

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 15th day of September, 2000

Original Application No. 1396 of 1992

District : Etah

CURIA :-

Hon'ble Mr. Rafiuddin, J.M.

Hon'ble Mr. S. Biswas, A.M.

Puland Son of Shri Pritam Lal,

Resident of Kasganj, Etah.

(Sri HN Sharma, / Sri Manoj Upadhyaya, Advocates)

..... Applicants

Versus

1. Union of India through

Ministry of Railways, Railway Board,
New Delhi.

2. General Manager, North Eastern Railway,
Gorakhpur.

3. Divisional Railway Manager (Personnel),
North Eastern Railway, Izzatnagar.

(Sri Govindsaran, Advocate)

.... Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. Rafiuddin, J.M.

The applicant has sought quashing of the letters/orders dated 10-2-1992 and 13/14-5-1992 issued by the Divisional Railway Manager (Personnel), North Eastern Railway, Izzatnagar (respondent no. 3) and the order dated 31-12-1991/1-1-1992 issued by the General Manager, North

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Eastern Railway, Gorakhpur (respondent no.2) and a direction to the respondents to treat the applicant as confirmed Machinist Grade I w.e.f. 1-4-1984. The applicant claims to be appointed as Trade Khalasi in the Railway Administration on 3-3-1968. The applicant was promoted as "achinist Grade II vide order dated 4-6-1999 after completion of successful examination. The applicant again was promoted Machinist Grade I vide order dated 15-11-1979 after completing successful examination for the said post. The applicant has been regularly working in this capacity i.e. Machinist Grade I and ~~having~~ ^{Re has} been paid salary regularly. The applicant has even been confirmed in this post vide order dated 22-4-1986 w.e.f. 1-4-1984. Thus, the applicant claims that he was regularly promoted on the post of Machinist Grade I after proper selection. The applicant also claims that he never claimed any such concession nor ever misrepresented any fact. However, the applicant was surprised to receive the impugned order No.1167 dt. 10-2-1992 issued by the respondent no.3 intimating that the applicant's confirmation as Machinist Grade I made earlier vide order dated 22-4-1986 has been cancelled by the respondent no.1 vide order dated 31-12-1991/ 1-1-1992. The applicant made representation to the respondent no.3 on 25-3-1992 and again on 29-3-1992 but the same has not been decided.

2. The case of the applicant is that no opportunity has been provided to the applicant before passing the impugned order and the same is against the principles of natural justice. The applicant has already completed successfully qualifying test and he cannot be de-confirmed.

2. The case of the respondents as disclosed in their counter affidavit is that one employee Sri Raja Ram, Machinist, belonging to Scheduled Caste Quota made a complaint to the administration that applicant was getting benefit of Scheduled Caste Quota while he belongs to General Caste. On the complaint of the said Raja Ram, the applicant was asked for explanation vide letter dated 25/28-4-1986 and again by letter dated 23-7-1986 whether he belongs to Scheduled Caste ^R Quota and if he does not belong to Scheduled Caste ^R Quota, why he was getting the benefits of Scheduled Caste Quota. The applicant vide his letter dated 8-8-1986 intimated that he does not belong to Scheduled Caste. On getting clarification from the applicant that he got illegal promotion in the Machinist Grade II & I against Scheduled Caste Quota. The competent authority General Manager (Personnel), North Eastern Railway Gorakhpur was informed and the ^{R permission} promotion was sought for de-confirmation of the applicant on the post of Machinist Grade I. The General Manager (Personnel), Gorakhpur after considering these facts cancelled the confirmation of the applicant vide letter dated 31-12-1991/1-1-1992 and the applicant was deconfirmed vide the impugned order by the letter dated 10-2-1992.

3. The respondents have further stated that vide order dated 13-5-1992 was reverted on the post of Machinist Grade II. It has also been clarified that since the applicant on the basis of General Caste category was entitled to be promoted on the basis of seniority in the Machinist Grade II w.e.f. 25-8-1988 because by that time juniors to the applicant of general caste were promoted on 25-8-1988. Consequently, after implementation of the Fourth Pay Commission, the applicant was promoted

in the grade of Machinist Grade II Rs.1200-1800 w.e.f.
1-1-1986.

4. The respondents have also stated that the applicant fully being aware of the fact that he does not belong to Scheduled Caste Quota, he was taking illegal benefit. Therefore, the impugned orders have been legally passed.

5. We have heard counsel for the parties and perused the pleadings on record carefully.

At the outset
6. ~~Q~~ ^{That} it is stated that the applicant has not filed any rejoinder affidavit against the facts mentioned in the counter affidavit of the respondents. It is not in dispute that the applicant belongs to general category. It has also not been disputed that the applicant was promoted as Machinist Grade II and I against Scheduled Caste Quota. Learned counsel for the applicant has emphasised that it was not the fault of the applicant that he was promoted on the post of Machinist Grade II and I against Scheduled Caste Quota. Therefore, he cannot be deprived of the benefit he got. We are not convinced with the plea of the counsel for the applicant. The applicant as a responsible Govt. servant was ~~responsible~~ ^{supposed} to inform that he was not eligible to get the benefits of reservation quota. Consequently, he is not entitled for the benefits of reservation category.

7. There is also no force in the argument that before passing the impugned order, no opportunity was given or show cause notice was issued to the applicant. We have perused the service record of the applicant in which the reply given by the applicant is available.

No doubt
~~Q~~ ^{time} ~~that~~ the respondents took the same ~~time~~ in considerat-

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~~and~~ deciding the matter of his deconfirmation but the
fact remains that the applicant was ~~not~~ issued show
cause notice in this regard and he also duly replied to
the show cause notice.

8. Therefore, after considering the facts, we find
that there is no violation of the principles of natural
justice. Learned counsel for the applicant has referred
to the case of Ram Krishna Namdeo Sarkata Vs. UOI & Urs,
decided on 7-7-1999 and reported in 1999(3) AJ 555.

We have perused the judgement and ~~we have perused the~~
~~judgement~~ and found that the facts of the case are
not identical and the ~~views~~ expressed by the Bombay Bench
of the Tribunal cited above are not ~~identical~~ to the
present case. For the reasons stated above, we do not
find any merit in this case and hence, the OA is
dismissed accordingly with no order as to costs.

B. D. Patel
Member (A) Member (J)

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