

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 353/91
T.A.NO.

DATE OF DECISION 28-11-97

Shri S.P.Sharma **Petitioner**

Mr.A.M.Vaishnav **Advocate for the Petitioner [s]**

Versus

Union of India & Ors. **Respondent**

Mr.Akil Kureishi **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V.Radhakrishnan : Member (A)

The Hon'ble Mr. T.N.Bhat : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri S.P.Sharma
Assistant Foreman,
O/O The Executive Engineer,
Division No. I, Ahmedabad,
The Central Ground Water Board,
Govt. of India,
New Delhi.

Resi.Address:

Swaminarayan College Compound,
Shah-Alam Toll Naka,
Ahmedabad-380 022.

: Applicant

(Advocate: Mr.A.M.Vaishnav)

Versus

1. Executive Engineer,
Division No.1, Ahmedabad
Central Ground Water Board,
Swaminarayan College Compound
Building, Shah Alam Toll Naka
Ahmedabad-22.
2. Sr.Administrative Officer,
G.O.I. CGWB-NH-IV-Faridabad
(Haryana)
Pin Code 121 001.
3. The Chairman,
Central Ground Water Board,
Jamnagar House,
New Delhi-110 011.
4. Shri Sukhnandan Lal
Foreman,
C/o.The Executive Engineer,
Central Ground Water Board,
Div.No.14, 705, 14th Cross,
24th Main Sarkhi, J.P.Nagar,
Second Phase,
P.O.Bangalore-560 078.

: Respondents

(Advocate: Mr.Akil Kureishi)

J U D G M E N T:

O.A.353/91

Date: 28-11-97

Per: Hon'ble Mr.V.Radhakrishnan : Member (A)

The applicant was appointed as Assistant
Mechanic with the respondents in January, 1963.

According to him, he was interviewed for the post of Assistant Foreman by the department in 1976 but before the result of the above interview was known he was sent on deputation to Iraq in 1977. He was repatriated in the year 1980 and posted as Senior Mechanic in the department. The grievance of the applicant is that Shri Sukhnandan Lal holding the post of Electrician was shown senior to him in the seniority list circulated on 31.8.87. According to the applicant Shri Sukhnandan Lal is junior to him and because of his supersession the applicant lost his chance of becoming Foreman. He submitted representation on 17.2.1987 for the promotion to the post of Foreman but this ^{was} rejected by the respondents. The applicant submitted another representation dated 27.6.90 which was rejected by the respondents vide letter dated 21.1.91. He was informed that action of the respondents was based on the recommendation of the Review DPC held on 18.9.1986. As per DPC's recommendation Shri Sukhnandan Lal was promoted as Assistant Foreman w.e.f. 23.9.1982 and accordingly he was placed above the applicant in the seniority list of Assistant Foreman on 31.3.1987. He was further promoted as Foreman in April, 1990 just after he completed probation period of two years. The applicant claims that being senior to Shri Sukhnandan Lal



he should have been promoted before Shri Sukhnandan Lal. Accordingly, he claims for the following reliefs:-

- " (1) To strike down the order appealed against and promote him to the post of Foreman from his original due date.
- (ii) To issue revised seniority list by withdrawing and cancelling the list prepared and circulated as on 31.8.87.
- (iii) To disburse his revised pay and allowances with effect from April, 90, his due date of promotion as Foreman."

2. The respondents have filed written reply.

The first objection taken relates to non-joinder of the party and that Shri Sukhnandan Lal was not made a party to the O.A.

3. They state that the applicant was promoted to the post of Assistant Foreman on 'reversible basis' on 17.8.1982 (Annexure A-2) and Shri Sukhnandan Lal was not available for promotion as he was on foreign assignment. According to the Recruitment Rules, the eligibility of promotion to the post of Assistant Foreman provide method of recruitment by promotion from amongst Mechanic/ Electricians with five years service in the respective grade subject to passing the departmental trade test. In 1982 there were ten vacancies of Assistant Foreman at that time some senior eligible persons were on foreign assignments.



Therefore, they could not be tested/considered for promotion. It was decided by the DPC in the interest of work that the promotion may be given to the juniors on 'reversible basis' till the senior persons who were on foreign assignments were repatriated. Accordingly, four junior persons including the applicant were given promotion as Assistant Foreman on 'reversible basis'. In 1986 seven persons who were on foreign assignments were repatriated to the department. A trade test was then conducted by the Selection Committee and out of seven persons, five persons passed the trade test and became eligible for promotion to the post of Assistant Foreman. As Shri Sukhandan Lal was senior to the applicant in the inter-se-seniority of two cadres i.e. Electrician and Mechanic, the review DPC which was convened on 18.9.1986 recommended that Shri Sukhnandan Lal should be promoted to the post of Assistant Foreman w.e.f. 23.9.1982 i.e. the date on which the applicant was promoted on 'reversible basis'. Accordingly, the Respondent No.4 Shri Sukhnandan Lal was promoted as Assistant Foreman w.e.f. 23.9.1982 vide letter dated 22.4.1987. Accordingly, he was placed above the applicant in the seniority list of Assistant Foreman as on 31.8.1987. These facts were conveyed to the applicant in response to his representation.



4. The respondents contend that Shri Sukhnandan Lal was all along senior to the applicant in the lower cadre of Electrician/Mechanic from which his promotion to the post of Assistant Foreman was to be given. The applicant was appointed as Mechanic in the scale of Rs.205-280 on 19. 2.1973 while Shri Sukhnandan Lal, Respondent No.4 was appointed as Electrician in the same scale from 18.12.1965. Accordingly, there was no irregularity in Respondent No.4, Shri Sukhnandan Lal being appointed before the applicant on regular basis. Shri Sukhnandan Lal Resp. No.4 could not be considered for promotion in 1982 as he was on deputation abroad. On his return from foreign assignment a Review DPC was conducted and he was given promotion from 23.9.1982 the date on which the applicant who was junior to him was given promotion. He had also passed the required trade test and he was given promotion with retrospective effect.

Shri Sukhnandan Lal was appointed as Electrician on regular basis from 18.12.1965 but the applicant was promoted as Mechanic only from 19.2.1973.

5. The applicant has filed rejoinder in which he has reiterated most of the points referred to in the O.A. According to him, he was promoted as Assistant Foreman on 17.8.1982 and completed two years of probation as Assistant Foreman and had become confirmed and could not have been reverted.

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He claims that being appointed in January, 1963 he is senior to Respondent No.4. He also states that according to the Recruitment Rules, the ratio of promotion of Mechanic and Electrician was 67 : 33 percent. He claims that the duty of the Mechanic is more arduous and important than the Electrician and that is why 2/3rd quota was given to the Mechanic. He states that after returning of Shri Sukhnandan Lal from foreign assignment to the department he should have completed five years service before he was considered for promotion. The eligibility for promotion to the post of Foreman was three years regular service in the higher grade which the applicant had completed in 1987 but instead of promoting him, Shri Sukhnandan Lal was placed senior to him and he was further promoted as Foreman. The applicant was informed the reasons for his being superceded the Respondent No.4. The DPC met only on 18.9.86 and found that the applicant was not eligible for promotion as he has not completed five years regular service after passing the trade test. He also added that the respondents are pressurising him to withdraw this case from the Tribunal.

6. We have heard both the learned counsels for the applicant and the respondents and gone through the documents including service books



of both the applicant and the Respondent No.4.

In so far as the question of non-joinder of party is concerned, the applicant lateron filed M.A. for joining Shri Sukhnandan Lal as (Respondent) Respondent No.4. From that it is seen that the applicant was appointed on 12.1.1963 as Assistant Mechanic in the pay scale of Rs.150-5-175-6-205-EB-7-240. He was promoted as Mechanic on 19.2.1973 in the scale of Rs.205-3-240-8-280 (Pre-revised). On the other hand the Respondent No.4, Shri Sukhnandan Lal was appointed as Electrician in the scale of Rs.205-7-240-8-280 from 18.12.65. He was sent on foreign assignment in 1980. The applicant was promoted as Assistant Foreman vide order dated 17.8.82 (Annexure A-2). The order clearly says that "The appointment of S/shri Ram Prasad, S.P.Sharma, I.Balaji Rao and Rajinder Prasad will be on reversible basis". Therefore, it is quite clear from the order that the promotion of the applicant was not on regular basis. At the time of promotion of the applicant the Respondent No.4 was senior to the applicant was not available for promotion as he was on foreign service. In 1986 the Respondent No.4 along with the other persons were repatriated to parent department and trade test was conducted by Selection Committee and the respondent No.4 passed the same. The Review DPC convened on 18.9.1986 and recommended that he should be promoted with

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retrospective effect from 23.9.1982 the date on which his junior i.e. the applicant was promoted. Hence, the Respondent No.4 was promoted as Assistant Foreman and he was placed senior to the applicant as on 31.8.1987. The applicant's representation dated 17.2.1987 was also replied to vide letter dated 30.9.1987. The applicant again submitted a representation dated 27.6.1990 and this was replied to vide letter dated 21.1.1991. The main contention of the applicant is that he is senior to the Respondent No.4 Shri Sukhnandan Lal. However, he was not able to substantiate his claim regarding his seniority by production of any relevant document showing his senior to Respondent No.4. His main contention appears to be based on the fact that he was appointed as Assistant Mechanic on 12.1.1963. Even though the applicant was appointed as Assistant Mechanic on 12.1.1963 in the pay scale of Rs.150-5-175-6-205-EB-7-240, he was promoted as Mechanic on 19.2.1973 only in the pay scale of Rs.205-7-240-8-280 (pre revised). The Respondent No.4 Shri Sukhnandan Lal was appointed as Electrician in the pay scale of Rs.205-7-240-8-280 on 18.12.1965. Hence, we are unable to appreciate the contention of the applicant that he was senior to Respondent No.4 and he should not have been downgraded in seniority when Resp.No.4 joined. It is clear from the order dated 17.8.1982 (Annexure A-2) that the promotion of the applicant to the post of Assistant Foreman was on 'reversible basis' probably thereby meaning it was on 'adhoc basis'.



Hence, the applicant could not claim that the promotion order was regular one. When his senior i.e. Shri Sukhnandan Lal, Resp.No.4 returned from foreign service he was trade tested and he passed the trade test. The Review DPC convened on 18.9.86 and recommended that he was fit for promotion for the post of Assistant Foreman from the date on which his junior i.e. the applicant was promoted as Assistant Foreman. Hence, the Respondent No.4 was promoted as Assistant Foreman with retrospective seniority but the financial effect only from date of taking over as Assistant Foreman and the applicant was downgraded in the seniority list which was accordingly drawn up placing the Respondent No.4 above the applicant. The respondent No.4 was also promoted as Foreman on 7.6.1990. The applicant was later offered promotion as Foreman on 13.12.91 but he refused the same. The applicant also did not challenge the seniority list as on 31.8.87 issued by the respondent on 13.9.1987. In case he wanted to challenge the seniority of Shri Sukhnandan Lal Resp.No.4., he should have taken timely steps to challenge the seniority list. Apart from which we find that the respondent No.4 was appointed as Electrician on 18.12.1965 while the applicant was promoted as Mechanic on 19.2.1973. The pay scale of both the posts of Electrician and Mechanic being the same scale Rs.205-7-240-8-280 the Resp.No.4 would appear to senior to the applicant being appointed to that post of Electrician much earlier



than the applicant. The Respondent No.4 could not be considered for promotion for the post of Assistant Foreman in 1982 as he was on foreign service. Hence, the applicant was promoted on 'reversible basis' and when the Respondent No.4 returned from foreign service he was trade tested and his case was placed before the Review DPC which recommended his promotion with retrospective effect from the date of promotion of his junior i.e. the applicant. Accordingly, he was given seniority above the applicant.

7. Taking into account the above facts and circumstances of the case, we feel that the applicant has not been able to show that the respondents had committed any irregularity in promoting the Respondent No.4 and reverting the applicant. Accordingly, the application is devoid of merit. Hence, the same is dismissed without, however, any order as to costs.


(T.N.Bhat)
Member (J)


(V.Radhakrishnan)
Member (A)

503/91
ADMINISTRATIVE TRIBUNAL
IN THE CE
AHMEDABAD

RA/TA/MA/RA/C.A.

1620-191 in OM 351/91

Neeta B. Des

APPLICANT(S)

M.
B. C. Bhatt

COUNSEL

VERSUS

Union of India

RESPENT(S)

N. S. Shinde

COUNSEL

Date	Officer Report	Orders
	Condonation & delay	(Advance copy served to Resp Adv.)
7/03/92		F/O.
17/1/92		P/O Two weeks
31/1/92		F/O
14-2-92		W/2/92 B/R Non present. Reply is not filed as per order dated 31-1-92. Hence matter be placed for appropriate order.
5/3/92		P/O
		DISPOSED OFF ON 13/3/92

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