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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29th of 9 2008

Original Application No. 456 of 2006

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Naresh Pal Singh, S/o Sri Jaiveer Pal Singh, R/o
T.R.S. North Central Railway, Jhansi.

... Applicant

By Adv: Sri S.K. Pandey

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. General Manager, (R.E.), N.C. Rly., Allahabad.
3. Divisional Railway Manager, North Central Railway, Allahabad.
4. Senior Divisional Electrical Engineer (T.R.S), North Central Railway, A.C. Loco Shed, Jhansi.
5. Chief Works Manager, N.C.R., Workshop, Jhansi.
6. The Divisional Railway Manager (P), N.C.R. Jhansi.

... Respondents

By Adv: Sri S.K. Anwar

O R D E R

By Hon'ble Mr. A.K. Gaur, JM

Through this OA the applicant has claimed following main reliefs:

"a. to issue a writ, order or direction quashing the order dated 15.03.2005.

b. to issue a writ, order or direction to the respondents to treat the petitioner as Khalasi w.e.f. 11.5.1987 and promote the

petitioner to the higher grade w.e.f. dates when Ved Prakash was promoted with all consequential benefits including seniority and arrears of difference of salary etc."

2. This is the second round of litigation. The applicant is ITI Diploma holder in the Fitter Grade and entered into service as casual labour on 14.06.1992 in Railway Electrification, Mathura. His paper lien was declared and fixed vide letter dated 11.01.2002 in the Electrical (TRS) department of Jhansi Division. He continued working in Railway Electrification Organization, but no seniority list was issued. As a result the seniority position of the applicant remained uncertain. The applicant was called to attend the screening on 15/16-11-1994. The applicant attended the screening in the office of respondent No. 4. Although the lien of the applicant was fixed in the Open Line of Jhansi Division against the post of Khalasi, but he happened to be posted at various ex-cadre organizations in different capacity. According to the applicant after screening a panel was drawn in which the name of the applicant figured at Sl. No. 64, but still his seniority position was not declared and seniority list was not published. It is further alleged by the applicant that several promotions were made under 25% quota fixed for ITI Diploma holders, working in Class IV Group 'D' cadre from Class IV to Class III Group 'C' cadre. The ✓

applicant was repatriated to his parent cadre vide order dated 11.01.2002 (Annexure A-3 to the OA). When the applicant joined at Jhansi on his repatriation he for the first time noticed that several juniors to him have already been promoted to the higher grade superceding him. This was on account of administrative failure on the part of Senior Divisional Electrical Engineer (TRS) Jhansi as well as Project Manager, Railway Electrification, Ambala. This administrative lapse has caused serious loss to the applicant in terms of status, seniority and promotion and his whole service career has been affected. Several notifications were issued by the then Divisional Railway Manager, Jhansi for promotion from Khalasi to Skilled cadre against 25% quota reserved for ITI holders, but none of the notifications were ever communicated to the applicant. Aggrieved by the inaction on the part of the respondents, the applicant filed OA No. 1357 of 2003 :Naresh Pal Vs. Union of India and others before this Tribunal, which was finally disposed of on 13.12.2004 with a direction to the respondents to decide the representation of the applicant by a reasoned and speaking order within a specified period of time.

3. The applicant has mainly prayed for retrospective promotion alongwith consequential

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benefits from the date his junior counterparts have been promoted as Skilled Artisan against 25% quota. Representation of the applicant has been decided by the Divisional Railway Manager, Jhansi vide order dated 15.03.2005. Aggrieved by the said order the applicant has filed this OA before this Tribunal.

4. In the reply filed by the respondents, it is submitted that the relief claimed by the applicant in OA 1357 of 2003 has already been granted to the applicant and the representation of the applicant has been disposed of according to law. Now after a long lapse of time the applicant has raised new controversy which is not legally maintainable. The applicant has claimed the seniority of Khalasi w.e.f. 11.05.1987 which is not legally sustainable and the same is barred by Principle of delay and latches. After regularization of the applicant w.e.f. 17.10.1995 he was repatriated to his parent cadre from Railway Electrification. The applicant cannot claim seniority over those employees who were regularized before 17.10.1995 and cannot claim promotion to the skilled cadre under 25% quota against the selection held in pursuance to the notification issued before 17.10.1995. The respondents have categorically submitted that no other casual labour, regularized on or after 17.10.1995, as Khalasi, has been promoted to skilled

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cadre and placed as senior to the applicant by the respondents. By no stretch of imagination, the applicant was entitled to be called and included in the selection proceedings allegedly held on 03.03.1987, 18.07.1995 and 29.08.1996. The applicant has already been given benefit of promotion vis-à-vis his juniors who were promoted either against selection held in the year 2000 or 2001 as Artisan Grade III against 25% quota.

5. Supplementary Counter Affidavit has also filed by the respondents. In the supplementary counter affidavit it is clearly submitted that no similarly situated employees has been promoted prior to the applicant. The name of junior persons given in the paragraph under reply cannot at all be helpful in order to verify the claim of the applicant and the details and the notification given by the applicant are wholly incomplete and vague.

6. We have heard Shri S.K. Pandey learned counsel for the applicant and Shri S.K. Anwar learned counsel for the respondents.

7. According to the learned counsel for the applicant the order dated 15.03.2005 is illegal, arbitrary and without jurisdiction and the action of the respondents in superseding the applicant from

several juniors is violative of Article 14 and 16 of Constitution of India. Learned counsel for the applicant would further contend that his case is covered under next below rules and the order passed in OA No. 431/02 decided on 16.05.2002. The applicant has claimed that he should also be granted promotion to the higher grade w.e.f. his junior Sri Ved Prakesh was granted.

8. We have perused the record and found that the applicant has already been granted benefit of pay in the Grade of Rs. 3050-4590, but and the actual benefit should have been granted to him from the date his juniors were promoted as Technician Machinist Grade III. We have also noticed that in the earlier OA the applicant has not disputed the date of maintaining his lien i.e. 11.01.2002, and his sole grievance was that he was not informed and included in the proceedings meant for the promotion to the skilled cadre against 25% quota of ITI Diploma holders.

9. In our considered view the applicant has sought to raise a new controversy on wholly baseless and frivolous grounds. The applicant has utterly failed to demonstrate that any other casual labour junior to him was regularized on or after 17.10.1995 as Khalasi and has been promoted in the skilled

cadre prior to him. The applicant was not at all entitled to be called and included in the selection proceedings allegedly held on 03.03.1987, 18.07.1995 and 29.08.1996 on the ground that on 03.03.1987 the applicant was not entitled to be regularized in Class IV as Khalasi, on 18.07.1995, the applicant was yet to be regularized in Class IV as Khalasi. As regard the notification dated 29.08.1996 is concerned the same was issued in continuation of notification dated 18.07.1995 and the applicant was not eligible to be regularized by that time. The applicant has already been given benefit of promotion vis-à-vis his juniors who were promoted against the selection held in the year 2000 or 2001 as Artisan Grade III, against 25% quota.

10. In our considered view the grievance of the applicant has already been redressed by the respondents. There is hardly any justification for the applicant to seek parity from those persons who were regularized prior to 17.10.1995. We may also observe that the specific averments contained in the Counter affidavit that the seniority of Sri Vinod Kumar was maintained by the TRS cadre and the seniority of the applicant was maintained by EL (G) Department which is separate department has not at all been denied the applicant, and as such, we find

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that no discrimination has been meted out to the applicant as alleged.

11. In view of the aforesaid observations we find no merit in the OA, which is accordingly dismissed.

No cost.

McGonigal

Member (A)

Angus

Member (J)

/pc/