

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.2555/89.

New Delhi, this the 17th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Tara Chand,  
Son of Shri Prabhu Dayal,  
Mason Khalasi Under Inspector of Works,  
(Maintenance), Ghaziabad,  
R/o Village & P.O. Kanauja,  
District Ghaziabad. ....Applicant

By advocate : Shri Malik B.D. Thareja.

VERSUS

1. The Union of India,  
Through General Manager,  
Northern Railway Headquarters Office,  
Baroda House, New Delhi.
2. The Divisional Engineer,  
Northern Railway,  
Ghaziabad.
3. Shri Vijay Pal,  
Son of Shri Mithan Lall,  
Mason, under Inspector of Works (Maintenance),  
Northern Railway,  
Ghaziabad. ....Respondents

By advocate : Shri B.K. Aggarwal.

O R D E R (ORAL)

SHRI J.P. SHARMA:

The applicant was appointed as Khalasi Mason with respondent no.2 with effect from 25-7-80. He also worked as casual labour carpenter earlier to this for 5 years from 1975 to 1980 under I.O.W., Ghaziabad. The respondents held a selection to the post of Mason on 5-8-89. The applicant took the selection and according to the applicant the result was not declared and one person Kirna was promoted who belonged to the reserved

category. Another selection was held on 28.9.89 and this time also Shri Chhatarpal, a reserved category candidate, was promoted. It is alleged that the respondents are going to hold another selection in order to absorb one Vijay Pal, also a reserved category candidate. The applicant, therefore, served a legal notice in the form of representation and thereafter filed the present application on 19.12.89 and he has prayed for the reliefs that the selection of respondent no.3 be quashed and respondents be directed to promote the applicant to the post of Mason from the date his junior respondent no.3 was promoted.

2. The respondents contested this application. It is stated that the applicant could not qualify in the selection. The applicant has no case. Regarding Vijay Pal, it is said that the vacancy fell in the reserved quota and because of seniority, Vijay Pal got the chance of promotion.

3. The applicant has also filed rejoinder reiterating the same facts.

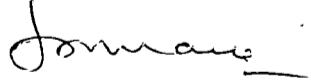
4. We heard the learned counsel for the parties and perused the record. It is not disputed that the post of Mason is a promotion post and there is a selection followed by trade test. The contention of the learned counsel that the respondent no.3 has not been favoured and adopted a partition attitude has to be substantiated from certain overfacts. Even there is no averment of mala fide vis-a-vis the selection body nor it is alleged that there was some biased or prejudicial attitude harbored by respondent no.2 against the applicant. The only contention is that since an affidavit has been filed by a person who also worked

under the same officer and certify the capability and suitability of the applicant, so in the absence of any counter affidavit from the side of the respondents, the applicant should have been judged having ability sufficient enough to clear the trade test. This perception cannot be accepted as it will amount to self appraisement by a person of his own capabilities. A examining body exams<sup>e</sup> the person and if there is any allegations of mala fide on the part of such body, that has to be alleged and also to be established by concrete facts, circumstances and reliable evidence. Merely because a person has failed will not by itself be a measure to judge the mala fides on the part of the examining body.

5. In view of the above facts and circumstances, since the applicant did not pass the trade test, he cannot be promoted to the selection post and we are fortified in our opinion by the Full Bench decision of JEPHA NAND v. UNION OF INDIA reported in Full Bench decisions Bahri Brothers Vol.I page 457. The application is, therefore, dismissed as devoid of merit, leaving the parties to bear their own costs.

  
(B.K.SINGH)  
MEMBER (A)

'KALRA'

  
(J.P.SHARMA)  
MEMBER (J)