

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 10th day of April 2000.

Original Application no. 275 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member  
Hon'ble Mr. Rafiq Uddin, Judicial Member

Teje Singh, Yadav,  
S/o Late Lakshmi Singh Yadav,  
Pass no. ST/135 Pay Acct. No. 19538R,  
Foreman (Elect) AN-32 M.H.L. No. 9 Hangar,  
No. 1 BRD, AF, Chakeri, Kanpur.

... Applicant

C/A Sri Idris Ahmad

Versus

1. The Union of India through the Secretary, Ministry of Defence, Central Secretariate, Government of India, New Delhi.
2. The Commanding Officer No. 1 BRD, AF, Chakeri, Kanpur.
3. R.K. Srivastava, S/o Not known, Pass no. .... pay Acct. No. 22270 Senior Chargeman (Elect) Armament Repair Section, No. 1 BRD, AF, Chakeri, Kanpur.

... Respondents.

C/Rs. Sri A.K. Shukla  
Sri M.B. Tiwari

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ORDER

Hon'ble Mr. Rafiq Uddin, Member-J.

The applicant has sought quashing of the show cause notice dated 08.03.1995, issued by the Commanding Officer No. 1 BRD, AF, Chakeri, Kanpur (Annexure A-1) to the applicant and also declaration to the effect that the promotion of the applicant to the post of Foreman Elect. w.e.f. 01.09.1991 is legal, regular, valid and binding on the respondents.

2. The brief facts of the case are that the applicant was promoted to the post of Foreman (Elect.) w.e.f. 01.09.1991 vide order dated 05.09.1991, in the pay scale of Rs. 1600-2660 issued by the respondent no. 2 (Annexure A-3). The applicant was promoted on the recommendation of duly constituted D.P.C. against the vacancy falling due to the basis of retirement/death of regular employee. However, respondent no. 2 has issued impugned show cause notice which is extected as under:-

CONFIDENTIAL

Tele : 351730/4301

1 BRD, Air Force  
Chakeri  
Kanpur - 208008

08 Mar 95

1 BRD/7955/10/PC  
Sri T S Yadav  
Foreman Elect (ST/135)  
CA AN 32 (No 9 Hanger)  
1 BRD, AF, Kanpur

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SHOW CAUSE NOTICE : SHRI T S YADAV  
REVERSION AS SCM (ELECT)

1. You were promoted to Foreman (Elect) w.e.f 01 Sep 91 vide this depot office order Part II 'A' Serial No. 74/91. Your promotion was subject to judicial/administrative review. Your promotion was intimated to your section vide this depot Service Note of even number dated 06 Sep 91.
2. Further your promotion was authorised based on the recommendation of Departmental Promotion Committee held in Apr 91. The said Departmental Promotion Committee also considered the name of Shri R.K. Srivastava, SCM (Elect) PA No. 22270, who is senior to you, but his case for promotion was made a "Sealed Cover" under the provisions of Govt. of India letter No. 22011/5/Est (D) dated 10.4.89.
3. Now the disciplinary proceedings against Shri R.K. Srivastava, SCM (Elect), PA No. 22270 has been finalised and his charge has been dismissed, hence he is required to be promoted as Foreman (Elect).
4. Since there is no vacancy available of Foreman (Elect) in this depot, it is proposed to promote Shri R.K. Srivastava SCM (Elect), PA No. 22270 as Foreman (Elect) by reverting you to the post of SCM (Elect), PA no. 22270 has been finalised and his charge has been

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dismissed, hence he is required to be promoted as Foreman (Elect).

4. Since there is no vacancy available of Foreman (Elect) in this depot, it is proposed to promote Shri R.K. Srivastava SCM (Elect), PA no. 22270 as Foreman (Elect) by reverting you to the post of SCM (Elect), This is in accordance with provision of Syamy's Compilation on Seniority and Promotion of Central Govt., Servants Page No. 92 Para 17.6.1.

5. Now, therefore, you are hereby called upon to show cause as to why proposed action as envisaged in para 4 above may not be taken. Your reply, if any to this show cause notice is to reach to undersigned by 20th March 1995 failing which it will be presumed that you have nothing to urge against said proposed action.

Sd/-  
(K S Chaturvedi)  
Group Captain  
Commanding Officer

M Lal, LDC

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3. The case of the applicant is that respondent no. 3 is junior to him and no sealed cover procedure was adopted during DPC, in which the applicant was promoted. The applicant was promoted on regular basis and has hold the post for about four years. The proposed reversion of the applicant amounts to major penalty. Hence, the same is illegal and is liable to be quashed.

4. The official respondents nos 1 and 2 and also responde no. 3, Sri R.K. Srivastava, have filed their seperate CA and have contested the application mainly on the ground that the same is premature, as the applicant has challenged merely a show cause notice. The applicant instead of filing any reply to the show cause notice has approached this Tribunal ~~straight~~ <sup>straight</sup> away. Hence the QA is liable to be dismissed. It is further stated that at the time of DPC, sealed cover procedure was adopted in respect of respondent no. 3 ~~and~~ After exoneration during the departmental proceedings, Respondent no. 3 being senior to the applicant is to be promoted in place of applicant. ~~Since~~ <sup>as</sup> no other vacancies is available of the post ~~in~~ question.

5. We have heard Shri Idris Ahmad, learned counsel for the applicant and Sri V.B. Tiwari, learned counsel for the respondents, and perused the records.

6. The applicant has challenged the show cause

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notice issued by respondent no. 2. In our considered opinion, a show cause notice can not be challenged by filing an O.A. and the O.A. is obviously premature. The applicant should have filed the reply to show cause notice. In the event of any adverse orders passed by the respondents, it was open to him to challenge the same before this Tribunal. Therefore, we hold that the present OA is premature and is liable to be dismissed on this ground only.

7. We have, however, noticed from perusal of record that the respondent no. 2 seeks to promote respondent no. 3, treating respondent no. 3 senior to the applicant. However, no formal seniority list appears to have been prepared by the respondents and the inter-se-seniority of applicant and respondent no. 3 is still in dispute. It is, therefore, desirable that the respondent no. 1 and 2 before giving promotion order of the respondent no. 3 should determine and issue formal seniority list of the applicant and respondent no. 3, so that the ~~applicant~~ <sup>official</sup> could file objection against it.

8. We, therefore, dispose of the present OA with the following directions:-

i. Respondents no. 1 and 2 would determine the dispute of seniority between applicant and

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respondent no. 3 and issued their seniority list.

ii. The applicant would file the reply to show cause notice within ~~one~~ <sup>one</sup> months and the same will be disposed of by speaking order by the respondents nos 1 and 2. This exercise will be completed within six months from the date of communication of this order.

9. No order as to costs .

*D. Rajivuddin*  
Member-J

*S. A.*  
Member-A

/pcf