

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Allahabad this the 30th day of September 1994

Original Application No. 611 of 1994

Hon'ble Mr. S. Dayal, Member (A)

Hon'ble Mr. J.S. Dhaliwal, Member (J)

Gurdeep Singh s/o Mohan Singh, working as Electric Fitter Grade II, C.S.P. Subedarganj, Allahabad.

Applicant.

By Advocate Shri R.P. Srivatava and Shri P.K. Kashyap

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Allahabad.

3. Deputy Chief Engineer, C.S.P., Subedarganj, Allahabad.

Respondents.

By Advocate, Shri A.K. Gaur

O R D E R

By Hon'ble Mr. J.S. Dhaliwal, Member (J)

Sri Gurdeep Singh has come to this Tribunal pleading that he was appointed as Electrical Khalasi in the year 1982 in Concrete Sleeper Plant, Subedarganj, Allahabad and in the year 1989 he was promoted to the post of Electrical Operator Grade III.

He filed a representation to the Senior Engineer C.S.P. Subedarganj for consideration of his name at a par with open market quota for appointment in electrical Fitter Grade-III, He filed another representation on 02.3.1990 (Annexure A-2 & A-3), he filed representation also on 08.1.1990 for his appointment as Electrical Fitter

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Grade III from his post of Electrical Operator-Grade III (Annexure A-4). The Senior Engineer C.S.P. vide letter dated 17.10.90 accepted his request and his trade was changed from Electrical Operator Grade III to Electrical Fitter Grade III(Annexure A-5). He pleads that since 17.10.1990, he has been working as Electrical Fitter Grade III and that in the year 1993, the trade test was held, in which he appeared and was declared successful. He appeared before the Selection Committee and here again he was declared successful and vide letter dated 01.2.93, he was promoted as a Electrical Fitter Grade II in the scale of Rs.1200-1800/- (R.P.S.)(Annexure A-6). He pleads that he was I.T.I qualified in Electrical Grade and this was taken into consideration at the time of acceptance of his representation. He explained that job of Electrical Operator consists of machine operation and that of a Fitter Grade II and III consists of maintainance of machines. The seniority list of Electrical(Openation Trade) and Electrical(Fitter Trade) are maintained separately and after having been ⁱⁿducted to the trade of Fitter since the year 1990, he has not only continued in the same but, has been promoted as Grade II. He was assigned seniority at serial no.14thA in Electrical Fitter Grade II(Seniority list, Annexure A-7), the next promotion would be as Electrical Fitter Grade I, and thereafter, as Chargeman. Under the talent quota, a person could be promoted to the post of chargeman directly after he has worked for 3 years continuously, being found eligible and qualified and if, he applies for it, ^{that} such test for the post of Chargeman, was to take place in near future. The respondents passed the order dated 13.4.94, regularising his services in

the Electrical Operation Grade, which he claims to be illegal and without jurisdiction. He has, thus, prayed for a writ of mandamus, directing the respondents to allow him to continue in the post of Electrical Fitter in a view of letter dated 17.10.1990 (Annexure A-5), ^{and} to quash the order dated 13.4.1994 (Annexure A-1).

2. In the reply, the respondents pleaded that the petitioner was appointed as Casual Khalasi on daily wage on 09.2.1992 and was put into the revised scale of Rs.196-232(BS)/750-940(RSP) w.e.f. 19.7.1982 and was regularised w.e.f. 29.8.1985. It is pleaded that for distribution of posts in different groups of Operation, Mechanical and Electrical, the applications were invited and he was kept in trade group of operation. Thereafter, a written test and interview were held and the petitioner was placed in the panel of Skilled Artisan Grade III in Operation Group vide office memo dated 10.7.89. He was appointed in the operation group as Grade III vide office order dated 08.2.1990 (Annexure C.A.-6). They further pleaded that the provisional groupwise seniority was prepared and circulated through letter dated 12.2.1990 (Annexure C.A.-7) as per the policy of the department and petitioner's name was shown in the operation group. He did not file any representation against the same and thus, finally, seniority list was circulated through letter dated 31.3.1990. It is further pleaded that "he manipulated" his change to the Electrical Group by the then Senior Engineer, Concrete Sleeper Plant. They further admit that on the application of the applicant, his category from Operator Grade III was changed to Electrical Fitter Grade III by the Senior Engineer, though as per

Railway Board circular (Annexure-B), this could not be done, if done, he has to be placed at the bottom of seniority list to which he goes. It is pleaded that no approval of Head of the Department was obtained. It is alleged that the dealing staff concealed these facts from the administration. It is further pleaded that this change was done due "to mistake of the then senior engineer". This mistake has been corrected by the Deputy Chief Engineer through the impugned order dated 13.4.1994. They have, thus, prayed for dismissal of the petition.

3. The learned counsel for the respondents has strenuously argued that change of trade of the petitioner from Operation Group to Fitter Grade was without jurisdiction. For this, he relies upon a circular letter no. 847E/38-II(Eiv.) dated 09.9.1969. The objection appears to have been taken from a misconception of the rules as 1969 circular which was only a administrative order stood superceded. The petitioner has in para 5 of the rejoinder cited a Presidential order incorporated in Indian Railway Establishment Code Vol.II issued in 1974. Under serial no.3 in Appendix XXXII makes Senior Scale Officers fully competent in respect of Class III posts under their control having power of transfer. This rule relates to power conferred on various categories of officers for transfer of railway servants from one post to another. Appendix XXXII of Indian Railway Establishment Code Vol.II Fifth Edition lays down ^{Rule 2011} ~~on~~

page 234 to the following effect;

"2011 Power to transfer 1. All heads Full power
a railway servant of depart-
from one post to ments.
another 2. Deputy Gen- Full power
eral Managers in respect
and Divisional of posts
Superintendents under
their
control.
3. Senior Scale Full power
Officers in respect
of Class
III and
Class IV
posts under
their c
control.
4. Assistant Full powers
Officers in respect
of Class
IV posts
under their
control."

4. It is, thus, clear that a Senior Scale Officer was fully competent in the year 1990 to change the post of the applicant as here has been done by the Senior Civil Engineer(Annexure-5). The objection regarding lack of jurisdiction to order change in the post of the applicant is found to be without any merit.

5. The other objection that it amounts to complete change from one category to another is also found to be without any merit as the nature of work is not completely different from the work which the doing.
petitioner was earlier L. Earlier he was operating Electrical Machines and now as Grade III, he was required to look after its maintainance and repair.

6. What strikes this Tribunal, the most is

the manner in which the impugned order has been passed. It is clear from the reading of the record that the petitioner was shifted to the trade Electrical Fitter vide order dated 17.10.1990 and thereafter he went through a process in the shape of trade test and the interview before a selection committee and was promoted as Fitter Grade II in the higher pay scale on 01.2.1993. He has been working as Fitter Grade II ever since then, and his seniority was also fixed in the same trade as per Annexure-A-6 and Annexure R,A.-1, the seniority list showing him at serial no.14/A. The impugned order has been passed in a most arbitrary manner in an attempt to set the clock back by mentioning that his regularisation is done in the operation grade from the year 1990 and he was ordered to join in that grade with immediate effect. It is not only arbitrary but, shows high handedness on the part of the Divisional Chief Engineer, who has very conveniently overlooked and bypassed the order dated 17.10.1990 and the order of promotion which the applicant had got. Until these two orders are set aside, it is inconceivable as to how the petitioner would be relegated back to the operation grade. It not only would deprive him of the rights which he had acquired but amounts to reverting him without following the requisite procedure.

7. Besides this, it has been seen that the applicant had the requisite qualification of I.T.I. for being placed in Electrical Fitter Grade and after going through the due process, he had been promoted. No rule has been shown which may bar the change of the trade of the Class III employee or which may indicate that the

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Senior Engineer did not have the power to order the change of trade as done, vide Annexure A-5.

8. For the reasons aforesaid, this petition deserves to be allowed and is accordingly allowed. The impugned order dated 13.4.1994 is quashed. The petitioner deserves to be regularised in the Electrical Fitter Grade and the respondents are directed to consider the same without disturbing his seniority in this trade at present.

9. With these directions, the application is disposed of with no order as to costs.

J
Member (J)

AM.M./