

RESERVED:

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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 560 of 1988

Suraj Nath and Ors Petitioners

Versus

Union of India and Ors Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MISS. USHA SEN. MEMBER(A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition Under Section 19 of the Administrative Tribunals Act 1985, the 2 petitioners have sought a direction to the respondents to correct their seniority according to their panel position after interpolation of their names in the panel of Electric Fitters declared on 4.5.81 and to give them yearly increments in accordance with their seniority in the panel of Electric fitters after the said interpolation showing their positions above their juniors on the panel. The petitioners have also prayed for direction to the respondents to exempt the petitioners from the trade test which is redundant and unwarranted in their case and to fix their pay on par with their juniors under next below rule.

2. The facts giving rise to this petition briefly stated are as follows:

The petitioners Sri Suraj Nath and Sri N.L. Bharatiya were working as Khalasi in T.L.I. Department of

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Electrical Branch w.e.f. 23.12.1967 and 21.7.71 respectively in Railway Administration under D.R.M, Allahabad- Respondent No.2. The petitioners were promoted as B.T. Fitter w.e.f. 5.5.1979 and were working on that post prior to their selection as Electric Fitters.

3. That for Artisan staff in Train Lighting Department of Electrical Branch the Railway Board, by their letter dated 25.1.77, had decided that the recruitment against direct recruitment quota 50% of the vacancies in the skilled grade, be made from Course completed Act Apprentices and I.T.I. qualified personnel after first trade test and that in the J.C.M meeting in November 1977 it was agreed that the earlier direct recruitment to a quota of 50% in the skilled cadre should be filled in the following manner:

- (i) 25% from serving semi-skilled and unskilled staff as laid down in the Apprentices Act who should be given appropriate training before they are absorbed in the skilled cadre.
- (ii) 25% by selection from Course Completed Act Apprentices, I.T.I. passed candidates and Matriculates from open market who are to be given training to bring them upto the standard of the earlier trade apprentices. Serving employees who are Course Completed Act Apprentices or I.T.I qualified and not more than 25 years should also be considered for absorption in the skilled grade.

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This has been approved by the Ministry of Railways as stated in the Railway Board's letter dated 24.2.79 (vide Annexure No. 1 to the petition).

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4. Thus the recruitment of 25% quota was to be made from serving staff and other 25% from outsiders who complete Apprenticeship.

5. In the year 1981 applications were invited for the post of Electric Fitter grade Rs.260-400. The petitioners along with others eligible for the post applied against 25% quota of serving semi-skilled and unskilled staff under the category serving semi-skilled and unskilled staff as stated in para no. 1 above. It is not disputed that the applications of the petitioners were not traceable in the office and as such they could not be called for the test and selection along with others and that the panel of selection contained the names of Bhuwaneshwar Prasad Singh and Sri Gopal Krishna Kohli who were junior to the petitioners. Sri Bhuwaneshwar Prasad Singh and Gopal Krishna Kohli were also promoted as Electric Fitter w.e.f 15.9.81 in grade Rs.260-400.

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6. On the petitioners representation to the authorities complaining that they were not called for trade test and selection and were unreasonably denied the opportunity of promotion, the authorities held a supplementary examination for the petitioners and on their passing the test and selection a fresh panel was formed and the names of the petitioners were interpolated in the earlier panel dated 4.5.81 showing the position of the petitioners above Bhuwaneshwar Prasad Singh and Gopal Krishna Kohli (vide Annexure II to the petition).

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7. The grievance of the petitioners is that even though their position in the panel of selection of Electric Fitters has been restored to a place above their junior Sri Bhuwaneshwar Prasad Singh, They have not been given the benefit of promotion and pay w.e.f. the date Bhuwaneshwar Prasad Singh was given.

8. In Para 5 of the Counter affidavit filed by the respondents in answer to the petition it has been stated that the petitioners were duly considered for selection against 25% Direct Recruitment quota from serving class IV employee of Electrical General Department by holding a supplementary test on 28.12.81 and viva-voce test on 4.1.82 and they are found suitable and placed on the panel as per (Annexure I to the counter affidavit) which is the same as (Annexure II to the petition), interpolating their names in the panel declared on 4.5.81 allowing them all consequential benefits as due.

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9. It has been pointed out by the learned counsel for the petitioners that the averment of the respondents that the petitioners were allowed all the consequential benefits as due consequent upon their names being interpolated in the panel of selection declared on 4.5.81 is not correct inasmuch as no benefit of fixation of pay upon selection w.e.f. 4.5.81 was given to the petitioners and that after several years they were by an order dated 15.12.88 (Annexure II to the counter affidavit) deemed promoted as T.L. Fitter Grade Rs.260-400 from 6.1.83 against * upgrading of the posts of Artisans due to reclassification and their pay was fixed as T.L. Fitter in that grade from 6.1.83. It is apparent that the

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petitioners were not given the benefit consequent upon their selection on being found suitable in the supplementary test held on 28.12.81 and viva-voce test on 4.1.82 and the consequential inclusion of their names by interpolation in the panel declared on 4.5.81.

10. The respondents have however, alleged that the petitioners could not be promoted after completion of training for want of non appearing in the trade test to assess their successful completion of training. This to our mind is not a convincing plea in defence which could justify denial of benefit of selection to the petitioners w.e.f 4-5-81, the date of empanelment with retrospective effect. The Railway Board's letter dated 25.1.77 recorded in (Annexure I to the petition) provided for direct recruitment of 25% in the skilled cadre from serving semi skilled and unskilled staff with educational qualification as laid down in the Apprentices Act who should be given appropriate training before they are absorbed in the skilled cadre. It also provided that for the serving staff suitable periods of Apprentice Training serving from 6 to 12 months may be prescribed by the Administration. There is no indication in Annexure 1 that the serving staff will have to undergo any test after Apprentice training serving from 6 to 12 months and the respondents have not placed any document prescribing the period of Apprentice training serving or any test at the close of such training serving in pursuance of the Board's letter dated 25.1.77. From a plain reading of the document (Annexure 1 to the petition) it appears that the serving staff was merely to undergo suitable periods

of Apprentice training serving and the question of any test of the training for the serving staff which have been recruited by holding selection test and viva-voce test does not appear contemplated.

11. In the circumstances, the action of the respondents in not giving benefit to the petitioners of promotion and seniority on their empanelment w.e.f. 4.5.81 on the basis of supplementary test held, cannot be justified and the order dated 15.12.88 (Annexure II to the counter) deeming the petitioners promoted from 6.1.83 against upgrading of the posts of Artisans due to reclassification is arbitrary and as such not sustainable in law.

12. In view of the discussion aforesaid, this petition succeeds and is allowed. The respondents are directed to treat the petitioners promoted on the post of T.L. Fitter Grade Rs. 260-400 consequent upon the inclusion of their names by interpolation in the panel of selection of Electric fitters declared on 4.5.81. The petitioners are held entitled to pay ~~at~~ par with their juniors under next below rule and they are to be treated as senior to Sri Bhuvneshwar Prasad Singh. For the purposes of giving seniority and fixing their pay the petitioners cannot be subjected to any trade test ^(LAW) ~~before~~ which is redundant and not warranted in their case. The implementation of this order shall be accomplished within three months ~~after~~ ^{from} _{1st} _{RAY}

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communication of this order.

13. There shall however, be no order as to costs.

Usha Sen
Member (A)

R.K. Varma
Vice Chairman

Dated: Nov: 23rd 1993

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