

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11 DAY OF March 2011)

PRESENT:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER - J

ORIGINAL APPLICATION NO. 1362 OF 2008

(U/s, 19 Administrative Tribunal Act.1985)

Jeb Lal son of Shri Bihari Lal, aged about 53 years, posted as Leading Hand Fireman, Ordnance Clothing Factory, Shahjahanpur, Resident of 55/3, R-Type Married Line Factory Estate, Shahjahanpur.

..... Applicants

By Advocate: Shri M. Lal

Shri S.K. Pandey

VERSUS

1. Union of India through Secretary, the Ministry of Defence, Department of Defence Production, New Delhi.
2. Secretary, Ordnance Factory Board, 10-A, Shaheed S.K. Bose Road, Kolcutta-1.
3. General Manager, Ordnance Clothing Factory, Shahjahanpur.
4. Gautam Kumar Vishwas, posted as Leading Hand Fireman, Fire Brigade, Ordnance Clothing Factory, Shahjahanpur.

..... Respondents

By Advocates: Shri R.D. Tiwari

Shri R.K. Srivastava

ORDER

Delivered by MRS. MANJULIKA GAUTAM, MEMBER-A.

The brief case of the applicant is that he was appointed as Fireman Grade II on 30.09.1980. He was promoted as Leading Hand Fireman on 1.9.2002. He attended general training course on 14.09.1998 and has sent for refresher course on 03.12.2001. He was due for promotion to the post of Supervisor but when D.P.C was held in the year 2008 he was not considered. When he applied under R.T.I Act seeking for reason for being superseded, he was informed vide letter dated 29.3.2008 (Annexure A-5) that in order to be promoted to the post of Supervisor, a course of three years has to be completed. This training is imparted by Regional Training

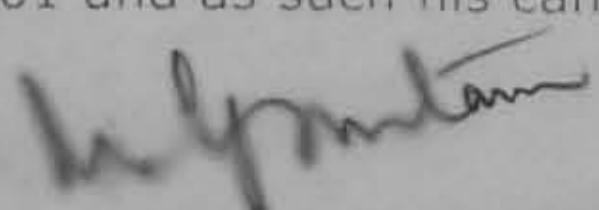
Institute, Ambajhari, Nagpur. When his name has sent for supervisory course, the training organization informed that he is over-age and there is no provision of giving relaxation.

2. On the other hand, respondent No. 4, who was junior to the applicant in the seniority list, was sent for supervisory training. Applicant has stated that on 6.9.2006, he represented to the General Manager requesting for being sent for supervisory course. The applicant again submitted his representation on 8.4.2008 and sent several other representations in the same connection. Not receiving any response, he has filed the present O.A. seeking following relief (s):-

- “8.1 issue a writ, order or direction in the nature of mandamus directing the respondents to promote the petitioner to the post of Supervisor (non technical) with effect from 1.1.2009.
- 8.2 Issue a writ, order or direction in the nature this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- 8.3 To award the cost in the favour of the petitioner”.

3. The case of the applicant is that he has never refused to go on any training and has been making request for being sent for supervisory training. He was not informed at any time that he was over-age for the same until he applied under R.T.I. Act and so injustice has been done to him by promoting his junior in the seniority list whereas he has been denied his promotion for no fault of his. The applicant has referred to the case of one Shri D.N. Tripathi was promoted to the post of Supervisor without undergoing the Supervisory training.

4. In the counter affidavit filed by the respondents, it has been stated that as per S.R.O. a Leading Hand Fireman in order to be promoted to the post of Supervisor is required to undergo training. According to the respondents, applicant had completed 45 years of age in the year 2001 and as such his candidature was not accepted

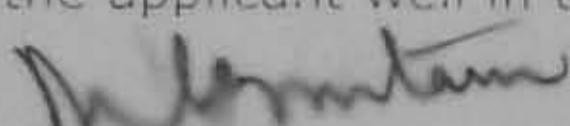


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by O.F.I.L. Ambajhari. Subsequently respondent NO. 4, who was junior to the applicant had completed Supervisory Course, was promoted. According to the respondents, since the applicant had completed the age of 45 years, his candidature was not accepted and there is no provision for giving relaxation. The respondents, in para 19 of their counter affidavit, have accepted that Shri D.N. Tripathi was promoted in the year 1979 by the General Manager but he has already been superannuated in the year 2007 and, therefore, his case is not applicable to that of the applicant.

5. We have heard Shri S.K. Pandey, learned counsel for the applicants and Shri R.K. Srivastava, learned counsel for the respondents and perused the records on file.

6. It is admitted fact that respondent NO. 4 is junior to the applicant. It is also admitted that the applicant could not be promoted to the post of Supervisor because he had not gone through the necessary training. The applicant kept on giving representation regarding his promotion but they were not replied to. He was, at no stage, informed that he was over-age for Supervisory post and as such could not be promoted. It is only when he moved under R.T.I Act that he was giving the reason for his supersession. It is thus clear that applicant was superseded not due to his fault because he was not informed about the necessary condition for his promotion. It is also admitted by the respondents in their counter affidavit that Shri D.N. Tripathi, who had not completed the supervisory course, was promoted to the post of Supervisor. Respondents are not able to produce any Rules of the Department, which say that there is any age limit for the supervisory course. If they were aware of the same, they should have informed the applicant well in time instead of which he had to

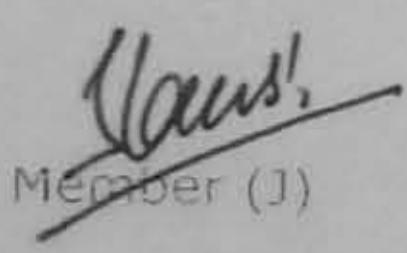


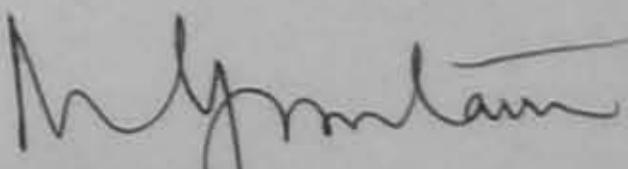
seek information through R.T.I. As per Annexure 8 filed by the applicant, there is no age limit for being sent for supervisory course but there is a stipulation that candidate should not be within three years of retirement. The applicant meets this requirement but he was still not promoted as per Rule of O.F.I.L. It is clear that the Rules, in no way, provide for rejecting the candidature of the applicant as being over-age. If one Training Organization did not accept him, efforts should have been made to send him elsewhere so he could avail his promotion.

7. Looking at entire facts, we are of the opinion that applicant has been deprived of his promotion due to no fault of his. He was neither informed nor did any rule prevent him for being sent for training when he had more than 3 years of service left. As against this, respondent No. 4, who is junior to the applicant, has been sent for supervisory training and is likely to be promoted.

8. We are of the view that the applicant deserves to be promoted. The precedent of Shri D.N. Tripathi has also been admitted by the respondents and on the same analogy, the applicant can also be given his promotion without completing the supervisory training as it is no longer possible.

9. O.A. is accordingly allowed. Respondents are directed to promote the applicant to the post of Supervisor from the date when the vacancy had arisen within a period of three months from the date of receipt of a certified copy of this order. No costs.


Member (J)


Member (A)

Manish/-