

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT NAINITAL

Allahabad this the 5th day of August 2003
Original Application No. 07 of 2002

Hon'ble Maj Gen K.K. Srivastava, Member A
Hon'ble Mrs. Meera Chhibber, Member J

Naresh Giri Goswami, a/a 42 years S/o Shri Jagdish Giri
Goswami, R/o Vill. Brahmanula, P.O. - Mazra
Distt. Dehradun, Uttaranchal.

...Applicant.

By Advocate : Shri K C Sinha

Versus

1. Union of India through the Director General/Chairman
Ordnance Factory's Board, 10, Khudiram Bosh Marg,
Kolkata.
2. General Manager, Opto Electronic Factory,
Raipur, Dehra Dun, Uttaranchal.
....Respondents.

By Advocate : Shri G.R.Gupta

O R D E R (O R A L)

By Hon'ble Mrs. Meera Chhibber, Member - J

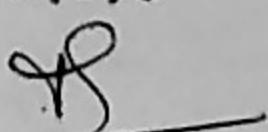
The short point involved in this case is whether applicant could be denied his promotion to the next higher grade simply on the ground that he had not appeared in the practical when admittedly at the time when the practicals were held, applicant was sent on training by the respondents themselves and he was not even informed about the holding of such practical.

2. The brief facts as stated by the applicant are that he was initially appointed as Wireman (Semi skilled) on 03.10.1988. He was promoted as Wireman (skilled) on 15.10.1990 vide order dated 10.10.1991 applicant was sent for training from 03.11.1991 to 22.11.1991 at A.T.I. Kanpur (Annexure-III). On 31.12.1991 a seniority list of Wireman (Skilled) was issued wherein the applicant was shown at Sl.No.4 after Shri Ramesh Chandra (Annexure -V). In the year 1992 an examination was held for Electrician (Skilled) and the applicant passed the competency test on 26.3.1993 (page 31) Annexure.VI).



thereafter he gave his option for Electrician provided he was given the seniority of Wireman. The applicant was shown in the seniority list of Electrician (Skilled) also at sl. no.9 after Sri Ramesh Chandra. The seniority list dated 30.6.1993 is annexed as Annexure-7. On 31.8.95 another seniority list was issued showing the position of the applicant at sl. no.7 after Sri Ramesh Chandra. However, in the seniority list dated 1.3.1997 he was shown at sl. no.4 as Electrician(Skilled), while Sri Ramesh Chandra was retained at sl. no. 6 as H.S. Gr.II (Annexure-9).

3. The grievance of the applicant is that in 1995 Sri Ramesh Chandra was promoted as H.S. Gr.II, but the applicant could not be promoted alongwith Sri Ramesh Chandra because no opportunity was given to him for appearing in H.S. Gr.II alongwith him, but on the very first opportunity given to the applicant thereafter on 19.7.97 he passed the competency test in first attempt which is evident from Annexure-10. Similarly in 1991 when Sri Ramesh Chandra passed the competency test, he could not clear it as he was never called for viva-voce test as during that period he was sent for training by the respondents themselves. Therefore, his grievance is that since he could not appear in the practical alongwith Sri Ramesh Chandra for no fault of his, he could not be deprived of his promotion at par with Sri Ramesh Chandra. Therefore, being aggrieved he gave a representation on 11.3.1998 (Annexure-12) followed by reminders to grant him promotion from the same date when Sri Ramesh Chandra was promoted alongwith all consequential benefits. Vide order dated 31.1.2000 (Annexure-14) applicant was informed that he could not be given seniority/promotion before passing the competency test. It is this order which has been challenged by the applicant in the present O.A. and he has sought the following relief(s):



- i) to issue a direction to the respondent No. 2 to correct the seniority list as on 01.02.1998 and 15.06.1999 and give placement to the petitioner according to the seniority list as on 01.03.1997.
- ii) A direction may be issued to the respondents to give promotion on the post of H.S Grade-II to the petitioner w.e.f 01.03.1997, the date on which his juniors were given promotion.
- iii) A further direction may be given to the respondents to promote the petitioner on the post of H.S Grade -I, the date on which his juniors were given promotion on the post of H.S Grade- I.
- iv) Further the respondent No.2 may be directed to give all the benefits and privileges including monitory benefits from the date when his juniors were given promotion on the post of H.S Grade-II and H.S Grade-I and arrears may kindly be paid alongwith interest @ 18% per annum.

4. The respondents in their Counter reply have submitted that as per rules a Wireman skilled can be redesignated to Electrician skilled and promoted to Electrician Highly skilled Gr.II on passing competency test for Electrician skilled and Electrician highly skilled respectively. The applicant had attended training at ATI, Kanpur w.e.f. 2.11.1991 vide order dated 10.10.91. During the same period, i.e. 18.11.91 the practical test for the above competency test was conducted. The intimation in this regard was received vide Chairman/ CTB Talex No. DGM/AS/CT/91 dated 11.11.1991. The individual did not appear for the practical, nor did he intimated that he is not in a position to attend the same due to training.

5. Since the petitioner passed the competency test for Electrician skilled in 1992, result thereof was declared on 26.3.93, therefore, he was re-designated as Electrician skilled w.e.f. 26.3.93 i.e. the date he passed competency test that is why his seniority

in the trade of Electrician (skilled) was reckoned w.e.f. 26.3.93 i.e. the date of induction to Electrician (Skilled) after passing the said test as per rules, while some wiremen ^{to} junior/the petitioner who had passed the competency test for Electrician (Skilled) in 1991 were redesignated to Electrician (Skilled) prior to the petitioner. They have, thus, submitted that the seniority has been given to individuals from the date of their redesignation as Electrician (Skilled) and no irregularity can be found in the said order. In short, the case of the respondents is that since the applicant had passed competency test from a later date than that of Sri Ramesh Chandra, therefore, his case cannot be compared with him. They have also submitted that in the seniority list of 30.6.93 and 31.8.95 applicant's seniority was wrongly fixed as the basis had to be the date from which these persons were inducted as Electrician (Skilled), therefore, on noting the mistake, the same was rectified on 1.3.1997. They have, thus, submitted that there is no merit in the O.A., the same may accordingly be dismissed.

6. We have heard both the counsel and perused the pleadings as well.

7. Since the whole case of the applicant in this petition is that in the year 1991 he could not appear in the oral test along with his other counter parts because during the said period, he was sent for training and had no intimation about holding of the oral test, while the respondents in para 6 of their counter have stated that intimation in this regard was received vide Chairman/CTB Telex dated 11.11.91, individual did not appear for the practical, nor did he intimate that he is not in a position to attend the same due to training. Therefore, we had directed the respondents to file their reply within two weeks vide our order dated 21.4.2003 with a specific query as to whether the intimation through telex message about holding of the practical test was conveyed to the applicant

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in time or not. We are sorry to say that in spite of repeated reminders to the counsel for the respondents, respondents did not file any such reply nor did he give any such document to the Court Officer. It was only on 22.7.2003 that counsel for the respondents has given a letter dated 29.4.2003 to the Court Officer. It is surprising that even this letter was addressed to Sri G.R. Gupta, Advocate, therefore, can hardly be said to be a reply of the respondents to the court. However, it is clear from the said letter also that written test was held from 19.8.91 to 21.8.91 under the Chairmanship of Sri Ajay Shanker, DGM/CFS, but due to his other commitments only written test was conducted and practical test could not be held during the above period. The practical test was conducted on 18.11.91, but the applicant was deputed for training to ATI, Kanpur w.e.f. 4.11.91 to 22.11.91. Thus, the applicant could not attend the practical test since he was not called back from the said training (letter taken on record).

8. It is clear from the above letter that when the oral test was conducted on 18.11.91, neither applicant was informed about the said test, nor he was called back from the said training. If he could not appear in the viva-voce in 1991 for the fault of the respondents, he cannot be made to suffer for the same. In normal course, applicant would have got the relief regarding 1991 if he had challenged it in time, but admittedly no such effort was made by him, nor any protest was lodged by him. ^{Therefore} He cannot be allowed to agitate that issue now after more than a decade. Even otherwise, we have to see the relief ^{which B} has been sought by the applicant in the O.A. as we cannot go beyond the relief sought. In relief clause, applicant has himself prayed that his position as on 1.3.1997 be retained.

9. In para XIX of the O.A., applicant has given names of as many as 8 persons who are stated to be junior to him as

on 1.3.97 but they have been given promotion as H.S. Gr.II while denying the same to the applicant, but perusal of the seniority list as on 1.3.97 shows that all these persons viz. S/sri R.C. Sharma, Nathu Ram, Tulasi Ram, Kamal Singh, Sanjay Sharma, S.K. Sharma, Mahendra Singh, Doom Singh and Rajendra Singh were already promoted as H.S. Gr.II w.e.f. 23.12.95, while the applicant was still shown as Electrician (Skilled) w.e.f. 26.3.93, therefore, it cannot be said that all these persons were junior to the applicant as on 1.3.97. Of-course, in the earlier lists, they were shown junior to the applicant, but then applicant has himself prayed that he be given placement according to the seniority list as on 1.3.97. On 1.3.97, applicant is shown to be Electrician w.e.f. 26.3.93, while all these persons are shown above him in higher grade. Since applicant's own prayer is to give him placement as on 1.3.97, he cannot get the relief as claimed in para (ii), (iii) or (iv) as that would be contrary to relief no. 1 because as on 1.3.97 he was Electrician (Skilled) w.e.f. 26.3.93 and for next promotion he could appear in the competency test only if he had put in 3 years regular service or if he had taken permission from competent authority to relax the said period. They have also submitted that the applicant never applied for relaxation even though it was open for him to seek such relaxation. On the contrary, he appeared in competency test for H.S. Gr.II meaning thereby he acquiesced to /the situation, therefore, he cannot seek promotion as H.S. Gr.II prior to the said date as according to the Electricity Act, it is mandatory to pass the competency test before promotion.

10. Even otherwise it is seen that in 1991 when applicant states he was not allowed to appear in the viva-voce test, he ought to have made grievance about it at that time, but no such effort was made by him. Even in the list dated 1.3.97 he is shown to be Electrician (Skilled) w.e.f. 26.3.93 and

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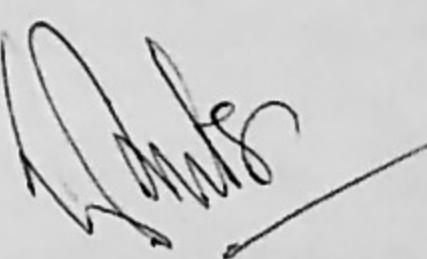
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The applicant has specifically prayed that his placement be retained as on 1.3.97. If he accepts to be Electrician (Skilled) w.e.f. 26.3.97, naturally those persons who were categorised as Electrician(Skilled) prior to him, would go above him because Electrician and Wireman are separate posts, he cannot claim the benefit of Wireman as all those persons who had come from Wiremen have been given the seniority from the date they were inducted as Electrician so applicant cannot be treated differently. The respondents have categorically stated that no such promise was extended to the applicant that his seniority of Wireman would be considered. They have explained that in earlier two lists applicant was given the seniority placement wrongly but as soon as the mistake was detected, the same was corrected on 1.3.97. The applicant has not challenged the list of 1.3.97. On the contrary, he has accepted it as his first prayer is to give him placement as on 1.3.97.

11. In view of the specific prayer made by the applicant himself, he cannot be given any of the relief(s) as sought by him. The O.A. is, therefore, dismissed with no order as to costs.



MEMBER (J)



MEMBER (A)

GIRISH/-