistake was detected, a Show-Cause Notice was issued on 13.03.1989 and, thereafter, the impugned order was passed as per provisions contained in CPR of 16th June, 1979 and SI of 65 and as SAI of 2.5.86. Thus according to the respondents applicant is not entitled to any relief.

6. The learned counsel for the applicant has placed before us the recruitment rules for promotion to the post of Chargeman Grade.II in the then scale of Rs.380-560, which has been shown to be a Selection Post and the post to be filled up 100% by promotion from the Grade B tradesman with not less than 8 years total service and, who has passed the trade test. The learned counsel has given a copy of the relevant rules which has been invoked at the relevant time and the same has been taken on record and placed in Part A of the file. On the basis of the extant rules filed

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by the learned counsel, the post of Chargeman Grade II is a selection post. When the post is filled up by Selection, the question of Seniority of the eligible candidates has no criterian, in as much as anybody qualifies for the post, unless the contrary provisions^{exists} / regarding zone of consideration of any person in the said trade, in the feeder post can appear for the selection. If a junior in the trade in the feeder post is selected, he will have the march over his senior. In view of this fact, the applicant cannot be denied and eligibility to take the trade test because 8 years ^{in the new unit} regular service[/] is required. Even considering the contention raised in the reply by the respondents that since applicant on his own volition, joined on transfer from Lucknow at Shakurbasti Ordnance Depot in 1979, his Army service in the Feeder Grade^(his earlier service) cannot be washed out inspite of getting a depressed seniority according to the extant CPRO enforced at that time. The learned Counsel has also relied on the decision Full Bench of CAT in the case of Shri K.A. Balasubramanian Vs Union of India and Others, and Full Bench judgement of Bihari brothers 1989 Vol.I, Page-2109. In this case, it has been held where rules require only 8 years regular service in the Grade, the service rendered even in the previous unit must be considered. Thus, the respondents have not properly appreciated in implementing extant rules for promotion of the applicant w.e.f. 27th September, 1985. The applicant has passed the trade test in 1980. He joined service as Carpenter in 1962. He completed more than 18 years in 1980. He was given the

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promotion only in 1985 when the post was available. Thus issue of notice was only on the ground that the applicant got depressed his seniority by virtue of opting for his transfer from Lucknow to Shakurbasti Ordnance depot would not undo the trade test he has passed and, the promotion that has been given to him w.e.f. 27th September, 1985.

7. The applicant in the rejoinder has also stated in Para 4.6 that he has been cleared by the Trade test by a regularly constituted DPC for the Selection Post. The respondents have not filed any supplementary reply to controvert the averment made in the rejoinder filed in December, 1989. In view of this, the photocopy of the extant rules filed by the applicant cannot be doubted regarding the genuineness of the same.

8. Another flaw in the order is that the applicant has been reverted from retrospective date though, order of withdrawing confirmation and promotion was passed on 13th June, 1989. Any order to the disadvantage of a person cannot be passed from a retrospective date. Even if, any promotion has been either ^{by} inadvertance or under a mistaken belief of certain fact than such a promotion can only be withdrawn from the date of the order. However, the learned counsel for the applicant has referred to the decision of Smt Pushpa Bhinde Vs Union of India reported in ATR 1981 Vol.I,Page-397. However, we are leaving this question open for as it is not so material/decision in this case.

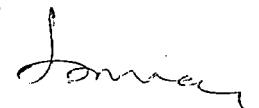
9. In view of the above facts and circumstances, the application is allowed and the Impugned Order

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of 13th June, 1989, of 28th June, 1989 and the Notice dated 13th March, 1989 are quashed and the interim Order granted by the Tribunal on 7th July, 89 is made obsolete. Cost on parties.



(B.K. SINGH)
MEMBER (A)



(J.P. SHARMA)
MEMBER (J)

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