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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 488 of 1987
(Original Civil Suit No. 252 of 1974)
(of the Court of Munsif, Moradabad)

Mahendra Pratap Singh Plaintiff

Versus

Union of India & Others Defendants.

Hon. Justice Kamleshwar Nath, V.C.

Hon. K. Obayya, Member (A)

(By Hon. Justice Kamleshwar Nath, V.C.)

The regular Civil Suit described above is before this Tribunal for a declaration that the order dated 23.5.73 promoting defendants 2 to 24 to the post of Semi Skilled Fitters is inoperative and void and that the plaintiff shall be deemed to have been promoted before any of them.

2. The plaintiff, Mahendra Pratap Singh was an unskilled Fitter Khalasi appointed on 31.7.57 and confirmed on 27.12.61. The next promotion was to the post of Semi Skilled Fitter subject to the candidates passing a trade test for the purpose. By letter dated 23.2.73, a number of unskilled category Fitter Khalasis were called to appear for a trade test to fill the post of Semi Skilled Fitters. The plaintiff's name was not included in the list of the persons so called. A trade test was held and the persons who qualified were placed on the panel of successful candidates in letter dated 23.5.73 and were promoted in course of time. Defendants 2 to 24 are the persons who were declared successful and were promoted as Semi Skilled Fitter.

3. The plaintiff's case is that he should also have been called to appear at the trade test and the omission of defendant No.1 to do so has resulted in his loss of promotion. It is admitted that defendants 2 to 24 are persons junior to the plaintiff. The plaintiff had therefore prayed that the appointment of defendants 2 to 24 should be quashed and that he should be declared to be deemed promoted.

4. The case in the written statement is that only those persons were called to take the trade test who had applied for the purposes and that since the plaintiff did not apply for appearing at the trade test, he was neither called nor he availed the opportunity of appearing at the test. It is said that the selection of defendants 2 to 24 is perfectly valid.

5. In addition to certain documents filed by the parties, the plaintiff examined himself as PW1. The defendant No.1 examined Raghuraj Singh DW1, an Assistant in the Personnel Branch of the Divisional Supdt. Moradabad who used to deal with the matters of promotion of persons like plaintiff.

6. The learned Munsif by his judgement dated 18.2.80 decreed the suit and declared that the selection and promotion of defendants 2 to 24 was void and inoperative and that the plaintiff shall be deemed promoted prior to those defendants. It is noticeable that till then defendants 2 to 24 had not been impleaded to the Suit. The judgement and decree of the learned Munsif were set aside by judgement dated 3.12.82 of the IIIRD Additional District Judge, Moradabad in Civil Appeal No.147 of 1980 and it was directed that defendants 2 to 24 be impleaded and the case be decided afresh in accordance with law.

7. After remand, defendants 2 to 24 were impleaded and necessary amendments in the pleadings were made. Before the case could be decided in the Court of learned Munsif, the Administrative Tribunals Act, 1985 was enforced. Consequently, by order dated 20.3.87 the Original Civil Suit was transferred to this Tribunal and is for disposal.

8. The question is whether the plaintiff was entitled to be called to take the trade test without his applying for the purpose. DW1 Raghu Raj Singh deposed that by letter dated 27/30.10.72 applications were invited from all categories of unskilled Fitters to appear at trade test for Semi Skilled Category. He said that defendants 2 to 24 applied, passed the trade test and were thereafter promoted while the plaintiff did not apply. He stated that not a single person was called to appear at the trade test without his making an application.

9. It may be mentioned that the witness had brought the records and files concerned with the test and the promotion and on the request of the counsel for the plaintiff in the course of cross-examination he filed the copy of the letter dated 27/30.10.72, Paper No. 51-KA. This letter was addressed ^{to} the Loco Forman of the various Loco Sheds appertaining to Moradabad Division. It mentions that applications were invited from all unskilled regular staff in Loco Sheds who had completed three years continuous service for the purposes of forming a panel with a view to fill vacancies of Semi Skilled Fitters and Greasers on the Division. It was stated that the Candidates would be required to appear at a trade test to be held by an Assistant

Mechanical Engineer and that the applications must reach the A.P.O. (I) positively by 15.11.72 through a special messenger. It also contained a direction that the orders calling for the applications be given wide publicity among the staff.

10. There is no reason to doubt the genuineness of this letter (Paper No.51-KA); it is a safe presumption that it was given a wide publicity among the staff and indeed a good number of persons did apply including defendants 2 to 24. The plaintiff admitted in his cross-examination that his Loco Shed had a Notice Board on which notices used to be pasted. He added that sometimes notices used to be pasted and sometimes not. The presumption and the reasonable conclusion is that the official duties were discharged by the concerned officers of the Loco Shed in the normal course and that, having clear directions to that effect in Paper No.51-KA, it would have been pasted on the Notice Board and given wide publicity thereto.

11. A doubt was ~~sought~~ to be created by the plaintiff about the defendants 2 to 24 making ~~some~~ applications but the doubt was ^{dis}spelled by the testimony of DW1 Raghu Raj Singh with the aid of the records which he produced before the learned Munsif. The witness stated that nine applications were available while the rest had been weeded out. We ^{accept} the testimony of the witness that all the defendants did apply for being considered for Semi Skilled category and for appearing at the trade test.

12. Your ~~Our~~ attention has not been invited to any law or official practice that each one of the unskilled Fitter should have been individually invited to submit

application for appearing at the trade test. As already indicated, selection was to be made from the various Loco Sheds within Moradabad Division from amongst all categories of unskilled regular staff. To meet that requirement, it was a fair practice to issue a general notice like Paper No. 51-KA inviting interested persons to apply for taking the trade test. DW1 Raghu Raj Singh said that from 26.6.76 the practice of inviting applications was revoked and since then the eligible unskilled category Fitters are called on the basis of combined seniority of all such persons. He added that on that very basis the applicant had been called for test later i.e. on 6.5.79 and was declared successful on 1.9.79 for Semi Skilled Fitter. It is interesting that the plaintiff admitted as PW1 that even prior to 1.7.79 he had appeared at trade test. This seems to signify that before being declared successful at the test held in 1979, the plaintiff had taken some chances where he must have failed. That may be a circumstance to indicate that the plaintiff deliberately did not apply to take the test when the general notice dated 27/30.10.72 was issued and in consequence of which particular candidates, who might have been found eligible or within the zone of consideration may have been called by notice dated 23.2.73 of whom defendants 2 to 24 were declared successful by the impugned order dated 23.5.73.

13. The plaintiff has made ^{an} attempt to show that he had not been called to take the trade test because officers were annoyed. He had been cross-examined on this point and had been found to be totally

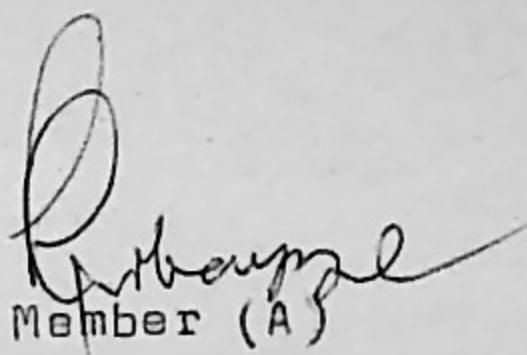
wanting. Mention may be made on his statement that on not being called he had objected in writing to the Divisional Mechanical Engineer to which no attention was paid. He admitted that he possessed a copy of the written objection but did not file it in the case. He admitted that he sent no reminder and did not consider it proper to summon it from the Railways. The reasonable inference is that the plaintiff voluntarily did not apply for being considered to appear at the test and never complained to the concerned authorities for not being called.

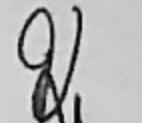
14. The learned counsel for the plaintiff urged that promotion to the post of Semi Skilled Fitter is on the basis of seniority-cum-Fitness and therefore the persons in the field of eligibility should have been called in order of seniority for appearing at the test. The plaint does not contain a case that the selection for the post of Semi Skilled Fitter by means of a trade test was on the basis of seniority-cum-Fitness and not on the basis of merit. What is more important is that there is nothing unreasonable or illegal in following the prevailing practice of issuing a general notice to all the categories of unskilled Khalasis inviting them to apply for taking the test if they so desired. We are of the opinion, in the totality of the circumstances, that no illegality is committed in not asking the plaintiff individually to appear at the trade test; the general invitation

to be considered for the trade test, was fair and adequate.

15. On a careful consideration of all the matters, we find this Suit to be frivolous which is fit to be dismissed.

16. The Suit is dismissed. Parties shall bear their costs.


Member (A)


Vice Chairman

Dated the 8 March, 1990.

RKM