

(2) (12/1) 173/7

Central Administrative Tribunal, Allahabad.

Registration O.A.No.1152 of 1988

Kennith Sullival ... Applicant

Vs.

Union of India and others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

The applicant was initially appointed as Engine Cleaner in the N.E.Railway on 16.12.1969 and was thereafter promoted as Fireman (for short FM)II on the basis of his seniority and thereafter as FM I in Nov. 1986. According to the allegations made in the petition till the report of the IVth Pay Commission which became effective from 1.1.1986, the promotions to the post of FM¹ were made purely on the basis of seniority without any test or examination. However, under the the IVth Pay Commission Report, promotion from the post of FM II to the post of FM I has been ordered to be made on the basis of test. The respondents had held the written and viva-voce tests for selection to the post of FM I in 1987-88 on various dates in which the applicant had appeared under protest and in the final result declared on 14.5.1988, the name of the applicant was not on the list of successful candidates.

2. Ap-prehending his reversion on his failure in the written and viva voce tests for the post of FM-I, the applicant has filed this petition u/s.19 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act) for a declaration that he is entitled to continue on the post of FM I irrespective of his failure in the examination for the said post and the result of the examination declared on 14.9.1988 by the D.R.M N.E.Railway be cancelled and the said examination was illegally held and for the further relief that various persons mentioned from sl.nos. 179 to 233 in annexure 2 be declared to be entitled to continue on the post of FM I. He has also claimed one more relief for the declaration of the seniority list of the ^{Engine Cleaners} for the year 1983 as

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illegal as the seniority of the applicant has not been correctly shown therein.

3. We have heard the learned counsel for the applicant on the point of admission of this petition and feel that so far as the relief regarding the seniority list of 1983 is concerned, it is grossly time barred. The contention of the applicant that he has been making representations against the said seniority list after its publication in 1983 is not of any help to him as the repeated representations cannot extend the period of limitation prescribed for filing a petition u/s.19 of the act as prescribed by S.21 of the Act. We further find that the correctness or otherwise of the seniority list of 1983 has nothing to do with the validity of the examination in question and the two reliefs could not be joined together.

4. Regarding the written and viva-voce tests for promotion to the post of FM I the only contention of the applicant is that as he was already promoted in Nov.1986 on the basis of his seniority, he was not required to appear in this test and as such, the test was held illegally. The only ground on which the applicant has ^{thus} challenged the validity of the result of the selection test is that he and some other persons who were already promoted earlier were wrongly required to appear in the said test. On his own showing, this contention of the applicant is not correct as after 1.1.1986 it was mandatory for the respondents to make promotions to the post of FM I on the basis of selection test and not on the basis of mere seniority. The promotion of the applicant having been made thereafter in Nov.1986 was, therefore, against the existing rules and ^{at best} this can be treated merely as an adhoc promotion till the regularly selected candidates were available. The applicant was given a chance to appear in the selection test but unfortunately he failed. He has not alleged any other illegality or irregularity in holding the selection test and as

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such the applicant has no prima-facie case to challenge the result of the selection test and continue on the post of FM I after his having failed in the selection test. In this way, there is no point for adjudication in this case.

5. The petition is accordingly dismissed at the admission stage.

MEMBER (J)

MEMBER(A)

Dated: 6th Oct.1988
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