

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.505 OF 2001

ALLAHABAD THIS THE 20th DAY OF November, 2006

HON'BLE DR. K.B.S. RAJAN, J.M.
HON'BLE MR. A. K. SINGH, A.M.

Sri Ram Sharma
Son of Late Mathura Prasad,
Carpenter Grade-II, N.E. Rly.
Electric Department under Electric
Foreman (E), Izatnagar,
District-Bareilly.

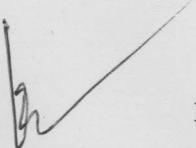
..... .Applicant

By Advocate: Shri R. D. Agrawal)

Versus

1. Union of India
through the General Manager,
North Eastern Railway,
Head quarters Office,
Gorakhpur.
2. The Divisional Railway Manager (Personnel),
North Eastern Railway, Izatnagar,
District-Bareilly.
3. Divisional Electrical Engineer,
North Eastern Railway,
Izatnagar, District-Bareilly.
4. Sri Jaganlal Sharma,
Son of Sri Kashi Ram,
Carpenter Grade II, North Eastern Railway,
Under Electric foreman Construction, Izatnagar,
District-Bareilly.

..... .Respondents


By Advocate : Shri S. K. Anwar.

O R D E R

HON'BLE DR. K.B.S. RAJAN, J.M.

Brief facts of the case are as under:-

(a) the applicant was appointed as a casual labour Khalasi on 25.10.1969. His services were regularized as a permanent hand and grade on 25.4.1970. The applicant was the basic Carpenter of grade Rs.210-290 and had passed the trade Test of Carpenter on 2.3.1983. As such he was awarded grade of Rs.260-400 from 1.6.1983.

(b) The screening test of the applicant was arranged on 12.4.1976 and he was declared suitable for the post of substantive Khalasi.

© The respondent no.4 was appointed as a casual Khalasi on daily wages for the period of three months with effect from 8.3.1973.

(d) Due to administrative errors, the name of the applicant has not been shown in the list of the test passed after screening.

(e) The applicant is much senior to the respondent no.4. Respondent no.4 was awarded promotion on 26.9.1989 as a carpenter Grade II superceding the applicant. The respondent no.2 acted arbitrary and unlawfully by showing the name of ~~the~~ respondent no.4 above to the applicant in the impugned seniority list of Carpenter grade II on 21.5.1996 which is under challenge before this Tribunal.

(f) The applicant submitted his objections/representations on 24.12.1989, 14.6.1990 and 6.7.1993.

 (g) The respondent no.2 did not consider and provide opportunity to the applicant and shown

the respondent no.4 as promoted as a Carpenter Grade II on 26.9.1989 and the applicant was shown as promoted on 21.10.1994 which is unlawful and is liable to be set aside by this Tribunal.

(h) The applicant submitted his grievances against the final seniority of 21.5.1996 to respondent no.2 on 6.2.1996 and 24.8.2000. Since the respondent no.2 failed to act, applicant was advised for filing the application before this Tribunal, which was filed on 24.9.2000 and registered under OA No.1174 of 2000. The applicant submitted his representation to respondent no.2 on 27.11.2000 and 2.2.2001 with this prayer for awarding the seniority in accordance with rules and law. The respondent no.2 passed the orders on 13.2.2001 and the same is under challenge before this Tribunal.

2. Resisting the claim of the applicant respondent have submitted that the applicant was appointed as casual labour on 25.10.1969 whereas the respondent no.4 was appointed casual labour on 6.3.1973. The applicant was granted temporary status vide order dated 14.8.1970. Subsequently screening tests were conducted on 23.3.1976, 30.3.1976, 12.4.1976 and 13.4.1976 wherein the applicant and respondent no.4 were screened. The applicant was asked by the department to produce date of birth certificate, which was not produced. Since the applicant failed to produce the required date of birth certificate, his name was not included in the panel (Annexure RA-1) dated 25.1.1977 whereas the name of the respondent no.4 figured at serial no.95 in the panel. Thereafter in 1979 screening was again held and the applicant has

been granted regular appointment granting him seniority w.e.f. 9.3.1979 and he is being given benefit of seniority accordingly in as much as the basis of the seniority is regular appointment. Since the respondent no.4 was appointed on regular basis w.e.f. 25.1.1977 prior to applicant he has been given promotion in grade II. The applicant has already ^{and court's order} agitated the matter before this court ^{and court's order} has been fully complied with by the respondents by deciding the representation by speaking and reasoned order. The applicant is agitating a grievance which could have arisen in the year 1977 and more so without challenging the non inclusion of his name in the panel of 25.1.1977 after a long period of time; the applicant may not be allowed to raise a grievance after such a long time.

3. Arguments were heard and documents perused. Admittedly the applicant is senior as a casual labourer and as a daily wage. However, his appointment could not be made on regular basis at the time when the party respondent was selected on account of the fact his date of birth certificate was not produced. However, in the rejoinder, the applicant contended that the requisite document is already available as early as from 1973 when the medical officer had furnished the date of birth in the certificate. But a perusal of the same would show that it was a certificate wherein, no doubt, the date of birth has been indicated but the said date of birth should be

b

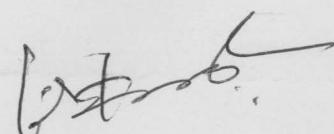
based on other authentic document issued by competent authority. This was not provided. The respondents cannot be faulted with when they had not regularized the services of the applicant, as there was no means to verify the date of birth. It is not exactly known whether at a later date any such certificate was produced by the applicant on the basis of which he was made a regular employee. In any event, the respondents are right in their contention that the applicant ought to have agitated against his non-regularization at the relevant point of time. Admittedly, this has not been done. The seniority list vide Annexure A-1 is as on 1.4.1996 and even at that time, the applicant had not made any representation. It is only some time in the year 2000 when he filed O.A. no. 1174 of 2000 that the applicant woke up and started agitating. It is settled law that settled things cannot be unsettled and what the applicant requires is to unsettle the seniority position after a long lapse of time, which is not possible.

4. In view of the above, on the ground of limitation the application fails and is therefore, rejected.

No Costs.

Member-A

/ns/



Member-J