

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

OA 1078 of 1987

Decided on 11-9-89

FAKHURUDDIN ..

APPLICANT

VERSUS

UNION OF INDIA & ANOTHER

RESPONDENTS

For the Applicant - Mr. R.L.Sethi, Advocate

For the respondents - Mr. M.L.Verma, Advocate.

B.S.SEKHON:

Aggrieved by the denial of promotion to the post of Senior Carpenter and by promotion of Shri Kundan Lal - respondent No.2, Applicant has preferred the instant Application.

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2. Applicant was recruited to the post of Carpenter on regular basis on January 23, 1978 and has ^{been} working under respondent No.1 since then. According to the Applicant, he has been working to the entire satisfaction of his superiors and had also received several commendation and appreciation letters. It is common-ground between the parties that the next step in the ladder of promotion is to the post of Senior Carpenter in the scale of Rs. 330-480, which is a non-selection post and is to be filled 100% by promotion. The feeding cadre is the post of Carpenter and the eligibility qualifications are five years' service in the said cadre. Claiming that he being the senior-most Carpenter at the time of occurrence

vacancy
of the ~~vacancy~~ of Senior Carpenter, should have been promoted to the ~~said post as a matter of course~~, applicant adds that for reasons best known to respondent No.1, Shri Kundan Lal, who was a Black-smith, was promoted on ad hoc basis. On a representation being made by him, Applicant was advised through the Deputy Superintending Archaeologist that after carefully examining his case, it was found that no injustice had been done to him by promoting respondent No.2 as Sr. Carpenter. Applicant has prayed that the impugned order dated 11-5-87, Annexure-1 (correct date appears to be 14th May, 1986) be set aside and he be granted promotion to the post of Sr. Carpenter from the date the vacancy arose, with all the consequential benefits by setting aside the irregular ad hoc appointment of respondent No.2.

3. Respondents have contested the Application saying that respondent No.2 though working as a Carpenter, was re-designated due to oversight as a Blacksmith in 1963. The case on being taken up by the Archaeological Survey of India Service Association, was referred to the Department of Personnel and Administrative Reforms, who advised that the Ministry/ Department was competent to grant one time relaxation in the case. Thereupon, the D.P.C. considered the case of respondent No.2, approved him for promotion to the vacant post of Senior Carpenter and that due to the peculiarity of the case and to give justice to the eligible candidate, one time relaxation has already

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been granted by the competent authority after showing the case to the Department of Personnel and Administrative Reforms and that as such appointment of respondent No.2 is not irregular. Another plea raised by the respondents is that Applicant is not the senior-most Carpenter, there are two other Carpenters, who are senior to him and that the Application is mis-conceived as also barred under Section 20 of the Administrative Tribunals Act, 1985 (for short 'the Act').

4. We have heard the arguments addressed by the learned counsel for the parties and have also waded through the relevant record produced by the respondents.

5. We may in the first instance dispose of the preliminary objection raised by the learned counsel for the respondents on the basis of Section 20(1) of the Act. This sub-section lays down that a Tribunal shall not ordinarily admit an Application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. It is pertinent to mention that this sub-section does not place an absolute embargo against the admission of an Application in a case wherein the Applicant has not availed himself of the alternate remedies. In the present case, Applicant not only made a representation to the Director General through proper channel, but the Application had also been admitted as far back as August 1987. In the circumstances, the preliminary objection has little

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substance and the same is hereby repelled.

6. During the course of arguments, the learned counsel for the Applicant inviting our attention to the Recruitment Rules (Annexure A-2), stressed that the post of Senior Carpenter is a non-selection post which is to be filled up 100% by promotion out of the Carpenters with five years service in the grade. The learned counsel added that respondent No.2, who was a Blacksmith, was not entitled to be promoted as the feeder service for the post of Senior Carpenter is the cadre of Carpenters. The learned ^{counsel} also placed reliance on the communication dated May 1986 forwarding representation of the Applicant to the Director General A.S.I. to make good the assertion that the Applicant is a meritorious worker, who did a splendid work in Indian War Memorial Museum. Reference was also made by the learned counsel to the remarks in Annexure A-3 to the effect that respondent No.2 is yet to prove that he knows any carpentry work.

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7. The learned counsel for the respondents fairly conceded that the Applicant fulfils the eligibility qualifications and that ~~is~~ ^{is} the post of Senior Carpenter a non-selection post; and that the feeding cadre for promotion to the post of Senior Carpenter is the cadre of Carpenters. The submission made by the learned counsel for the Applicant about the post of Senior

Carpenter being a non-selection post, appointment to which is to be made 100% by promotion out of the feeding cadre of Carpenters with five years service is supported by the Recruitment Rules. Applicant is thus eligible to be promoted to the post of Senior Carpenter. The learned counsel for the respondents, however, submitted that respondent No.2 is a duly qualified Carpenter. He has been doing the job of a Carpenter, but he alongwith three colleagues of his was wrongly designated as Blacksmith. The learned counsel went on to say that on a representation put in by four employees wrongly designated as Blacksmiths, the designation of three was changed to that of Carpenter, but respondent No.2's designation was not changed due to inadvertence. Another point made by the learned counsel was that respondent No.2 had been doing the job of a Carpenter and that in view of the injustice done to respondent No.2, and one time relaxation in the ~~Recruitment Rules~~ Recruitment Rules was granted and respondent No.2 was promoted to the post of Senior Carpenter on regular basis. The relaxation is stated to have been ~~granted~~ after seeking advice from the Department of Personnel and A.R. A perusal of the Service Book of respondent No.2 as also of order No.11/9/66-GS dated April, 1967, goes to show that respondent No.2 had been appointed as a Blacksmith. His designation has also been indicated as Blacksmith-cum-Carpenter. Further point made by

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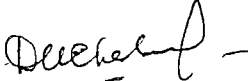
the learned counsel for the respondents was that respondent No.2 was the senior-most employee. He possessed a certificate in carpentry from ITI . He was not redesignated as Carpenter due to oversight, when the designation of three colleagues of his was changed and that the promotion having been made after relaxation of the Recruitment Rules cannot be questioned by the Applicant. After a perusal of the notings pertaining to the one time relaxation in the Recruitment Rules at the time of promoting respondent No.2, the orders^{regarding} granting relaxation including the order of respondent No.2's promotion, we are satisfied that relaxation has been granted by the competent authority on valid considerations and not for extraneous reasons. The salient grounds considered while granting relaxation are:


- i) Respondent No.2 possesses the ITI diploma in Carpentry and does not possess any qualification for the post of Blacksmith.
- ii) He has been attending to the duties of Carpenter only.
- iii) He represented several times for change of designation from Blacksmith to Carpenter, which was not done due to oversight, but he was given to understand that he will be considered for promotion to the post of Senior Carpenter as and when such a vacancy arises in future.
- iv) The D.P.C. convened on 16-9-83 considered his case at length and decided that Shri Kundan Lal, who was initially appointed as Blacksmith-cum-Carpenter and knows the job of Carpenter be given ad hoc promotion.

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The aforementioned grounds apart from being relevant are quite germane to the question of granting relaxation. Since the promotion of respondent No.2 has been granted after one time relaxation in the Recruitment Rules and that too on valid grounds, promotion of respondent No.2 to the post of Senior Carpenter cannot be faulted. In view of the factum of relaxation in the Recruitment Rules, the submission of the learned counsel for the Applicant that respondent No.2 did not possess the eligibility qualifications of five years' service as a Carpenter is of little avail to the Applicant.

8. In the premises, the Application is held to be devoid of merit. In fine, the Application is hereby rejected. In the circumstances, we make no order as to costs.


(D.K. Chakravorty)
AM
11-9-1989


(B.S. Sekhon)
VC.
11-9-89

'RK'