

Judgment
Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO.267 of 1986.

Bhola Nath

,..... Plaintiff
appellant.

Versus

Union of India and two others

,..... Defendants
Respondents

Hon'ble D.S.Misra-Member-A

Hon'ble G.S.Sharma-Member-J

(Delivered by Hon'ble D.S.Misra)

This is an appeal against the judgment and decree passed by 12th Munsif, Varanasi in Suit no.742 of 1984 dismissing the suit of the plaintiff. It has come to us on transfer under section 29 of the A.T.Act, 1985.

2. Briefly, the case of the plaintiff is that he has been working as Khalasi in Signal and Tele-Com Department, Eastern Railway Moghalsarai since 10.1.1967. He was promoted to the post of Khalasi helper in the scale of pay Rs. 210-270. He was called for a test on 14.3.1984 to fill up one vacancy of Mason as a scheduled caste candidate. He was declared unsuitable vide letter dated 12.9.1984 and two persons junior to him were called for test on 7.8.1984 and declared suitable. The plaintiff has challenged the above order on the ground that there was only one vacancy and two candidates could not be called for promotion to the post of Mason Grade III. He accordingly filed the suit giving rise to this appeal seeking permanent prohibitory injunction restraining the defendants from promoting his juniors to the post of Mason Grade III.

3. In the written statement, defendants had stated that the plaintiff alongwith Jamuna was called for trade-test for the post of Mason Grade III to fill up two vacancies of Mason and not

one as alleged by the plaintiff. As the plaintiff failed in the trade test and Jaiuna gave refusal for promotion, the next two senior candidates were called for test to fill-in the two vacancies. It is also stated that Mason grade III is not the only post of promotion in the category and that there were several posts like Black-smith Grade III, Skilled hammer-man Grade III, Skilled Carpenter etc., in which the plaintiff ~~could~~ may be promoted, if he is found fit in the trade test.

The defendants had also stated that seniority was not the only criteria for promotion and the passing of the trade test was essential for promotion to the post of Mason Grade III. Out of two posts, for which selection was to be made, one post was reserved for scheduled caste and the other was for general candidate. Defendants further denied the claim of the plaintiff on the ground that promotion can not be claimed as a matter of right.

4. On the basis of the pleadings of the parties, learned trial court framed six issues. However, for the purposes of this appeal, it would be sufficient to discuss the findings of the trial court on issue nos. 1 and 6.

Issue no.1. Is the plaintiff entitled to the relief claimed?

Issue no.6: Is the plaintiff entitled to any relief?

5. Both these issues were taken up together by the trial court and ~~it~~ was held that the post of Mason Grade III is ~~the~~ non-selection post and under para 212 of the Railway Establishment Code, ~~for the~~ ^{for} promotion to this post, besides suitability and seniority, it was necessary to pass the trade test and as the plaintiff had failed in the trade test, he was not entitled to the relief claimed. Learned counsel for the appellant in appeal before us, has contended that the action of the respondents in calling two persons against one vacancy of Mason was in violation of the rules on the subject and also contended that the plaintiff had been declared failed due to

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prejudice and the plaintiff, being the senior most person eligible for promotion, should have been promoted. The defendants had filed cyclostyled copy of paper no.15-C, letter dated 8.10.1983 from the office of Divisional Railway Manager, Moghalsarai regarding filling in vacancies in Signal and Tele-Com Department from which it is clear that in the category of Mason in Grade 260-400, there was one vacancy in the general category and another vacancy in the scheduled caste category. Paper no.21-C is the Hindi copy of the letter. It clearly goes to prove that the contention of the appellant that there was only one vacancy of Mason Grade III is not correct. The second contention of the plaintiff-appellant is that he should have been promoted without being subjected to a test as he was the seniormost candidate eligible for promotion. Under para 212 of the Railway Establishment Code, promotion for non-selection post is to be made on the basis of seniority cum fitness for the post. As the post against which the plaintiff appellant was seeking promotion, was in the category of a skilled post, it was necessary to take a trade test to judge the suitability of the plaintiff for promotion. The defendants had stated that the plaintiff was the seniormost person eligible for promotion and he was given an opportunity to appear in the grade test to prove his suitability for the post but as he failed to do so, he could not be promoted to that post. The learned trial court had decided both issues against the plaintiff-appellant.

6. We are of the opinion that the findings of the learned trial court on the two issues mentioned-above is based on a proper appreciation of the evidence on record and the departmental rules applicable in the matter and call for no interference.

7. For the reasons mentioned-above, we are of the

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opinion that there is no merit in the appeal and it is hereby dismissed. There will be no order as to costs.

Bh...
2/12/86

Member.A

Subharina
2/12/86

Member-J

JSingh/