

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Dated; This the 24th day of December, 1998

Hon'ble Mr. S. L. Jain JM
Corum : Hon'ble Mr. G. Ramakrishnan AM

ORIGINAL APPLICATION NO. 384/95

1. Radhey Kumar s/o Sri Bhirigu Ram,
posted at Electrical office,
Central Railway, Banda in Train
Lighting Department.

2. Jagat Pal s/o Sri Pal, posted at
Train Lighting Office, Jhansi.

3. Veer Singh s/o Sri Kalloo, posted
at Train Lighting Office,
Jhansi.

- - - - -Petitioners

C/A Sri Rakesh Verma

Versus

1. Union of India through the
Divisional Railway Manager,
Central Railway, Jhansi.

2. Sri Habibullah Khan son of
Sri H. Khan, posted in Train
Lighting office, Jhansi.

3. Sri Khuman Prasad son of NOT KNOWN
posted in Train Lighting Office,
Jhansi

- - - - - Respondents

C/R Sri G.P. Agrawal.

Sri H.P. Pandey



O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

This is an application under section 19 of the Administrative Tribunals Act, 1985 challenging the action of the respondents in not calling the applicants for trade test for promotion as Train Lighting Fitter Grade III in pay scale of Rs.950-1500 and calling respondents no.2 and 3 who are junior to them for the following reliefs :

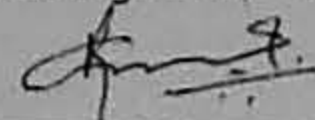
- (i) To issue a writ, order or direction in the nature of mandamus directing the respondent no.1 to conduct trade test and to give opportunity to the applicants to appear in the said trade test for selection to the post of Train Lighting Fitter Grade III and in case they are found fit, promote them w.e.f. the date of when the respondent no.2 had been promoted with all consequential benefits i.e. seniority and back wages etc etc.
- (ii) To issue a writ, order or direction in the nature of mandamus directing the respondent no.1 to consider and dispose of the representation of the petitioners dated 14.7.1994 (Annexure A-4) by a reasoned and speaking order within the period as may be stipulated by this Hon'ble Tribunal.
- (iii) To issue a writ, order or direction which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
- (iv) To award cost of the petition.



2. There is no dispute regarding the service particulars of the applicants :

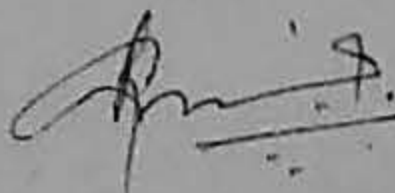
NAME	APPLI- CANT NO.	DATE OF		
		Initial appoint- ment.	Regular- isation	Promotion as Helper Khalasi
1. Radhe Kumar	1	17.8.77	23.6.79	17.7.89
2. Jagat Pal	2	20.8.77	25.6.79	17.7.89
3. Veer Singh	3	05.6.78	16.9.79	17.7.89

The applicants' case is that respondent No.2 Habibullah Khan, initially appointed as Khalasi in Train Lighting cadre with effect from 2.2.1 975, even though was senior to the applicants but he was subsequently transferred to O.S.M. cadre on 27.6.1985 on bottom seniority and as such he is not in the strength of Train Lighting staff and respondent no.3 Khuman Pd. even though was initially appointed as Khalasi w.e.f 10.10.1977, the same was in O.S.M.Cadre and he became to Train Lighting cadre on his own request on transfer w.e.f. 19.7.79 and is thus junior to the applicants. Extract of the seniority list published on 18.12.1985 by respondent no.1 (annexure A-3) shows respondent no.2 at serial no.211 with remarks against his name "Transferred to OSM" Applicants' 1, 2 and 3 are shown in the said list at serial nos.234, 235 and 243 and respondent No.3 is at serial no.250. The respondents 2 and 3 were given promotion as Helper Khalasi on 1.1.1984/26.5.1986, and applicants were promoted as Helper Khalasi w.e.f. 17.7.1989. Thus the action of the respondent no.1 in promoting respondents 2 and 3 as Helper Khalasi w.e.f.1.1.1984/26.5.1986 ignoring the claim of the applicants for promotion as Helper Khalasi was arbitrary and illegal. Vide letter No.




P/306/15/2/TL/TT/EL dated 29.6.1994 and P/396/15/2/TL/TT/EL dated 13.7.1994 when respondents no.2 and 3 were called for trade test for promotion as Train Lighting Fitter Grade III in the pay scale of rupees 950-1500, the applicants jointly represented to respondent no.1 vide representation dated 14.7.1994 requesting for their trade test also alongwith the others. In this representation, calling respondent no.3 for trade test had been questioned stating that his date of joining in Train Lighting Cadre is 19.7.1979 and is junior to the applicants. A further representation dated 14.11.1994 (annexure-5) was submitted by the applicants in which calling respondent no.2 for trade test had also been quoted with a request to permit them also to appear in the trade test. They had an interview with respondent no.1 but it had been alleged that no action was taken for redressal of the grievance.

3. In the written statement filed by the respondent no.1, it was stated that respondent no.2 who was appointed on 2.2.1975 in Train Lighting group was transferred to OSM group on 27.5.1985 on his own request and again he had sought mutual transfer on his own request with Sri Panna Lal ETL khalasi on 12.9.1986 and his seniority would have been maintained in TL Khalasi with effect from 4.7.1985 assigning seniority of Sri Panna Lal. It was stated that necessary notification for reversion of Habibullah Khan as Helper Khalasi in grade Rs.800-1150 had been issued and accordingly his seniority adjusted in the cadre of Helper Khalasi. As regards respondent no.no. 3, it was stated that even though he was junior to the applicants 1, 2 and 3 as Khalasi, on the basis of his



date of appointment in the Train Lighting group, he was considered for promotion as Helper Khalasi against the reserved point of 40 point roster, being a Scheduled Caste candidate and thus had become senior as Helper Khalasi to the applicants 1, 2 and 3. Further it was stated that respondent no.2 Habibullah Khan had been reverted vide respondent's office letter no.p/328/15/EL dated 1.2.1996 in the pay scale of Rs.800-1150 and that respondent no.3 had not been promoted as Train Lighting Fitter grade III and being a scheduled caste candidate, he became senior to the applicants 1, 2 and 3. Respondent no.1 denied having received a representation from the applicants 1, 2 and 3. Further respondent no. 1 stated that the applicants 1 and 2 had been trade tested and would be promoted later on, on availability of vacancy, in his turn. It was asserted that the applicants are not entitled to the reliefs claimed.

4. Respondent no.2 in his counter affidavit stated that the application was time barred as he (respondent no.2) was ^{not} promoted to the post of Helper Khalasi on 28.9.1986 by order dated 12.9.1986 and the applicants had never represented the matter before the departmental authorities against assignment of seniority or promotion to him as Helper Khalasi prior to filing of the O.A. Even in their representation dated 14.7.1994, the applicants had not cited his (respondent no.2) name. He stated that he was transferred to OSM group on 27.5.1985 and on 28.9.1986 by an order dated 12.9.1986 he had returned back to the Train Lighting group where his lien was held. ^{He} ~~The~~ further stated that his promotion after trade test on 13.2.1995 as Fitter grade III was correct and the applicants challenging his promotion on the basis of the seniority assigned in 1986 was not maintainable. He further asserted



that he having been promoted to the post of Helper Khalasi w.e.f. 1.1.1984 and the applicants having been promoted w.e.f. 17.7.1989 much later than him, he had been correctly promoted w.e.f. 13.2.1995. He also asserted that he had taken mutual transfer with Shri Panna Lal for coming back to the Train Lighting Cadre and on returning back, he had to take Panna Lal's seniority or his own and as Sri Panna Lal was much senior to the applicants and himself and, therefore, his seniority should be determined as per rule 310 of Indian Railway Establishment Manual. He also stated that the action of respondent no.1 in ordering his reversion from the post of Fitter Grade III while the matter was sub-judice before the Tribunal without an opportunity being given to him was violation of natural justice.

5. In the rejoinder affidavit filed by the applicants in reply to the counter affidavit of the respondent no.2, the applicants asserted that respondent no.2 was not senior to the applicants. Regarding specific assertion of the respondent no.2 that Shri Panna Lal was senior to the respondent no.2 and the applicants and that when ^{the} ~~he~~ had sought mutual transfer with Sri Panna Lal for coming back to Train Lighting grade and his seniority was to be assigned as per para 310 of Indian Railway Establishment Manual. In the rejoinder affidavit, the applicants only stated that counter reply was misconceived and misleading and hence denied and further stated that respondent no.2 was junior to the applicants even if seniority is assigned as per Rule 310 of I.R.E.M.. In their rejoinder affidavit to the counter affidavit filed by the official respondent, applicants, asserted that respondent no 2 and respondent no.3 were junior to them and they were

liable to be promoted as skilled Fitter grade III with effect from the date on which respondents no.2 and 3 were promoted.

6. We have given careful consideration to the rival pleadings and the arguments of the learned counsels.

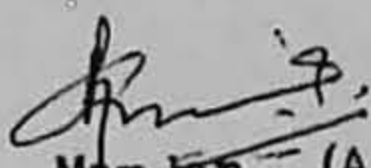
7. The first relief sought by the applicants was for a direction to the respondent no.1 to conduct the trade test of the applicants and if they were found fit to promote them with effect from the date respondent no.2 had been promoted with consequential benefits. To consider this relief, this Tribunal will have to first decide the relative seniority position between the respondent no.2 and the applicants. It is admitted fact that respondent no.2 was promoted as Helper Khalasi w.e.f. 1.1.1984/26.5.1986 and the applicants were promoted to the post of Helper Khalasi with effect from 17.7.1989. In this view of the matter, respondent no.2 is senior to the applicant as Helper Khalasi i.e. the feeder cadre. To examine whether respondent no.2 is junior to the applicants as claimed by them, this Tribunal will have to go into the legality of the actions taken by the respondent no.1 in 1985 and 1986 of transferring the respondent no.2 on request basis to OSM group in May, 1985 when subsequently in May, 1986 he had been promoted w.e.f. 1.1.1984 and again issuing orders of his mutual transfer as "Khalasi", which is barred by limitation.

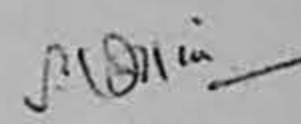
~~-----~~ Therefore, question cannot be considered. The second relief is for a direction to respondent no.1 to consider and dispose of the representation dated 14.7.94 (annexure-A-4) by a reasoned and speaking order within a stipulated time. In this representation reference to



respondent no.3 only had been made. In the counter reply, respondent no.1 had explained the position and, therefore, this relief has become infructuous. The other two reliefs are consequential.

In the result with the above observations, the O.A. is dismissed with no order as to costs.


Member (A)


Member (J)

SQI