

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 30th day of 11, 2011

Present:

HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J

HON'BLE MR. SHASHI PRAKASH, MEMBER-A

ORIGINAL APPLICATION NO. 548 of 2006

Bijay Kumar, S/o Late Sri Lekh Ram, R/o working as Khalasi helper under CTF (R)/TRS East Central Railway, Mughalsarai, Chandauli.
.....Applicant.

V E R S U S

1. The Union of India through the General Manager, East Central Railway, Hazipur, Bihar.
2. The Divisional Railway Manager, East Central Railway, Mughalsarai, Chandauli, U.P..
3. The Senior Divisional Personnel Officer, East Central Railway, Mughalsarai, Chandauli, U.P.
4. The Senior Divisional Electrical Engineer/OPN/TRS/E.C.Rly/Mughalsarai, Chandauli, U.P.
..... Respondents

Present for the Applicant: Sri S.K. Mishra
Present for the Respondents: Sri P.K. Pandey

O R D E R

By Hon'ble Mr. Sanjeev Kaushik, JM

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant seeks a direction to the respondents to promote him on the post of Fitter Grade-I in pay scale of Rs. 5000-8000 from the date when his junior has been promoted with all consequential benefits with further direction to decide the pending representation filed by the applicant.

2. The facts of the case are that the applicant initially was appointed as Khalasi on 20.10.1987 under dying in harness rules in

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Sealdah Division from where he was transferred to Mughalsarai Division in the year 1989 and joined as Khalasi under CTF (R), TRS/ER, Mughalsarai. He was promoted as Khalasi Helper in the year 1994 after passing departmental examination. In para 4.5 of O.A it is averred that persons junior to the applicant have been given promotion to the post of Fitter Grade-II in pay scale of Rs. 4000-6000 and the applicant has been deprived of his legitimate entitlement, against which the applicant moved representation on 16.03.2000 followed by representations dated 17.02.2004, 02.06.2004, 28.06.2004, 15.07.2004, 08.08.2004 and lastly on 09.09.2004 (Annexure A-1 to A-7) through proper channel. It is averred that the persons junior to the applicant have been given three promotions between 2000 and 2004 whereas the legitimate right of the applicant has not been considered. Aggrieved the applicant has filed the instant original application on the ground that he is entitled for promotion in accordance with rule 224(ii) of I.R.E.M (I) from the date of his immediate junior was promoted. It is submitted that in identical case this Tribunal vide order dated 25.11.2005 passed in O.A No. 1177/1999 - Raghivar Dayal & Ors. Vs. U.O.I & Ors directed the respondents for promotion of applicants therein in skilled grade of Rs. 3550-4500 on the basis of inter se seniority. It is further averred that in terms of para 5 (iii) Railway Board Circular dated 28.09.1988, 20% quota are reserved for departmental candidates, which is to be filled up only by way of seniority.

3. In pursuance to the notice the respondents appeared and filed detailed counter affidavit and contested the claim of the applicant.

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4. It is admitted that the applicant was appointed as Khalasi on compassionate grounds. Thereafter on his request the applicant was transferred from Sealdah Division to Mughalsarai Division. Accordingly his seniority was assigned below of the permanent and temporary staff available in the category of Khalasi in TRS department on 19.06.1989 i.e. the date when the applicant joined duty at Mughalsarai. He was promoted as Khalasi Helper Grade-I in the pay scale of Rs. 800-1150 w.e.f. 04.02.1994. The Railway Board vide letter No. PC-V/97/I/II/7 dated 28.09.1998 upgraded the post of Khalasi Helper Gr. I in scale of Rs. 2650-4000 (RSRP) with provision that those who have possessed the qualification of ITI and matriculate, may be promoted. It is averred in para 4 of the Counter Reply that although the representations were made by the applicant but why the applicant waited for four years, therefore there is delay for which settled seniority cannot be unsettled at the belated stage. It is further averred that no junior to the applicant was promoted under 20% quota to be filled on seniority basis because of non-availability of vacancy. In para 10 of the Counter Reply the respondents have rebutted that allegations of applicant that persons junior to the applicant were promoted and regarding discrimination and submitted that in view of changed policy issued by the Railway Board vide letter dated 28.09.1998 (Annexure -1 of C.R), the Khalasi Helper, who had prescribed qualification, were trade tested and who were declared suitable for promotion to the post of Skilled Gr. III in pay scale of Rs. 3050-4590, were promoted. Since the applicant did not fulfill the requisite qualification of having I.T.I and matriculation, therefore, he was not considered eligible for appearing in trade test and was not promoted.

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5. None appeared on behalf of parties when the matter was called for hearing. Since the matter is very old of the year 2006 hence by exercising the powers under rule 15(1) of CAT (Procedure) Rules 1987, the matter was reserved for orders. Later on both counsel for parties have filed their Written Arguments, which is taken on record..

6. We have gone through the pleading on record and the averments made by the respective parties in their written arguments.

7. The sole contention raised by the counsel for the applicant that he has not been given promotion and persons junior to have been promoted therefore, the applicant has been discriminated. It is not disputed that the applicant initially was appointed on compassionate grounds on 20.10.1987 in Sealdah Division and on his request he was transferred in the year 1989 to Mughalsarai Division where he was placed at the bottom in the inter se seniority. It is alleged that the persons junior to the applicant were promoted way back in the year 2000 whereas; he has though made first representation on 16.03.2000 but kept mum till 2004 and after more than 4 years he preferred another representation on 17.02.2004 and instant O.A has been filed in the year 2006, therefore, respondents sought dismissal of the O.A on the ground of delay because no cogent reason has been given for not approaching the Tribunal when the juniors were promoted.

8. Secondly, as averred in the Counter Reply, as per the Railway Board's Letter dated 28.09.1998, the applicant did not fulfill the

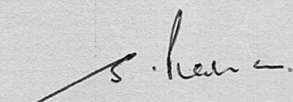
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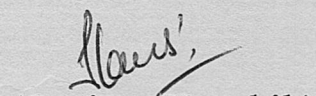
requisite qualification to be promoted against 20% quota. The relevant para of the letter dated 28.09.1998 reads as under : -

- “1. 60% by direct recruitment from successful course completed Act. Apprentices, ITI pass candidates and matriculates from the open market.
2. 20% from serving semi skilled and un-skilled staff with three years of regular service with educational qualification as laid down in the Apprentice Act, as our lined in Rly. Board's letter No. E(NG)I/96/PM7/56 dated 02.02.1998 and;
3. 20% by promotion of staff in the lower grade as per prescribed procedure.”

9. Since the applicant did not have the requisite qualification for promotional post , therefore, he was not considered for promotion. Further as per the seniority list published on 25.04.2005, the applicant was placed at Sl. No. 45 and no person junior to the applicant was promoted, therefore, the claim for seeking direction cannot be accepted on this ground also.

10. In view of the above, we find no merits in the O.A and it deserves to be dismissed being devoid of merits. O.A is dismissed accordingly . No costs.


(Shashi Prakash)
Member-A


(Sanjeev Kaushik)
Member-J

/Anand/