

(A2)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.928 of 1986

Mewa Lal Harijan Plaintiff

Versus

Union of India & Another Defendants.

Hon.S.Zahed Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

Suit No. 1026 of 1984 Mewa Lal Harijan
Versus Union of India & Another has been received
on transfer from the Court of Munsif City Kanpur
under Section 29 of the Administrative Tribunals
Act XIII of 1985.

32/

2. The plaintiff has alleged that after having^{32/ been}
released from the Armed Forces in 1946 and having
qualified himself from a Govt. Institute in the
trade of Painter and Decorator, he was appointed
as a Painter and Decorator in the Central Ordnance
Depot Kanpur on 5.9.1951. At the time of filing
this petition he was serving as a Painter Mate
in the same Depot. According to the plaintiff he
should have been elevated to the post of Chargeman

to him instead of promoting him second rate and much junior employees namely Nanhey, Devi Deen, Shiv Shanker etc. were promoted to the higher post including the post of Chargeman in utter disregard of the mandatory provisions for the Scheduled Caste/ Scheduled Tribe reservations. On the point that there was reduction in the strength he has stated that it had no more any significance as seven promotions and appointments to the grade of Painter and Decorator were made in the Depot right from 1960 onwards. But the plaintiff was not promoted. He has therefore prayed that he is entitled to the relief of his status ^{being made} ~~as~~ Painter and Decorator from the year 1962 if not earlier and Chargeman w.e.f. 1.1.1982. He has also prayed that a decree of declaration that he is entitled to the earned salary of the post of Painter and Decorator from 1962 and to that of the Chargeman from 1.1.1982 or 1.8.1982 onwards which tentatively amounts to Rs. 5000/-.

3. The defendants' in their written statement have said that the plaintiff had not disclosed that he was an Ex.military man ³ ~~not~~ submitted any discharge certificate at the time of his appointment as a temporary Painter and Decorator w.e.f. 5.9.1951. He was not appointed in substantive vacancy. They have denied that he had any qualification of any Govt. Institute. According to the defendants the plaintiff

A3/4

- 4 -

was not entitled for further promotion to the post of Chargeman as he was not qualified for the said post and is not qualified even at present. He was appointed as temporary Painter and Decorator in the scale Rs. 40-2-60. His pay was increased to Rs.42/- on 21.9.52. Thereafter he was struck off the strength. In 1953 he was reappointed to the post of Tent Mender. His services were again terminated w.e.f. 5.11.57. When he agreed to work as Mazdoor he was reappointed as Mazdoor w.e.f. 4.12.1957. Thus, according to the defendants the plaintiff had himself opted for being absorbed and accepted the lower post on his becoming surplus. Later on in the course of time he was promoted as Painter Mate. The plaintiff was posted as a Tent Mender w.e.f. 28.2.1953 when he accepted the said reappointment. Having been found surplus as a Tent Mender his services were again terminated w.e.f. 5.11.1957. When he agreed to work as Mazdoor he was reappointed as Mazdoor with effect from 4.12.57. The defendants have not denied that the plaintiff passed the technical proficiency test in the trade of Painter and Decorator vide Depot order dated 10.1.1973. According to them a Painter Mate is not entitled to be promoted as Chargeman. In respect of S/Shri Shiv Shanker and Devi Deen they have not

38

13/5

promoted as alleged but Nanhey Lal who was in direct line of promotion was selected for promotion by the Departmental Promotion Committee. But the plaintiff was not a Painter and Decorator and hence could not be put before the Promotion Committee. He was not superseded. In a trade test held in December, 1978 for the promotion to the post of Painter and Decorator the plaintiff failed. Passing the trade test in 1973 did not give him any right. According to the defendants the plaintiff was never denied his promotion when it fell due. He was promoted as a Painter Mate the post to which he was entitled. He was not eligible for promotion to the post of Painter and Decorator or Chargeman. Mere crossing of Efficiency Bar did not by itself confer any right of promotion to the plaintiff. Thus according to the defendants the plaintiff's suit is wholly misconceived and liable to be dismissed.

3/

4. We have heard the learned counsel for the plaintiff and the learned counsel for the defendants. The learned counsel for the plaintiff contended that plaintiff was reverted in 1953

A3/6

- 6 -

30/

as a Tent Mender and this fact has not been refuted in the written statement and therefore the reversion was illegal. On representations in December, 1957 he was made a Mazdoor and then again a Painter Mate and ultimately he retired as a Painter Mate in 1986 while new persons were recruited as Painters and Decorators much later but the post was not given to the plaintiff. Irrespective of the fact whether he became surplus or not the fact remained that there were 17 posts of Painters and Decorators out of which only 9 were filled and 8 were kept vacant. According to the learned counsel for the plaintiff the plaintiff should have been promoted as a Painter and Decorator and then as a Chargeman which promotions have been denied to him. The learned counsel for the defendants repelled these contentions on the point that though the plaintiff was appointed as a temporary Painter and Decorator he became surplus to the requirements and he was offered the post of ^{30/}Tent Mender which he accepted. Even from the post of Tent Mender he became surplus and he was next offered the post of a Mazdoor. From the ~~above~~ post of the Mazdoor he got promoted to the post of Painter Mate. It was not a question that he was demoted and therefore the fact that he has accepted his reappointment as a Tent Mender and subsequently as a Mazdoor willingly and without any representation and objection would indicate that there was nothing wrong in the appointment

The learned counsel for the plaintiff had asked for the service record of the plaintiff to be produced before the Tribunal. This service record has been brought by the defendants and we have perused it. At page 44 of the service record there is ~~a statement~~ ^{an entry} ~~of service~~ in respect of temporary Tent Mender. Mewa Lal's name appeared at the stage showing his date of engagement as 5.9.51. He has been shown as having been appointed as a Painter and Decorator on 5.9.51. He earned his increment on 21.9.52. He was declared as surplus as Painter and Decorator and appointed as a Tent Mender on 28.2.1953. At page 36 of the same record he has been shown as Painter Mate. The period of continuous service in appointment has been certified as follows :-

From 5.9.51 to 27.2.53 As a Painter & Decorator.

From 28.2.53 to 3.12.57 As a Tent Mender

From 4.12.57 to 22.1.63 As a Mazdoor

On page 46 of the Service Book it is clearly mentioned that being surplus to the requirement served with one month's notice of termination of service w.e.f. 5.11.57 at the particular time he was working as Tent Mender. He was thereafter shown on page 47 of the service book ^{or as} absorbed in alternative appointment of Mazdoor w.e.f. 4.12.57. On page 51 he has signed the form of option on 26.10.60. Accepting the existing scale of pay 30- $\frac{1}{2}$ -35 his pay was then refixed in 1960 on Rs. 74/- w.e.f. 1.7.59 when he was still working as a Mazdoor. On 23.1.63

he was reclassified as a Painter Mate and was considered for quasi permanent appointment under the Govt. w.e.f. 1.11.67 as a P & D(Mate) vide order placed at 66 of the Service Book dated 22.9.1960.

3/ 5. In regard to his having qualified in a test in 1972 this is corroborated by a certificate which is placed at page 75 of the Service Book which says that he was technically tested and passed by a Technical Testing Board in group 'D' category Painter and Decorator class I. ^{3r} ~~One~~ This certificate however did not entitle him to be mustered in that category by right. It was also indicated that he must obtain all the requisite qualifications to be eligible to be mustered permanently in the class for ^{3r Second} which the certificate is granted. His service Book starts from 24.5.62 as a temporary Mazdoor and confirms that he was reclassified as Painter Mate w.e.f. 23.1.63. In 1967 he was declared quasi permanent and the entry confirms that he was appointed substantively against the post of Mazdoor w.e.f. 14.8.67. He has verified his own service record in October, 1975 and again in June, 1980.

6. A test was held in January, 1979 for the category of Painter and Decorator and the plaintiff had failed in this test and was advised of the same. on 14.2.79. The copy of the proceedings for this trade

3/ test which have been abstracted from Case No.46643/TT/
Promotion shows that for reserved community candidates
they had to indicate the community in order to
enable their promotions in accordance with the 40 point
roster. It cannot therefore be said that the 40 point
roster was not in existence in the Depot. The fact
remained that the plaintiff failed to qualify in
the trade test held in 1979. The test that he had
passed in 1972 was only a test by a Technical Testing
Board for a group 'D' post in the category of
Painter and Decorator class I. This was to be
supplemented by his obtaining all the requisite
qualifications as laid down in the circular
No.A.1(i)39/5/47 to be eligible to be mustered
permanently in the class for which the certificate
was granted. This seems to have been the trade
test held in 1979 where the plaintiff failed to
qualify.

7. It is thus clear from the perusal of the
service documents of the plaintiff that he was
initially appointed as a temporary Painter and
Decorator. On becoming surplus he was offered the
post of Tent Mender, when he became surplus for this
post he was offered the post of Mazdoor and was
subsequently reclassified as a P & D(Mate). The
claim made by the plaintiff that he had qualified for
the post of Chargeman is not supported by the documents.
The Technical Testing Board had qualified him for

19/15

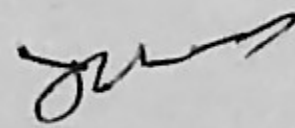
- 10 -

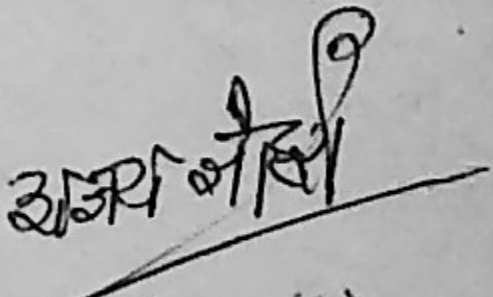
Painter and Decorator class I and not Chargeman. He could not be promoted because he failed in the trade test. It is not his case that he was denied any concessions available to the reserved community candidates for passing trade test. Once he did not qualify in a trade test he had no claim for being considered for promotion even if a vacancy existed. Another point was raised at the bar and that he filed the suit in 1984 and he is seeking relief for certain events that had taken place much earlier. The learned counsel for the plaintiff had contended that delays and latches will not apply in the plaintiff's case because his case was one of a continuing cause and he filed the suit when his representations were not heeded. No copies of any representations have been submitted alongwith application or subsequently. It is therefore difficult to say that the plaintiff ever represented and had a cause of grievance. As a matter of fact he has signed his service record in 1975 and again in 1980 as a token of having seen it. ^{in this way} He had agreed to the entries and he could not now turn back and agitate the matter that he was denied his rightful promotion. In any case we do not find that there has been any injustice done to the plaintiff. He has not qualified in the trade

test and therefore he could not be considered for promotion. Earlier he had been declared surplus and he was offered alternative employment which he accepted.

8. On the question of delays and latches we do not agree with the contention of the plaintiff. Legal remedy should have been resorted to by the plaintiff within ~~reasonable~~^{the} time. He was given a temporary appointment in 1951. He was tested by the Technical Board in 1973. He was trade tested in 1979 but he never agitated the matter. There is a considerable delay and the case should normally have been rejected on this ground alone. However, ^{even on} ignoring this position we do not find that there is any substance in the petition which supports the reliefs claimed by the plaintiff. His petition is therefore, liable to be rejected.

9. On the above considerations, we dismiss the petition (Suit No. 1026 of 1984). Parties will bear their own costs.


Vice Chairman


Member (A)

Dated the 23rd July, 1987

RKM