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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1451/91

Date of decision: 28.01.1993.

Shri Radha Krishan Kumar

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Applicant

Versus

Union of India

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Respondents

Coram:-

The Hon^oble Mr. P.C. Jain, Member(A)

The Hon^oble Mr. J.P. Sharma, Member(J)

For the applicant

:

Sh. R.K. Relan, counsel

For the respondents

:

Ms. Sunita Rao, counsel

JUDGEMENT(ORAL)

(delivered by Hon^oble Sh. P.C. Jain, Member(A))

The applicant was working as Mechanic Grade-I in the Diesel Shed of the Ajmer Division of the Western Railway in the grade of Rs.380-560/-(present grade 1320-2040). The new Electrical Loco Shed was being established at Tughlakabad and for the post^es of Supervisors, skilled Artisan^s and unskilled Artisan^s, ^{new} ~~staff~~ for selection/filling up the posts were laid down in the Western Railway Headquarters Office letter dt. 30.04.1986 (Annexure A-3/1). For the post of Supervisor in the grade of Rs.425-700 (present grade Rs.1400-2300, 50% posts were to be filled up by direct recruitment and 50% by eligible optees in the scale Rs.425-700

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in all branches of Electrical department of Western Railway including the Electrical Loco Shed, by screening and training and/or by selection from eligible artisan staff in Grade-I scale Rs. 380-560 in all branches of Elec.Deptt. of Western Railway including workshops after obtaining options. Preference was to be given for lateral induction of Supervisors in Electrical Loco Shed Maintenance side and then other streams of Electrical Deptt.(other than TRS Cadre). In case of selections from the cadre of skilled artisans in Grade-I scale Rs.380-560, they were ranked junior to selected supervisors in the grade of Rs.425-700 and posted in Electrical Loco Shed. The applicant gave his option on 20.4.1989, he was screened in August, 1989 and joined the new Electrical Loco Shed, Tughlakabad on 18.1.1989 in the grade of Rs.380-560 (revised grade Rs.1320-2040). He continued to work in that post until he was asked to appear in a selection for promotion to the post in the grade of Rs.425-700 (Revised scale Rs.1400-2300). It is in this background that he approached this Tribunal by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985 against the communication asking him to appear in selection. He has prayed for the following reliefs:-

"(a) that the impugned order dated 23.1.91 be set aside being arbitrary, discriminatory and against the rules, in so far it relates to the subjecting the applicant to

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a selection to the post of Chargeman as he had already passed the selection for that post and held the same from May/89 to Nov/89 and his juniors are already holding on such posts in pursuance of the selection held in April, 1989;

(b) that the applicant should be deemed to have been promoted from the date the vacancy of Chargeman arose in Sept/90, in Electric Loco Shed, Tughlakabad in keeping with the assurance held out to him at the time of his posting into this Shed in November, 1989 and even otherwise he has a vested right to be promoted as & when vacancy arises without having undergone any fresh selection;

(c) that the applicant is entitled to the Notional promotion from the date his juniors were promoted to the post of Chargeman in his parent Division by creation of a supernumary post at Electric Loco Shed Tughlakabad under Respondent No.3 by operation of the next below Rule;

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- (d) that the Respondent No.3 may be directed to declare the seniority position of the applicant at the appropriate place in seniority group of Electrical Chargeman considering the factor that he was holding the equivalent post of Chargeman in Diesel Shed Gandhi Dham since May/1989;
- (e) any other or further consequential relief as this honourable Court may deem fit and proper in the circumstances of the case may also be granted in favour of the applicant as against the respondents;
- (f) the cost of the suit may be granted in favour of the applicant as against the respondents.

2. By an order passed by a Bench of this Tribunal on 25.6.1991 while directing issue of notice to the respondent on admission and interim relief, the respondents were directed not to declare the result of the examination scheduled to be held for the post of Chargeman in terms of their order dt. 23.5.1991. This interim order was vacated by an order passed on 5.5.1992 on the ground that the applicant had been given promotion to the post of Chargeman in the grade of Rs.1400-2300 w.e.f. 23.1.1991 by office order dt. 24.4.92 Annexure A-I to the rejoinder.

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3. As the pleadings in this case are complete, this O.A. is being disposed of finally at the admission stage. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

4. Briefly stated, ^{the} the case of the applicant is that in his earlier cadre he had appeared for selection for the higher post in the grade Rs.1400-2300 held in April, 1989 and ^{he} have also been promoted to the higher post by order dt. 24.5.1989 (Annexure A-4), and, as such, on his taking over the charge ^{for} the post in the New Electrical Loco Shed on 18.11.1989, he should have been given the scale of 1400-2300 instead of 1320-2400 as ^{he was} he ^{was} already working in his earlier cadre in the higher scale. The case of the respondents, on the other hand, is that ^{the} if the applicant had given his option for transfer to the Electrical Loco Shed Tughlakabad, he was screened in August, 1989 for being taken in the grade 380-560/1320-2040 and was in fact taken in the new Electrical Loco Shed on 18.11.1989 in that grade and not in the higher grade of 1400-2300. It is further their contention that the applicant continued to work in that grade until he was ordered to be given promotion to the grade 1400-2300 w.e.f. 23.1.1991 by office order dt. 2.1.1992 on the ground that he had

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already passed the selection for the higher grade in his earlier cadre and it was only on 23.1.1991 notice for selection under the ranker's quota in the higher grade had been issued.

5. On the basis of the respective stand^U taken by the parties, the question ^{U which} is now survives for consideration in this case is the date from which the applicant is entitled to pay in the grade Rs.1400-2300 in the Electrical Loco Shed Tughlakabad. The stand of the applicant is that ^{U as had} he ^{U promoted} already been ~~transferred~~ to the above grade w.e.f. 20.4.1989, he is entitled to pay in the above scale w.e.f. 18.11.1989 when he joined the Electrical Loco Shed. On the other hand, the stand of the respondents is that as the applicant's case ^{U fell in} for ^{U promotion} selection quota of 50% and as there was no vacancy in that quota in the grade 1400-2300 in ^{U November} February, 1989 when the applicant joined in Electrical Loco Shed, he cannot be given the benefit of the higher scale in the new grade from that date. The applicant has not placed any material on record to show that a vacancy in the 50% promotion quota for the post of Supervisor/Chargeman in the grade of 1400-2300 was available on 18.11.1989 when he joined the Electrical Loco Shed. The reliance on the cadre position as on 31.3.1992, ^U ~~has been~~ placed at Annexure A-4 to the rejoinder, is not relevant for this purpose as the applicant ^U has already been given promotion to the higher scale from a date earlier than that. Further, the

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fact ^{is} that the applicant was screened for a lower grade post in Electrical Loco Shed and he joined in lower grade in that shed can also not been ignored. He was free to ^{to decline} ~~revise~~ to be screened for selection for lower grade post when he was already working in higher scale and also free to ^{to refuse to} join in the lower grade post on the same ground. He, however, did not do so. He did not assail the aforesaid screening and appointment at the appropriate time before the Tribunal. This O.A. was filed by him only on 21.6.1991, ^{thus} he is ^{estopped} from assailing screening/appointment in the lower grade in August/November, 1989 in the new ^{set up} Electrical Loco Shed ^{on prayer} in pursuance of his own option. ^{Further}, in view of the statement in the office order dt. 2.4.1992 that the applicant is being given the promotion in the scale 1400-2300 w.e.f. 23.1.1991 as it was on that date that a notice for selection in the rankers quota was issued, ^{and he has no case.} If the applicant's case ^{was that} ~~for~~ selection ^{for} in the higher grade was initiated earlier than 23.1.1991 and, therefore, he was eligible to be considered in the higher grade from a date prior to 23.1.1991, the position might have been different. However, it is not so.

6. In the light of the foregoing discussion, we are of the considered view that after ^{being order} ~~given~~ promotion to the applicant by an order dt. 2.4.1992 w.e.f. 23.1.1991 has been ^{be}.

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issued, the applicant is not entitled to any further relief.
The O.A. stands disposed of ^{as accordingly} leaving the parties to bear their own costs.

J.P. Sharma
(J.P. Sharma)

Member (J)

P.C. Jain
(P.C. Jain)

Member (A)