

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 25TH DAY OF JANUARY, 2002

Original Application No. 1111 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Satya Narain Sharma, Son of
Shri Kedar Nath Sharma,
R/o Qr.No.103-1, Baulia Railway Colony,
N.E.Railway, Gorakhpur working as
Carpenter Grade-III in workshop
N.E.Railway, Gorakhpur.

... Applicant

(By Adv: Shri Bashist Tewari)

Versus

1. Chief Works Manager,

N.E.railway, Gorakhpur.

2. Union of India through the
General manager, N.E.Railway
Gorakhpur.

... Respondents

(By Adv: Shri A.Tripathi)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 the applicant has claimed for setting aside the order dated 15.6.1995, passed by Chief Works Manager(P) and also for a direction to the respondents to give him benefit of seniority w.e.f. 19.10.1990 instead of 20.11.1990. The applicant has also prayed for a direction to the respondents to give salary for the post of Carpenter Grade-III for the period between the order of the Tribunal and order of the appointment as the delay was on account of the respondents. Applicant has also prayed for promotion as granted to his juniors but Shri tewari during arguments conceded that relief of promotion on the basis of parity cannot be claimed ~~as~~

~~granted to the juniors but Shri Tewari during argument~~
~~conceded that relief of promotion on the basis of parity~~
~~cannot be claimed~~ as the persons mentioned in the OA
become senior to the applicant, who were initially junior.

The facts of the case are that applicant was engaged as casual labour in N.E.Railway, Sonepur. He was called for a screening test for regular appointment as Carpenter Grade III in the year 1984. He was found fit in the screening but in medical examination he was not found fit. ^{on} He was declared unfit for the post. Subsequently, ^{on} his representation he was examined medically and was declared fit by the Chief Medical Officer on 19.10.1990 for the post of Carpenter Grade III. He approached the department but appointment ~~has~~ not been given, then he filed OA No.938/91 in this Tribunal which was decided on 15.4.1993 by the following order:-

"In these circumstances the application has to be allowed. We allow the same and direct the respondents to appoint the applicant as Carpenter Grade-III(950-1500) with immediate effect and in the matter of seniority, he should be given notional seniority over those appointed as Carpenter Grade-III after 19.10.1990 i.e. the date on which the applicant was medically certified as fit for the post by Chief Medical Officer. The application is allowed as above. No order as to costs. "

The grievance of the applicant is that respondents have for the purpose of seniority treated him to have been appointed on 20.11.1990. The submission is that respondents could not fix this date on their choice as the date ~~itself~~ has been disclosed in the order. It is also submitted that the intention of the Tribunal while directing this date is clear that it was the date on which applicant was examined by Chief Medical officer and was declared fit.

The respondents, however in an arbitrary manner have picked up the date 20.11.1990 which is the date of letter of General Manager Mechanical by which the decision of the

Chief Medical officer was communicated. Shri Tewari has further submitted that the order of the Tribunal was to give appointment to the applicant with immediate effect but the appointment order was issued by the respondents on 7.8.1993 i.e. after about four months. The applicant according to the terms and conditions provided in the order is entitled for the salary of this period between the date 15.4.1993 to 7.8.1993. For this submission Shri Tewari has placed reliance in a judgement of Hon'ble Supreme Court in case of 'Union of India and Others Vs. Basant Lal and Others, (1992) 2 SCC-679.

Shri S.K.Pandey learned counsel for the respondents, on the other hand, submitted that the date 20.11.1990 has rightly been mentioned in the order which was the date on which applicant's fitness was communicated to the Railway. With regard to the appointment with immediate effect, it is submitted that the order of the Tribunal should be interpreted in a reasonable manner. The intention of the Tribunal was to take action without delay.

We have considered the submissions of the counsel for the parties. A perusal of the order of this Tribunal dated 15.4.1993 clearly shows that this Tribunal directed to take 19.10.1990 for determining the notional seniority of the applicant. This date has been referred with context about happening on the date i.e. when the applicant was certified as fit by C.M.O. The respondents, however, ^{have} chosen 20.11.1990. This date has been mentioned on the basis of the letter (Annexure 1 to the SCA) which clearly demonstrates that G.M.(Mechanical) by this letter communicated the report of the C.M.O by which the applicant was found fit for the appointment as Carpenter GradeIII. Thus, the respondents have committed an error in saying that 20.11.1990 should be taken as a date for notional seniority. ^{For change} ~~as~~ the date ^{which} was mentioned in the order, if they wanted to change, they ought

to have approached the Tribunal for correction of the order and variation in the date in this manner cannot be approved. The applicant is entitled for relief

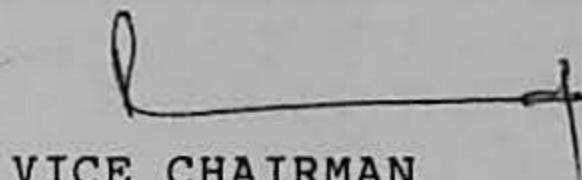
The next submission of the learned counsel for the applicant is about salary during the intervening period i.e. from the date of judgement to the date on which the appointment order was issued. It is true that this Tribunal directed for appointment of the applicant ~~was~~ with immediate effect but the purpose behind this direction was that the applicant may not suffer further as he had already suffered from 1984 to 1990 when he was declared ultimately fit for appointment. In the application it has not been mentioned as to on which date the copy of the order was filed before the authority concerned for issuing appointment order, which was very necessary for determining as to whether the ~~intervention~~ ^{intervention} of delay can be thrown on the respondents. In absence of pleading it is difficult to hold respondents guilty for the delay. It may be mentioned that the Tribunal did not disclose any specified period for complying with the order, in our opinion, the time taken about four months was ~~not~~ ^{not} unreasonable and unduly long. In our opinion the applicant is not entitled for any salary for this period. The judgement relied on by the learned counsel for the applicant was entirely in different set of facts, where out of 105 workers 35 were given appointment earlier and remaining 70 were given appointment after some delay. The court directed that they shall be treated to be appointed from the same date and shall be entitled for same benefits. Such a situation is not in the present case. The judgement of Hon'ble Supreme court is clearly distinguishable.

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For the reasons stated above, this OA is allowed in part. The respondents are directed to fix notional seniority of the applicant from the date 19.10.1990 as provided in the order. So far ^{as far as} promotion is concerned, as the applicant has already served about 9 years, he shall be considered for promotion whenever the occasion comes in accordance with rules. There will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: January 25th, 2002

Uv/