

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 22nd day of November, 2001

Original Application No.1405 of 1994.

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Hon'ble Maj Gen KK Srivastava, A.M.

Ashok Babu Dinkar
Son of Shri Laturi Singh,
working as Highly Skilled Fitter Gde I,
AC Electric Loco Shed Jhansi,
resident of 961-A, RB-II, TRS Colony,
Nagra Haat, Jhansi, C/o Raghuvan Dayal,
Asst. Sub Inspector, Delhi Police,
44, Govindpuri Kalkaji, New Delhi.

(Sri AK Dave, Advocate)

• • • • • .Applicant

Versus

1. Union of India through the Secretary, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. The Divisional Railway Manager, Central Railway, Jhansi.
3. The Senior Divisional Electrical Engineer, (Traction Rolling Stock), Central Railway, Electric Loco Shed, Central Railway, Jhansi.

(Sri AK Gaur, Advocate)

• • • • • .Respondents

O R D E R

By Hon'ble Mr. Justice RRK Trivedi, V.C.

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has questioned the order dated 17-8-1994 by which he was reverted from the post of Electric Fitter Grade I to Electric Fitter Grade II.

2. The case of the applicant is that he was trade tested and thereafter he was promoted as highly skilled Fitter Grade I on 25-3-1994. The name of the applicant was mentioned at Serial No.2 in the panel. The applicant held the post but by the impugned order he was reverted.



It is submitted that no opportunity of hearing was provided to the applicant before passing the impugned order and the order is liable to be quashed on this ground.

3. Sri MK Sharma, counsel for the respondents on the other hand submitted that it is true that the applicant was trade tested for promotion but according to seniority, he was not entitled for promotion. It has also been submitted that the promotion was granted on the basis of provisional seniority and when the seniority list was finalised, the order was passed reverting the applicant. It has also been submitted that as the appointment was officiating, no opportunity of hearing was required to be given.

4. Learned counsel for the applicant has relied on the judgement of Hon'ble Supreme Court in the case of Ram Ujarey Vs. Union of India, 1999 SCC (L&S) 374. We have considered the submission of the counsel for the applicant, but the undisputed facts are that the applicant was trade tested and thereafter was given promotion as highly skilled Fitter Grade I by order dated 25-3-1994. In para 1 of this order, it was clearly provided that the promotion was given in officiating capacity and the applicant was not to be entitled any advantage over the employees who are senior to him. Thus, the interest of seniors was well protected. The applicant had joined the post and worked for sometime. In the circumstances he should have been provided an opportunity of hearing. It is undisputed that in 1996 on the basis of the same trade test, the applicant was given promotion. The Hon'ble Supreme Court in the case of Ram Ujarey (supra) held that where the appellant was given promotion after trade test and he was reverted on the ground that he got promotion because of wrong seniority, opportunity of show cause should have been

given to him.

5. Though in para 11 of the counter affidavit, it has been alleged that notice was sent to the applicant on 02-8-1994 but it finds no mention in the impugned order. The applicant has vehemently denied service of any such notice but the respondents have not filed any material in support of this allegation. In these circumstances, it appears that the order was passed without giving any opportunity of hearing to the applicant and it cannot be sustained.

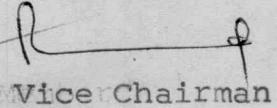
6. For the reasons stated above, this OA is allowed. The order dated 17-8-1994 (Annexure-A-1) is quashed.

7. The applicant shall be entitled for difference of salary if he was not paid the salary of highly skilled Fitter Grade I inspite of the interim order dated 19-9-1994 passed by this Tribunal. ^{The amount} ~~value shall be paid to applicant within four months.~~

8. There shall be no order as to costs.



Member (A)



Vice Chairman

Dube/