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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 16.7.2000

O.A. No.172/1995

Birma Ram S/O Shri Lumba Ram, aged about 43 years,
R/O Block No.5/B quarter No. 'A', Railway Colony,
Rai-Ka-Bagh, Jodhpur. (Raj)

... Applicant

vs

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Superintendent Engineer (E) Northern Railway, Jodhpur.
3. The Assistant Engineer, Northern Railway, Jaisalmer.
4. Shri Pratap Ram S/O Sh. Sukha Ram Mason C/O I.O.W. Northern Railway, Pokaran. (Raj)
5. Shri Sesh Narain Tiwari S/O Shri Hira Lal, Temporary Fitter, C/O I.O.W. Rai Ka Bagh Northern Railway, Jodhpur.

... Respondents

Mr. S.K. Malik, Counsel for the Applicant.

Mr. R.K. Soni, Counsel for the Respondents 1 to 3

Mr. N.K. Khandelwal, Adv., Brief holder for

Mr. M.S. Singhvi, Counsel for the Respondents 4 & 5

Coram :

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant, Birma Ram,
has prayed for setting aside the impugned orders dated
21.7.1994 (Annexure A/1) and dated 02.3.1995 (Annexure A/2)

Gopal Singh

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and for a direction to the respondents to consider the applicant for the post of Fitter/Mason Grade 950-1500 from the date persons junior to him have been appointed as such with all consequential benefits.

2. Applicant's case is that he was initially appointed as Khalasi Grade 750-950 with effect from 09.1.1978 after due screening, and thereafter promoted as Khalasi helper grade 800-1150. That respondent No.4, (Pratap Ram) and respondent No.5 (Shesh Narain) were respectively screened as on 28.10.1985 and 25.2.1993, and appointed as Khalasi w.e.f. the same dates. Thus, respondent No.4 and respondent No.5 are junior to him. The applicant appeared for the trade test for Mason/Fitter on 10.10.1988, however, the result of trade test was never declared. Respondent No.4, was trade tested on 08.2.1995 and was appointed as Mason on 02.3.1995 while respondent No.5, was trade tested on 18.3.1990, ignoring the claim of the applicant. Hence, this application.

3. In the counter, it has been stated by the official respondents that the respondent No.5 has been working with the respondents as skilled labour Artisan scale 260-400 with effect from 18.12.1984 on casual basis and the case of the applicant is not identical with the case of respondent No.4 and respondent No.5 and, therefore, he cannot compare himself with respondent No.4 and respondent No.5. The official respondents have also stated that no trade test was held on 10.10.1988.

4. Private Respondents No. 4 and 5, in their reply have stated as under :

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" The true facts are like this that the respondent No.5 Shesh Narain Tiwari was working as Canner with the Inspector of Works, Rai Ka Bagh. As per the order of the Divisional Engineer, Northern Rly. Jodhpur, the Inspector of Works, Rai Ka Bagh vide his letter No.WAF 937E/Engineering/Surrender dated 6.2.1989 was asked to surrender one post of Canner and one post of Canner Khalasi and to accomodate the incumbents against his cadre vacancy. A copy of the said letter is produced herewith and marked as Annex. R-5/1. In order to comply with the aforesaid orders the respondent No.3 called the respondent No.5 to attend the trade test for the post of Fitter in Grade 950-1500 on 18.3.1990. A copy of the said letter No. WN 293-W-1/X dated 15.3.1990 is submitted herewith and marked as Annex. R-5/2. The respondent No.3 took the trade test of respondent No.5 and found him suitable for the post of Fitter Gr. 950-1500. The result of the said trade test was sent to the Divisional Superintending Engineer (W), Jodhpur vide his letter No.WN 293-E-1 dated 18.3.90. As mentioned in the forgoing paras that the respondent No.5 was considered for the post of Fitter Gr. 950-1500 against the 25% matriculate quota on T.L.A. from amongst the skilled casual labourers. This fact is evident from the letter of respondent No.3 No.AEN/JS M/WW/293/E-2 dated 21.11.1990. A copy of the said letter is submitted herewith and marked as Annexure R-5/3.

When the applicant had refused to appear for the T/T for the post of Masson than next employee i.e., Respondent No.4 was called. However, the applicant cannot equate himself with the respondent No.5, who was already in the higher grade."

5. we have heard the learned Counsel for the parties, and perused the records of the case carefully.

6. It is seen from the seniority list published on 06.5.1991 (Annexure A/5) that the applicant's name figures at Serial No.3, while that of respondent No.4 at Serial No.5 of the seniority list. The name of respondent No.5 did not appear in this seniority list as he was not screened by then Respondent No.5 was screened on 25.2.1993 and thereafter absorbed as Khalasi (Annexure A/11). While respondent No.5

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was working as casual labour (Canner), he was rendered surplus vide Official Respondents letter dated 06.2.89 (Annexure R-5/1) and he was called for trade test for the post of Fitter vide Official Respondents' letter dated 15.3.1990 (Annexure R-5/2). Official Respondents' letter dated 21.11.1990 (Annexure R-5/3) reveals that respondent No.5 was trade tested for the post of Fitter under 25% quota for Matriculate casual labour. Thereafter, respondent No.5, was allowed to continue as Fitter on T.L.A. (Temporary Local Arrangement) basis. Facts remains that respondent-5 was regularized/absorbed only after screening held on 25.2.1993, his appointment or continuance as Fitter on TLA basis does not vest in him superior rights as compared to casual labours screened/regularized earlier to him. Respondent No.5 would continue to as casual labour though skilled till regularization.

7. It is also seen from records that on being declared surplus, respondent No.5, was sought to be adjusted against any other post in the Unit. A post of Fitter was available in the office of Inspector of Works, Rai Ka Bagh, respondent No.5, was trade tested for the same and appointed as such on T L A basis. Subsequently, the said post was declared to be meant for matriculate or III pass casual labour as if ~~to~~ to favour respondent No.5. It has not been explained by the respondents as to how this post came to be earmarked for matriculate casual labour. Secondly, Railway Board letter dated 19.1.1976 (Annexure A/12) lays down that :

"the number of candidates to be called for suitability test/trade test's (for promotion on the basis of seniority cum-suitability) should be equal to the actual vacancies existing and those anticipated in the next three months due to retirement. In practice, however it has been found that many Rlys. have continued to draw select list taking the actual vacancies existing and those anticipated during the next one year. This practice has worked to the detriment of the interests of Scheduled castes and

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Scheduled Tribes. The Rly. Ministry, therefore, after careful consideration have decided that henceforth the No. of candidates to be called up for a suitability/trade test should be equal the number of existing vacancies and anticipated vacancies are not to be taken into account."

Thus, in terms of above directions, the applicant alone, being senior to respondent No.4 and respondent No.5 should have been called for the trade test for the post of Fitter. Respondents have not specifically contested the applicant's stand that respondent No.4 is junior to the applicant. Further the method adopted by Official Respondents by calling willing candidates for trade test (Annexure A/7) whereby respondent No.4 was appointed as Mason (Annexure A/2) is against the Railway Board Circular cited above. The respondents have denied that any trade test was held on 10.10.1988 as alleged by the applicant, but they have not denied the existence of letter dated 06.10.1988 and 10.10.1988 placed at Annexure A/3 and A/4 by which the applicant was informed of the trade test and relieved for the trade test. Further, applicant's representation dated 25.7.1994 and 16.8.1994 were never replied to by the respondents. In these representations, he had challenged the appointment of respondent No.5 as Fitter and had prayed for consideration of his case for the said post he being senior to respondent No.5.

8. In the light of above discussion, we are firmly of the view that the Official Respondents have erred in appointing respondent No.4 and respondent No.5 as Mason and Fitter ignoring the case of the applicant who is senior to both respondent No.4 and respondent No.5.

9. The applicant, in this application has prayed for

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setting aside the order dated 21.7.1994 (Annexure A/1) by which respondent No.5 has been allowed to continue as temporary Fitter on TLA basis and order dated 02.3.1995 (Annexure A/2) by which respondent No.4, has been promoted as Mason. But in the interest of justice and fair play we would not like to set aside these orders putting respondent No.4 and respondent No.5 at a disadvantageous position. Consideration of the applicant for the post of Mason/Fitter by holding a suitability test for him now, and if he qualifies in the suitability test appointing him to the said post allowing him seniority above respondent No.4 and respondent No.5 and notional pay fixation from the date his junior has been appointed as such would meet the ends of justice.

10. Accordingly, we allow this application with a direction to the respondents to conduct a suitability test for the applicant and if he qualifies appoint him on the said post from the date his junior has been appointed as such allowing him seniority over respondent No.4 and respondent No.5, and notional fixation of pay from the date his junior has been appointed as such, within a period of three months from the receipt of a copy of this order.

11. Parties are left to bear their own costs.

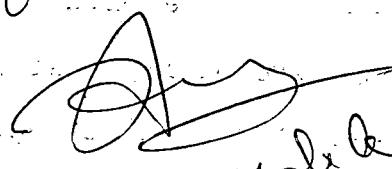
Gopal Singh
(GOPAL SINGH)

ADM. MEMBER

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S.M. 18/7/2002
(A.K. MISRA)
JUDL. MEMBER

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See copy
order date

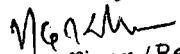

S. K. Mukherjee

29/7/2003

2/1/03
2/4/03

Demolition
Commission
Report
Part II
Part III
Report

Part II and III destroyed
in my presence on 29/7/2003
under the supervision of
Section Officer () as per
order dated 10/11/2003


Section Officer (Record)