

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

ORIGINAL APPLICATION NO. 659 OF 1999.

THIS THE 2nd DAY OF MARCH, 2005.

HON'BLE MR. D.R. TIWARI, MEMBER-A
HON'BLE MR K.B.S. RAJAN, MEMBER-J

Heera Singh, aged about 36 years, S/o Shri Surendra Singh, R/o B-615 Awas Vikas Colony, Jhansi.

Applicant.

By Advocate : Sri R. Verma.

Versus.

1. Union of India through the General Manager, Central Railway, Chhatrapati Shivaji Terminus, Mumbai.
2. The Divisional Railway Manager, Central Railway, Jhansi.
3. The Senior Divisional Electrical Engineer (TRS), Central Railway, Jhansi.
4. Sri Rajendra Kumar, s/o sri Janki working as Skilled Fitter Grade-III, posted Electrical Loco Shed, Jhansi under the control of the Senior Divisional Electrical Engineer (TRS), Jhansi.

Respondents.

(By Advocate : Sri K.P. Singh)

ORDER

BY K.B.S RAJAN, MEMBER-J

The applicant Shri Heera Singh has, through this O.A. claimed promotion to the grade of Skilled Grade III Category as Welder w.e.f. 16-01-1996, when his junior i.e Respondent No. 4 had been promoted. Consequential benefit of such promotion including seniority has also been prayed for by the applicant.

2. A thumbnail sketch of the facts of the case, as spelt out in the O.A. are as under:-

- (a) That the applicant had always been senior to the Respondent No. 4 in various capacities, right from the temporary status, when the regular pay scale of Rs 750-940/- was afforded to them upto the grade of Helper



Khalassi. The details as given in the OA are congealed in a tabular form as under:-

S.N	Details of the posts held	Applicant	Respondent No. 4
1.	Temporary Status	05-03-1988	08-08-1988
2.	Khalasi	02-11-1988	11-11-1991
		Seniority No. 93	Seniority No. 193
3.	Helper Khalasi	01-01-1993	10-11-1994

(b) The applicant has averred in paragraph 4.15 of the O A. that although he had submitted his option on 26-11-1994 to appear for trade test for promotion to the post of Skilled Grade III, he was not called for trade test and on learning that Respondent No. 4 who was junior to him had been promoted in the Skilled Grade III Category as Electric Fitter in the pay scale of Rs 950-1050/-, he had penned a representation on 30-01-1996 (Annexure A-VII), requesting the respondents to promote him to the same grade from the same date as his junior was promoted. The fact that he had exercised his option to appear for the trade test was also specified in his representation. The applicant was, however, promoted to the said Skilled Grade III Category as Welder only w.e.f. 26-09-1997, whereas he should have been given the promotion w.e.f. 16-01-1996 when his junior (i.e. Respondent No. 4) was promoted.

(c) The Respondents have contested the application. Though objection was raised in the counter about limitation, the same was not pressed into service during the course of arguments. The only contention put forward by the Learned Counsel for the respondents is that the applicant did not exercise his option in 1994 and as such, he was promoted in 1997. The learned Counsel has also submitted that while Respondent No. 4 was promoted in the Fitter Grade, the promotion of the applicant was as Welder in Skilled Grade III.

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(d) The applicant in his rejoinder has stated that the contention of the respondent that no option was given by the applicant in 1994 is misconceived and meant to misguide the Hon'ble Tribunal. He reiterated that apart from the fact that he did file the option in 1994, in his representation dated 30-01-1996 (Annexure A VII) he had specifically mentioned about having given the option. This representation was not replied to by the respondents and it is only in the counter that the respondents contend that the applicant had not exercised his option to sit for the trade test. The Learned Counsel for the applicant also invited our attention to a judgment dated 17th May 2004 of this Hon'ble Tribunal (Allahabad Bench) in OA No. 111/1998, (Nirottam Lal Sharma and Another vs U.O.I) wherein it was laid down that in view of the specific stipulation in para 184(i) read with 185 of the I.R.E.M. it is difficult to accept the contention of the respondents that the applicants were not considered due to the reason that they failed to give their option. Right to be considered for promotion according to the rules is a fundamental right.

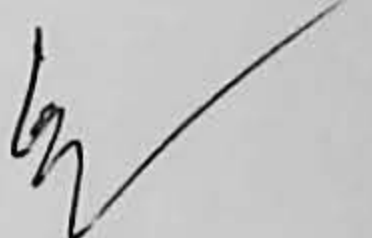
3. The rival contentions have been considered and the records perused. It has been admitted by the counsel for respondent that the applicant stood senior to Respondent No. 4. The Learned Counsel for the Respondents contended that no option was exercised in 1994 and as stated in para 21 of the counter affidavit, the applicant has submitted the option for promotion to the post of Welder Grade III in the pay scale of Rs 950-1500 (R.P.S) accordingly he was tradetested for welder grade III and on being found suitable in trade test, he was promoted as Welder Grade III in the said pay scale w.e.f. 26-09-1997. The exact date when the applicant given his option was not spelt out in the counter. It is pertinent to mention here that the applicant had submitted a representation to the respondents as early as vide Annexure A VII referred to in para 2(b) above, and

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the same was not denied by the respondents. The said communication is a contemporaneous document and in the absence of any reply denying the receipt of the option, we are satisfied that the applicant's averment that he did exercise his option in 1994 to sit for the trade test is acceptable. In any event, in view of the decision of this Hon'ble Tribunal in the case of Nirottam Lal Sharma and Another vs U.O.I and others (supra), there was no need to give any option. And admittedly, the applicant having proved his mettle in the trade test, in the wake of which he was promoted as Skilled Grade III as a welder w.e.f. 26-09-1997, he is entitled to be promoted to the said grade w.e.f. 16-01-1996, i.e. the day when his junior i.e. Respondent No. 4 was promoted. However, the promotion from 16-01-1996 till 26-09-1997 should be treated only as notional.

4. It is the admitted fact that the applicant was promoted as Welder Grade III and the respondent No. 4 was promoted as Fitter Grade III. It is not very clear whether seniority in respect of the two fields is one or different. If they are different, then promotion of the applicant as Welder Grade III w.e.f. 16-01-1996 would not pose any problem in the seniority of Respondent No. 4. As such, the benefit afforded to the applicant would not be affecting in any way the career prospects of Respondent No. 4. If there be only combined seniority for the two grades then also, the applicant's promotion beyond the skilled Grade III shall not come in the way of the promotion of Respondent No. 4 and the promotion of the applicant to the higher grade would be w.e.f. the date when respondent No. 4 was promoted in that grade and such promotion of the applicant would be notional till the date of filing of the OA i.e. 08-09-1999.

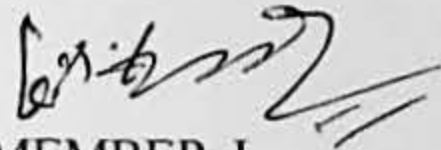
5. In view of the discussions above, the OA succeeds. The applicant is entitled to be promoted as Skilled Grade III Welder w.e.f. 16-01-1996 and the consequential benefits would be limited as under:-



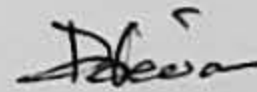
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- (a) The promotion as Skilled Grade III Welder in the scale of pay of Rs 950-1500 (Pre revised scale) would be notional and no arrears of pay would be available to the applicant.
 - (b) The applicant is also entitled to be promoted to the next higher post (subject of course to suitability) in accordance with his seniority in the grade of Welder Grade III w.e.f. 16-01-1996, from the date of promotion of Respondent No. 4 in that grade if there be combined seniority or from the date when his junior in the welder grade was promoted, as the case may be, subject of course his having been found suitable for promotion. And, here again, the promotion to the higher grade would be notional from the date of promotion till 8-06-1999, the date when this OA was filed.
 - (c) The applicant would be entitled to pay and allowances in the promoted post w.e.f. 8-06-1999 and the difference in pay allowance should be paid to the applicant.

Respondents are directed to afford the applicant the above benefits by following the necessary formalities for promotion (i.e. holding of DPC etc.,) and fix the pay of the applicant as on 8-06-1999 to work out the arrears of pay and allowances due to the applicant on and from 8-06-1999. This drill has to be carried out and the amounts due to the applicant paid within a period of six months from the date of receipt of certified copy of this order.

There shall be no order as to cost.


MEMBER-J

GIRISH/-


MEMBER-A