

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 25th day of April 1996.

Original Application no. 177 of 1994.

Hon'ble Mr. T.L. Verma, Judicial Member  
Hon'ble Mr. D.S. Baweja, Administrative Member.

K.C. Singh, S/o Late Shri Ramadhar Singh, R/o Qr. No. 466/A D.L.W., Colony, Varanasi.

... Applicant.

Counsel for the applicant Shri Sanjay Kumar.

Versus

1. The Union of India, through General Manager, Diesel Locomotive Works, Varanasi.
2. The Chief Mechanical Engineer, Diesel Locomotive Works, Varanasi.
3. Shri V.K. Sachdev, Shop Supdt./ P.M.S., Staff no. 02224. Diesel Locomotive Works, Varanasi.
4. Shri A. K. Sinha Shop Supdt.,/Modunisation Cell Staff no. 02132, Diesel Locomotive Works, Varanasi.

... Respondents,

Counsel for the Respondents Shri Amit Sthalekar.

O R D E R

Hon'ble Mr. D.S. Baweja, AM

Prayer has been made through this application filed under Section 19 of the Administrative Tribunal

(v)

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Act 1985 for quashing the impugned orders dated 12.8.93 and 8.11.93 by which the seniority allowed earlier ~~vide~~ order dated 16.6.93 has been cancelled. The applicant also prays for restoring his seniority as per the order dated 16.6.93.

2. The applicant is working in Diesel Locomotive Works, Varanasi. He was selected as Trainee Chargeman (Mechanical) through Railway Service Commission. On completion of the one year training in Millwright trade, he was posted as Chargeman (C) in the grade 205-280 in Central Transport Shop (CTS). He joined the Section on 3.1.67 as per office order dated 26.11.66. The Central Transport Shop was a part and parcel of Millwright shop and the avenue of advancement and seniority were combined and the staff were posted wherever required within the same seniority unit. In 1968, the Administration called for options for the new trade of Motor Mechanic introduced in Central Transport Shop. The applicant did not opt for the same. However his trade was changed to that of Motor Mechanic ~~vide~~ order dated 15.4.68. When he came to know of the same he represented against the same and oral assurance was given to him that this will not affect his promotional prospects and his interest will be protected. The cadre of the Motor Mechanic trade is very small with lesser <sup>at</sup> promotion prospects as compared to that of the Millwright shop.

The applicant represented in 1993 that his junior who had joined the Millwright shop as <sup>a</sup> Chargeman 'C' much later than him has been promoted to Shop Superintendent grade. His representation was considered and the Chief Mechanical Engineer allowed the contention of the applicant, ~~vide~~ order dated 16.6.93 (Annexure-A-6) and the change of the trade <sup>to that of Millwright was</sup>

allowed to the applicant. However this was subsequently cancelled vide order dated 12.8.93 (Annexure-A-I) which was also passed by the Chief Mechanical Engineer who had earlier decided in the favour of the applicant. Subsequently, the applicant made a representation against the same to which reply was sent vide letter dated 8.11.93 which has been also impugned. Aggrieved by this, the applicant has filed this application.

The applicant's case is that he had not given any option for the Motor Mechanic Trade and therefore the applicant is entitled to retain his seniority in the Millwright Trade in the Central Transport Shop which is a part of Millwright shop and where he was originally posted.

The applicant has pleaded in support of his reliefs that having decided considering his representation in the favour of the applicant, the order has been cancelled without giving show cause notice. Further the original decision was taken by the Chief Mechanical Engineer while the cancellation of the same has been also done by the Chief Mechanical Engineer. The appeal was made by him to the General Manager but the same was replied by the Chief Mechanical Engineer. Thus the cancellation order dated 16.6.93 is arbitrary and in violation of the principles of natural justice.

3. The respondents have filed the counter in which the pleadings made by the applicant have been strongly refuted. The respondents have not disputed the fact of the change in cadre allowed by Chief Mechanical Engineer vide order dated 16.6.93 and then subsequently cancellation of the same vide order dated 12.9.93. It has been asserted that the contention of

the applicant that there was no separate Motor Mechanic cadre branch is not factual. The Motor Mechanic trade in Mechanical Supervisory category always existed as will be evident from the Annexure R-3, giving avenue for advancement vide order dated 17.10.66. This was subsequently superseded and revised avenue of advancement was issued vide letter dated 31.5.72 (Annexure-R-4) implementing of the principle of one trade one seniority. Further promotion are to be in the respective trades. The seniority list of the Motor Mechanic trade supervisor was also issued on 1967 (Annexure-R-5). The trade of the applicant was changed along with other two vide order dated 15.4.68 (Annexure-R-6), after the acceptance by the applicant, as will be evident from the endorsement by the applicant on the same. Therefore the trade has not been changed without obtaining option from the applicant. The applicant was continued to be promoted in the Motor Mechanic trade. He was promoted as Chargeman 'B' Motor Mechanic trade with effect from 31.12.68, and Chargeman 'A' with effect from 10.3.78. The applicant did not make any representation at any time against the change in trade except the representation dated 31.5.1993. Therefore the application is time barred, and is also not maintainable by the principle of estoppel.

The applicant made a representation dated 31.5.93 stating that the juniors who had joined much later as Chargeman 'C' in the Millwright Shop have been promoted to Shop Superintendent grade and the seniority of the Millwright and Motor Mechanic trade supervisors should be combined to rule out the disparities in <sup>the</sup> promotion prospects of the Motor Mechanic trade. This representation was considered by the Chief Mechanical Engineer, and he was allowed change of trade ~~to~~ <sup>to</sup> ~~May~~ <sup>of</sup>

Millwright. However there was a joint representation from the staff of the Millwright cadre (Annexure-R-7) and one supervisor Sh. A.K. Bhattacharya who is senior to the applicant in the Motor Mechanic Trade. Taking into account the joint representation of the staff as well as representation of Sh. A.K. Bhattacharya who is senior to the applicant, the matter was reviewed by the Chief Mechanical Engineer and arrived at the conclusion that the earlier decision was not based on the correct facts. The Chief Mechanical Engineer passed an order to cancel the same. It is further submitted that the Chief Mechanical Engineer being the Head of the Department is competent to consider and decide issue and review the earlier order passed by him in case any facts have been brought to his notice which bring out that the decision taken earlier was not correct.

As such there is no violation of any rules. The application is not only time barred but devoid of merits also.

4. We have heard the learned counsel for the parties and also gone through the pleadings in the application, counter and the rejoinder affidavits and other documents brought on the record.

5. From the rival contentions made by the parties two aspects which need to be examined are. (a) Whether the authority who earlier allowed seniority to the applicant is competent to review its own decision and cancel the same, without giving any show cause notice? (b) Whether there is any merit in the relief claimed by the applicant with regard to seniority in Millwright cadre?

6. Taking first the issue (a) above, of competency of authority to review its own decision, the representation

of the applicant was considered by Chief Mechanical Engineer and the same was allowed by him by giving <sup>key of Millwright</sup> change in the trade to ~~this~~ effect. However there was reaction from the staff of the Millwright cadre ~~and the~~ supervisor Sh. Bhattacharya who was senior to the applicant in the same cadre also represented. The matter was again reviewed by the Chief Mechanical Engineer based on the facts brought out in the joint representation of the staff and the supervisor. It ~~was~~ <sup>was</sup> revealed that the decision taken earlier was not factual and therefore Chief Mechanical Engineer decided to review his earlier decision. The applicant's plea is that Chief Mechanical Engineer was not competent to review his own decision as per the rules. However no rules have been quoted in support of this contention, that any executive decision taken by the competent authority can be reviewed <sup>only</sup> by the higher authority and if so, which authority. The respondents have strongly contended that the Chief Mechanical Engineer was competent authority to decide the case of seniority. If the competent authority finds that the decision taken by him was not based on the correct appreciation of the facts or all the facts were not brought to his notice at that time, it should be certainly in his competence to review his own decision until or unless any specific rules have been laid down that the review of the decision is to be done by the higher authority. In the absence of any such specific rules laid down we are unable to find any substance in this pleading of the applicant.

As regards the issuing of showcause notice before cancellation of the decision taken earlier in favour of the applicant, it is to be seen whether this has caused <sup>of the opportunity</sup> any denial to the applicant to represent his case. The

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applicant had earlier put forward his case in his representation dated 31.5.93 where all the facts in support of his claim had been brought out. In view of this the issue of show cause notice would have served very little purpose.

Therefore we are of the opinion that non issue of show cause notice has not caused any violation of principles of natural justice.

7. As regards the merits of the case, the main plank of the contentions of the applicant is that he had not opted for posting in the Motor Mechanic Trade Cadre and there was no separate cadre of this trade and the seniority was common with the Millwright Shop Cadre. The submission made by the respondents controverts these contentions. As per annexure-3, the avenue of advancement has been laid down vide letter dated 17.10.66 and this clearly mentions separate seniority group in the supervisory cadre for the Motor Mechanic trade. This was also indicated in the revised avenue of advancement issued in 1972 (Annexure-R-4). Separate seniority list of the Motor Mechanic trade supervisors had been also notified, a copy of which has been enclosed at R-5. Therefore the contention of the applicant that there is no separate cadre of supervisors for Motor Mechanic trade is not born by the facts. The next contention of the applicant is that he did not opt for the Motor Mechanic trade and change of the trade was done by the Administration on their own. The respondents have strongly refuted this and have placed on record a copy of the letter dated 15.4.68 as per which change of Motor Mechanic cadre was notified, which includes the name of the applicant.

This letter is shown to be seen by the applicant. There is also clear endorsement on this letter that the names of the supervisors incorporated in the seniority list of Motor Mechanic trade supervisors accordingly. Therefore this <sup>the</sup> <sup>in</sup> pleadings of applicant is also tenable.

As per the details furnished by the respondents, the applicant has been progressing in the cadre of Motor Mechanic trade from time to time and got last promotion as Deputy Superintendent in the grade 700-900.

The applicant has also averred that he has been making representations since he came to know the change of his trade and oral assurance was given to him that change in trade will not affect his seniority and prospects for promotion. However in the rejoinder <sup>only</sup> representation has been brought on the record whereby he represented against his change of trade to that of Motor Mechanic but he has not brought out that he has been following up the matter thereafter. In fact subsequently all the promotions starting with first promotion from 31.12.1968, have been given to him based on the seniority in the Motor Mechanic trade, and he has been accepting without any protest at any stage. Perusal of the representation dated 31.5.93 (Annexure-A-3) also reveals that it does not contain any of the pleas taken up in the application. The main plea made in the representation is that a supervisor who had joined after him as Chargeman 'C' in the Millwright trade have been promoted to the higher grade 2375-3500 while he has been left out and therefore seniority of Motor Mechanic trade should be considered on combined basis along with Millwright shop so as to remove disparities in the promotion <sup>al</sup> prospects to the Shop Superintendent grade in the Motor Mechanic trade. This application does not mention that he was given the change to Motor Mechanic trade without exercising of any option by him and the change in trade was tentative. In his representation dated 21.9.93 (A-7) placed on the record, he has also averred that the applicant got the promotion to the grade of Rs. 2000-3200 in 1989 only while his contemporaries in Millwright section got in 1984, but he has not submitted

whether any representation was made against the same.

The above shows that the applicant was all along aware of his seniority in the Motor Mechanic trade and the disparity in the promotion prospects.

9. The cause of action initially started in 1968 when he was given the change in trade to Motor Mechanic trade. The relief prayed for now has to set right his seniority with reference to this point. The counsel of the applicant during the hearing pleaded that limitation provisions of Section 21 of the Administrative Tribunal Act 1985 will not apply on the premise that if the representation at any stage is decided subsequently on merits, this will give the fresh cause of action. He has cited the following judgements to support his contention:-

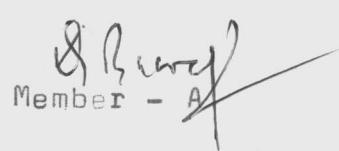
- i) ATR 1988 (i) page I B. Kunar Vs. U.O.I.
- ii) (1989) 9 ATC 682 Ajay Shankar Vs. U.O.I.
- iii) (1988) 8 ATC 249 A.N. Gambhir Vs. Secretary M/o Water Resources

In the instant case the representation dated 31.5.93 was entertained by the Administration and decision was taken on merits in his favour and advised vide letter dated 16.6.93. This has been cancelled vide letter dated 12.8.93. His representation against the same was replied on 8.11.93. Therefore the limitation will seen from this date. In view of this the application filed on 2.2.94 is within time. Keeping in view what has been held in the above referred judgements, we are inclined to agree with the contention of the applicant.

10. We have deliberated on the merit of the various contentions made by the applicant in support of his reliefs.

Even if the limitation provisions are not attracted, the merit of the case has to be assessed keeping in view the long span of period since the first cause of action in 1968 and the subsequent developments and progress ~~in~~ <sup>in</sup> the career of the applicant vis-a-vis the cadre in which he has claimed the seniority. This aspect has to be kept in view while considering the application on merit. As brought out earlier, the denial of the applicant that he did not opt for the Motor Mechanic trade and also there is no separate cadre and seniority group ~~is~~ <sup>is</sup> not tenable on the facts of the documentary evidence brought out by the respondents. The applicant remained complacent all the years having accepted his position and availing successive promotions till the grade of Rs. 2000-3200. His averments about making representations have no force in the absence of any material brought on record except one representation brought out in the rejoinder reply. He has turned around now and claims that his seniority was not separate from that of Millwright cadre and he did not opt for the Motor Mechanic trade. Much water has flown under the bridge since his first promotion in 1968. He has slept over his rights and if he was really aggrieved he would have sought legal remedy much earlier. Settled state of affairs cannot be unsettled after long interval of time having elapsed since 1968. Therefore we do not find any reasons to interfere at this late stage to reopen the issue of seniority. In the fact of documentary evidence <sup>also</sup> brought on record, the ~~details~~ <sup>made</sup> of the contentions by the applicant has no substance.

11. Considering the deliberations above, we find no merit in the application and the same is dismissed with no order as to costs.

  
Member - A

  
Member - J