

10
CAT/7/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No.
T.A. No.

1259/92

199

1-8-97

DATE OF DECISION

Sh. Vijay Kumar Pathak

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

Respondent

USI & Ors

Advocate for the Respondent(s)

Shri H.K. Gangwani

CORAM

The Hon'ble Shri S.P. Adige, Member (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (B)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (B)

Central Administrative Tribunal
Principal Bench

O.A. 1259/92

New Delhi this the 1st day of August, 1997.

Hon'ble Shri S.R. Adige, Member (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Vijay Kumar Pathak,
S/o Shri Pooran Chand Pathak,
Head Trains Clerk,
Central Railway,
Agra Cantt.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The General Manager,
General Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Jhansi.

By Advocate Shri H.K. Gangwani.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant has filed this application seeking a direction to the respondents to revert him from the post of Head Trains Clerk (HTC) to the post of Senior Trains Clerk (STC) and promote him to the post of Guard as per the option exercised by him; and further to direct the respondents to promote him as Guard from the date when his juniors have been promoted with all consequential benefits, seniority, fixation of pay, arrears with interest and other orders as may be deemed fit.

8/

(2)

2. We have perused the records and have also heard Shri B.S. Mainee, learned counsel for the applicant and Shri H.K. Gangwani, learned counsel for the respondents.

3. According to the applicant, he was promoted as HTC in grade Rs.425-640 against the upgraded post vide Respondents' letter dated 10.8.1984. Later, he says that since the respondents found that he has been wrongly promoted, he was reverted to the post of Trains Clerk vide order dated 13.5.1985. In terms of the respondents' letter dated 14.4.1986, he submits that he submitted his option for the post of Goods Guard grade Rs.1200-2040 on 13.5.1986, which option is final. Thereafter, he was promoted as STC on ad hoc basis on 6.10.1986 followed by another letter on 1.12.1986 in the same capacity. By letter dated 24.12.1986, he was again promoted as HTC purely on ad hoc basis. His grievance is that in spite of his request to the respondents to promote him as Guard in pursuance of his option exercised on 13.5.1986, he was not promoted. He submits that Senior Welfare Inspector, Agra Cantt had given a report on 15.10.1989 that the applicant had given his option in the prescribed proforma dated 13.5.1986, which is available at page 132 of his personal file maintained in the office of Chief Controller, Agra Cantt which has been forwarded to the D.R.M's office, Agra Cantt by letter dated 14.5.1986. He submits that in spite of the option and his several representations, the respondents have wrongly promoted a number of other

81

(M)

STCs who were junior to him as Guards, the details of which are given in paragraph 4 of the O.A. Shri B.S. Mainee, learned counsel for the applicant also relies on the judgement of this Tribunal (CAT Jodhpur Bench) in **Hans Raj and Ors. Vs. Union of India and Ors.** (O.A. 576/87), decided on 13.8.1991. The learned counsel submits that the impugned orders of the respondents refusing to promote the applicant as Guard after reverting him to the post of STC are illegal and unjustified as the applicant has already exercised a valid and final option for promotion in that grade.

4. The respondents in their reply have confirmed that options for Goods Guard were asked by their letter dated 14.4.1986 from Junior Trains Clerk and that the applicant had submitted his option for promotion as Goods Guard in May, 1986. They have submitted that this was done when he was working as HTC which does not entitle him for the option asked in respect of Guards. The learned counsel for the respondents has submitted that since the applicant has been promoted as HTC w.e.f. 1.1.1984, he cannot be considered for promotion as Guard even though he might have exercised the option as this is in a different line.

5. After careful perusal of the records and the submissions made by the learned counsel for the parties, we are of the view that the contentions of the respondents are erroneous for the following reasons.

and not sustainable ¹³
2

82

1X

6. There is no dispute that the applicant had exercised his option in terms of the respondents' letter dated 14.4.1986 for promotion as Guard. The submission made by the learned counsel for the respondents that since he was working as HTC, he could not exercise such an option or be promoted in that grade is erroneous. From a perusal of the orders passed by the respondents themselves annexed to the O.A. including the letter dated 24.12.1986 it shows clearly that the applicant had been promoted as HTC in grade Rs.425-640 purely on ad hoc and local basis only, which does not bar the applicant from being considered for promotion as Guard in terms of the option exercised by him on 13.5.1986. The respondents have not disputed the allegation that they have promoted a number of STCs who were junior to the applicant as Guards ignoring his claim.

7. In the result, this application is allowed to the extent that the applicant shall be considered eligible for promotion to the post of Guard, and shall be so promoted in terms of the option exercised by him on 13.5.1986 from the date when his juniors were promoted in accordance with law. He shall also be entitled to all the consequential benefits, including seniority and arrears of pay in the promoted post from the due date. The respondents shall take necessary action as above, within a period of three months from the date of receipt of a copy of this order.

O.A. allowed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Adige
(S.R. Adige)
Member(A)

'SRD'