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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.615 of 1986

(C.A. No. 107 of 1985)

Ramesh Shanker ..... Plaintiff-Appellant

Versus

Union of India & Another .... Defendants-Respondents.

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. S.Zaheer Hasan, V.C.)

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This appeal arising out of the judgement and decree dated 23.3.1985 passed by the learned Munsif, Jhansi in original Suit No. 515 of 1982 dismissing the suit of the plaintiff-appellant, has been received on transfer from the Court of District Judge, Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2.

The plaintiff-appellant (hereinafter referred to as the applicant) has filed this suit for declaration that he is entitled to grade Rs.330-480, Highly Skilled Grade Fitter II with effect from 2.3.1979 with consequential arrears. He was appointed as Khalasi in 1962. He was promoted as Wheel Tapper in 1965 and in 1978 he was promoted as Skilled Fitter in the scale of Rs. 260 - 400. His case is that he should be given the grade of

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Rs.330 - 480 without being subjected to trade test. In any case he had appeared in the trade test and one Jagota removed the original records and it was falsely shown that the applicant has failed in the trade test. The defence version is that the applicant had failed in the trade test held on 10.1.1979. By mistake of one Jagota the name of the applicant was wrongly shown in the list of the candidates who had passed the test. Subsequently action was taken against Jagota and mistake was corrected. The applicant made a complaint in this connection and an enquiry was conducted by a Committee which came to the conclusion that no bungling was done and on the basis of the original record it concluded that the applicant had failed in the trade test. The applicant was working as Skilled Fitter in the grade Rs. 260 - 400. His case is that he should have been given the upper skilled grade of Rs. 330 - 480 without passing the test. Admittedly the applicant himself had appeared in the test. But such upgradation cannot be done without passing the test and in this connection the applicant could not show us any rule or law.

3. The simple question remains to be decided is as to whether the applicant had passed the trade test held on 10.1.1979 or not. According to the applicant he had passed the test. According to the defendants(hereinafter referred to as the respondents) he secured 8 marks out of 40 and the

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minimum pass marks was 15 and in the other subject he got 40 marks out of 60 and in this way he failed in the test. On 2.3.1979 it was shown that the applicant alongwith others had passed the test and they were posted. On 7.3.1979 the mistake was detected and an order was passed that three persons including the applicant had not passed the trade test and they will not get the required grade. The applicant wants to take advantage of this mistake. According to the applicant one Jagota had removed the original file in which it was mentioned that he had passed the test. Action was taken against Jagota in this connection. If the applicant had passed the test Jagota would have immediately produced the original record to show that <sup>applicant</sup> he had passed the test and there was no sense in removing the original file. The paper in which the marks are written contained signature of so many officers and it will be too much to assume that all of them were acting dishonestly against not only the applicant but also against as many as three employees. There appears to be no good motive for removing the original file of trade test. In this connection an enquiry was conducted by a Committee which after going through the original records came to the conclusion that no bungling was done and the applicant had failed in the trade test. So there is

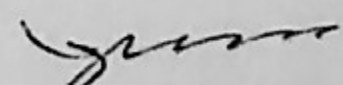
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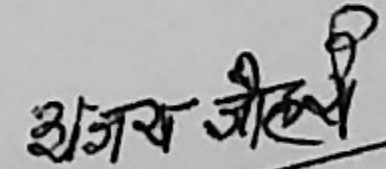


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good evidence on record that the applicant had failed in the trade test. It appears that Jagota had committed mistake and the applicant wants to take advantage of the same. Under the circumstances mentioned above it is immaterial that the applicant gave a telegram and started asserting that he had actually passed the test. Simply because the applicant was a Union Leader, it cannot be inferred that so many officers conspired together and removed the original records and falsely asserted that the applicant and two others had failed in the test. It was next argued that the applicant has stated on oath that he has passed the trade test. Ofcourse there is no oral evidence in rebuttal on the record but documentary evidence as well as the circumstantial evidence on the record go to corroborate the version of the respondents in this case, thus rebutting the applicant's statement. In view of all the above, the learned Munsif was justified in holding that the applicant(plaintiff) appeared in the test and failed. The learned Munsif had the overriding advantage of hearing the evidence. From the record we find that he has applied his mind and therefore we find no good reason to interfere with the findings of the fact. In short the applicant had failed in the trade test and as such he cannot be granted the grade of Rs.330 - 480. The application (Civil Appeal No.107 of 1985) is dismissed with costs on parties.

  
Vice Chairman

  
Member (A)

Dated the 16<sup>th</sup> Sept., 1987

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