

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Transfer Application No. 63 of 1986

Bhagwan and Ors ... Applicants  
Vs  
Union of India & Ors ... Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Member(A)

( By Hon. U.C. Srivastava, V.C. )

This application has been filed under Sec. 29 of the Administrative Tribunal Act 1985. The applicants filed a suit no. 26/77 Bechan and Ors Vs. Union of India and Ors claiming their seniority over Bhagwan and Bhageloo in the seniority list. Being aggrieved by the decision of the learned Munsif the applicants went in appeal in the court of District Judge Varanasi. The said appeal was dismissed in default of appearance of the appellants before the court on the date fixed.

2. The applicant no.1 is posted as a Moulder in Grade 260-400 and applicant no.2 is posted as Cupolamen in Gr. 210-290 at the Plant Depot Mughalsarai, Eastern Railway. In May 1969, a trade test for formation of panel for promotion to the post of moulders was held in which Bhagwan, Hammerman and the applicants and others appeared. Bhagwan failed at the said test and a panel

No. 441-A/E dated 11.10.1969 was issued wherein four persons were declared suitable and Bechan was placed at No. 2, Abdul Samad Khan placed at 4 in the said panel.

This panel was revised by order No. 29-E dated 20.5.1971 vide decision of C.P.O Calcutta No. EP/1692/A & L dated 7.4.71 whereby Bechan was put at No. 3 below Sri M.A. Ansari and applicant No.2 remained at 4.

3. In the said case for Bhagwan and Bhageloo a trade test for the post of moulders is alleged to have been held in March 1970. Bhagwan appeared at the said test. However the said test held was illegal and against rules. However, a panel No. 64/E dated 20.3.1970 was issued containing the names of the said two persons in the same and thereby Bhagwan and Bhageloo placed above the four persons of the panel dated 20.5.71 in one panel. The above final position after various revisions is illegal and contrary to the rules and Bhagwan and Bhageloo cannot be put at no.2 and no.3 in the panel of moulders above M.A. Ansari, Kamta Prasad, Bechan and A.S. Khan as Bhagwan and Bhageloo have become juniors to them according to the rules of seniority contained in the Railway Establishment Manual. Bhagwan and Bhageloo according to rules must be put at No.5 and 6 below Kamta Prasad, M.A. Ansari, Bechan and A.S. Khan.

4. The respondents, Union of India filed written statement in which it has been stated that the trade test for moulders has to be held from amongst basic trade man

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The trade test result was announced through Executive Engineer, Plant Depot Mughalsarai vide order dated 11.10.69 was illegal and contrary to rules for holding the trade test vide Railway Board's Circular dated 13.10.67 and accordingly the letter issued on 11.10.69 was corrected vide order no. 64/E dated 20.3.70 in which the two senior most basic trade men entitled for trade test were declared suitable Sarvashri Kamta Prasad, Bechan, M.A. Ansari and Sbdul Samad Khan being the junior most illegally tested have no right or claim for promotion over the seniors. The matter was finally decided by C.P.O/Calcutta vide its letter No. EP/692/ARC dated 26.2.74 in supersession of previous orders and M.A. Ansari was reverted vide order dated 13.3.74. In the trade test for moulder held in March 1970 Bhagwan and Bhageloo were found suitable vide office order no. 64D dated 20.3.1970. The C.P.Os order No. EP/1692/A&L Part I dated 26.2.74 correctly revised the panel of moulders and Bhagwan and Bhageloo declared senior to other persons.

5. This was again revised vide order dated 30.9.74 as the applicant happened to be senior in service of skilled category and also because the applicants empanelled in the first trade test could not be promoted earlier for want of regular vacancy. The applicants claim is not maintainable. On the basis of certain clarification dated 5.6.74 Kamta Pd. was put at sl. no.1 of the panel followed by Bhagawan at no.2, Bhageloo at no.3, M.A. Ansari at no.4 Bechan at no.5 and A.S. Khan at no.6.

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6. The seniority of S/Shri Bhagwan and Bhageloo were correctly assigned because they were junior to the applicants in semi skilled category and also because the applicants empanelled in the first trade test but could not be promoted earlier for want of regular vacancy hence the applicants claim is not tenable. The rules applicable for non selection posts are also applicable in the case of trade test of moulder and as per rules only one candidate who is senior most trades man can be tested and promoted if found suitable. The applicants are not eligible to be tested hence they have no cause of action to maintain the suit. Accordingly both the appeals are dismissed. No order as to the costs.

*B. Bhagwan*  
A.M.

*V.C.*  
V.C.

Dated: 22nd April, 1992

(UV)