

X/6

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 329/2011 with MA No.137/2011

Jodhpur, this the 5th day of September, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judl. Member
Hon'ble Ms. Meenakshi Hooja, Adm. Member

Surajdeen s/o Shri Gayadeen, aged about 65 years r/o House No.13/28, D Sector, in front of Dhannavanshi Swami Hostel, Rameshwar Nagar, Basni First Phase, Jodhpur, last employed on the post of Technician-I/Fitter-I under Section Engineer (Works)-B (Erstwhile IOW (Works-B), Jodhpur, NW Rly.

.....Applicant

Mr. J.K. Mishra, counsel for applicant

Versus

1. Union of India through General Manager, HQ Office, North Western Railway, Malviya Nagar, New Jawahar Circle, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Sr. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.

.....Respondents

Mr. Girish Sankhala, counsel for respondents

+ 7

3/5

ORDER (Oral)

Heard on the Misc. Application No.137/2011 for condonation of delay in filing the OA. In view of the averments made in the MA and in the interest of justice, the MA is allowed and the delay in filing the present OA is condoned.

2. In the present application, the applicant has challenged the impugned order dated 29.5.1008 (Ann.A/1) by which candidature of the applicant for promotion to the post of Junior Engineer (Works) has not been considered by the respondent department.

3. Brief facts, as brought by the applicant, are that the applicant was initially appointed as Rest House Attendant cum Chowkidar on 29.9.1972. He was further promoted on the post of Fitter-III, II and I w.e.f. 29.8.1983, 1.3.1993 and 16.6.1995 respectively and retired from the post of Technician-I (Fitter-I) on 30.6.2006 and accordingly paid the retiral benefits. It is further stated that there was a restructuring of the cadre w.e.f. 1.11.2003 and applicant's junior Shri Pritam Singh was granted benefit of restructuring by modified selection and was promoted from the post of Supervisor to Junior Engineer but candidature of the applicant was not considered by the respondents. The applicant submitted representation and the same was rejected by the respondents vide letter dated 29.5.2008 intimating that applications were called from eligible persons for promotion to the post of HS-I to Supervisor (Works) and only Shri Pritam Singh has submitted application and therefore, he was rightly promoted. After making representation when the applicant received

2

no favourable response from the respondents, he has filed the present OA praying for the following reliefs:-

- (i) That impugned order dt. 29.5.2008 (Annexure A-1) may be declared illegal and the same may be quashed. The respondents may be directed to consider the candidature of the applicant for promotion to the post of Junior Engineer (Works) at par with his next junior and allow all consequential benefits including arrears of difference of pay, revision of pensionary benefits etc. along with market rate of interest.
- (ii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded."

4. The respondents by way of reply contended that the applicant was not eligible for promotion to the post of Junior Engineer-II (JE-II) as he was not a Supervisor which is the basic requirement for promotion as JE-II. Further, there was no discrimination on the part of the respondents as the applicant did not apply for promotion to the post of Supervisor and, moreover, he never raised any grievance of not being promoted as Supervisor. According to the respondents, there has been no secret action of the respondents in giving promotion to Shri Pritam Singh as he was the only one who applied pursuant to the letter which was given wide publicity. Merely making allegations on the higher authorities without impleading them as party respondents, the applicant cannot get relief. The respondents have also stated that there is a clear speaking order of rejection wherein it has been clearly mentioned that the applicant never applied for promotion to the post of Supervisor.

79

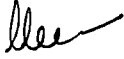
5. By way of rejoinder, the applicant has reiterated the same facts as averred in the OA.

6. We have heard the learned counsel for the parties and perused the material available on record. The claim of the applicant is that he should have been considered for promotion to the post of JE-II at par with his junior. The respondents by annexing letter dated 4/5.12.2001 (Ann.R/1) contended that wide publicity was given and more than 20 days were given to the candidates to apply for the post of Supervisor, but only one candidate Shri Pritam Singh applied and he was promoted. The applicant was not eligible for promotion to the post of JE-II as he has not applied and thus was not holding the post of Supervisor, which is the basic requirement for promotion to the post of JE-II.

7. In the above facts and circumstance of the case, when the applicant was not holding the post of Supervisor which is the basic requirement for promotion to the post of JE-II, he cannot claim promotion to the post of JE-II. After perusal of Ann.R/1, it reveals that letter for calling application was issued on 4/5.12.2001 with the last date of receiving the application upto 28.12.2001 and therefore, more than 20 days time was given to the candidates. Pursuant to the above letter, the applicant has not applied and therefore, was not considered for promotion to the post of Supervisor which the basic required for promotion to the post of JE-II. Therefore, in our view, the applicant has no claim for getting any relief.

2

8. Accordingly, the OA being devoid of merit fails and the same is hereby dismissed with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member