

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

ORIGINAL APPLICATION NO. 1240 OF 2003 (U)

ALLAHABAD THIS THE 30th DAY OF April 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.

Hon'ble Mr. N.D. Dayal, Member (A)

Mahendra Kumar S/o Shree Jai Prakash, R/o MES Roorkee, District Haridwar.

.....Applicant

(By Advocate: Shri Anurag Pathak)

Versus.

1. Union of India through Defence Secretary, Ministry of Defence, New Delhi.
2. Engineer-In-Chief (E-In-C's Er), Army Headquarter Kashmir House, New Delhi.
3. Chief Works Engineering (Hills), Mall Road, Dehradun.
4. Chief Engineer, Bareilly Zone, Cantt. Bareilly.
5. Garrison Engineering (MES), Roorkee.

.....Respondents

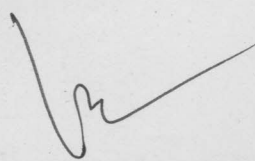
(By Advocate: Shri S.C. Mishra)

ORDER

By Justice Khem Karan, Vice Chairman.

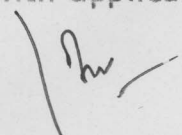
The applicant has prayed for following relief(s):-

- "(a) That the impugned order passed by the respondent NO. 3 on 10.4.2003 be set aside by this Hon'ble Court.
- (b) That the respondents may kindly be directed to consider the case of the applicant and give his due seniority and promotion since 1.7.1972.
- (c) That the respondents may be directed to award the benefits of three grade structure as provided under E-in-C's Br. Letter NO. 00270/BC/TGS/EIC (III) dated 06 July 1986.
- (d) That the respondents may be directed to consider the seniority of the applicant as envisaged in letter of Chief Engineer Bareilly Zone Bareilly letter NO. 815608/P/220/E1 (2) dated 6 July 2000.
- (e) That cost of the application and any other relief which this Hon'ble Court deems fit kindly be awarded to the applicant".



2. In brief, his case is that he was appointed as Mazdoor on 16.11.1970 in the office of Military Engineering Service, Roorkee and he passed the Trade Test of Wireman on 4.6.1972. He says a vacancy in the cadre of Wireman arose on 1.7.1972 in Military Engineering Service, Roorkee but instead of promoting the applicant, one Mamraj was directedly appointed as Wireman. He says he also passed trade test for the post of Mate and also got his name registered in the Employment Exchange, but inspite of all this he was not appointed as Wireman, though others were appointed. He was promoted to the post of Mate in June 1985 and to the post of Wireman on 6.3.1987. As he was aggrieved, on account of his non-promotion to the post of Wireman from 1.7.1972, so he continued representing and when his claim was rejected on 2.7.2002, he filed one O.A. NO. 32/02, which this Tribunal finally disposed of vide order dated 23.9.2003, directing the respondents to dispose of his representation by speaking order. The respondents have, after considering his representation, rejected the same vide order dated 10.4.2003 (Annexure 8), which the applicant is challenging in this O.A.

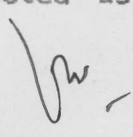
3. The respondents have filed reply partly supporting the claim of the applicant and partly contesting the same. While they say in para-6 that promotion from Mazdoor to Wireman could not be considered due to frequent changes of administrative control of Garrison Engineer, Roorkee. The same is reiterated in para 16, that staff of Garrison Engineer, Roorkee faced a great recurring loss by not getting their promotions on due time, due to frequent changes of administrative control resulting in juniors getting better opportunity in the matters of promotion, within a short span of time as compared to senior. By making these averments, the respondents have indirectly tried to say that justice was not done to the applicant. They say that after Tribunal's order dated 23.9.2002, opinion of the Senior Standing Counsel of Government of India was sought and in accordance therewith applicant's matter



was reconsidered and was also referred to Engineer-in-Chief, New Delhi and finally the impugned order dated 10.4.2003 was passed. They have attempted to say that the department is inclined to reconsider the matter in the light of the facts stated in application dated 3.5.2003 and have also taken certain steps but the decision of Chief Engineer, Bareilly Zone, Bareilly is still awaited. What we have been able to understand from these averments made in the reply is that the respondents are re-examining the matter in the light of representation dated 3.5.2003 (Annexure 7 on page 33).

4. We have heard Shri Anurag Pathak, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for the respondents. Since the respondents themselves concede that grievance put in the representation dated 3.5.2003 (Annexure 7), is being examined and matter is being reconsidered and decision is awaited, we need not delve deep into the controversy. The ground NO.1 cited in the impugned letter dated 10.4.2003 to the effect that a person not completing three years service cannot appear in the trade test for Wireman, does not appeal to us because the applicant admittedly cleared that test in the year 1972. If he was not eligible to appear, as he had not put in requisite three years service by 25.6.1972, why he was permitted to appear in that test. Once he was permitted to appear and once he cleared the same, the Administration cannot turn around and say that he was not eligible to appear in the trade test for promotion to the post of Wireman. We do agree with the respondents that passing of the Trade test for the post of wireman was not sufficient to confer a right on the applicant to get promotion to the post of Wireman.


5. Learned counsel for the applicant has contended that the respondents are not correct in saying, that no junior to the applicant was promoted. He has pointed out by referring to representation dated 3.5.2003, that one Bir Singh appointed as Mazdoor on 12.1.1971 was classified/promoted as Wireman on

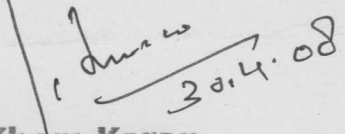


25.1.1980 and, one Tej Singh appointed as Mazdoor on 22.11.1978 was promoted/classified as Wireman on 27.11.1982. He says that several other juniors to the applicant were so promoted to the post of Wireman, ignoring the claim of the applicant.

6. Since the respondents have tried to say in the reply that they are reconsidering the matter in the light of the representation dated 3.5.2003 (Annexure 7) of the applicant and decision is awaited, so we do not want to express our view this way or that way, in the hope that respondents will examine each and every aspect of the matter and in case it is found that some juniors to the applicant were given promotions earlier to the applicant ignoring his claim, then suitable orders will be passed.

7. So the O.A. is finally disposed of with a direction to the respondent NO. 3 to consider and dispose of representation dated 3.5.2003 (Annexure 7) of the applicant in accordance with the relevant facts and circumstances, by passing a speaking order, within a period of three months from the date, a certified copy of this order is produced before him and in taking such decision, the impugned order dated 10.4.2003 will not come in the way of respondent NO. 3. No costs.


N.D. Dayal
Member (A)


Justice Khem Karan,
Vice Chairman.

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