

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH: ALLAHABAD**

**ORIGINAL APPLICATION No. 1441 OF 2009.**

**ALLAHABAD THIS THE 13<sup>TH</sup> DAY OF MAY 2009**

**HON'BLE MR. JUSTICE A.K.YOG, MEMBER (J)**  
**HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)**

Hemant Kumar Pathak son of Shri Harihar Prasad Pathak,  
resident of House No. 11/10, Bakashi Khurd, Daraganj,  
Allahabad, presently working as Helper Khalasi under Senior  
Section Engineer/ TRD/Construction/Northern Railway/  
Allahabad.

By Advocate: Sri A. Rajendra.

*\*: Corrected as per order of date 18-06-09 on Order sheet.*

*or M.K. Upadhyaya.*

.....Applicant.

Versus

1. Union of India through Chief Administrative Officer/Construction, North Central Railway, Allahabad.
2. Chief Electrical Distribution Engineer, North Central Railway, Allahabad.
3. Dy. Chief Electrical Engineer/Construction/North Central Railway, Allahabad.
4. Divisional Railway Manager, North Central Railway, Allahabad.
5. Bhagwan Sharma S/o Shri Sukh Lal Sharma, 1010/3M, Rajroop Pur, Allahabad.

..... Respondents

By Advocate: Shri P.N. Rai.

**ORDER**

**Delivered by Justice A.K. Yog, Member-Judicial**

*[Signature]*

Heard Shri Rakesh Dixit holding brief of Shri M.K. Upadhyaya, Advocate appearing on behalf of the Applicant and Shri P.N. Rai, Advocate appearing on behalf of the Respondents. Perused the records as well as documents on record.

2. Applicant seeks to challenge the order-dated 25.07.2001 whereby representation filed by the applicant has been rejected by Divisional Railway Manager, Northern Railway, Allahabad.

3. Applicant has claimed following reliefs :-

- i. *The Hon'ble Tribunal may be pleased to direct the respondents to quash the order dated 23.7.2001 which was issued by Divisional Railway Manager, respondent No. 4.*
- ii. *The Hon'ble Tribunal may be pleased to direct the respondents to promote the applicant on class III post from the date 27.3.87 when junior Bhagwan Sharma respondent No. 5 has been promoted and he may be allowed the same higher pay alongwith all consequential benefits.*
- iii. *That the Hon'ble Tribunal May graciously be pleased to direct the respondents to give all consequential benefits which has been given to the respondent No.5 (Bhagwan Sharma).*
- iv. *Any other order direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be issued in favour of the applicant.*
- v. *The Hon'ble Tribunal may graciously be pleased to award the cost of original application and legal fee in favour of the applicant".*



4. Learned counsel for the applicant refers to paras 4.9 to 4.16 of the

OA, which are reproduced below :-

*"4.9 That the then Senior Electrical Foreman/Construction/Northern Railway, Allahabad have given report of performance of the applicant on 25.6.91 which is as follows:-*

*"In above reference it is to inform you that the performance of the above named is satisfactory. This is for your information and necessary action please". The true photocopy of letter dtd. 25.6.91 is annexed herewith as Annexure A6.*

*4.10 That after 10 years of screening of the applicant the respondent No. 5 Bhagwan Sharma was screened by letter no. EMII/TRD/Screen/Class IV dtd. 18.8.94. The true photo copy of aforesaid letter dtd. 18.8.94 is annexed herewith as Annexure A7.*

*4.11 That the respondent No. 5 was appointed on the post of Trolleman (775-1025-RPS) by letter no. EMII/TRD/Panel/Screen/class IV post dtd. 15.3.95. The name of the applicant may found at S.No. 43. The true photocopy of letter dtd. 15.3.95 is annexed herewith as Annexure A8.*

*4.12 That by letter dtd. 22.3.95 the respondent No. 3 has given order for joining to the respondent no. 5 Bhagwan Sharma on the post of M.C. (Material Clerk) grade 825-1200 while order was already issued to the respondent no. 5 for joining on the post of trolleman grade 775-1025 in the same month of 1995. Therefore, the action of the respondent is arbitrary and illegal and same is can not sustainable in the eye of law. The true photocopy of letter dtd. 22.3.95 is annexed herewith as Annexure A9.*

*4.13 That office of the FA&CAO/Construction, Establishment, Northern Railway, Kashmeri Gate, Delhi has already issued an order on*

*See*

*3.3.95 in this respect that irregular adhoc promotion of MCC/Clerks in construction unit promotion of such practice should be stopped and set right all cases of irregular promotions by reverting them to their substantive grade and holding a fresh selection of MCC/Clerk from eligible candidates despite that the respondents given promotion to the respondent no. 5 ignoring the aforesaid letter. The true photocopy of letter dtd. 3.3.95 issued by respondent no. 1 is annexed herewith as Annexure A10.*

*4.14 That the respondent no. 3 Dy. Chief Electrical Engineer/Construction/Northern Railway, Allahabad has issued a letter on 31.10.95 about the pay fixation of respondent no. 5 Bhagwan Sharma w.e.f. 27.3.87 and pay of the respondent no. 5 fixed as 950-1500 w.e.f. 27.3.87. The true photo copy of letter dtd. 31.10.95 issued by respondent no. 3 is annexed herewith as Annexure A11.*

*4.15 That the Assistant Personnel Officer, Northern Railway, Allahabad has issued a seniority list of Khalasi on 24.12.96 in the aforesaid the name of applicant may found at S.No. 142 and name of respondent no. 5 Bhagwan Sharma also found at he was illegally promoted on the post Material Clerk w.e.f. 27.3.87 by the respondents and in the interest of justice the promotion of the respondent no. 5 is liable to quashed and applicant is entitled for the promotion of Material Clerk w.e.f. 27.3.87 in which the respondent no. 5 was promoted in arbitrary and illegal manner. The true photo copy of seniority list of Khalasi dtd. 24.12.96 is annexed herewith as Annexure A12.*

*4.16 That the respondent no. 3 has issued a seniority list for group IV employee in which the name of the applicant may find at S.No. 17 and name of the respondent no. 5 Bhagwan Sharma may found at S.No. 20, therefore it is appeared to this seniority list the applicant is senior to the respondent no. 5 Bhagwan Sharma and he was*



*given illegally and wrongly promotion of Material Clerk w.e.f. 27.3.87 while applicant is entitled for this promotion with all benefits, which was given to the respondent no. 5. The true photocopy of seniority list dtd. 18.5.96 is annexed herewith as Annexure A13.*

**RELEFS SOUGHT:**

*In view of paragraph 4 and 5 of the present original application the applicant prays for the following relief:*

*(i). The Hon'ble Tribunal may be pleased to direct the respondents to quash the order dtd. 23.7.01, which was issued by Divisional Railway Manager respondent no.4.*

*(ii) The Hon'ble Tribunal maybe pleased to direct the respondents to promote the applicant on class III post from the date 27.3.87 when junior Bhagwan Sharma respondent no. has been promoted and he may be allowed the same higher pay alongwith all consequential benefits.*

5. Afore quoted para 4.9 to 4.16 of the OA have been replied vide paras 10 & 12 of counter affidavit, which are also for convenience reproduced below:-

- i. That, the contents of para 4.9 of the OA are not admitted as stated. In 1993, the Deputy Chief Electrical Engineer (Construction), Allahabad has already intimated that the working of the applicant is unsatisfactory. For kind perusal of this Hon'ble Court, letter dated 7.1.1993 to this effect is enclosed as Annexure-R-1 to this reply.*
- ii. That, the contents of paras 4.10 and 4.11 of the OA need no comments.*
- iii. That, in reply to the contents of para 4.12 of the OA it is stated that Sri Bhagwan Sharma alongwith other employees were transferred to Allahabad Division for the posting. Some staff were posted in Allahabad Division and*



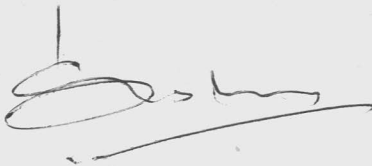
*some were sent back to the unit of the respondents. Shri Bhagwan Sharma was also one of them, because he was posted on usual category.*

6. From the letter dated 07.01.1993 (Annexure 1 to the counter affidavit) it is clear that the Applicant was not considered for promotion for 'other skilled post/s' on the alleged ground that his working was not unsatisfactory.
7. Perusal of letter dated 23 July 2001 Annexure A-2 to the OA shows that Bhagwan Sharma/Respondents No.5 was 'shifted' temporarily to work in the construction division on the basis of 'local arrangement' only and therefore he could not claim preferential rights over his seniors in group D.
8. We may note that the documents filed by Respondents alongwith their Counter Affidavit are not legible, besides the fact that the parties have failed to bring on record not or otherwise produce rules for our perusal to show that impugned decision/act of the Respondents (in question) ignoring claim of the Applicant, is justified.
9. In view of the above, impugned order dated 23 July 2001 Annexure - 2 to the OA is set aside with a direction to the concerned authority to decide the matter afresh after giving opportunity of hearing to the concerned




(particularly the applicant the Hemant Kumar Pathak and Respondent No. 5 Shri Bhagwan Sharma.) by passing a speaking/reasoned order in accordance with law within three months of receipt of certified copy of this order.

10. OA allowed subject to the above directions. No order as to costs.



Member (A)



Member (J)

S.Verma/-