

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**  
**ALLAHABAD**

**Original Application No. 1233 of 2000**

This the 6. day of November, 2007

**HON'BLE SHRI JUSTICE KHEM KARAN, V.C.**  
**HON'BLE MR. SHAILENDRA PANDEY, AM**

Dilawar Agha, aged about 46 years son of Shri Nanchoo, resident of c/o Sultan Pradhan, Faridpur Chaudhary, Izatt Nagar, Bareilly.

..Applicant

By Advocate: Sri T.S. Pandey

Versus

1. Union of India through General/Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Izatnagar Division, Bareilly,
3. Senior Divisional Personnel Officer, N.E. railway Izatnagar Division, Bareilly,
4. Divisional Mechanical Engineer (Power) N.E. Railway, Izeet Nagar Division, Bareilly.

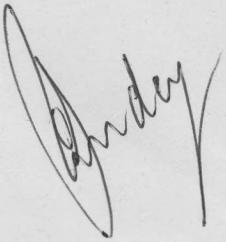
Respondents

By Advocate:- Sri P. Mathur

**ORDER**

**BY HON'BLE SHRI SHAILENDRA PANDEY, AM**

The applicant counsel has pointed out that despite the pendency of his application before this Tribunal and as ~~because~~ no interim order has been passed, the respondents vide their notification dated 13.3.2001 held a Trade test for promotion to the post of Technician Grade III of Helper Khalasis on the basis of which officials junior to the applicant were promoted vide their order dated 1.6.2001 without considering the case of the applicant. Vide the present O.A., the applicant has sought a direction to the respondents to consider his promotion to



the post of Technician Grade II and III and to pay the arrears of salary of the applicant for the post of Fitter Grade III for the period from 7.8.1987 till 30.8.1994 along with 12% interest on the following grounds:-

i) That the services of the applicant (working as Helper Khalasi in the Locoshed at Pilibhit) had been utilized as Fitter Grade III against a vacant post w.e.f. 7.8.1987, for which he was paid Rs. 90/- per month in addition to his pay upto 29.8.1994. It is also pointed out that in a charge sheet issued to the applicant on 4<sup>th</sup> May 1991 and a warning issued to him on 23<sup>rd</sup> May, 1994, his designation was also shown as Fitter Grade III, and therefore, he should properly be paid his salary as Fitter.

ii) That from 30.8.1994, he was sent to the Diesel Shed Izatnagar as the Loco shed at Pilibhit was closed down from this date. He also mentions that as he was senior, he was not re-deployed while his juniors, who were declared 'surplus staff', were sent to the Diesel Shed in the year 1996 for re-deployment and have also obtained promotions. The avenue of promotion is of Khalasi to Helper Khalasi, Helper Khalasi to Fitter Grade III, Fitter Grade III to Fitter Grade II and Fitter Grade II but the applicant could not get promotion as there is no post, this position arising due to arbitrary surrender of 62 posts of Fitter Grade III (these existed in 1993 but was surrendered in the year 1995).

3. He has, therefore, sought a direction to the respondents to quash the Trade Test and the



resultant promotion of persons junior to him, promote him to the post of Fitter Grade III and to pay him arrears of salary for the period during which he had been discharging the function of ~~the~~ post of Fitter Gr. III viz. from 1987 to 1994.

4. The applicant also mentions that his first representation dated 26<sup>th</sup> August 2000 in the matter (issued after Tribunal order on 6<sup>th</sup> July 2000 that the Department consider his representation and pass appropriate orders on it) was illegally disposed of by an illegal order dated 14<sup>th</sup> September, 2000 without considering the points raised in his representation, and therefore, he has had to come to the Tribunal again in the matter.

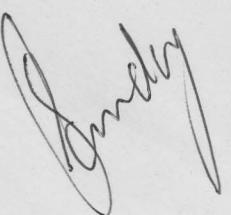
5. In support of his case, applicant counsel has referred to the judgment of the Hon'ble Supreme Court in Writ Petition (Civil) No. 490 of 1987 in the case of Rudra Kumar Sain and others Vs. Union of India and others reported in (2000) 3 UPLBEC 2373, in which it was held that ".....when a person continuously holds a post for several years, he must be considered senior to those recruited/ promoted thereafter ....." and it is contended, therefore, that as the applicant ~~did~~ did discharge the duties of the post of Fitter Grade III from 1987 to 1994, this gives him a right to be appointed as Fitter Grade III and to receive the

*Bandyopadhyay*

pay of the post and not only additional allowance.

6. The applicant counsel has also referred in this connection to the decision of the Hon'ble Supreme Court in Civil Appel No. 8467-68 of 1995 in the case of State of U.P. Vs. Chandra Prakash Pandey in which it was held that "...Kurk Amins who had been appointed on the commission basis should be given the same benefits as regular Kurk Amins since they are performing the same duties and responsibilities and have been given the same powers."

7. Respondents' counsel, has however, argued that the applicant was working as helper Khalasi from 05.4.1984 under Section Engineer, Phlibhit and that he was never promoted as Fitter Grade III as alleged by him, and that he only officiated as Fitter Grade III from time to time for which he was paid officiating pay as per rules. He further stated that as regards the working report of the applicant as Fitter III, a report was called for from his immediate superior i.e. Section Engineer, Loco Shed, Philbhit "but they could not produce any relevant records of his working" nor could the applicant produce any such records and that the applicant was apprised of this situation vide office letter dated 15.10.99 through his immediate superior.

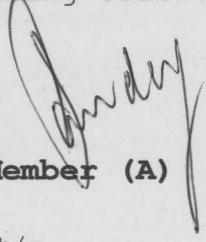


8. He has also clarified that junior employees in question (who were declared surplus earlier to him) were absorbed in various other cadres in other Departments, whenever vacancies existed and also got their promotions in those Departments in terms of the policy laid down by the Railway Board from time to time. However, the applicant, being the senior most employee, could not be declared surplus and remained in his parent cadre as Helper Khalasi, and could not be promoted as Fitter Grade III as there was no post.

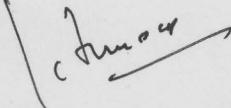
9. We have gone through the records of the case and have also heard the counsel for both parties. While we are unable to quash the result of the Trade Test and the resultant promotion of persons junior to the applicant for the reason inter alia that ~~these~~ persons have not been impleaded in the O.A. by the applicant's counsel, we are of the view that even if the applicant does not have an inalienable right for promotion to the post of Fitter Grade III there being no post available for him, keeping in view the fact that the applicant was used by the department as Fitter Grade III for a long period of time i.e. from 1987 to 1994, and also in view of the fact that the applicant was senior to the persons who were re-deployed to other Departments and obtained promotions and for this reason alone, he could not *get*



promotion, it would be fair and just for the Department to 're-visit' the case of the applicant and, based on a review of his performance as Fitter Grade III during the period when he was officiating against this post, consider if relief can be given to the applicant as a special case in terms of the extant rules and special powers vested in the Railway Board. In this connection, it is also not clear to us as to what exactly is the meaning of the statement that "a report was called for from his immediate superior i.e. Section Engineer Loco Phibhit who could not produce any relevant record of his working." (Refer para 8 above). The Department is directed to obtain a clear and full factual report from the Section Engineer, Loco shed, Pilibhit and then take this into account while deciding the representation of the applicant. The department is given 4 weeks time to decide the matter through a speaking order. No order as to costs.

  
Member (A)

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Vice Chairman