

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 634 of 2002
this the 31st day of March 2004.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MR. A.K. BHATNAGAR, MEMBER(J)

prem Narain Upadhyay, S/o Sri Bhagwati prasad Upadhyaya,
R/o Village Sita Rampur, Post pokhanni, District Basti.

Applicant.

By Advocate : Sri S.N. Yadav.

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The General Manager, North Eastern Railway, Gorakhpur.
3. The Chief Workshop Manager, Signal Workshop, North Eastern Railway, Gorakhpur Cantt., Gorakhpur.

Respondents.

By Advocate : Sri A.V. Srivastava.

O R D E R

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

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the order dated 31.10.2001/1.11.01 (Annexure A-1) with direction to the respondents to consider the claim of the applicant from the date of his juniors were promoted to the Skilled Category Trained Apprentice in accordance with the notice dated 10.5.1986 with all consequential benefits.

2. The facts, in short, giving rise to this O.A. are that the applicant is an ex-serviceman. He retired from



Indian Army in July 79. The applicant was selected and re-appointed as Khallasi (Helper) on 10.2.1984 in the pay-scale of Rs. 196-230/- . Applications were invited from the employees who had passed ITI with Apprenticeship for the post of Skilled Category Training Apprentice in the pay scale of Rs.200-400/- vide notification dated 10.5.1986. The applicant applied for the post as he was mechanic Motor Apprentice Class I of the Indian Army, which is equivalent to National Trade Certificate (ITI). The grievance of the applicant is that though he produced the certificate issued by the Military authorities, he was not allowed to appear in the trade test alongwith other candidates. Besides, the Deputy Chief Manager Workshop (Engineer) of the respondents establishment held that the certificate produced by him did not show that he was equivalent to Civil ITI and directed him to produce the certificate duly certified by the District Soldier & Welfare Board , Basti. The District Soldier & Welfare Board, Basti vide letter dated 28.9.1996 informed the respondents that the applicant is mechanic Motor Vehicle Class I as per Government of India Ministry of Labour D.G.E. & T order dated 3.3.1978 (Annexure A-3). Since the juniors of the applicant appeared in the trade test during the year 1986, they were all promoted earlier. The case of the applicant was again recommended by District Soldier and Welfare Board, Basti on 27.11.1992. As per the applicant, the respondent no.3 vide his letter dated 27.7.1993 sought clarification from the General Manager (workshop), N.E.R., whether the applicant is/treated to be equivalent to N.T.C. (I.T.I.) in accordance with the Government of India, Ministry of Labour's circular dated 3.3.1978 (supra). The case of the applicant was pending for a very long time with the respondent nos. 1 & 2.

The applicant filed O.A. no. 1534 of 1994 and the respondents took a stand that the matter was pending with the Railway Board for consideration. The affidavit was filed by the respondents on 17.5.2001 in O.A. no. 1553/94 wherein the respondents accepted the certificate of the applicant issued by the Military authorities that the applicant is equivalent to ITI and his case was being considered by the respondents. O.A. no. 1553/94 was finally disposed of by order dated 17.5.2001 by this Tribunal with the direction to the respondents to consider the claim of the applicant in accordance with law and pass a reasoned and speaking order within a period of three months from the date of communication of the order. The respondent no.3 vide letter dated 27.7.2001 directed the applicant to submit the relevant documents issued by the Military authorities and the applicant submitted the same on 1.8.2001. The respondents vide their letter dated 11.9.2001 directed the applicant to appear in the test of Motor Mechanic Gr.III (Annexure A-11). The applicant represented to the respondents that since he has already passed Technical Gr.III pay scale of Rs.3050-4590/- and Technical Gr.II pay-scale of Rs.4000-6000/- and was working as Technical Gr.II in the higher grade, he should be exempted from appearing the trade test Gr.III for Motor Mechanic. The request of the applicant was not accepted by the respondents and the order dated 310.10.2001/1.11.2001 was passed, in which it has been observed by the respondents that the applicant himself has not appeared in the Motor mechanic Gr.III test and, therefore, he is not entitled to the benefit of Motor Mechanic Gr. Aggrieved by the same, this O.A. has been filed, which has been contested by the respondents by filing Counter Reply.

3. Sri S.N. Yadav, learned counsel for the applicant submitted that the action of the respondents is not

correct. Once the Government of India's circular dated 3.3.1978 (Annexure-12) exists, the respondents could not ignore the claim of the applicant. The applicant was equivalent to ITI and, therefore, asking the applicant to re-appear and pass Motor Mechanic Gr.III test is an act of high handedness on the part of the respondents. The justice demanded that the claim of the applicant was considered in the light of the Government of India's circular dated 3.3.1978.

4. The learned counsel for the respondents, on the other hand, opposing the claim of the applicant submitted that the applicant is working on the post of Bench Fitter. The post of Bench Fitter and Motor Mechanic are ~~an~~ identical and having separate avenue of promotion. In order to give the benefit of Motor Mechanic, keeping in view the post of the applicant ⁱⁿ ⁱⁿ which he is working, it was decided to hold trade test of the applicant for Motor Mechanic. He was called to appear in the same, but he refused to participate on the pretext that he had passed the trade test in Army. Therefore, since he himself refused to appear in the trade test for Motor Mechanic Gr.III, he is not entitled for the relief claimed for and there is no illegality in the order dated 31.10.2001/ 1.11.2001.

5. We have heard the counsel for the parties at length, considered their submissions and perused the records.

6. The short controversy involved in this case is whether it was necessary for the applicant to appear in the trade test for Motor Mechanic Gr.III or not ? Admittedly, the applicant was Mechanic Motor Vehicle Class I in the Army and he produced the technical certificate issued by the Military authorities, the respondents did not accept the same on the face of it

and instead kept the issue pending and ultimately referred the matter to the Railway Board. The respondents vide letter dated 11.6.99 and 23.6.99 informed this Tribunal while arguing in O.A. no. 1153/94 that the certificate issued by the Military authorities to the applicant is equivalent to Civil ITI and the claim of the applicant was being considered. In view of the above, we fail to understand that once it was established that the certificate of the applicant was equivalent to Civil ITI, why the respondents could not give the legal due to the applicant.

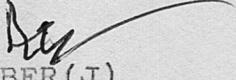
7. We find substance in the arguments of the learned counsel for the applicant that once the applicant was already working in the higher grade, there was no requirement for the applicant to appear in the trade test for Motor Mechanic Gr.III, which the applicant had already passed in the Army and because of which he was issued with the certificate that he was equivalent to ITI.

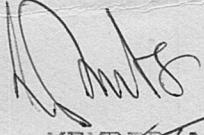
8. Not only this, we would also like to observe that the respondents have grossly erred by not giving the benefit of the Army certificate to the applicant by treating him equivalent to ITI especially when the Government of India, Ministry of Labour's circular dated 3.3.78 (Annexure A-12) has laid down that the Army certificate Gr.I is equated with National Apprenticeship Certificate (NAC).

9. In the facts and circumstances and also our aforesaid discussions, the O.A. is allowed and the impugned order dated 31.10.2001/1.11.2001 is quashed. The applicant is entitled for fixation of his pay and promotion as per rules from the date when his immediate junior was promoted. However, he shall not



be entitled for back wages. There shall be no
order as to costs.


MEMBER (J)


MEMBER (A)

GIRISH/-