CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(13)

1. OA No.644/92 Date of decision: 8.9.1993.

Shri Maman Singh ...Petitioner

Versus

Union of India through the General Manager, Northern Railway, New Delhi & Others ...Respondents

2. OA No.97/93

Shri Nirmal Singh ...Petitioner

Versus

Union of India through the General Manager, Northern Railway, New Delhi & Others ...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner Shri V.P. Sharma, Counsel in OA No.644/92.

Shri B.S. Mainee, Counsel in OA No.97/93.

For the respondents Shri Shaukat Matto, Counsel.

Judgement(Oral)
(Hon'ble Shri I.K. Rasgotra)

OA No.644/92 is filed by Shri Maman Singh. He has impleaded besides the official respondents Shri Nirmal Singh as respondent No.4 with whom he has a dispute in regard to the assignment of seniority. OA No.97/93 has been filed by Shri Nirmal Singh, who is respondent No.4 in OA-644/92 to agitate his claim of seniority over Shri Maman Singh, petitioner in OA No.644/92. He has impleaded Shri Maman Singh as respondent No.4 in his OA No.97/93. Both the petitioners are working as Turners in the Diesel Loco Shed, Northern Railway, Tughlakabad. S/Shri Maman Singh and Nirmal Singh were appointed as Khallasi on

24.3.1978 and 2.3.1974 respectively. A trade test was held in the Loco Shed and vide letter dated 28.7.1981 Shri Maman Singh was declared to have passed the said trade test for the post of skilled Turner (Rs.260-400) from among the staff who volunteered for trade test on 2 tier basis. The said order further stipulated that Shri Maman Singh who has been found suitable may be put to officiate locally as Turner Grade Rs.260-400 (RS) on 2 tier basis with effect from today against an existing vacancy. He may, however, be warned that it is purely a local adhoc arrangement and does not confer upon him any right of such promotion over his seniors. The endorsement to the said order states that "He (APO) is requested to issue necessary officiating orders and arrange posting of staff on Divl. Seniority basis. It is certified that there is no SPE/VIG/DAR case pending against Sh. Maman Singh. Trade test forms of item No.3 & 4 and refusals of item No.1&2 are sent herewith." In a subsequent order issued on 6.1.1992 by the same authority Shri Nirmal Singh, petitioner In OA-97/93 was also declared successful in the trade test on two tier basis from among the staff who volunteered for trade test for the post of Turner Grade 260-400 (RS). A similar request was made in the case of Shri Nirmal Singh also to the A.P.O. (III), Northern Railway, DRM's Office, to issue necessary orders in favour of Shri Nirmal Singh and arrange posting of staff on Divisional basis, indicating that such appointment of Shri Nirmal Singh will not confer upon him any right of seniority over the seniors. A seniority list was issued on 21.6.1988, according to which Shri Nirmal Singh with date of appointment as 2.3.1974 and date of promotion as 15.7.1983 was shown at serial No.5 and Shri Maman Singh was shown at serial No.15 with date of

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appointment as 24.3.1978 and date of promotion as 29.7.1981. Aggrieved by the assignment of the seniority as above, the petitioner filed a representation. The said seniority was revised by the respondents vide circular dated 7/12.6.1990. In the revised seniority so issued Shri Maman Singh was placed at serial No.11 with date of appointment as 24.3.1978 and date of promotion as 29.7.1981 while Shri Nirmal Singh at serial No.12 with date of appointment as 1.11.1974 and date of promotion as 1.1.1982. The short question that arises for adjudication is whether the date of appointment as Khallasi would be reckoned for the purpose of seniority or the date of appointment as Turner should be taken for determining the inter-se-seniority of Shri Maman Singh and Shri Nirmal Singh.

2. Shri V.P. Sharma, learned counsel for the petitioner (Sh. Maman Singh OA-644/92) submitted that after the said O.A. was filed, the respondents issued seniority list on 12.6.1990 and granted seniority to the petitioner above Shri Nirmal Singh. In consequence thereof he is being deemed to have been promoted to the next higher grade from 1.1.1984, giving the benefit of the higher grade post which became available consequent to restructuring of the cadre and Shri Nirmal Singh who had earlier been given the said benefit has been reverted. Shri Maman Singh has, therefore, nothing more to seek by way of relief and his O.A. has consequently become infructuous.

3. The case of Shri Nirmal Singh (petitioner in OA-97/93) was argued by the learned counsel Shri B.S. Mainee. It was urged before us that Shri Nirmal Singh is Senior to Shri Maman Singh, as he was appointed as Khallasi on 2.3.1974. It is the original date of appointment which is to determine the seniority and not

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the date of appointment as Turner skilled grade Rs.260-400. The learned counsel submitted that the respondents had correctly fixed the seniority in 1988 with reference to the date of appointment of Shri Nirmal Singh. Shri Maman Singh had represented against the seniority assigned to him in 1988 and his representation was rejected by the respondents vide letter dated 7.10.1988 stating that "The seniority of the above named has been assigned correctly as it is prepared in order of merit, based on the longavity of service at the time of screening and not according to the date of promotion." It was further submitted that based on this seniority Shri Nirmal Singh was called for selection to the next higher post of Turner highly skilled grade-I vide respondent administration letter dated 10.2.1992. This means that obviously Shri Maman Singh was reckoned lower in seniority, as otherwise he should have been called for the trade test for the next higher grade. The learned counsel also relied upon the instructions issued by the Railway Board vide letter No.E(NG)I-83-PM-I-53 of 11.5.1983 printed in the Railway Establishment Rules on Labour Law edited by Shri B.S. Mainee. The said letter deals with the candidates who will come in the zone of consideration for suitability test for non selection post. The said letter stipulates that for such non selection post equal number of candidates to the number of vacancies plus anticipated vacancies in the next four months should be called. Thereafter the said letter gives the details of the procedure for determining the anticipated vacancies. The last line of the said letter reads "that these instructions will also be applicable to tradesman."

4. Shri Shautat Matoo, who appeared for the official respondents submitted that the respondents have carefully considered the representations and counter representations and come to the final decision that the seniority assigned through the revised circular letter dated 7/12.6.1990 is the final and correct position.

5. We have considered the matter carefully and taken into consideration the submissions made by the learned counsel for the petitioner in both the OAs and the learned counsel for the respondents. The orders to which our attention has been drawn, promoting Shri Maman Singh and Shri Nirmal Singh are admittedly passed to fill up the vacancies in local officiating arrangements. The endorsement or the requests made to the office of the DRM are also identical viz. to the effect that necessary officiating orders may be arranged to be issued and posting made on divisional seniority basis. One fact, however, which needs to be underscored is that both Shri Maman Singh and Shri Nirmal Singh were declared successful in the trade test from among those who volunteered for the trade test. When Shri Maman Singh volunteered for the trade test in 1981 S/Shri Amba Dutt, Kashmiri Lal, Kishan Pal had also volunteered for the selection. While S/Shri Amba Dutt and Kashmiri Lal counter 'refused' Shri Kishan Pal failed to make the grade. Only Shri Maman Singh was declared successful in the trade test. At the subsequent selection again the volunteers seem to have been called by the respondents. In response Shri Nirmal Singh, Shri Vijay Kumar volunteered to be trade tested. While Shri Nirmal Singh passed, Shri Vijay Kumar failed in the trade test. Since the trade test was arranged for the volunteers, it is reasonable to infer that in

the first trade test Shri Nirmal Singh had not volunteered. This is, however, contested by the learned counsel for the petitioner Shri B.S. Mainee who submits that Shri Nirmal Singh was working in a different section and he was not called for the test. It is on record that both Shri Maman Singh and Nirmal Singh are working in the loco shed Tughlakabad. On both the occasions volunteers were called for the trade test. We are not persuaded to accept that the opportunity to appear in the trade test was denied to Shri Nirmal Singh by the respondents and was restricted to one section of the employees only. The normal procedure in such cases is that the notices are put on the notice board of the loco shed/establishment and those who are willing to appear in the trade test they give their willingness in writing to appear in the trade test. Indian Railway Establishment Manual Volume-I vide paragraph-184 which deals with the promotion from Group 'D' to Group 'C' in the Mechanical Engineering Department reads as under:-

> "Every unskilled staff in running sheds and carriage and wagon depots should be made eligible for promotion to higher grade like semi-skilled/Basic Tradesmen in their respective branches, i.e running sheds or carriage and wagon depots, as the case may be, subject to his acquiring the necessary qualification. <u>No category shall be excluded from such consideration and there need to be no subgrouping within the respective branches.</u> Unskilled staff in running sheds should also be eligible for consideration for transfer to posts of cleaners upto the age of 30 years,

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relaxable upto 35 years in the case of persons belonging to scheduled castes and scheduled tribes, subject to their being otherwise eligible for such consideration but on two occasions only and their having the necessary aptitude and satisfying the medical and educational qualifications. (Emphasis ours)"

The above rule makes it clear that all unskilled staff are to be made eligible for promotion to the higher grade like semi skilled, basic tradesmen subject to their acquiring necessary qualifications. These qualifications are adjudged by holding trade test. Unless a unskilled staff passes the requisite trade test he cannot be promoted or appointed to a skilled post. The fact that an unskilled staff, i.e. Khallasi has to qualify or pass the trade test is a sufficient testimony to the effect that the trade test is not merely to determine the suitability for promotion to fill up non-selection posts. Here, the unskilled staff e.g. Khallasis have to pass the trade test which is designed to test the level of the skill of the unskilled staff required for the job in skilled grade. The circular cited by the learned counsel for the petitioner for promotion to non-selection posts on the basis of suitability subject to rejection of unfit is not relevant in the present case. The petitioners before us were trade tested to ensure that they possess the requisite skill in undertaking the job of Turner Grade-III. The post of Turner is not a normal channel of promotion for the Khallasis where they can automatically reach the level of the skilled artisan or highly skilled artisan on the basis of suitability. They have to pass the requisite skill. It is not the question of mere suitability but the question is

whether the unskilled worker has acquired the skill required for undertaking skilled job. Unless that skill is proven in the trade test he has no right to be promoted and appointed to the skilled post. In that view of the matter the seniority in such post can be reckoned only from the date the trade test is cleared by unskilled staff. The date of joining in the grade of Khallasi is not germane in determining seniority in the skilled grade. Having regard to the above facts and circumstances and particularly the fact that the trade tests were held from among the Khallasis who volunteered for the test and the rule position as brought out in paragraph-184 of the I.R.E.M. Volume I, we have no reason to question the seniority assigned to Shri Maman Singh and Shri Nirmal Singh in the seniority list circulated vide circular dated 7/12.6.1990. Accordingly, OA No.644/92 filed by Shri Maman Singh is allowed while the O.A. filed by Shri Nirmal Singh is dismissed as bereft of merit.

6. The learned counsel for the petitioner (OA-97/93) Shri B.S. Mainee at this stage pointed out that the petitioner Shri Nirmal Singh should not be made to suffer financial hardship merely because the respondents could not determine the correct procedure for assigning seniority. Shri Nirmal Singh was appointed to the post of highly skilled grade II in the pay scale of Rs.330-480 from 1.1.1984 till the date he was reverted vide order dated 26.11.1992. The respondents have indicated that the petitioner will have to pay back the over payment made to him. If this is allowed, Shri Nirmal Singh will be put to financial hardship. We see merit in the argument particularly because the petitioner Shri Nirmal Singh had actually

performed the duties of Turner highly skilled grade-II during the period 1.1.1984 to 26.11.1992. In that view of the matter, it will not fair and just to effect recovery for the payment made to him for the job which he actually performed. He had in fact performed the job of highly skilled grade-II and is entitled to payment of pay and allowances attached to the said post. The respondents are, therefore, directed not to effect any recovery for the said period when Shri Nirmal Singh, petitioner in OA-97/93 worked as Turner grade-II in the revised pay scale of Rs.330-480.

7. With the above observations both the OAs stand disposed of through this common judgement. No costs.

(B.S. HEGDE)
MEMBER(J)

(I.K. RASGOTRA)
MEMBER(A)

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For the petitioner Shri V.P. Sharma, Counsel in OA No.644/92.

Shri B.S. Mainee, Counsel in OA No.97/93.

For the respondents Shri Shaukat Matto, Counsel.

1. Whether reporters of local papers may be allowed to see the Judgement? No

2. To be referred to the Reporter or not? Yes.

(I.K. Rasgotra)
Member(A)