

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 535/2011

Reserved on : 15.07.2020

Pronounced on : 21.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Smt. Hina P. Shah, Member (J)**

Abdul Hakim Son of Shri Hamid, aged about 56 years, resident of Gali No.8, Mukti Marg, Sanjay Nagar, Kota Junction, Kota. At present working as Valve-man, West Central Railway, Kota.

...Applicant.

(By Advocate: Shri Rajvir Sharma)

Versus

1. Union of India, through its General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota.
3. Divisional Engineer (Works), West Central Railway, Kota.
4. Shri Jagbandhu, Son of Shri Kulmani working as Sr. Valve-man, in the office of Senior Sector Engineer (Works Water Supply) West Central Railway, Kota.
5. Ram Prasad working as Sr. Valve-man, in the office of Senior Sector Engineer (Works Water Supply) West Central Railway, Kota.
6. Prahlad working as Sr. Valve-man, in the office of Senior Sector Engineer (Works Water Supply) West Central Railway, Kota.

...Respondents.

(By Advocate: Shri Dinesh Pathak)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has sought a direction to quash and set aside letter by the Assistant Divisional Engineer (Works), Kota dated 22.09.2011 (Annexure A/1, by which he has been informed

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that he cannot be considered senior to three other employees S/Shri Jagbandhu, Chhotelal and Ram Prasad mentioned in that letter) and to promote the applicant on the post of Senior Valve-man since the date of promotion of juniors with all consequential benefits. He has also requested for direction to correct the seniority list dated 09.02.2011 (Annexure A/6) by placing the applicant at Item No 9 above the persons shown at Items No. 9, 10 and 11.

2. The applicant was initially appointed as Driver on 18.09.1982. While working as Driver in pay scale 3050-4590, he was transferred to the post of Khallasi in the pay scale 2550-3200. He got orders for having his pay protected following a direction in OA No.478/1999 by this Tribunal but was still kept in the pay scale of Class-IV employee (2650-4000) in the cadre of Senior Gardner and was finally transferred against the post of Valve-man on 25.02.2000 (in the pay scale 2550-3200), which the applicant alleges, was wrong. The applicant's next promotion was to be to the post of Senior Valve-man. On a Senior Valve-man (Shri Chhotu Lal) taking voluntary retirement, the applicant should have been given promotion to this vacancy. However, instead of doing that, the respondents have promoted ineligible persons (Shri Chhotu Lal and Shri Jagbandhu) which is arbitrary. The applicant alleges that though his pay has been protected, he has not been given his correct designation as Senior Valve-man while juniors have been posted against such posts. It is stated that by an order dated

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23.06.2006, some employees have been de-categorized and adjusted as Senior Valve-man. There are three persons (aforementioned) in this list who are junior to him. Adjusting them as Senior Valve-man, and not giving the applicant promotion to that post, is what is questioned in this OA.

3. The respondents have denied the claim made by the applicant. It is alleged that the applicant has no grievance as his pay has already been protected as directed by this Tribunal in OA No. 478/1999. The applicant was not entitled for promotion to the post of Senior Valve-man, while those who have been adjusted have been done on the basis of Medical disability and not by promotion. No Junior person has been promoted on the post of Senior Valve-man. The three persons mentioned in the OA, who are alleged to be Juniors, were already working in the same pay scale (of Senior Valve-man) when they were medically de-categorized and adjusted and they cannot be said to have been promoted to the post of Senior Valve-man from the post of Valve-man. There is no difference in the pay scale of Valve-man and Senior Valve-man and the applicant is already getting benefit of pay protection. For all these reasons, the OA deserves to be dismissed.

4. A rejoinder has been filed by the applicant in which, besides reiterating his earlier claims, he has stated that the employee has not only right to get the salary but also a right to have a status and

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a right to live with status and dignity. It is also stated that the three employees who are promoted to the post of Senior Valve-man are not only junior to the applicant but are also totally unfit for the post to which they have been promoted. Amongst these promoted employees, Shri Chhote Lal and Shri Jagbandhu were appointed in the year 1985-86, while the petitioner was appointed on 01.01.1981. The applicant has also denied other claims made in the reply (about adjustment of the 3 allegedly junior employees in the same pay scale that they were getting before, merger of cadres etc.) and stated that no documents have been placed to support these claims and therefore these should be presumed to be wrong claims. The applicant has also alleged that failure to file reply by private respondents also shows that they have no case to defend.

5. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The learned counsel for the applicant argued that the impugned order dated 22.09.2011 (Annexure A/1) itself admits that (translated in English) the facts mentioned in the representation are correct to a large extent. It was also argued that the applicant is senior to the private respondents since he got into service before them, was granted temporary status before them, and was working as Valve-man (while getting salary of Senior Valve-man, as protected as per orders of this Tribunal) before these persons who were medically de-categorized and posted as Senior Valve-man in his Unit (instead

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of promoting him to that job). The learned counsel also brought our attention to the hearing disability of one of these persons which makes him not capable of performing the functions of the Senior Valve-man. The learned counsel for the official respondents argued that since the medically de- categorized persons were already working in that scale at other places, it cannot be said that they were given promotion to this post, overlooking the applicant. The applicant was not a Senior Valve-man, but was only getting that salary by way of pay-protection and hence he cannot claim to have seniority over the persons who were already getting that scale by way of their having been promoted to that scale earlier (in the job from which they were medically de-categorized). The applicant cannot claim promotion as a matter of right, and the impugned order only points out a fact that he has not been promoted to the grade of Senior Valve-man and hence he cannot be held to be senior to the private respondents.

6. After going through the pleadings and hearing the arguments, it is clear that the applicant's claim is based on his alleged seniority over the private respondents. This claim is based on his having entered the service before the private respondents and on his getting the pay of Senior Valve-man (though without getting that designation) as a result of a pay protection order from this Tribunal. These facts are not contested by the respondents, but they have argued that the applicant has no right to get promotion.

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Those who have been put as Senior Valve-man (in the Unit where the applicant is working), were sent there by way of adjustment in the same rank where they stood before, on account of their medical de-categorization as per the rules. No persons who is Junior to applicant have been promoted over him to the post of Senior Valve-man. These categorical assertions by the respondents have been denied by the applicant in his rejoinder and he has argued that since no documents have been produced with the reply, these should be presumed as wrong. We do not agree with this line of argument by the applicant. The applicant has himself not produced anything to prove his seniority over the private respondents other than the fact of his having entered service (admittedly in a different capacity) before the private respondents. It is also admitted by the applicant that he is working as Valve-man and getting higher salary only because of pay protection given to him. Though he says it was wrongly done, he has admittedly abided by that decision and has been working as such since the year 2000. In these circumstances, his claim for promotion stems from, what he has expressly mentioned in his rejoinder, the need to be granted status and dignity and not just salary. While we do not deny that every employee should have job (and status) satisfaction, it cannot be claimed as a matter of right. It can be seen that the applicant did not get promotion due to 3 other employees, who were medically de-categorized from various other places, happened to be adjusted against posts of Senior Valve-

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man. The official respondents have categorically stated that they have done this as per their rules relating to adjustment of medically decategorised employees, and these employees were already holding the scale and rank to which they were adjusted. We have no reason to doubt this assertion. The applicant has not produced anything to counter this assertion other than stating that no record is produced by the respondents to support their contention. From these facts, we do not find any denial of any right of the applicant. Any loss of opportunity, due to adjustment of medically decategorized staff to the unit where he was working, can only be ascribed to fortuitous circumstances.

7. For the reasons mentioned above, we are unable to grant the prayers of the applicant. The OA is therefore, dismissed. No costs.

(Hina P.Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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