

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

.....
Date of Order : 27-3-2002.

O.A.NO. 3/2001

Bala Ram S/o Shri Heera Das, by caste Sad, aged about 69 years, Resident of Village Godaran, Post Untwalia, Tehsil and District Nagaur, Ex Fitter Gd. II at Train and Lighting Department, Northern Railway, Jodhpur.

.....Applicant.

versus

1. The Union of India through General Manager, Northern Railway, Headquarter Building, Baroda House, NEW DELHI.
2. The Divisional Railway Manager, Northern Railway, D.R.Ms Office, JODHPUR
3. The Divisional Personnel Officer, Northern Railway, D.R.Ms Office, JODHPUR.
4. The Divisional Electrical Engineer, Northern Railway, D.R.Ms Office, JODHPUR
5. The Divisional Accounts Oficer, Northern Railway, D.R.Ms Office, JODHPUR

.....Respondents.

CORAM :

Hon'ble Mr. Justice O.P.Garg,
Vice Chairman

Hon'ble Mr. Gopal Singh,
Administrative Member

ADVOCATES PRESENT :

Mr. S.N.Trivedi, present for the applicant.
Mr.Kamal Dave, present for the respondents.

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O R D E R
(Per Hon'ble Mr.Gopal Singh,Administrative Member)

In this Application under Section 19 of the Administrative Tribunals Act, 1985, applicant, Bala Ram, has prayed for quashing

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the impugned order dated 10.12.1999 (Annex.A/1) and order dated 9.12.1999 (Annex.A/2) and for a direction to the respondents to extend to the applicant benefit of upgradation to the post of Train and Lighting Fitter Grade II w.e.f. 1.4.1983, the date from which his juniors have been given the benefit, with all consequential benefits including pay fixation and pensionary benefits.

2. Applicant's case is that he entered in the Railway service as Khalasi in the month of July 1955. Applicant was promoted to the post of Fitter Grade III in the pay scale of Rs. 260-400 w.e.f. 4.11.1974 and he remained on the said post up to the date of his voluntary retirement w.e.f. 3.11.1987. The applicant was placed under suspension w.e.f. 26.6.1984 to 19.8.1984 for 55 days. This period of suspension was ultimately treated as on duty vide respondents letter dated 8.3.1994 (Annex.A/5). Applicant contends that he was called for suitability test for the post of Head Lighting Mistry in the pay scale of Rs. 330-480 and he had appeared in the said test on 7.7.1986 but the result of the said test was not declared. The respondent-Railways introduced re-structuring / re-classification in group 'C' and 'D' cadres w.e.f. 1.4.1983 and 1.1.1984 and it is the contention of the applicant that he was eligible for promotion as Train and Lighting Fitter Grade II w.e.f. 1.4.1983 and 1.1.1984 in terms of the re-structuring scheme. However, many of his juniors were extended the benefit of upgradation ignoring his claim. On his representation in this regard, the applicant was informed vide Annex. A/1 dated 10.12.1999 that he was not promoted to the post of Fitter Grade II as he had not passed the trade test for the said post. Hence, this application.

3. In the Counter, the respondents have denied the case of the applicant. It is contended by the respondents that for the benefit of upgradation under the restructuring scheme, the applicant was required to pass the trade test. However, he did not pass the trade test. They have also placed before us a copy of the result sheet of

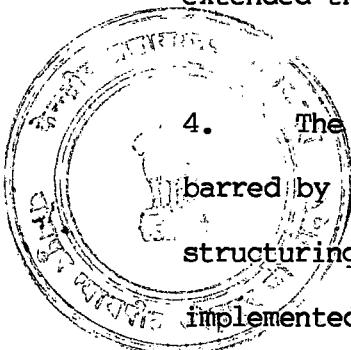
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the trade test undertaken by the applicant. The said trade test was held on 8.7.1986 for the post of Train and Lighting Fitter Grade II. The learned counsel for the applicant contends that for extending the benefit under restructuring scheme, no trade test was required. The Tribunal directed both the counsel to produce before it the relevant restructuring scheme with a view to examine the aspect of trade test. The learned counsel for the applicant has produced a Railway Board's Circular dated 16.11.1984 on cadre review and restructuring of group 'C' and 'D' staff. In Para 5.1 of this Circular, it is provided that 'if an individual railway servant becomes due for promotion to only one grade above the grade of the posts held by him, at present, on a regular basis, and such higher grade post is classified as a 'Selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection, will be based only on scrutiny of service records without holding any written and/or viva voce test. Under this procedure, the categorisation 'Outstanding' will not exist'. On the basis of this provision, it is contended by the learned counsel for the applicant that no trade test was required to be conducted and promotion to the next higher post was to be given on scrutiny of service records only. This Circular dated 16.11.1984 also indicates in Annexure the categories of Group 'C' and 'D' where re-structuring has been ordered. It is seen from the Annexure of this circular that department of Train Lighting is not included in this annexure. As such, it cannot be said that this circular dated 16.11.1984 would apply to the cadres of Train Lighting department. The learned counsel for the respondents on the other hand, has brought to our notice Railway Board's Circular dated 10.7.1985 on the subject 're-classification of Artisan Staff in the Railway - Relief to unskilled, semi-skilled and skilled categories'. This Circular deals with re-structuring of cadres of Artisan staff w.e.f. 1.1.1984. This circular inter alia provides that for the initial allotment of semi-skilled grade to the un-skilled staff, shall be on the basis of seniority-cum-suitability without subjecting the

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eligible staff for any trade test as an one time exception. Thus, the exemption from trade test was only given to the un-skilled staff on their allotment to semi-skilled grade. The applicant, in the instant case, was holding the post of Fitter Grade III. He was not an un-skilled worker. He is seeking upgradation from Fitter Grade III to Fitter Grade II under the re-structuring scheme without passing the trade test. There is no such provision exempting the skilled workmen from the trade test for extending the benefit of upgraded pay scale. Thus, in terms of Circular dated 10.7.1995, the applicant is not entitled to exemption from trade test for the purpose of his promotion to the post of Fitter Grade II and as has been already mentioned, the applicant has failed in the trade test held for the post of Fitter Grade II. Thus, the applicant cannot be extended the benefit of promotion under the re-structuring scheme.



4. The respondents have also pointed out that the application is barred by limitation and, therefore, cannot be entertained. The re-structuring scheme came in the year 1984-1985 and it was to be implemented from 1.1.1984. The applicant retired voluntarily w.e.f. 30.11.1987 and he did not raise this issue during his service period from 1984 to 1987. Even after ^{when} his case of suspension was settled in the year 1994, he did not raise this issue. He has for the first time, approached the respondent-department with the representation in the year 1999, after 15 years the grievance arose to him and he has approached this Tribunal in the year 2001. Thus, the case suffer from laches and delays. The applicant has all along been sleeping over his rights and the law cannot come to rescue of such a person. In this view of the matter, this application can be dismissed on this count alone.

5. We have discussed the merits of the case also and find that the applicant is not entitled to promotion under the re-structuring scheme without passing the trade test. We, therefore, do not find any merit in this application and accordingly dismiss the same with no order as to costs.

Gopal Singh
(Gopal Singh)
Adm.Member

O.P. Garg
(Justice O.P.Garg)
Vice Chairman

Rec'd CM
Received 2/4/2
Rec'd
2/4/2

Part II and III destroyed
in presence on 2/4/2
under the supervision of
Section Officer () as per
order dated 1/4/2
Section Officer (Records)