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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

Original Application No.93/2003

Date of decision: 9th March '05

CORAM:

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

HON'BLE MR. M K MISRA. ADM. MEMBER.

Maher Singh, S/o Sheri Madam Singh, b/c Bend (SC) Aged 48 years r/o G-Sector, Agama Colony Partap Nagar, Jodhpur, at present posted as Tool Hardener, Technical Gr. 2nd Shop No. 19, Loco Workshop N.W. Railway, Jodhpur.

: Applicant

Mr. D.S. Thind: Counsel for the applicant

VERSUS



1. Union of India through the General Manager, N.W. Railway, Head Office, Jaipur.
2. Deputy Chief Mechanical Engineer, Office North West Railway Workshop Jodhpur.
3. Mukesh Chand S/o Shri Naraindas, T.N. 6057 at present posted as Technical Gr. Ist, (Tool Hardener) Shop No. 19, Loco workshop, N.W. Railway Jodhpur.

: Respondents.

Mr. Kamal Dave: Counsel for the respondents 1 & 2

Mr. Vijay Mehta: Counsel for the respondent No. 3

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri Mehar Singh has primarily questioned the validity of order dated 31.03.2003 (Annex. A/1), vide which the respondent No. 3 has been promoted. The applicant has further claimed that he may be promoted to the post of Tech. Gr. I Tool Hardener

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from the date similarly situated persons was promoted and be given seniority over respondent No. 3.

2. We have heard the learned counsel for the parties at a great length and have perused the pleadings and records of this case.

3. The factual background of this case reveals that the applicant was initially appointed as Group D employee on 06.12.1973. He enjoyed his next promotion to the post of Hammer Man with effect from 14.05.82. The applicant was further promoted as Gr. II Tool Hardener with effect from 11.11.92.

4. The further facts of the case are that the respondents No. 3

Shri Mukesh Chand was initially appointed in Group 'D' on 20.03.76 and was promoted to the post of Hammer Man on 26.05.82. The applicant is thus senior to respondents No. 3 in every respect in as much as he is elder in age to that of respondent no. 3. The respondent no. 3 was promoted to Gr. II Spring Smith with effect from 15.07.92. The applicant submitted his refusal to undertake the trade test for the post of Spring Smith Gr. II whereas the respondent No. 3 under took the trade test and enjoyed promotion with effect from 15.07.92, which is said to have resulted in change in the seniority position i.e. the position of the applicant was lowered in the seniority list. Thereafter the respondent no. 3 has been further promoted to the post of Tech. Gr. I Tool Hardener on 31.03.2003. The applicant made a representation on 28.01.2003, to the



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authorities requesting for his promotion on the post of Tool Hardener Gr. I, since he was the only person available on the feeder post, but no response was the result. The Original Application has been filed on multiple grounds mentioned in para 5 and its sub-paras.

5. The respondents have contested the case and resisted the claim of the applicant. Separate replies have been filed on behalf of the official respondents as well as by respondent No. 3. The official respondents have also filed an additional affidavit for furnishing additional information as was directed by this Bench of the Tribunal. The reply filed on behalf of the official respondents contains brief history as well as factual aspects of the case. A reference has been made to O.A. No29/97, which was filed by four individuals including the respondent No.3, regarding the fixation of their seniority on the post of Spring Smith, which came to be upheld by the Hon'ble High Court of Rajasthan at Jodhpur. Certain preliminary objections have been made which are inter mixed with the factual aspect of the matter as narrated in the reply to the facts. It has been averred that the post of Spring Smith Gr. II & Tech Gr. II became available to the applicant, but he refused for the same and on the basis of option of the respondent No. 3, the same was filled in by promoting the later. The seniority list at Annex. A/3 denotes the seniority list of Tool Hardener and the same has no relevance to the other trades. Shri Mukesh Chand got the higher seniority position and was rightly promoted to Tech Gr. I Tool Hardener in view of his



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date of entry with effect from 15.07.92. and that of the applicant as 11.11.92 on the feeder post. The grounds raised in the O.A have generally been denied. Certain preliminary objections have been raised on behalf of respondent No. 3. It has been averred that the applicant was promoted to the post of Tool Hardener Gr. II as per his option; when he was asked to appear in the trade test for the post of Spring Smith Gr. II he refused the same and the respondent no. 3 got a chance to appear in the same and he passed and enjoyed his promotion from a much earlier date than the applicant. The applicant has based his claim on the basis of seniority of cognate trade and the post of Spring Smith and Tool Hardener forming separate cadres. The applicant being junior to the replying respondent, he has no right for promotion in preference to respondent No. 3.

6. A short rejoinder has been filed almost reiterating the facts and grounds raised in the O.A. and countering the grounds advanced set out in the reply. In the additional affidavit filed on behalf of the official respondents, it has been submitted that the avenues of promotion to respondent No.3 was in respect of isolated post for which no regular channel has been provided anywhere in the rules. In order to overcome the difficulties, the avenue of promotion was prepared in consultation with the recognised trade unions and such consultation is valid in the Railways. P.S. No. 2533 provides for amalgamation of seniority. The applicant in the O.A has not controverted the avenue of promotion. In fact the applicant is praying the benefit of very

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channel of promotion and the channel of promotion has not been questioned. Similar controversy in respect of seniority for the same post was raised in O.A. NO. 29/97, which came to be allowed by the Hon'ble Tribunal, where the avenue of promotion was exactly the same. After considering the controversy the W.P. Filed by private respondent came to be rejected.

7. The learned counsel representing all the contesting parties have reiterated the facts and grounds based in their respective pleadings as noticed above. The learned counsel for the applicant has submitted that once the applicant has opted for promotion in the cadre of Tool Hardener, he ought to have been considered against the same cadre. On the other hand, the respondent No. 3 had opted for Spring Smith cadre and therefore he ought not to have been promoted to the higher post of Tool Hardener category in preference to the applicant. The learned counsel for the official respondents invited our attention to Annex. R/2 and submitted that the said chart indicates the avenue of promotion and as per the avenue of promotion, the respondent No. 3 came to be promoted in the grade of Rs. 1200-1800 much earlier to the applicant and he scored a march over the applicant on seniority in the feeder grade and promotion to the next higher post in H Sk Gr. I Tool Hardener. The learned counsel for the respondents has submitted that Annex. R.2 is only a channel of promotion. However, he has also endeavoured to persuade us that the channel of promotion is not in dispute and also the applicant has not prayed for promotion on the basis



of any other channel of promotion. He has contended that the applicant does not have any case for indulgence of this Tribunal.

8. The learned counsel for the respondent No. 3 has almost repeated the facts and grounds as raised in the reply. It has been submitted that once the applicant has refused to go to Spring Smith trade by promotion he cannot claim seniority over respondent No. 3 who enjoyed the said promotion from a much earlier date.

9. We have considered the rival submissions put forth by the learned counsel for the parties. As far as the factual aspect of the matter is concerned, there is hardly any dispute. It is true that the applicant was senior to respondent no. 3 on the post of Hammer Man. It is also true that options were called for undertaking the trade test for the post of Tech. Gr. II Spring Smith. The applicant had refused and the 3rd respondent had accepted to undertake the trade test, whereby respondent No. 3 came to be promoted on 15.07.92 on passing the same. On the other hand when the post of Tool Hardener Gr. II became available the applicant opted for the same post and passed the trade test and enjoyed his promotion with effect from 11.11.92. Subsequently respondent No. 3 has been promoted to the post of Tech Gr. I Tool Hardener by the impugned order dated 31.03.2003, which is under challenge in this O.A.

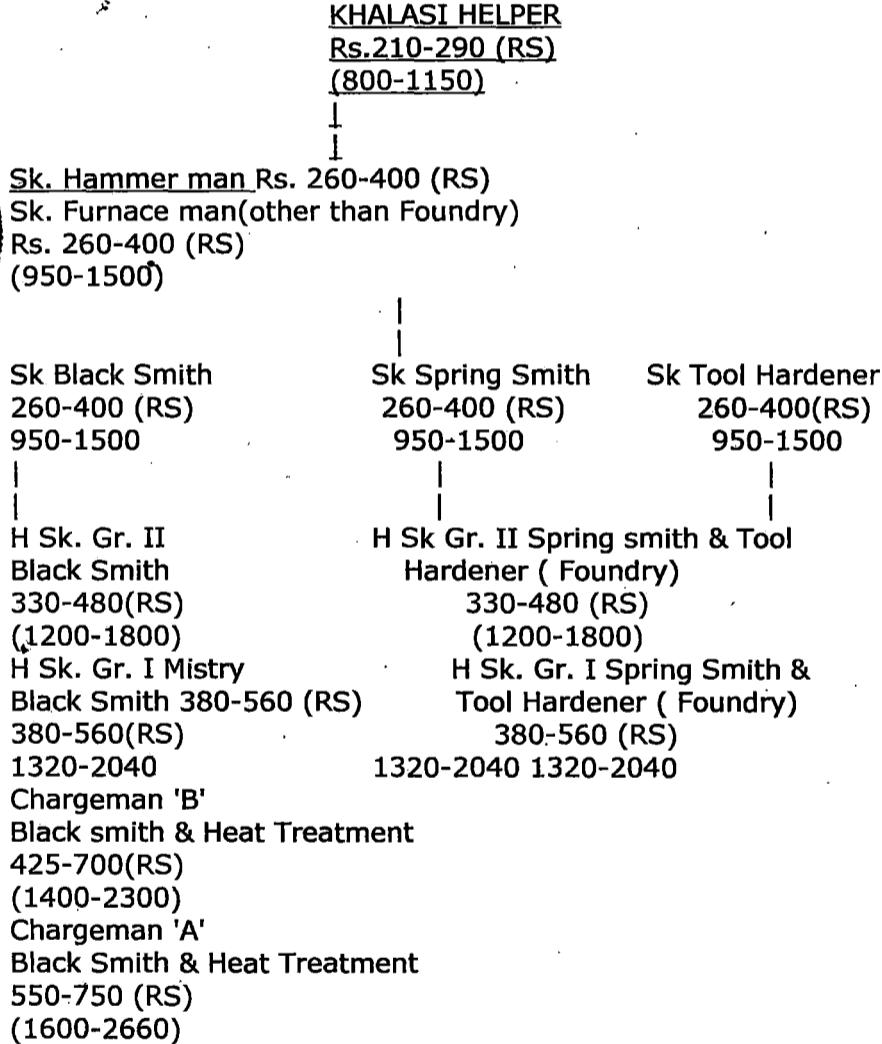
10. We have strived hard to gather information as regards the channel of promotion for the post of Tech. Spring Smith, Tech

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Tool Hardener and as to whether they are combined cadre or to be filled by option or in any other manner. Unfortunately, the official respondents have not been able to furnish the required avenue/channel of promotion. They have, however, laid down great emphasis on Anne. R/2 and have submitted that this is the only avenue of promotion. To appreciate the controversy the contents of Annex. R/2 is reproduced hereunder:

CHART SHOWING AVENUE OF PROMOTION
(FROM 01.01.73 III Pay Commission)
Khalasi Rs. 196-232 (RS)

(Rs. 750-940 from 01.01.86 IV PAY COMMISSION



Sd/-
Dy. CME(W)
N. Rly.
Jodhpur

Sd/-
Secy. NRMU
W/Shop Branch
Jodhpur

Sd/-
Secy. ORMU
W/Shop Branch
Jodhpur

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11. A perusal of the aforesaid indicates that it is styled as a chart showing the avenue of promotion and prepared by Dy. CME and Secy NRMU and Secy ORMU Jodhpur. The important question for consideration is whether the same could be construed as a channel of promotion and if the same is the channel of promotion, whether the denial of promotion to the applicant could be stated to be in order.

12. Before examining the aforesaid question, we may point out that the learned counsel for the official respondents had laid emphasis that the aforesaid is the channel of promotion and the applicant does not dispute the same. He has also submitted that there is no controversy as regards the channel of promotion, in other words, his contention is that there is no need to examine the same. We respectfully agree to differ. We may have to render our findings whether Annex. R/2 is a valid rule or not and would it become an authority and unquestionable since the applicant has agreed to it. Annex. R/2 is the basic document on which the whole case hinges. One is entitled to get promotion as per his avenue of promotion alone and not in any other way. The same could not also be construed as a recruitment rule, since recruitment could be made by direct recruitment method and/or by promotion. Recruitment Rules have to be framed by competent authorities. We find that competent authorities to frame the recruitment rules are given in para 123 and 124 of the Indian Railway Establishment Code vol. I which reads as under:



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" 123. The Railway Board have full powers to make rules of general application to Group C and Group D railway servants under their control.

124. The General Managers of Indian Railways have full powers to make with regard to Railway servants in Group C and D under their control provided they are not in consistent with any made by the President or the Ministry of Railways.

13. Perusal of the aforesaid provisions would reveal that it is either the Railway Board or the General Manager who has been given power to frame rules of general application in respect of non-gazetted railway servants. Annex. R/2 is simply a chart that has been prepared under the signature of one of the subordinate authorities and two of the representatives of the trade unions, who have absolutely no power to frame any rules. Thus by no stretch of imagination, Annex. R/2 could be construed to be a valid rule. Consultation with consultative machinery is one thing and framing of the recruitment rules is another thing. It may also be expedient to point out that the General Manager himself has been delegated with the powers to frame the recruitment rules and he is not competent to delegate his powers further to any of his subordinates and as per the doctrine of delegation of powers, the delegatee cannot further delegate his powers to any of his subordinates. Applying the said proposition it would be safe to conclude that there is no common avenue of promotion like Annex. R/2 in respect of the posts of Spring Smith and Tool Hardener. We may also notice that Annex. R/2 does not contain even a covering letter as to when it was issued and who has issued and since when it is effective.



14. Now adverting to the next question, that when once there is no common channel of promotion in respect of Spring Smith, Tool Hardener what course of action should be adopted. We have a reasonable doubt as to how the question of option comes when the term option does not find a place in the so-called avenue of promotion i.e. Annex. R/2. However, the applicant being Tool Hardener his channel of promotion would be in Tool Hardener cadre on higher post and no other view could be stated to be justified. If that be so, the applicant's contention shall have to be accepted and concurred.



15. We have perused the various circulars especially P.S. NO. 2533 and the judgement passed in O.A. NO. 29/97, which was affirmed by the Hon'ble High Court of Rajasthan. The same have no application to the instant case since the facts involved in the said case are dissimilar and distinguishable in as much as the controversy involved in the instant case was neither raised nor discussed in that case. The question of channel of promotion was not in dispute. In this view of the matter the same is of no help to the respondents and therefore the action of the respondents can safely be construed as arbitrary, illegal and unjust.

16. In the result, we find that the O.A has ample substance and merits acceptance, which we do order accordingly. The impugned order dated 31.03.2003 (Annex. A/1) is hereby quashed. The respondents are directed to consider the candidature of the applicant for promotion to the post of Tech.

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Gr. I Tool Hardener, on the post on which respondent No. 3 has been promoted and in case the applicant is found suitable he shall be promoted from the date on which Mukesh Chand Respondent No. 3 was promoted with all consequential benefits except monetary benefits. This order shall be complied with within a period of two months from the date of receipt of a copy of this order. The parties are directed to bear their own costs.




(M K Misra)

Administrative Member



(J K Kaushik)

Judicial Member.

Jsv.

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mail
Supt 11/3/05

Rec'd
Supt
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Part ~~and~~ III destroyed
in my presence on 8/1/14
under the supervision of
section officer 18112113
order dated 18/12/13

Section officer (Recd)

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