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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.1107 of 1987

S.D. Tiwari Applicant

Versus

Union of India & Others. ... Respondents

Hon. Ajay Johri, A.M.

Hon. G.S. Sharma, J.M.

(By Hon. Ajay Johri, A.M.)

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By this application received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant has prayed for the relief that the decisions of Garrison Engineer Jhansi not to allow the applicant to sit for the trade test for promotion to the post of Charge Mechanic be declared illegal and the applicant should be entitled to be eligible to appear in the aforesaid trade test taking him to have been working as a Fitter from December, 1974. He has also prayed for a direction to be issued that he is entitled for promotion to work as Charge Mechanic from 26.12.77 with salary and all benefits.

2. The case of the applicant is that he was initially appointed as a Plumber but was recategorized as a Fitter in December, 1974. When he was promoted

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as a Fitter he was transferred from Babina to Bhandara where he worked upto March, 1975. He was also allowed to appear in the trade test for the post of Charge Mechanic that was held in January, 1975. He was told by the officers that since he has been promoted as a Fitter only recently he will be promoted as a Charge Mechanic only after completion of three years of service as a Fitter in accordance with S.R.O. 215/71. Later on he was reverted from the post of Fitter to the post of Plumber without any show cause notice and opportunity of hearing. Being aggrieved by this action he challenged the order of his reversion in a Court of Law and got a decree in his favour in March, 1979. It was declared that he was entitled to work on the post of Fitter and was also entitled to get the salaries of the post of Fitter with effect from December, 1974. An appeal against this order of the Trial Court was dismissed by the Appellate Court in October, 1984. So the applicant ^{3r} ~~was~~ ^{had to considered} promoted as a Fitter with effect from December, 1974. Based on this judgement he had put in nearly 4 years 10 months service in October, 1979. He has therefore claimed that he is entitled to appear in the trade test of Charge Mechanic in accordance with the policy of the Govt. According to him in April, 1976 the Garrison Engineer Jhansi invited

applications from willing employees for appearing in the trade test for promotion to the post of Charge Mechanic. He also submitted his application but he was told in April, 1976 that since he is not a Fitter and was working as a Plumber he was not entitled for the post of Charge Mechanic.

Again in October, 1979 when he applied for the post he was told that he has not completed 2 years of service as Fitter hence he was not allowed to appear in the trade test. According to him, since by the judgement of the Trial Court and the Appellate Court he was deemed to have been working as a Fitter with effect from December, 1974,

28/ In April, 1976 he was entitled to appear in the trade test of Charge Mechanic and similarly in October, 1979 also he was eligible and entitled. According to him a number of employees junior to him were permitted to appear in the trade test but he was denied the same.

3. The respondents' case is that the applicant cannot challenge the orders of 1976 and 1979 by an application which he has filed before the Tribunal in November, 1987 as it is barred by limitation. The respondents have further said that the applicant was working as a Plumber from

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April, 1965 and in 1974 when applications were invited from ^{31 eligible} ~~eligible~~ candidates for promotion to the post of Fitter, the applicant who had passed the departmental trade test in 1970 also volunteered and he was recategorized as a Fitter. He also appeared in the trade test of Charge Mechanic in January, 1975 but he was declared unsuccessful. Later on the recategorization of the applicant from Plumber to Fitter which was done in 1974 was not approved by the Chief Engineer vide his letter of January, 1975 as the post of the Plumber was not in direct line of promotion to the post of Fitter as per Recruitment Rules. Consequently the applicant was reverted. His applications were allowed by the Civil Court and he was regarded to have been working as a Fitter with effect from December, 1974. According to the respondents, inspite of this judgement the Department had treated him as ^{or if} ~~as~~ he was holding the post of Plumber only. In regard to the seniority of the applicant as a Fitter with retrospective effect as well as considerations of promotion as Charge Mechanic the respondents have said that the Department did not implement the judgement of the Trial Court ^{31 of March 79} which was confirmed in the appeal which was decided in ^{Oct 2nd 1984} ~~March 1979~~. Therefore the seniority of the applicant could not be decided. On these

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grounds the respondents have said that the applicant is not entitled to any reliefs that he has sought.

4. We have heard the learned counsel for both parties. The learned counsel for the applicant submitted that by non implementation of the orders of the Trial Court the applicant has been deprived of his further promotion to the post of Charge Mechanic and since denial of promotion is a recurring loss, the cause of action survives even today while on behalf of the respondents the question of limitation was contested.

3/ 5. The clear averments made by the respondents that the relief given by the Trial Court in 1979^{3/} of treating the applicant as having been promoted as a Fitter with effect from December, 1974 which was upheld in the appeal decided in ^{3/ 1984} 1979^{3/} was not given effect to by the respondents, ^{3/} we will go to show that the applicant was definitely entitled for being considered as a Fitter but the respondents against the judgement of the Trial Court did not give him the benefit of promotion as a Fitter from 1974 and thereby denied him opportunity to appear in the trade test for Charge Mechanic held after the appeal

was decided. Further they have also not taken any action to fix the seniority of the applicant in the category of Fitters. According to the designations which the applicant has shown in his application as being held by him on the date of the application he is working as a Fitter under Assistant Garrison Engineer, Varanasi. As a matter of fact, the applicant should have agitated the proper Court in 1979 when he did not get the relief but he had chosen to keep quite. He has now agitated the matter before this Tribunal. We agree with the respondents that as far as the challenge of the orders which denied him appearance in the trade test for Charge Mechanic is concerned the application is time barred and cannot be entertained at this stage. At the same time we also ^{note} ~~know~~ that there has been no change in the legal position in regard to the fact that the applicant was considered to have been working as a Fitter since 1974 as the judgement and decree of the Trial Court has not been set aside or modified by any higher court. By the mere executive action of not implementing the judgement which had been upheld in an appeal made by the respondents, the respondents cannot seek protection of not considering the case of the applicant for further promotion on account of his inaction ^{or} ~~on~~ the non execution of the

judgement. Though we will not like to take cognizance of a grievance arising out of an order made prior to 1.11.82 as we have no jurisdiction to entertain a petition in respect of such a grievance, the ultimate result has been that even today the applicant has not been allowed to appear in the trade test for the post of Charge Mechanic and is therefore suffering in the matter of his promotion.

6. In terms of the Recruitment Rules today, the applicant has to be considered to have completed the minimum period required for being allowed to appear in the trade test of Charge Mechanic. We therefore direct that the respondents should fix the seniority of the applicant immediately in the category of Fitters and arrange to hold a trade test for him for consideration of his promotion to the post of Charge Mechanic, in case any vacancy has been filled since the filing of this application dated 17.11.87 and any junior has been promoted. If no vacancies have occurred they will consider the name of the applicant for being called for the trade test when next vacancy occurs and consider him for promotion ³¹ ~~which immediate effect~~ ³ ~~if~~ ⁴ if he becomes due. ³¹ ~~He~~ ^{on his promotion} will also be entitled to proforma fixation in the category of Charge Mechanic.

7. The application is disposed of in the above terms. We make no order as to costs.

[Signature]
Member (J)

Dated the 26th July, 1988.

RKM

[Signature]
Member (A)