

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.512 of 2002.

Allahabad, this the 27th day of Sep, 2005

Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr. K.B.S. Rajan, Member-J

Nijamuddin
S/o Late Moinuddin
R/o 331-D, Loco Colony,
Mughalsarai,
District Chandauli, U.P.

.....Applicant.

(By Advocate : Shri S.K. Mishra)

Versus

1. The Union of India,
Through the General Manager,
Eastern Railway,
Calcutta-I
2. The Divisional Railway Manager,
Eastern Railway, Mughalsarai,
Chandauli.
3. The Senior Divisional Personal Officer,
Eastern Railway, Mughalsarai,
Chandauli.
4. Divisional Mechanical Engineer (P)
Eastern Railway, Mughalsarai,
Chandauli.

..... Respondents.

(By Advocate : Ms. S. Siddiqui)

ORDER

By Hon'ble Mr. K.B.S. Rajan, J.M. :-

The applicant was engaged as substitute Khalasi in the then scale of pay of Rs 196 - 232 and was regularized in March 1983, whereafter, in 1985 he was promoted as Khalasi helper in the scale of Rs 800 - 1150. In late eighties, there was a complete transformation of 'dieselization' of the trains, eclipsing

the earlier "steam engines" and this resulted a number of incumbents on the steam engine side to be rendered surplus and posted to diesel wing including Accident Relief Train - Breakdown crane of maintenance unit. The applicant was one such who had been moved to the above unit. Having come down to this wing, the applicant had requested for his seniority to be protected. Since the applicant found that some of his juniors had been placed in a higher pay scale, he had preferred a representation in this regard. According to him his juniors were promoted to the post of Fitter Grade III and II, whereas the applicant was still working in the lower post of BTM with the scale of pay of Rs 2,650 - 4000/-.

2. Later, the applicant who was promoted as Fitter Grade III, in the scale of Rs 950 - 1500 and transferred to Loco Shed Gaya did not undertake the posting, on the alleged ground that the posting and transfer was illegal and arbitrary, as he having switched over to diesel wing, could not be transferred to the steam side again which would, according to the applicant affect his seniority in the diesel wing. This had compelled the applicant to move OA No. 20 of 1991 with one Shri Ram Chandra Prasad and some others in which the Tribunal had passed a stay order on 21-01-1991 against the transfer. As the Steam shed in Gaya was closed, such of those who were promoted and posted to Gaya were sent back again to their old duty station. The OA was rendered infructuous. However, according to the applicant he was illegally denied his promotion.

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The respondents had published a seniority of the Khalasis in 2nd Nov. 1995 in which the applicant could find that all his juniors were promoted and placed in the higher pay scale. Thus, the claim of the applicant is that his juniors have reached Fitter Grade II and Grade I to his exclusion and the same is arbitrary, illegal and unjust. Hence, this O.A. praying for quashing of the order whereby the applicant was denied promotion as Fitter Grade II and fitter Grade I at par with others who had been promoted much earlier than the applicant and consequential benefits.

3. The respondents had contested the OA. According to them, the applicant, on his refusal to go to Gaya on promotion and posting (albeit in the Steam side, where he was once rendered surplus); refused to take up the same while others who had, along with the applicant posted to the same area had joined. It is this set of persons who had later been promoted to the higher grade and since the applicant had refused to join Gaya at the time when he was promoted and posted, he had to lose his parity with the others who had been so promoted. It is this difference that has resulted in the juniors to the applicant having stolen a march over the senior, i.e. the applicant. Hence, the applicant is not entitled to the relief claimed in the O.A.

4. Rejoinder has been filed in which the applicant had reiterated his earlier version with more emphasis. His main contention is that his not moving to Gaya at the time when he

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was promoted and posted in the batch of 11 persons was not of his own but on the strength of the stay order granted by the Tribunal in OA 20/1990. His contention in the rejoinder also included one that even if his promotion was refused, the sting would continue only for one year and he ought to have been considered for promotion again in the next year against the vacancies and this not having been done, he cannot be made to suffer. He has, thus taken recourse to the provisions of para 224 of IRIM Part I.

5. Arguments were advanced from the respective side and the documents were perused. And we have given our anxious consideration.


6. The applicant was rendered surplus from the steam wing and was sent to A.R.T. where he had the requisite experience. It was not exactly known as to how the applicant along with ten others was posted again to steam wing at Gaya, which, in our considered opinion the applicant had rightly refused. His refusal was, however, on a different ground i.e. he had by then obtained stay vide OA 20 of 1996. Paradoxically, those who were posted to Gaya were again back to Mugalsarai. And, here is the error on the part of the respondents. All those who had moved to Gaya and were again back to Mugalsarai were granted higher promotion, while the applicant was left high and dry on the sole reason that he did not accept his promotion when he was posted to Gaya. This is unjustified. There would have been a justification in penalizing the applicant on his refusal to

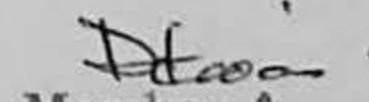
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move on transfer if the bar of promotion was only for one year and that too if his posting was not to Steam wing, from where he was rendered surplus. This was not the case. Hence, the applicant is entitled to be considered for promotion at par with his juniors for the post of Fitter Grade III, II and I without taking into account his refusal to move to Gaya.

7. In the end, the OA is allowed; the impugned orders, i.e. order dated 23-12-2000 and 21-05-2001 which related respectively his seniority and promotion are quashed and set aside. The respondents are directed to consider the promotion of the applicant to the post of Fitter in various grades right from 1990 at par with his juniors and if considered fit, he be promoted to the respective post. It is however, made clear that the applicant would be entitled only to notional promotion and fixation of pay in respect of such promotions while actual pay would be admissible to the applicant from the day he takes charge of the promotional post.

8. Under the above circumstances, there shall be no orders as to cost.


Member-J


Member-A

RKM/