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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1210 of 1987

Allahabad this the 23rd day of Jan. 1996

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D. S. Baweja, Member (A)

Bhola Shankar Khare A/a 39 years S/o Shri B.L. Khare,
R/o 52, inside Datia Gate, Jhansi, Working as Skilled
Trimmer No. 148 in C & W Depot, Central Railway, Jhansi

APPLICANT

By Advocate Shri H.P. Chakravarty.

Versus

1. Divisional Railway Manager, Central Rly. Jhansi.
2. Shri Munna Khan, C&W Skilled Trimmer, C&W Depot, Central Railway, Jhansi.

RESPONDENTS

By Advocate Shri V.K. Goel.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has approached the Tribunal challenging the orders dated 22.6.1987 (Annexure A-1) and 04.11.1987 (Annexure A-4), whereby the seniority of the applicant was fixed below the respondent no. 2 without giving any opportunity of hearing to him.

2. The facts of the case are that the applicant who was engaged as Casual Labour in 1964, was absorbed as Khalasi on 17.4.1974 in a regular service. He was then made Skilled Trimmer and thereafter as Basic Trimmer. He was further promoted as Skilled Trimmer in February, 1982. It is contended that the respondent no.2 had joined services in 1972 and was promoted as Basic Fitter in 1982 but, he refused the post of promotion. He opted for the cadre of Trimmer and after qualifying the Trade Test for the Basic Trimmer, he was posted as such on 16.9.1982 and Skilled Trimmer in 1983. Thus, he was made Trimmer subsequent to the applicant, yet he was made senior to the applicant. He has also relied on Para 306 of Indian Railway Establishment Manual (herein after referred as I.R.E.M.) in which it was laid down that candidates selected for appointment for an earlier selection, shall be senior to those later in respect of the dates of posting. The applicant made representation but with no result, hence this O.A.

3. The respondent no.1 contested the case and filed reply disclosing that the applicant was made C&W Khalasi on 17.4.1974 and Basic Trimmer on 28.8.1981. He was promoted as S.K. Trimmer on 12.2.1982. The refusal of promotion as alleged by the applicant, has been denied. It is the case of respondent no.1 that the respondent no.2 had applied for the post of Trimmer long before the petitioner i.e. on 14.4.1975 but, because of the administrative lapses, his application dated 14.4.75 could not be ^{traced and} connected and, therefore, he was given

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promotion in the cadre of Fitter instead of the cadre of Trimmer. It is averred that the respondent no. 2 was senior to the applicant and, therefore, he was made senior to the applicant.

4. The respondent no. 2 did not file any counter-reply. The applicant, however, submitted rejoinder reiterating the facts mentioned in the O.A.

5. We have heard the learned counsel for the applicant and the respondents and have perused the record.

6. It is indisputed² a fact that the applicant was made Trimmer prior to the induction of the respondent no. 2. The grounds taken by the respondent no. 1 that the application dated 14.4.1975 of the respondent no. 2 was not traceable and, therefore, he could not be given the cadre of Trimmer, is not understandable. The seniority in the cadre is determined when an employee gets berth in the cadre. If the respondent no. 2 was inducted in the cadre of Fitter even if his application was not traceable, he cannot be deemed to be in the cadre of the Trimmer from the date when he was made Fitter. The contention of the applicant, therefore, is not without substance. Besides, if any change is to be brought in the seniority of the employees, it is incumbent that a notice should be served and an opportunity of hearing be given to the employees who are going to be affected. In this case, no such steps were

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taken and thus, the decision of making the respondent no.2 senior to the applicant, is violative of the principle of natural justice. We, therefore, quashed the seniority orders dated 22.6.1987 (Annexure A-1) and 04.11.1987 (Annexure A-4) and direct the respondents to re-fix the seniority after giving an opportunity of hearing to the applicant. The O.A. is decided accordingly. No order as to costs.

S. R. Hegde
Member (A)

D. Dandekar
Member (J)

/M.M./