

Central Administrative Tribunal
Calcutta Bench

OA No.1220/96

Calcutta this the 4th day of October, 2002.

Hon'ble Mr. S. Biswas, Member (A)
Hon'ble Mr. S. Raju, Member (J)

Pijush Kanti Hazara -Applicant

(By Advocate Shri B. Chatterjee)

-Versus-

Union of India & Others -Respondents

(By Advocate Ms. U. Bhattacharjee)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Heard the parties. By an order dated 26.6.1992 following directions have been issued:

"In that view of the matter, we allow O.A. 143 of 1990 by directing the respondents to re-instate the applicant within 30 days from the date of communication of this order. The intervening period will be treated as on duty. The applicant will not be entitled to any pay and allowances for this period on the principle of no work no pay. The increments, if any, falling due during the intervening period shall be granted to the applicant.

There will be no order as to costs."

2. The claim of the applicant is that despite the direction of the court to treat the period from 1980 to 1992 as spent on duty, the respondents have not accorded him promotion as Helper Khalasi as extended to his junior Dutta from 3.3.86. It is also his grievance that the applicant has not been trade tested and further promoted as Skilled Fitter Grade-III.
3. On the other hand, respondents contend that they have complied with the directions of the court and re-instated the applicant. As he is not made entitled to any back wages the same was denied to him, but he is given all his

increments on promotion as Helper Khalasi w.e.f. 1.3.93. In this view of the matter it is stated that the applicant who is still not eligible to be considered for Fitter Grade III cannot be accorded promotion.

3. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view the direction of the court to treat the intervening period from 1980-1992 as on duty~~has an~~^u implication of the applicant having continued without back wages. In this manner he shall also be entitled to all service benefits which would have accrued to him during this interregnum. One of the instances where the applicant has been deprived of similar treatment when his junior Dutta was promoted as Helper Khalasi w.e.f. 3.3.86, whereas the applicant was promoted as Helper Khalasi under restructuring on 1.3.93. Moreover, applicant was also not considered for the post of skilled fitter grade III and his junior Dutta was called for the trade test.

4. In our considered view the action of the respondents cannot be countenanced and is contrary to the direction of the court. The justification for depriving the applicant of promotion is that the applicant remained out of service from 28.8.80 to 30.7.92, cannot be countenanced as the period has already been treated as on duty for all purposes except back wages. In this view of the matter and for the reasons recorded above we find that when the junior of the applicant has been promoted as Helper Khalasi w.e.f. 3.3.86 and was also trade tested, applicant cannot be discriminated which would be violative of Articles 14 and 16 of the Constitution of India.

5. In the result the OA is allowed. The respondents are directed to consider the applicant for promotion as Helper Khalasi from 3.3.86 notionally. He would not be entitled to any back wages except seniority. Respondents shall thereafter consider the applicant for trade test for the post of Skilled Fitter Grade III, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

S. Biswas
(S. Biswas)
Member (A)

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