

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. NO. 361/1999

Date of Order: 01-10-2002

Shanker Lal s/o Shri Birbal Ram aged 38 years FGM Highly Skilled Gr. II working in the office of Garrison Engineer, Abhor District Firozpur (Punjab), r/p C/o Shri Satis Kumar, Kailash Nagar, Sito Road, Byepass, Sri Ganganagar.

...APPLICANT.

V E R S U S

1. Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commandar Works Engineer, Sri Ganganagar.
3. Kailash Ram, FGM HS Gr.II C/o Garrison Engineer Lalgarh Jattan District Sri Ganganagar.
4. Rohtas Singh MES No. 314135 FGM HS II working in office of Garrison Engineer, Sri Ganganagar.

...RESPONDENTS.

Mr. Vijay Mehta, counsel for the applicant.

Mr. S.K. Vyas, counsel for the respondents no. 1 & 2.

None present for respondents no. 3 & 4.

CORAM:

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

PER MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Shanker Lal has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, and has prayed for the following reliefs :-

"That in view of the facts and grounds mentioned hereinabove the applicant prays that the impugned order Annex. A-1 to the extent of giving promotion to respondent no. 3 and thereafter to respondent no. 4 be quashed. The respondent Nos. 1 and 2 be directed to promote the applicant on the post of FGM HS Gr-I from 8.2.1999 with all consequential benefits."

2. The factual matrix of the case as narrated by the applicant in the Original Application is that the applicant is presently holding the post of Fitter General Mechanic Highly Skilled Grade-II (hereinafter referred to as FGM HS-II, for brevity). The promotion to the post of FGM HS-I is to be made from amongst FGM HS-II on passing the requisite trade test. The applicant appeared in the said test and was declared successful as per communication dated 18.07.1998. His name is placed at Sl. No. 36. Name of the respondents no. 3 who is junior to the applicant is placed at Sl. No. 37.

3. The further case of the applicant is that 22 persons were given promotion to the post of FGM HS-I vide order dated 08.02.1999 (Annexure A/1). The respondent no. 3, who belongs to ST category and is also junior to the applicant has been allowed the said promotion. One Shri Rohtas Singh, respondent no. 4, has also been allowed the promotion to the post of FGM HS-I by the same order and his name is placed at Sl. No. 11. He also belongs to ST category and is also junior to the applicant. In this way two persons belonging to ST have been given promotion. The facts relating to the seniority of the applicant vis-
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a-vis the respondent no. 3 have been narrated in para 4.9%.
The name of the applicant is placed at Sl. No. 75 of the seniority list dated 16.03.1998 and that of Shri Rohtas

Singh, respondent no. 4 at Sl. No. 149. Shri Rohtas Singh was earlier being treated as senior to the applicant for the reason of grant of accelerated seniority which no longer existed and the correct seniority list has been published vide letter dated 16.03.1998 (supra). Respondent No. 4 belongs to S.T. Category but he cannot be given promotion on ~~un~~-reserved post on the ground of so-called accelerated seniority.

4. The Original Application has been filed on number of grounds mentioned in the Original Application in as much as the cadre strength is only 22 posts and as per the roster point only one post goes to the ST and the applicant is entitled to get the promotion from the date his next junior has been promoted on the basis of Accelerated seniority.

5. The respondents have filed the counter reply and have not seriously disputed the facts and grounds mentioned in the Original Application. It has been submitted that Shri Rohtas Singh who belongs to ST category has been promoted against un-reserved vacancy because he falls in his own seniority and stands at Sl. No. 9 as per 200 points roster, one vacancy is reserved for ST and on that Shri Kailash Ram, respondent no. 3 has been promoted. The respondent no. 4 has not been given the benefit of ST vacancy. There are two vacancies lying vacant for promotion which were reserved for SC category but qualified candidates of SC category were not available.

6. We have heard the learned counsel for the parties and have carefully perused the records of this case.

7. As far as the relief of the application in relation to the respondent no. 3, Shri Kailash Ram who belongs to ST category and has been posted against the vacancy meant for ST is concerned, the applicant can have no legitimate right to claim parity with him since Shri Kailash Ram belongs to a different category and has been extended benefit of reservation despite the fact that Shri Kailash Ram is junior to the applicant in the Fitter post/basic grade. Therefore, no relief against Shri Kailash Ram is sustainable.

8. The only controversy which needs adjudication is in relation to Shri Rohtas Singh, respondent no. 4. It is admitted that the name of the applicant is placed at Sl. No. 75 of the seniority list (Annexure A/3) whereas the name of the respondent no. 4 is placed at Sl. No. 149 for the post of FGM HS-I. This position is also evident from the seniority list placed by the respondent at page 61 and 66 of the paper book. We are satisfied that the applicant is senior to Shri Kailash Ram on the Fitter post. The position in regard to the promotion of the respondent no. 4 is also admitted that he has been promoted against an un-reserved vacancy and has not been extended the benefit of ST vacancy since there was no vacant post for ST category. In this way, the respondent no. 4 has been promoted by the superseding the applicant. However, the learned counsel for the respondents has seriously objected the contention of the learned counsel for the applicant. But we find that there is no substance in the contention and submission of the learned counsel for the respondents. The applicant has already passed the requisite trade test and his case ought to have been considered for promotion. Consideration of promotion is a

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Fundamental Right under Article 16 of the Constitution of India and in the present case his Fundamental Right has been infringed. Since there is only one post of FGM HS-I vacant on which the respondent no. 4 has been promoted, the candidature of applicant has been ignored. The respondent no. 4 is not entitled to continue on the said post and his promotion order will have to be cancelled for making room for the actual eligible person. In this view of the matter, the Original Application has force and the same deserves to be allowed. Therefore, we pass the order as under :-

"The Original Application is allowed. The impugned order dated 08.02.1999 so far it relates to promoting Shri Rohtas Singh, at Sl. No. 11 to the post of FGM HS-I, is concerned, is hereby quashed. The applicant shall also be entitled to promotion to the post of FGM HS-I from 08.02.1999 with all consequential benefits including the salary etc. Ordered accordingly. However there shall be no order as to costs."

J.K. KAUSHIK
(J.K. KAUSHIK)
Judicial Member

Gopal Singh
(GOPAL SINGH)
Adm. Member

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