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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1512/91

DECIDED ON : 8/5 Sept. 92

Pearey Lal

... Applicant

Vs.

Union of India & Others

... Respondents

COURT : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)

THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri Umesh Misra, Counsel for the Applicant

Shri Shyam Moorjani, Counsel for the Respondents

JUDGMENT

By Hon'ble Shri P. C. Jain, Member (A) :

The applicant in this O.A. under Section 19 of the Administrative Tribunals Act, 1985 is aggrieved by his alleged reversion from the post of Master Crafts Man under the office of Divisional Railway Manager, New Delhi to his substantive post of Fitter Grade-I by the impugned order dated 12.2.1991 (Annexure-B to the O.A.). He has prayed that the above impugned order be declared to be against the principles of natural justice, against the provisions of Article 311 of the Constitution and that the same is arbitrary, null and void and liable to be set aside and for directing the respondents to reinstate him with full benefits, arrears of salary, seniority and other benefits accrued to him as if he was not reverted.

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete, with the consent of both the parties, it was decided to finally dispose of the case at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

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3. The applicant joined service as a Khalasi on 2.4.1963 and in April, 1972 he was promoted as Fitter Grade-C. In October, 1978 he was promoted as Fitter Grade-B and in July, 1981 as Fitter Grade-I. These facts are not disputed. But after this stage there is a dispute between the parties as to what actually happened and why. The contention of the applicant is that on 9.3.1990 he was promoted to the post of Master Crafts Man and that promotion was made on regular basis against a permanent vacancy and he was promoted because he was found fit in selection. Further, on promotion he was transferred to Tughlakabad from Shakur Basti where he was earlier working, but for administrative reasons he was retained as Master Crafts Man at Shakur Basti. According to the respondents, however, due to non-availability of suitable qualified person to fill the vacancy of Master Crafts Man the applicant was allowed to officiate on the basis of seniority as an ad-hoc temporary measure pending holding of the suitability test and with the availability of qualified personnel to man the vacancy the ad-hoc temporary arrangement has been discontinued. It is further their case that after the applicant passed the selection/suitability test for promotion to the post of Master Crafts Man vide results notified on 24.8.1990 he was promoted to officiate as Master Crafts Man and posted to the Tughlakabad Shed, but vide his letter dated 6.11.1990 he declined this promotion for a period of one year and it was on account of this request of the applicant that the impugned order was passed on 12.2.1991 by accepting his request, and as such, the applicant has no cause of action.

4. We have carefully considered the rival contentions of the parties. Learned counsel for the applicant strongly relied on the office order dated 9.3.1990 (copy at Annex.-A

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to the O.A.) in support of his case. This office order states that vide Senior Divisional Personnel Officer's letter dated 2/90 the applicant along with four others had been promoted as Master Crafts Man and posted to Diesel Shed, Tughlakabad and that it has now been decided to promote and post the applicant (along with four others mentioned therein) at Shakur Basti w.e.f. 9.3.1990.

Accordingly, it was argued that the applicant was regularly promoted as Master Crafts Man w.e.f. 9.3.1990 and posted at Shakur Basti. The applicant has not placed on record the Senior Divisional Personnel Officer's letter dated 2/90 which is referred to in this office order dated 9.3.1990, with a view to show that the applicant was regularly promoted vide the office order dated 2/90. However, on our direction, a copy of the aforesaid letter dated 2/90 was made available to us by the learned counsel for the respondents. From a perusal thereof it is clear that the applicant among others was appointed to officiate as Master Crafts Man on ad-hoc basis, on Divisional seniority subject to passing a suitability test and in case there was no vigilance/departmental inquiry pending against him. It is also seen that he was ordered to be posted at Tughlakabad against an existing vacancy. It is thus clear that the promotion of the applicant to the post of Master Crafts Man earlier at Tughlakabad and then his retention at Shakur Basti in pursuance of order dated 2/90 and office order dated 9.3.1990 was only on ad-hoc basis subject to his passing the suitability test. Learned counsel for the respondents, on our direction, also made available to us a copy of order No. 220-E/8/RC/P-5 dated 24.8.1990 by which result of the suitability test held on 2/90 and 11.7.1990 was notified and
C.e.



in which suitability test the applicant was found suitable. The respondents have filed as Annexure R-3 to their counter affidavit a copy of order dated 24.10.1990 which clearly shows that the applicant among others who were declared suitable for the post of Master Crafts Man was promoted to officiate as Master Crafts Man and posted to Tughlakabad Shed. It is thus beyond any doubt that the applicant's promotion to the post of Master Crafts Man after he was declared successful in the suitability test was ordered only in October, 1990 and not in February, 1990 or on 9.3.1990, as contended by the applicant.

5. It is in the above context that the applicant gave his refusal to his promotion as Master Crafts Man vide letter dated 6.11.1990 and a copy of which has been filed as Annexure R-1 to the counter affidavit of the respondents. The contention of the applicant in the O.A. that he was asked to sign an application that he wanted to stay at Shakur Basti, when the applicant did it, he never gave up his post of Master Crafts Man, cannot be accepted in view of his own letter already referred to above. It clearly states that he refuses his promotion for a period of one year; there is nothing in this letter to show that he accepted his promotion but only prayed for his retention on promotion at Shakur Basti. The impugned order dated 12.2.1991 only states that the applicant who was promoted as Master Crafts Man by office letter dated 10.90 and posted to Tughlakabad, ^{ed} has tendered his refusal on 8.2.1991 for promotion as Master Crafts Man at Tughlakabad it was thereby accepted for a period of one year. Here it may be stated that the refusal of the applicant though dated 6.11.1990 appears to have been tendered on 8.2.1991 as per endorsement on that very letter.

6. In the light of the foregoing discussion, it has to be held that the applicant was ordered to be promoted on a regular basis to the post of Master Crafts Man only after he was declared successful in the suitability test in the letter dated 24.8.1990 by promotion order issued in October, 1990. Further, his promotion in pursuance of the above order ceased at his own request given by him in writing. Under the Railways, a Railway servant has the option to refuse his promotion for a period of one year and once the option exercised by him is accepted by the competent authority, he is to be held to be estopped from agitating on this point. Thus, the O.A. is devoid of merit and is accordingly dismissed leaving the parties to bear their own costs.

(Signature)
(P. C. JAIN)
MEMBER (A)

as

(Signature) 8.9.92
(T. S. OBEROI)
MEMBER (J)