

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.546/88

Date of decision: 15.08.1993.

Shri Om Parkash

...Petitioner

Versus

Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi
and Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri V.P. Sharma, Counsel.

For the respondents

None.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

Shri Om Parkash, the petitioner joined the Railway department on 14.10.1965 as substitute Khalasi. He is aggrieved by Shri Bhawani Shankar, respondent No.4 who also joined as a substitute khalasi on 23.10.65 stealing a march over the petitioner for promotion to the grade of ESM Grade-IIIT in 1983. The petitioner herein filed a civil suit in the Court of Sub-Judge Ist Class Rewari on 18.2.1984, which on transfer to Chandigarh Bench under Section 29 of the Administrative Tribunals Act, 1985 was registered as T-566/86. The judgement in the said T-566/86 was rendered by the Tribunal on 27.3.1987. The operative part of the said judgement reads as under:-

"3. During the course of arguments at the bar the learned Counsel for the respondents accepted that the applicant would be allowed to take test for ESM/MSM. The learned counsel

conceded that the applicant will be considered for promotion from the date his juniors had been promoted.

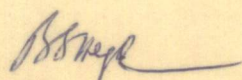
4. In view of the above undertaking given by the respondents' Counsel, the application is allowed with no order as to costs. The applicant will be entitled to all the benefits including promotion from the date his juniors had been promoted because he had himself been seeking the opportunity for undergoing the said Trade test of his volition right from the beginning."

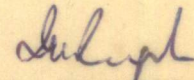
2. The learned counsel for the petitioner Shri V.P. Sharma submitted that ~~the~~ later on the petitioner was called for the trade test and had in fact been promoted as ESM Grade-III. The grievance in the present petition is that the respondents promoted Shri Bhawani Shankar, respondent No.4 on 9.12.1987 as E.S.M. Grade-II i.e. the next higher grade while the petitioner's case was not considered. The learned counsel submitted that since T-566/86 filed by the petitioner was allowed, the petitioner should have been considered in the order of his seniority keeping in view the date on which the petitioner and respondent No.4 have joined as substitute khalasi.

3. The stand of the respondents in their counter-affidavit is that both the employees were screened and after screening were regularly appointed in Class-IV service w.e.f. 18.3.1971 and 23.4.1971 respectively. As Shri Bhawani Shankar joined the regular post on 18.3.1971 earlier than Shri OM Parkash, the petitioner herein ^{who} joined on 23.4.1971. Shri Bhawani Shankar is senior to the petitioner. This fact is also substantiated

by the Divisional seniority list of Signal and Block khalasi issued on 26.8.1982. In the said seniority list Shri Bhawani Shankar figures at serial No.97 with his date of posting on this post indicated as 23.10.1965/18.3.1971 whereas the petitioner Shri Om Prakash is shown as serial No.99 with dates as 19.10.65/23.4.1971. In regard to the decision of the Chandigarh Bench the respondents submit that the undertaking given by the respondents was relevant only in the event of any junior person than the petitioner having been promoted. As no junior person to the petitioner had been promoted the question ^{of} ~~for~~ calling the petitioner for the trade test did not arise at all, as already stated respondent No.4 is not junior to the petitioner. He was called for the trade test for the post of ESM Grade-II whereas the petitioner had not yet been trade tested for the said post.

4. In view of the above facts and circumstances of the case we are not inclined to interfere in the matter. The O.A. is accordingly dismissed. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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