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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Dated: 14 September, 1995.

O.A.No.1089 Of 1987

Hon.Mr. Justice B.C. Saksena, V.C.  
Hon.Mr. S. Das Gupta, Member(A)

Jagdeo Padey, son of late Shri Badri  
Nath Pandey, Retired Welder Ex. Ticket No.486,  
N.E. Rly. Loco Workshop, Gorakhpur..... APPLICANT.

(By Advocate Sri R.K. Tewari)

VERSUS

1. ;Union of India, through G.M.  
N.E. Rly. Gorakhpur.
2. Chief Workshop Manager, N.E.  
Rly. Mechanical Workshop,  
Gorakhpur ... .. RESPONDENTS.

( By Advocate Sri A.K. Gaur )

O R D E R

( By Hon.Mr. S. Das Gupta, Member(A) )

The applicant was initially appointed as Khalasi in ~~the~~ N.E. Rly. Loco Workshop, Gorakhpur on 17.7.1956. He responded to a notification dated 25.11.1964 inviting ~~the~~ applications from the Unskilled /Semi skilled Khalasies of the workshop who have completed 3 years of service and were willing to appear at the trade test for appointment as Basic Gas Welders and Electric Gas Welder. The applicant claimed that he appeared and qualified at the said trade test. A copy of the notification dated 15.3.1965 by which the results of the trade test are stated to have been announced by the respondents is at Annexure-A 2. The applicant's name appears at Sl. No.24 of the list of

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the candidates. He was among 14 candidates who had qualified in the trade test. However, before these 14 persons could be absorbed, the respondents absorbed 6 persons who were declared surplus from different shops as welder by order dated 30.8.1965( Annexure-A 3) . Thereafter, one Narendra Singh was also absorbed as Welder by an order dated 7.1.1969(Annexure-A 4) .The applicant was, however, provisionally absorbed in the cadre of Welder by order dated 29.8.1973 (Annexure-A 5) This was followed by another order dated 10.12.1974 (Annexure-A 6) by which his absorption as Welder was made final. Since then, he made number of representations to the respondents regarding his belated promotion and incorrect fixation of seniority. Ultimately, the Railway Board gave a decision in the matter and directed the respondents to fix the pay and seniority of the applicant with reference to the pay and seniority of his immediate junior. The respondents, in compliance with the order of the Railway Board revised the pay and seniority of the applicant by an order dated 24.7.1984 (Annexure-A 10) with reference to the pay and seniority of one Sri Magbool Ahmad. Not being satisfied with such fixation of pay and seniority, the applicant represented the matter to number of authorities. The reply from the Chief Personnel Officer not being satisfactory, he submitted a representation to the Railway Board on 2.12.1986. Having received no reply to the same, the applicant approached ~~to~~ this Tribunal seeking the relief that his pay and seniority be revised with <sup>reference</sup> ~~different~~ to the pay and seniority of his immediate junior namely Sri Sheo Murat <sup>or</sup> ~~and~~ Jawahar Pd. w.e.f. 30.8.1965 and he be paid arrears of pay and allowances

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arising out of such re-fixation. It has also been prayed that his pension also be re-fixed accordingly.

2. In a written statement filed by the respondents, it has been stated that the application is highly time barred as it is directed against an order dated 24.7.1984 while the application was actually filed on 16.11.1987. On merits of the case, it has been stated that although, the applicant did appear and pass the trade test for Welder, he did not belong to the Welding Group and was thus not in the line of promotion to the post of Welder. He was, therefore, not promoted earlier on the basis of the Trade tests result. However, he was subsequently, promoted after obtaining the approval of the Head of the department as he was outside the normal avenue of promotion to the post of Welder. It has been further averred that based on the decision of the Railway Board, the applicant has been given the benefit of fixation of pay and seniority by giving him proforma promotion from 1.2.1969.

3. The applicant has filed a rejoinder affidavit reiterating the contentions made in the original application.

4. We have heard the learned counsel for the parties and have carefully gone through the pleadings of the case carefully.

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5. The plea taken by the respondents that the application is time barred, has no force since the applicant represented against the impugned order dated 24.7.1984 which was rejected by the respondents by their order dated 24.10.1986 (Annexure- A 12). Keeping in mind that the communication of this order would have taken some time, the present application which was filed on 16.11.1987 cannot be dismissed as having become time barred. We, therefore, considered this application on its merit.

6. The applicant was not promoted on passing the trade test on the ground that he was not in the normal line of promotion to the post of Welder. On his representation, the Railway Board appears to have reconsidered the matter and came to the conclusion that his non-promotion should be treated as an administrative error and, therefore, the applicant should be treated as having <sup>been</sup> promoted to the Semi-Skilled Category of Welder from the date his junior in the seniority list was promoted and his pay be fixed on proforma basis accordingly. The applicant has not challenged this order of the Railway Board ; therefore, by implication, it can be assumed that he has accepted this order and whatever rights he is trying to enforce through this application flow from this order only. The respondents have issued the impugned order dated 24.7.1984 purportedly in compliance <sup>with</sup> to the Railway Board order dated 7.6.1984 . His pay has been refixed on proforma basis w.e.f.

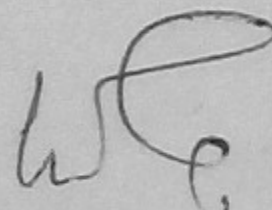
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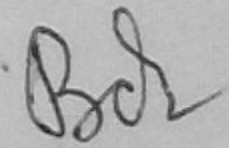


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1.2.1969 and the pay at subsequent stages have also been refixed accordingly. The applicant's case is that this refixation has not been done correctly as it was not with reference to his immediate junior. He claims that his immediate junior was either Sheo Murat or Jawahar Pd. The applicant, however has failed to produce sufficient material to establish his claim that his immediate juniors were Sheo Murat and Jawahar Pd. and his pay and seniority should have been fixed with reference to their pay and seniority. The contention made by the applicant in this regard in the O.A. is absolutely bald. Moreover, it is clear from the order <sup>dated</sup> ~~that~~ 30.8.1965 <sup>that Bdr. and Jawahar Pd.</sup> ~~Shao~~ Murat <sup>were</sup> in the trade of Reletter. He cannot, therefore, compare his seniority with reference to these two persons as they do not belong to the same category as the applicant. We ~~are~~, therefore, come to the conclusion that the applicant has failed to establish that his seniority and pay should have been reckoned with reference to the pay and seniority of these two persons.

7. In view of the foregoing, the application lacks merit and is dismissed accordingly. There will be no order as to costs.

  
Member (A)

  
Vice-Chairman.

(N.U.)