

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 92 of 2007

Order Reserved on 26.03.2014

Order Pronounced on 10-04-2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Bhagwati aged about 59 years 07 months son of late working as H.S. Carpenter Grade-I under the respondent and resident of C/o Senior Section Engineer (Works) N. E. Rly, Aishbagh, Lucknow.

Applicant

By Advocate Sri A. C. Mishra.

Versus

1. Union of India through General Manager, North Eastern Railway, Headquarter Office, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway Ashok Marg, Lucknow.
3. Nand Kishore, Master Crafts Man C/o Senior Section Engineers, NE. Rly, Aishbagh, Lucknow.

Respondents

By Advocate Sri B. B. Tripathi.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following relief(s):-

- “1. That the Hon'ble Tribunal may graciously be pleased to direct the respondent No. 2 to examine/test the applicant at once and if found suitable for the said post of master craftsman he may be prompted against the existing vacancy for preferably under Senior Section Engineer (Works)/Aish Bagh, on the said post of master craftsman.
2. That the Hon'ble Tribunal may further be pleased to direct the respondent No. 2 to promote the applicant within the time fixed by the Hon'ble Tribunal as he is going to retire only after five months on 31.7.2007, even after reverting Respondent No. 3, if there is no vacancy.
3. Any other relief as deem fit in the eye of the Hon'ble Tribunal may kindly also be allowed with cost.”

2. The brief facts of the case are that the applicant joined the respondents organization and subsequently, promoted as HS Carpenter Grade-II in 1991. After working substantial period of time, he opted for promotion to the post MCM in July 2005 itself, he was not allowed to appear in the examination for the post of Craftsman. Thereafter, the applicant superannuated on 31.7.2007 after attaining the age of superannuation.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was indicted that there were 3 general posts of Carpenter (MCM) in the pay scale of Rs. 5000-8000 and three candidates namely Shri Raghubeer, Jayanti and Nand Kishore were called on the basis of seniority, the applicant being junior was also included in it and was ordered to be ready for the selection but the first three candidates were found suitable as the applicant was not called therefore, not calling the applicant for selection for the post of Carpenter (MCM) is not unjustified. This was done in July, 2005 and subsequently, there was only one post of Carpenter (MCM) in pay scale of Rs. 5000-8000 vacant which was reserved for S.T. candidate and there was no rule for de-reserving S.T. post to General as such, the candidature of the applicant was not considered. By stating this fact, the learned counsel for the respondents has categorically pointed out that there is no illegality in not calling the applicant for the selection.

4. The applicant has filed rejoinder affidavit and through rejoinder, mostly the averments made in the O.A. are reiterated.

5. The learned counsel for the respondents have also filed the supplementary counter reply and through supplementary counter reply, it is indicated by the respondents that the R.B. E. No. 114/97 this provides that the post reserved for SC/ST should not be de-reserved and should be carried forward as per extent rules.

6. The learned counsel for the applicant filed supplementary rejoinder and through supplementary rejoinder, the averments made in

the O.A., once again reiterated and the averments made in the supplementary counter reply are denied.

7. Heard the learned counsel for the parties and perused the record.

8. Admittedly, the applicant was initially appointed in the respondents organization and subsequently given promotion. He has also opted for promotion to the post of (MCM) Carpenter. The selection was held in the year 2005 and as per the said selection, there were three general posts of Carpenter (MCM) and according to the seniority, the first three senior most persons were considered and selected as such, the name of the applicant was not found suitable. Again, the selection took place for one post of Carpenter (MCM) in the pay scale of Rs. 5000-8000, but same was reserved for S.T. candidates and since there is not rule for dereserving S.T. post to General as such, the candidature of the applicant could not be considered. It is submitted that option does not give a right to the applicant for his name to be considered for promotion. It is also indicated that the application superannuated in July 2007. As per the RBE No. 114/97 dated 21.8.1997, it is provide as under:-

“Post reserved for SC/ST should not be dereserved and should not be carried forward as per extent rules. The reserved posts may also continue to be exchanged between SCs and STs in the 3rd year of carry forward as per extent orders. Thus there may be a situation where a SC may be occupying a post earmarked for STs and vice-versa. When such a situation will arise, the combined reservation shall not exceed more than 22.5%. However, when ever either Scheduled Caste(s) or Scheduled Tribe(s) is/ are occupying post(s) meant for the SCs or STs as case may be, the possibility of filling up of the post by SCs or STs as the case may be, at the earliest opportunity, against a subsequent reserved post may be kept in view.

9. Considering the averments made by the learned counsel for the applicant and also after perusal of the record, it is abundantly clear that the name of the applicant could not be considered for the first time in 2005 as three senior most persons were considered and promoted as there was only three posts of General candidates and subsequently, there was one post of ST candidates and the applicant being General candidate, his name cold not be considered against the ST candidate.

10. Considering the submissions made by the learned counsel for the parties, we do not find any ground to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

vidya