

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration T.A. No. 44 of 1987
(W.P. No. 2830 of 1984)

Pankaj Kumar Jaiswal Applicant.

Versus

Divisional Railway Manager,
N. Railway, Allahabad and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

In the year 1969, the applicant inducted in the Railway Service as Khalasi and was posted at Delhi. Thereafter, on 16.3.1972, he was given an opportunity to work as a Tele-communication Fitter (Casual). His services were dispensed within the year 1972 on the pretext that he may not claim for regular appointment and only after a few weeks, he was again appointed as Casual Fitter. Since the applicant has an experience of working as Tele-Communication, Fitter (Casual), he was treated as an Artisan Staff and a trade test was conducted by the officer of the Railway Department consisting of the Divisional Superintending Engineer, Head Quarter and Senior Divisional Signal Tele-communication Engineer. The record indicates that in the trade test, the applicant was qualified and he was given the officer of appointment on 15.12.1974 as Tele-communication maintenance Grade-3 in the scale of Rs. 260-400. When the next increment was due to the applicant, he was informed that a penal for Tele-communication Mechanics is going to be prepared from the Casual Artisan Staff but instead giving place in the penal of Tele-communication Mechanics, the applicant was reverted in the scale of Rs. 196-232. The applicant filed a representation

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against his reversion order as the said order was passed against the provision of law and the principle of natural justice and vide order dated 15.1.1980, he was again granted the revised scale of Rs. 260-400 of class-II post. He filed another representation stating therein that his basic pay can not be reduced from 284 unless the respondents gave him an opportunity to say in the matter, but the said representation has not yet been disposed of. On 24/28.5.1979, the respondent no. 2 issue a letter which was addressed to all the C.T.I., T.C.I. through which an information was given about the decision to hold screening Fire Wireman of had to fill up 25% from amongst the Casual Artisan Staff. The applicant also sent for screening and he also participated in the test. The total vacancies were 104 and against the aforesaid 104 vacancies, 25% quota was to be given to the casual artisan staff who were already working as Tele-Communication Fitter/Mechanics or Wireless Fitter/ Mechanics and the rest of the quota that is of 75% were to be filled up from the direct recruits. For filling up the rest of 25% quota of Casual Artisan Staff, as mentioned above, the test was held and the result was declared on 28.1.1983 and the applicant was at No. 3 in the said result. In terms of the aforesaid result dated 28.1.1983, a letter was again issued on 5.3.1983 to the applicant through which he was appointed in in the scale of Rs. 260-400 and through the said letter, he was also directed to perform the formalities before getting the benefit of the said appointment. As the applicant has completed 5 years of service, so he was entitled to get three sets of passes and six sets of P.T.O. The applicant made representation for the same and ultimately, the same was granted to him. While, the applicant was on medical leave, the order of reversion was passed and one B.N. Pandey who

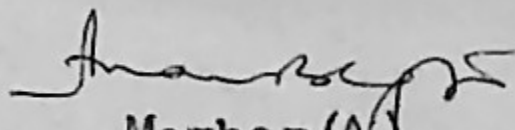
was junior to the applicant was appointed in his place. The said B.N. Pandey was earlier reverted to the post of Khalasi and when the applicant was selected against 104 vacancies, By means of this application, the applicant has prayed for quashing the order dated 5.10.1983 and 15.12.1983 and has also prayed for issue a writ of mandamus directing the respondents to maintain the seniority of the applicant w.e.f. 15.12.1974 and give him all the benefits.

2. The Railway administration in its reply has stated that the applicant was never trade tested. ~~As~~ As the applicant was working as Telecom Mechanic purely on temporary and adhoc basis and that has not confer any right on him, and the result of the screening, he was found suitable and placed in the panel and that is why, an offer of appointment was given to him which was accepted by him without any protest. According to the railway administration, only 12 seats were to go in favour of the casual artisans and 25% quota out of the 50% was only allocated to them. As the applicant was only working on adhoc basis, in the grade of Rs. 260-400 under the temporary arrangement, as such, he can not claim any right. Regarding B.N. Pandey, it has been stated the applicant was although selected and empanelled, the very panel was cancelled. He ranks no where, near Sri B.N. Pandey, because Sri B.N. Pandey was empanelled before the alleged empanellment of the applicant. So the said B.N. Pandey was given appointment and he became senior to the applicant. In the second, ~~second~~ panel, according to the applicant, he has not been given an opportunity to appear. The applicant was put to work as TCM Grade-III against the post sanctioned on EIA basis and was not working against the regular vacancy, as such, he can not claim absorption. The said B.N. Pandey was promoted against direct quota on adhoc basis

subject to his reversion on the availability of direct recruit. Shri B.N. Pandey and other who were promoted for posting and the applicant continued to officiate against Extra Labour application vacancy in Engineering control because he was working there and no permanent posting could have been made against that post. Now the facts indicated above that the applicant, infact, was trade tested and he has worked as Tele-communication mechanic for 4 years. It was for the railway administration to place him for this side or that side, if they have placed him on a particular side, it could not be taken to mean he could be deprived from the direct side. The applicant having gained experience and having worked years together and in case, the panel in which he was placed, was unilaterally cancelled, he should have given an opportunity and he could even have been absorbed taking into consideration the experience which he ~~gained~~ gained. But the railway administration, ~~as it appears~~ ^{side of the} it appears, did not act fairly. So far as the placing of the applicant is concerned, it was in the hands of the railway administration and the applicant is no say in the matter. When the said B.N. Pandey was going to be appointed and the applicant has already been placed in the panel and the panel was not cancelled because of his fault but was cancelled on the fault of the administration, therefore, the applicant's case should have considered for placement in the panel when the said B.N. Pandey was placed, but that too has not been done. We have informed that years have passed but the applicant has not, yet been promoted to the said post, and it is difficult to believe that ofcourse vacancies have not occurred during all these years and it is really regrettable that the things are not done in the fair manner by the administration.

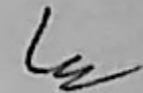
3. Accordingly, we direct the respondents to consider the

case of the applicant also being the similarly placed employee like Mr. B.N. Pandey and others and in case any person who was junior to him has been promoted, or has been appointed as Tele-communication Mechanic and has been given benefit, the case of the applicant shall also be considered fairly and justly by the administration and he shall also be given promotion ~~from the~~ from the due date to which he was entitled to, may be notional or otherwise. Let this consideration be done within a period of two months from the date of communication of this order. The application is disposed of with the above terms. Parties to bear their own costs.


Member (A)

Dated: 1.7.1992

(n.u.)


Vice-Chairman