



Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1367 of 1986 (Civil Appeal No.80 of 1985)

Brij Bhusan Lal .... Applicant.

Vs.

Union of India & two others .... Respondents.

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

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

This transferred application is civil appeal against the judgment and decree dated 22.2.1985 passed by the XI Addl. Munsif Moradabad in suit no.107 of 1980 and has been received by transfer from the Court of XI Addl. District Judge Moradabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant (hereinafter referred to as the plaintiff) had joined the Northern Railway as Boiler Maker (for short BM) Khalasi in 1958 and was promoted as a semi-skilled BM in the grade of Rs.70-85 in 1965 and while working as such, was selected and sent for training in Welding at the Charbagh Locomotive Works, Lucknow in 1970 and had successfully completed the training. The plaintiff was, however, reverted from the post of BM to the post of BM Khalasi notionally and was promoted as Welder by order dated 6.6.1972 issued by the D.S. Office. The plaintiff continued to work as Welder till 28.2.1979 when he was again made to work as BM. The respondent no.1 Union of India (hereinafter referred to as the defendant) tried to justify that order on the ground that the defendant no.2 Edwin Thomas since deceased, who was senior to the plaintiff and was working as Welder at Rosa, was to be provided a post as his post at Rosa was no more available. According to the plaintiff, the defendant no.1 was neither senior to him nor was working as Welder at Rosa and

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the ground of his reversion stated by the defendants was not correct. The plaintiff has alleged that the defendant no.2 held the post of Fitter Khalasi and had never worked as Welder nor was qualified to hold the said post. The plaintiff was drawing more pay than the defendant no.2. The plaintiff was again promoted as BM on 15.10.1979. The plaintiff is alleged to have suffered a loss of Rs.962 in his pay from 1.3.1979 to 29.2.1980 on account of difference in his pay and he accordingly claimed a declaration that the order dated 28.2.1979 of his reversion is arbitrary and illegal and for a decree of Rs.962 and for recovery of pendi-tilite and future difference in pay @ Rs.50/- per month.

3. The suit was contested on behalf of the defendants and in the written statement filed on behalf of the defendant no.1, it was stated that in 1970-71, the plaintiff and defendant no.2 both were trade tested for the post of Welder and the plaintiff was placed at 3rd position while defendant no.2 had secured the second position in the panel. After the trade test but before the formation of the panel, the plaintiff was reverted to his original substantive post of BM Khalasi on 1.9.1970 on account of reduction in sanctioned strength and he was again promoted as BM on 26.5.1972. On 6.6.1972, a post of Welder fell vacant and according to panel position, the defendant no.2 was to be promoted against that post but on account of his long illness, the plaintiff was promoted in his place temporarily till the availability of defendant no.2. From 19.12.1977, the temporary post of Welder was created at Rosa and on recovering from illness, defendant no.2 was posted there and on the expiry of the temporary sanction of the post there, there was no alternative but to revert the plaintiff and he was accordingly reverted as BM and the

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defendant no.2 had already officiated as Welder for various terms from 31.3.1962 to 23.4.1972 and he was senior to the plaintiff. At the time of promotion of the plaintiff as Welder on 9.6.1972 he was clearly made to understand by the order of his promotion that he was being promoted in officiating capacity till the person obtaining second position in the panel (defendant no.2) remains on sick list. The plaintiff never challenged the said condition and his suit is bared by estoppel and is also barred by limitation. On being declared suitable for the post of BM in the grade of Rs.260-400, the plaintiff was appointed to officiate as BM from 15.10.1979 and his pay was fixed at Rs.296 after giving him the benefit of next below rule. The grievance of the plaintiff is, therefore, not justified and he is not entitled to the reliefs claimed.

4. The defendant no.2 had filed a separate written statement almost on the same lines but he died during the pendency of the suit and his sister- respondent no.3 was brought on record as his legal representative. None appeared on her behalf in this appeal before us.

5. The learned trial Court held that the plaintiff was promoted as Welder on 9.6.1972 with a clear condition that his promotion was only till the availability of the defendant no.2 who was on sick list and as he accepted the promotion without any protest or objection and kept silence for a period of about 7 years his suit is barred by limitation as well as principles of estoppel and acquiescence. On merits it was held that the order dated 28.2.1979 reverting the plaintiff to his substantive post is not invalid. The suit was accordingly dismissed with costs.

6. The contention raised on behalf of the plaintiff is that the plaintiff had already been trade-tested ~~and~~ <sup>before</sup> he was given the appointment as a Welder under order dated 6.6.1972 and after having worked on this post for a period of more than 6 years, he could not be reverted to his substantive post under the impugned order dated 28.2.1982. There is no dispute in this case that before giving the officiating appointment to the plaintiff as Welder under order dated 6.6.1972, the plaintiff had already been trade tested and he was declared successful. We are, however, of the view that mere succeeding in the trade test does not entitle an official to get the promotion and the promotion is subject to the availability of the promotional post. In the instant case, in the panel prepared after trade test the plaintiff was placed below the deceased defendant no.2 and as the defendant no.2 was to be given the promotion first, the plaintiff was promoted under order dated 6.6.1972 conditionally as the defendant no.2 was on sick leave and was not available to man the promotional post. We will like to quote below the order dated 6.6.1972 under which the plaintiff was promoted as Welder :-

"Consequent on creation of one post of L.R.Welder (Loco) in grade Rs.110-180 (AS) under LF MB Shri Brij Bhushan Lal SS B/Maker under LF MB. in grade Rs.75-110(AS) is hereby appointed to officiate as Welder at Rs.110/- p.m. in grade Rs.110-180 (AS) and posted under LF MB. against this vacancy till Shri F/Thomas Fitter Khallasi under LF Rosa remains on sick list. Movements may be advised."

7. . The aforesaid order clearly stipulates that the plaintiff was posted on the promotional post as Welder till the defendant no.2 remained on sick list. The plaintiff did not protest against this order and joined his duties as Welder under this order and continued to work as such till he was reverted under the impugned order without raising any objection regarding the condition imposed on his promotion. After a lapse of about 8 years in 1980, he filed the present suit and we are of the view that the learned Munsif was fully justified <sup>in holding</sup> that the claim of the plaintiff was not only barred by limitation but was also barred by principles of acquiescence and estoppel. Even

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otherwise we feel that as there was only one vacancy in 1972, the plaintiff could not be promoted as Welder at that time had defendant no.2 joined the said post. We, therefore, find no justification in the grievance made on behalf of the plaintiff in this case.

8. It further appears from the impugned order dated 28.2.79 copy Exb.A-5 and the pleadings of the defendants that after the promotion of the plaintiff when defendant no.2 was physically fit to join his duty, he was accommodated on another post without reverting the plaintiff and the plaintiff was ordered to be reverted under the impugned order only when the post on which defendant no.2 was working was undergraded and to accommodate him, the plaintiff being junior to him, had to be reverted. Thus, without a vacancy, the plaintiff and defendant no.2 could not be accommodated as Welder and the reversion of the plaintiff made by the defendants for a short period was fully justified. The plaintiff was thereafter again promoted w.e.f. 15.10.1979 and his pay was fixed after giving him the benefit of next below rule and since then, he is working on the promotional post. We, therefore, find no force in this appeal and it merits dismissal.

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The appeal is accordingly dismissed and the judgment and decree passed by the trial Court are hereby upheld. Parties are directed to bear their own costs.

*Khanna*  
28/1/88

MEMBER (A)

*Sundararao*  
28/1/88

MEMBER (J)

Dated: 28th Jan. 1988  
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