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Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A. No. 2371/92

Decided on 16.7.99

Harnam Singh ..... Applicant

(By Advocate: Shri B.S. Mainee )

Versus

U.O.I. ..... Respondents

(By Advocate: Shri R.L. Dhawan  
Shri S.K. Sawhney)

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying  
benches of the Tribunal or not? No.

*Adige*  
(S.R. ADIGE)  
VICE CHAIRMAN (A)

Central Administrative Tribunal  
Principal Bench

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O.A. No. 2371 of 1992

New Delhi, dated this the 16 July, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Harnam Singh,  
S/o Shri Darshan Singh,  
Highly Skilled Fitter (G) Gr.I  
under Asst. Electrical Engineer,  
Northern Railway,  
Electrical Workshop, Daya Basti,  
Delhi-110035.

... Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. The Chief Electrical Engineer,  
Northern Railway,  
Baroda House,  
New Delhi.
3. The Asst. Electrical Engineer,  
Electrical Workshop, N.R.,  
Daya Basti,  
Delhi-110035.
4. Shri Fateh Singh,  
Highly Skilled Fitter (G) Gr. I,  
Electrical Workshop, Northern Railway,  
Daya Basti,  
Delhi-110035.

... Respondents

(By Advocate: Shri R.L. Dhawan  
Shri S.K. Sawhney for R-4)

O R D E R

BY HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' notice dated 27.8.92 (Ann. A-1) calling Respondent No.4 for Trade Test for the post of Mistry (G) (Rs.1400-2300 RPS) to his own exclusion although he claims to be senior to R-4.

2. Applicant who belongs to SC category states that he was appointed as Khallasi on Northern Railway on 22.12.71 and was promoted as Fitter Gr. III on 5.11.82; Fitter Gr. II in 1983 and as Fitter Gr. I w.e.f. 1.1.87. He states that being an SC candidate, he was promoted from Fitter Gr. II to Fitter Gr. I against a reserved post. The next higher promotional post is that of Mistry (G) which is filled up on the basis of seniority-cum-suitability after holding Trade Test. He contends that the first vacancy on the 40 point roster for this non-selection post of Mistry (G) arose on 16.5.83, but as it was a single vacancy it was treated as unreserved, and the senior most candidate, one Shri Harnam Singh was trade tested and then promoted as Mistry (G) and was subsequently promoted further as Chargeman on 2.6.92 (Ann. A-2).

3. Applicant asserts that consequent to Harnam Singh's promotion as Chargeman, the post of Mistry (G) again fell vacant upon which the senior most Fitter Gr. I Shri Jagbir Singh was trade tested, vide letter dated 3.6.92, but he failed, upon which applicant who was the next senior most in the cadre of High Skilled Fitter (Gr. I) was called for trade test vide letter dated 2.7.92 and he was trade tested on 16.7.92, but the result had not been declared. He avers that without declaring the result of that trade test, official respondents have issued impugned notice dated 27.8.92 calling Shri Fateh Singh who is junior to the applicant for

trade test for the post of Mistry (G) which he contends is illegal, arbitrary and unconstitutional.

4. Official respondents have filed their reply. They have given a comparative bio-data chart of applicant as well as R-4 from which it is clear that applicant is nearly 14 years younger than Respondent No.4 and joined service in the Railways nearly 16 years after R-4 did. While R-4 was promoted as Fitter Gr. III in 1969, applicant was promoted in 1982, and was confirmed in that grade on the date of his promotion itself while R-4 was confirmed in that grade in 1972. Thereafter applicant was promoted as Fitter Gr. II in 1983, while R-4 was promoted as such in 1984. Further, applicant being an SC candidate was promoted as Fitter Gr. I against the 40 point roster on 1.1.87 while R-4 was promoted as such on 1.5.88.

5. Official Respondents state that there are five posts of Mistry (G) on the sanctioned strength in the electrical workshop, Daya Basti, Delhi. These five posts are allotted to different sections and a vacant post of Mistry (G) is always filled up from the respective sections. They state that when Jagbir Singh upon being trade tested was found unfit for promotion, applicant was called for being trade tested. They state that out of five posts of Mistry (G), the 15% quota for SC gives them  $5 \times 15/100 = 3/4$  or 1 post. They assert that of the five posts of Mistry (G) one post was lying vacant

because of a Court order, 2 posts were held by general candidates; 2 posts were already given to SC candidates and now if the post in dispute was also reserved for one SC candidate, the 50% reservation quota would be exceeded. Relying upon Railway Board's instructions circulated vide P.S. No. 10647 official respondents state that it is for the aforesaid reasons that R-4 who was a general candidate was called for the trade test, and there was nothing illegal, arbitrary, unconstitutional or malafide in doing so.

6. Pvt. Respondent No.4 has also filed his reply in which he has broadly taken the same defence as official respondents.

7. We have heard Shri Maine for the applicant, Shri Dhawan for the official respondents and Shri Sawhney for Respondent No.4. We have also perused the materials on record and given the matter our careful consideration.

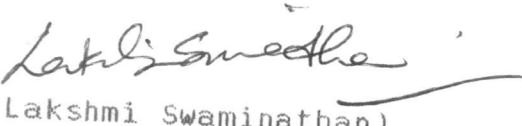
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8. Admittedly, as per rules and instructions, the candidates for promotion to the post of Mistry (G) were to be called for the trade test on the basis of their seniority-cum-suitability, and official respondents called applicant for the trade test before they called Respondent No.4, because they considered applicant senior to Respondent No.4 as Fitter Gr. I which is the feeder post for promotion to the post of Mistry (G). The fact that official respondents treated applicant senior to Respondent No.4 as Fitter Gr. I is confirmed by comparative bio-data chart which shows applicant being promoted as Fitter Gr. I on 1.1.87 while Respondent No.4 was promoted as such on 2.5.88. This is further confirmed by the seniority list as on 17.9.91 (Ann. A-5) which places applicant immediately above Respondent No.4 in order of seniority.

9. If applicant is eligible for promotion as Mistry (G) on the basis of his seniority, he cannot be denied promotion merely because he belongs to SC community, and if he were also promoted the 50% reservation quota would be crossed. If this stand of the official respondents were to be accepted, applicant would be subject to hostile discrimination merely because he belongs to SC community which would clearly be illegal and arbitrary. In a case of this nature, applicant would be eligible for promotion not because he belongs to SC community but because he is the senior most in line for promotion.

10. In this background the rulings relied upon by counsel for R-4 Shri Sawhney namely 1998 (1) SC SLJ 601; 1996 (1) SC SLJ 424; and 1987 (2) SC SLJ (1) are not relevant to the particular facts and circumstances of this case. Furthermore we notice that <sup>Respondent 4's</sup> ~~applicant's~~ date of birth is stated to be 30.5.37 and <sup>he</sup> would have retired on superannuation by now. Under the circumstances even if applicant were considered for promotion w.e.f. the date Respondent No.4 was promoted as Mistry (G) the interests of Respondent No.4 are not likely to be adversely affected.

11. Under the circumstances this O.A. succeeds and is allowed to this extent that official respondents are directed to consider applicant's case for promotion to the post of Mistry (G) in accordance with rules and instructions w.e.f. the date his immediate junior Shri Fateh Singh Respondent No.4 was <sup>considered</sup> ~~promoted~~. These directions should be implemented within three months from the date of receipt of a copy of this order. If upon such consideration, applicant is promoted as Mistry (G), he will be entitled to all consequential benefits; including backwages (because he was <sup>denied</sup> ~~not~~ promoted for no fault of his own), and consideration for further promotion, if any <sup>in accordance with rules & instructions</sup> ~~if any~~ No costs.

  
(Mrs. Lakshmi Swaminathan)  
Member (J)  
/GK/

  
(S.R. Adige)  
Vice Chairman (A)