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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

D.A.943/91

DATE OF DECISION: 18.9.92

Chatter Singh

... Applicant

vs.

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

For the Applicant

... Sh.A.K.Bhardwaj,
Advocate

For the Respondents

... Shri Romesh Gautam,
Advocate

C O R A M

THE HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE SHRI T.S.OBEROI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Y*
2. To be referred to the Reporter or not? *N*

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 16.4.1991 the applicant who has been working as a Grade-II Fitter under the Senior Divisional Mechanical Engineer (Carriage & Wagon) in the Northern Railway has challenged the order dated 19.6.1990 at Annexure-A1 rejecting his appeal for promotion as Grade-I Fitter and has prayed that the respondents be directed to promote him as H.S.Fitter Grade-I with effect from the date when his juniors were promoted with all consequential benefits. The brief facts of the case are as follows.

2. The applicant as Grade II Fitter was eligible for promotion as Grade-I Fitter after passing the trade test. He appeared in the trade test on 5.6.90, but he was declared to have been failed while his juniors, who

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according to him are less experienced passed the test and were given promotion superseding him. His representations for his supersession were of no effect and finally resulted in the impugned communication at Annexure A1 dated 19.6.90 in which he was informed that though he passed in the job preparation he failed in overall assessment but that he would be entitled to be called for future selections. His further grievance is that contrary to the Railway Board's orders to give more chances for passing the trade test, the applicant was not called for the second trade test held on 2.7.90 for promotion as Highly Skilled Fitter Grade I. It appears that after this application was filed, the respondents invited the applicant to the trade test vide the letter dated 10.6.91 but instead of inviting the applicant Shri Chatter Singh, son of Shri Tika Ram, another Chatter Singh, son of Shri Shiv Lal appeared and passed the test. When this error was discovered, the explanation of the concerned authority was sought and the applicant was asked to appear in the trade test vide the letter dated 30.9.91 (Annexure-R5), but the applicant refused to appear in the trade test and expressed his unwillingness in writing on the reverse of Annexure-R5. The applicant has not specifically denied the expression of his unwillingness to appear in the trade test evidenced from the reverse of Annexure-R5.

3. The respondents, however, have conceded that the applicant was not invited to appear in the second trade test held on 2.7.1990 .

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4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is not denied that in accordance with the instructions of the Railway Board, once a candidate has failed in the trade test, he has to be given further chances to pass the trade test. It is also not denied that the applicant was not given the opportunity to appear in the trade test held on 2.7.90 having failed to pass the trade test on 5.6.89. From the conduct of the respondents of inviting the applicant to appear in the trade test on 10.6.91 and again on 30.9.91 it is clear that the applicant was entitled to appear in the trade test on 2.7.90 when others were given the opportunity to do so. It is true that the applicant had refused to appear in the trade test when he was invited to do so vide the communication dated 30.9.91 at Annexure R5, but that cannot be held out against him permanently as he had sufficient reason to do so. Firstly, he was not called for the trade test on 2.7.90 and subsequently when another letter inviting him to the trade test was issued on 10.6.91, instead of reaching the applicant, it reached a wrong person with the same name and the third communication was issued on 30.9.91 when the applicant can justifiably be expected to have been completely upset by the turn of events. As regards the applicant's claim for being selected on the basis of the test held on 5.6.89, the same cannot be allowed as there is no reason to question the assessment made by the respondents through the trade/selection test. No malafides against the respondents or the selection committee ^{are} is proved.

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5. In the conspectus of facts and circumstances we allow the application to the extent of directing the respondents to arrange a trade/selection test for the applicant within a period of one month from the date of communication of this order and the applicant is directed to take the trade/selection test without demur. If the applicant comes upto the desired level of performance and suitability in the trade/selection test, the respondents are directed to promote him as Highly Skilled Fitter Grade I with effect from the date any of his juniors who appeared in the trade test of 2.7.90 was so promoted. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

T.S. Oberoi 18-9-92
(T.S. OBEROI)
JUDICIAL MEMBER

S.P. Mukerji
18-9-92
(S.P. MUKERJI)
VICE CHAIRMAN

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