

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

ALLAHABAD BENCH.

Transfer Application No.1132/86.

(O.S. No. 41 of 1985)

Shri Badri Prasad Bejpai..... Applicant.

Versus

Union of India and others..... Respondents.

Hon'ble Mr. D.K. Agarwal, J.M.

Hon'ble Mr. K. Obayya - A.M.

(By Hon'ble Mr. K. Obayya - A.M.)

The above suit was received on transfer Under Section 29 of the Central Administrative Tribunal's Act 1985, from the court of II Civil Judge Kanpur. The plaintiff is employed in the Ordinance Equipment Factory, Kanpur and in the above suit he has prayed for.

(a) a decree for a declaration that the plaintiff was eligible to have been appointed as Wireman 'A' from the very beginning of his career with effect from 1963 by virtue of his having possessed the licence granted by the U.P. Government.

(b) and that the plaintiff is also eligible as Wireman 'A' from the date of test held in 1970.

2. Briefly the facts of the case are that the plaintiff was appointed as Wireman 'B' in the scale Rs. 75 - 95, in 1963. The plaintiff was a holder of Wireman's Trade licence issued by U.P. Government and by virtue of this licence

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it is alleged that he was eligible to be appointed as Wireman 'A' in the higher Scale Rs. 125/- . According to the plaintiff he was made to work in the higher posts as Armature Winder/Wireman 'A' right through his appointment, but the scale of Rs. 125/- was not given to him. He was eligible to appear for the Trade Test held in 1970 for the post of Electrician 'A', but he was considered ineligible and not permitted to appear. However in 1982 he was posted to a higher post of Armature Winder 'A' equivalent to Wireman 'A'. His grievance is that even initially he should have been appointed in the higher grade of Wireman 'A' and that denial of opportunity to appear for the trade test held in 1970 was arbitrary, resulting in financial loss to him. He made several representations to the authorities in this regard; as there was no positive response, he filed civil suit no. 851 of 1972 in the court of Munsif City, Kanpur, but the same was dismissed. He preferred an appeal no. 485 of 1976 before the Additional District Judge, Kanpur which was also dismissed on 23.7.77. He moved Civil Appeal No. 2313 of 1977 in the High Court of Judicature at Allahabad which was also dismissed on 10.4.1979. Thereafter he went to the Supreme Court in Civil Appeal No. 6017 of 1983 and the Hon'ble Supreme Court upheld his contentions and held that the lower courts were in error in rejecting the claim of the plaintiff to appear for the trade test for Electrician 'A'. The plaintiff armed with the decision of the Supreme Court approached the Authorities but no further action has been taken.

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3. In the written statement ~~the~~ stand taken by the defendants is that the Employment Exchange was approached to sponsor names of the suitable candidates for the post of wireman 'B'. The E. Exchange list containing some names including the name of the plaintiff was received and the plaintiff was found suitable for the same and accordingly he was appointed as wireman 'B' in 1963. There is no automatic promotion to the post of wireman 'A'. The promotion is only ~~conferred~~ by Trade Test. plaintiff was not allowed to appear in the trade test held in 1970 for the post of Electrician/wireman 'B' Armature Winder 'B' as he was ^{not} possessing the prescribed eligibility conditions. In 1971 a trade test for the post of wire-man 'A' was held and the plaintiff was asked to appear in the trade test, but he declined to accept that letter. As the plaintiff did not appear and passed the trade test of wireman 'A' he was not eligible to be promoted as wireman 'A' or equivalent post. It is also stated that for the post of Electrician 'B', two year's experience ^{as} wireman 'A' is required. Regarding the judgment of the Hon'ble Supreme Court, the defendant's case is that the plaintiff was promoted to the post of Armature Winder in 1982 and there was no need for him to appear in trade test further.

4. We have heard the counsel of the parties. The plaintiff has sought legal remedy through different courts seeking relief that he should be permitted to appear for the trade test of Electrician 'B' and also be given consequential promotion. While lower courts dismissed this case, the Supreme Court however considered the matter and allowed the appeal. The order is in the following terms:-

" The appellants are eligible and qualified

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for appearing at the test to be held for promoting persons to the post of Armature Winder. The next test for giving promotion to the post of Armature Winder will be held as undertaken by the respondent and the appellants shall be permitted to appear at the test and their eligibility for promotion will be determined in accordance with the result of the test. The decree dismissing the suit is set-aside and the suit is decreed to the extent herein indicated.

The appeal is disposed of accordingly!"

5. From the above decision, it is evident that eligibility of the plaintiff to appear ^{at} the trade-test was up-held and that the promotion should be determined in accordance with the result of the test. The decision of the Hon'ble Supreme Court does not contain any direction that the plaintiff should be promoted either from 1963 or 1970 as claimed by the plaintiff. He was only to be permitted to appear at the next trade test and promoted, if found successful in the trade test. In our view the controversy of eligibility and right of promotion of the plaintiff to the higher post Electrician 'B' etc has already been settled by the Supreme Court. There is nothing further for us to decide. Admittedly the plaintiff has already been promoted to higher post in 1982 and is continuing in the said post since then. In these circumstances we are unable to give any direction to the defendant to promote the plaintiff as Wireman 'A', notwithstanding the fact that he has not passed the trade-test and also that the

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Hon'ble Supreme Court has already dealt with this issue in its judgment referred to above. It is well settled that the qualification or higher qualification of the candidate is relevant only for initial appointment. What is relevant is that the candidate must answer the qualifications prescribed. Merely because the candidate is having the higher qualification, that does not give him a right for higher posts. The applicant has since been promoted as Wireman 'A'. He gets right for further promotion after passing the prescribed trade test. Officiating or working in higher posts will not carry with it the entitlement for the salary of higher posts. Unless one is duly promoted in accordance with the rules and passing the trade test, if any, prescribed. In this view of the matter and also in the back ground of the decision of the Supreme Court on this very issue, we do not see any merit in the present application. Accordingly it is dismissed with no order as to costs.

A.M.

J.M.

15.1.92

15th January, 1992.

(DPS)