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Central Administrative Tribunal
Allahabad.

Registration T.A.No.812 of 1986(Original Suit No.383 of 1982)

Surendra Mohan ... Plaintiff

Vs.

Union of India and 2 others ... Defendants

Hon. D. S. Misra, AM
Hon. G. S. Sharma, JM

(By Hon.G.S.Sharma, JM)

This original suit has been received by transfer from the Court of IV Additional Munsif Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the plaintiff is that he was initially appointed as a Khalasi in the Northern Railway at Lucknow on 19.6.1960 and was promoted as B.T.Fitter on 15.5.1966. The nomenclature of this post has since been changed to Assistant Train Lighting Fitter (for short ATLF) and the plaintiff was confirmed on this post on 1.4.1968. On 31.3.68, the plaintiff was promoted as Skilled Fitter which is a class III post and on 12.3.1979, he was further promoted as Skilled Fitter Grade II in the scale of Rs.370-480. The posts of Skilled Fitter Grade II and Grade I are non-selection posts and they are filled by promotion on the basis of suitability determined on the basis of service record, and for skilled categories, on the basis of trade test. On becoming eligible for promotion to Grade I, the plaintiff was trade tested on 27.8.1979 but failed. The defendant nos. 2 and 3, namely O.P.Sharma and Surjit Singh were also called for the said trade test but they refused to appear therein. Under the rules, the plaintiff became eligible to reappear in the further trade test after an interval of 6 months but no trade

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test was held for him on the due date 26.2.1986. Despite his representation to the Divisional Railway Manager (for short DRM) Lucknow on 14.7.1980, no trade test was arranged for the plaintiff and in the trade test held on 29.12.1980, the defendant nos. 2 and 3, who were juniors to the plaintiff, were called but the plaintiff was not called. The defendant no.2 was declared successful while the defendant no.3 Surjit Singh was declared failed and on his representation, he was declared successful on 11.3.1981. The plaintiff could appear in the trade test held on 9.4.1981 and on his being successful he became entitled to be promoted w.e.f.5.5.1981 when the defendant nos. 2 and 3 were promoted as skilled Fitter Grade I but his representation made in this connection on 14.7.1980 to the DRM was rejected on 12.2.1982. The grievance of the plaintiff, therefore, is that there has been discrimination against him in violation of the provisions of Articles 14 and 16 of the Constitution and after serving the defendant no.1 with a notice under Section 80 of the Code of Civil Procedure, he filed the suit for a declaration that on the basis of substantive seniority, the plaintiff ranks senior to defendant nos. 2 and 3 and he is entitled to be promoted as Skilled Fitter Grade I w.e.f. 5.5.1981 when the defendant nos.2 and 3 were promoted with all consequential benefits.

3. The suit has been contested on behalf of the defendant nos. 1 and 3 only. In the written statement filed on behalf of the defendant no.1, it was admitted that the plaintiff was promoted as Highly Skilled Fitter Grade II w.e.f. 31.3.1979 in the grade of Rs.330-480. The plaintiff was called for the trade test after the completion of 6 months as and when the vacancy occurred. It was admitted that the defendant nos. 2 and 3 were juniors to the plaintiff but the defendant no.1 denied the fact that they were given the chance and had refused to appear in the trade test held on

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27.8.1979 with the plaintiff. The defendant nos. 2 and 3 had given their option for the post of Electrician and as such, they had not appeared in the said trade test with the plaintiff and later on they changed their option for the post of Highly Skilled Fitter Grade I which was allowed by the competent authority and in the trade test held thereafter, the defendant no.2 was declared successful while the defendant no.3 who had initially failed was declared successful on appeal and they were promoted as High Skilled Fitter Grade I. It was further pleaded that where the posts are to be filled on quota basis, it has to be ensured that each category is adequately represented. The employees passing the suitability test have to be placed on the panel. The defendant no.1 denied the receipt of the notice under Section 80 CPC and disputed the adequacy of the valuation and the court fee paid by the plaintiff.

4. The defendant no.3 in his separate written statement pleaded that the plaintiff was promoted as Highly Skilled Fitter Grade II w.e.f. 31.3.1979 and not from 12.3.1979. He disputed the plaintiff's allegations that his own promotion was illegal or wrong and pleaded that he had never refused to appear in the trade test with the plaintiff earlier. As his option was for the post of Electrician Train Lighting Fitter no opportunity was afforded to him to appear in the trade test on 27.8.1979. The post of ETLF is equivalent to the post of High Skilled Fitter Grade I in scale and status and as he was not called for the trade test for the post of ETLF, he had represented against the same and only there-

after, he and defendant no.2 were trade tested on 29.12.1980. He was declared failed in the said test and on his representation, he was trade tested again and was declared successful. The re-test of the staff declared failed is done after 6 months provided the vacancy ^{is} and after giving chance to all the eligible staff is available. The defendant no.3 was not afforded an opportunity to appear in the earlier test with the plaintiff and he was entitled to be tested leaving the plaintiff who had already availed the chance and as such, there was no illegality in the test and the plaintiff is not entitled to the relief claimed.

5. From the pleadings of the contesting parties it appears to be an admitted position that in the High Skilled Fitter Grade II, the plaintiff was senior to defendant nos. 2 and 3. This is further evident from the copy of the seniority list, paper no.48/6-C on record. It is also an undisputed fact that the defendant nos. 2 and 3 had earlier opted for ETL and when the plaintiff appeared in the trade test held for Highly Skilled Fitter Grade I on 27.8.1979, the defendant nos. 2 and 3 did not appear in that test on the ground that they had not opted for Highly Skilled Fitter Grade I. The contention of the plaintiff as alleged in paragraph 6 of the plaint is that the defendant nos. 2 and 3 had refused to appear in the said test. This fact is also borne out from the remarks made against defendant nos. 2 and 3 in the aforesaid seniority list paper no.48-C. In the letter dated 11.6.1981 of the DRM Lucknow to Uttari Railway Majdoor Union, paper no.2, filed by the

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defendant no.3 before us, it is stated that defendant nos. 2 and 3 were called for the trade test of High Skilled Fitter Grade I held in Aug.1978 but they refused in writing to appear in the same on the plea that they had already opted for ETL. In view of this documentary evidence, it is wrong on the part of the defendant no.3 to state in paragraph 18 of his written statement that he was not afforded an opportunity for appearing in the trade test for Highly Skilled Fitter Grade I.

6. Undisputedly, the defendant no.3 ^{later} changed his option and opted for High Skilled Fitter Grade I in 1979 which was allowed and in the trade test held on 29.12.1980, the defendant nos. 2 and 3 were allowed to appear but the plaintiff was not given the opportunity of appearing in the said test. The defendant nos.2 and 3 after passing the said trade test were promoted as Highly Skilled Fitter Grade I w.e.f. 5.5.1981. The plaintiff was allowed to appear in the trade test held on 9.4.1981 and was declared successful. The plaintiff relies on the circular letter dated 17.10.1981 of DRM Lucknow, paper no.48/1-C, which states that Highly Skilled Fitters Grade II who had earlier failed in the trade test but passed the same when called upon to appear again by virtue of earlier seniority, on completion on 6 months will remain seniors to those juniors declared suitable and were, in the meantime, not promoted on regular basis. It is an admitted case of all the parties before us that an employee having once failed in the trade test becomes eligible for retest after 6 months if the vacancies

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arise. The contention of the plaintiff, therefore, is that after the expiry of ~~the~~ 6 months from the date of his earlier test in which he had failed, he became due for appearing in the trade test w.e.f. 26.2.1980 but the defendant no.1 wrongly did not allow any test for him and again the plaintiff was deprived of an opportunity of appearing in trade test held on 29.12.1980 in which the defendant nos. 2 and 3 were allowed and as he passed the subsequent test held on 9.4.1981, he is entitled to promotion w.e.f. 5.5.1981 when the defendant nos. 2 and 3 were promoted.

7. The objection of the defendants to this contention of the plaintiff is that the trade test for a candidate who once fails in the earlier test is held after 6 months only on the availability of the vacancies and before giving him the chance to appear in the trade test, all other eligible staff is to be given a chance to appear therein. In paragraph 24 of its written statement the defendant no.1 has pleaded that in cases where posts are to be filled on quota basis, it should be ensured that each category is adequately represented within overall number of candidates called for. The defendants have, however, not filed any document in support of their this contention. There is nothing on record to show that on 29.12.1980 the plaintiff was not eligible for any specific reason to appear in the trade test in which defendant nos. 2 and 3 had appeared. No document has been produced before us to show that no vacancy actually occurred for the plaintiff at that time or according to the quota prescribed for his branch, he

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could not be given a chance for trade test or promotion. The burden to prove this fact is on the defendants as according to the original seniority, the plaintiff had a better claim for appearing in the trade test after the expiry of his failing in the first test and as he was wrongly denied an opportunity of appearing in the said test, his seniority and emoluments should not be adversely affected on account of the mistake committed by defendant no.1.

8. In this case, the plaintiff has not claimed for redetermining his seniority, vis-a-vis, the defendant nos. 2 and 3, and as such, the question of their ^{present} seniority need not be considered in this suit. The defendant nos. 2 and 3 are not going to suffer if the plaintiff is also allowed ^{to be} promoted in Highly Skilled Fitter Grade I w.e.f. 5.5.1981 when they were promoted. There is no other point for determination in this case.

9. It is accordingly declared that the plaintiff is entitled to get his promotion as Highly Skilled Fitter Grade I w.e.f. 5.5.1981 with all consequential benefits. The parties are directed to bear their own costs.

[Signature]
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MEMBER (A)

[Signature]
28/8/87
MEMBER (J)

Dated: Aug. 28, 1987
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