

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 5th day of July 2002
original Application no. 71 of 1995.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Jamal Uddin Khan, Helper Khalasi, Concrete Sleeper Plant,
Northern Railway, Subedarganj,
Allahabad.

... Applicant

By Adv : Sri R.P. Srivastava
Sri P.K. Kashyap

Versus

1. Union of India through General Manager,
N. Rly., Baroda House,
New Delhi.
2. Deputy Chief Engineer, Concrete Sleeper Plant,
N. Rly., Subedarganj, Allahabad.
3. The Senior Engineer, CSP, N. Rly., Subedarganj,
Allahabad.

... Respondents

By Adv : Sri A.K. Gaur

ORDER

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 15.12.1994 (Ann A) and letter dated 13.1.1995 (Ann A-1) rejecting applicant's representation and has prayed that the same be quashed and the applicant be restored to his original grade Rs. 950-1500 and seniority without any break and allow arrears of pay thereof.

2. The facts, in short, are that the applicant was

2.

selected and appointed as Technical Khalasi on 11.6.1982 alongwith others. The applicant was sent on deputation to Iraq and remained ~~there~~ ⁱⁿ till 5.6.1990. On return ~~here~~ he was posted under Dy CE/CSP Subedarganj Allahabad on the same post in grade Rs. 750-940. During the deputation period of applicant, other candidates who were recruited alongwith the applicant filed OA 264 of 1990 in this Tribunal for promotion to skilled grade Rs. 950-1500 against 25% quota as per existing rules. The OA was allowed by this Tribunal on 18.2.1992 and the candidates who were recruited from the open market on 11.6.1982 including the applicant were promoted to skilled grade Rs. 950-1500 vide officer order dated 17.3.1992 and the applicant resumed his duty in the grade Rs. 950-1500 on the same day. Some persons who were not similarly situated were also promoted ignoring some of the applicants in OA no. 264 of 1990. So those applicants who were applicants in OA 264 of 1990 and were ignored filed Misc. Appl. no. 738 of 1992 praying that the names of other persons shown in the promotion order dated 17.3.1992 at sl no. 1 to 12 and 25 ~~be~~ stayed. This Tribunal by order dated 16.9.1994 directed the respondents to promote 12 more applicants. While implementing the orders of the Tribunal Dy CE/CSP Allahabad promoted 12 more applicants but doing so he reverted the applicant by impugned order dated 15.12.1994. Applicant represented against this on 29.12.1994 (Ann A-9) and the same was rejected by impugned order dated 13.1.1995. Hence this OA which has been contested by the respondents by filing counter reply.

3. Heard Sri A Srivastava holding brief of Sri R.P.

3.

Srivastava, learned counsel for the applicant and Sri M.K. Sharma holding brief of Sri A.K. Gaur, learned counsel for the respondents, and perused records.

4. Sri A. Srivastava, learned counsel for the applicant submitted that the applicant is similarly situated with the applicants in OA 264 of 1990, he is entitled to get the benefit which has been given to his juniors who were party in the said OA. This benefit of promotion was allowed to the applicant on his turn on 17.3.1992 alongwith other similarly situated persons in OA 264 of 1990, the same cannot be withdrawn without giving opportunity of hearing. Thus the impugned reversion order dated 15.12.1994 is illegal and deserves to be quashed.

5. The learned counsel for the applicant further submitted that the order of the Tribunal dated 18.2.1992 is judgment in rem and is applicable to all the similarly placed employees whether or not party to it.

6. Resisting the claim of the applicant the learned counsel for the respondents Sri M.K. Sharma submitted that no where and at no stage including the notification any assurance was given that the candidates ~~retired~~ ^{recruited} on 11.6.1982 will be absorbed as skilled grade III in scale of Rs.950-1500. However, he was promoted as skilled grade III against 25% ITI open market quota according to seniority by order dated 17.3.1992 without any selection/trade test as per order of this Tribunal dated 18.2.1992 in OA 264 of 1990. As per para 109 and 159 of IREM, 25% quota should have been filled up through Competitive examination by the Railway Recruitment Board.

7. The respondents counsel submitted that the applicant returned from deputation on 8.6.1990. If the applicant also wanted to get the legal remedy he was having sufficient time either to join the applicants in OA no. 264 of 1990 or file a separate OA but he did not avail this opportunity. As per orders of this Tribunal dated 26.9.1994 in contempt petition no. 738 of 1992, 12 more applicants had to be promoted even if other non applicants had to be reverted. Therefore, the respondents had no choice but to revert the non applicants as helper khalasi and in case the benefit is to be given to the applicant then the persons placed at sl no. 1 to 12 & 25 of the promotion list dated 13.3.1992 (Ann A-3) will also be eligible for getting this benefit. The applicants reversion is not with any malafide intention but due to compliance of Tribunals order dated 26.9.1994 in OA no. 738 of 1992.

8. We have heard learned counsel for the parties, have carefully considered their submissions and perused records. The curx of the matter in the present case is whether the applicant is entitled for promotion which was granted to him by order dated 17.3.1992 (Ann A-3) or not. The promotion to the applicant was given by the said order due to his seniority in compliance of this Tribunal's order dated 18.2.1992 in OA no. 264 of 1990. Admittedly the applicant was not a party to OA 264 of 1990. It is also admitted that on issue of order dated 17.3.1992 the applicant joined the promotion post of skilled grade in scale of Rs. 950-1500. However, while complying with the order of this Tribunal dated 26.9.1994 in contempt petition no. 738 of 1992 the respondents reverted the applicant in order to accommodate 12 applicants of OA 264 of 1990. The question which arises before us is whether the respondents could revert the applicant without any show cause notice. Our answer is categorical 'NO'. The proper course for

....5/-

the respondents was to have given show cause to the applicant and given an opportunity of hearing. Respondents failed to do so and we have no hesitation to hold that the action of the respondents is violative of principles of natural justice. On this ground alone the action of the respondents is liable to be set aside.

9. In Para 13 of the counter reply the respondents have pleaded that in view of the orders of this Tribunal dated 26.9.1994 in contempt petition no. 738 of 1994 the benefit cannot be extended to the applicant. Besides the respondents in Para 10 of the counter reply have also pleaded that if the applicant wanted to get the legal remedy he was having sufficient time to either join the applicants of OA no. 264 of 1990 or to file a separate OA. We do not agree with these submissions of the respondents. It is ~~in~~ ~~in~~ true that the order dated 26.9.1994 of this Tribunal was to promote 12 more applicants even if the non applicant of OA 264 of 1990 already promoted had to be reverted, but this does not mean that the respondents were given licence to revert the applicant without observing the principles of natural justice. We would like to observe that as ideal employer, which the Railways is expected to be, the respondents should have ensured that no injustice was done to its employees. It would be sheer injustice that the claim of the seniors is ignored and the juniors are promoted to higher grade. The respondents should have examined the entire issue in its totality and ensured that the right of the seniors was safeguarded by seeking approval of the competent authority if necessary. The order of this Tribunal dated 18.2.1992 has to be in rem applicable to all

6.

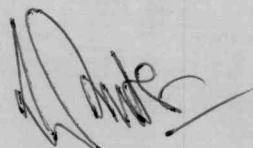
~~are~~

similarly situated persons whether they ~~are~~ parties to OA no. 264 of 1990 or not.

10. In the facts and circumstances and our aforesaid discussion OA is allowed. The impugned order dated 15.12.1994 (Ann A) and impugned letter dated 13.1.1995 (Ann A-1) are quashed. The applicant will be deemed to be in skilled grade of Rs. 950-1500 and will be entitled to all consequential benefits except arrears of pay and allowances. The orders to this effect will be issued by respondent no. 3 within one month from the date of communication of this order.

11. There shall be no order as to costs.


Member-J


Member-A

Dated : 05/07/2002

/pc/