

A3

C.A.No.320/1992

Spl Mukund Tripathi :::::::::: Applicant

Vs.

Union of India & Others. :::::::::: Respondents.

Hon. Mr. Justice C.C. Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. Justice C.C. Srivastava, V.C.)

The applicant was appointed as Khalasi on 9-7-74 and since then he was performing his duties as such. He has passed the Trade Test on 12-7-90. Since then he was given the work of Welder, but he was not regularly posted as welder despite several representations in this behalf.

2. According to the respondents, he has started his service as a substitute fitter and he was appointed as a fitter khelasi, but he was never promoted. There is no denial of the fact that he was assigned the work of welder and he was performing the duty of welder. According to them he was never promoted to the post of welder in the scale of Rs.950-1500 by the competent authority. Loco Foreman/Chargeman was not the competent authority to promote the applicant to the grade of welder in the pay scale of Rs.950-1500, and there was no vacancy. Admittedly the applicant passed the trade test on 12/7/90 and due to non-availability of the post of welder in the pay scale of Rs.950-1500 he could not be promoted against one post of welder which was already transferred.

2. These facts make it clear that notwithstanding the fact that the applicant has passed the Trade Test of welder, and there may not be any regular vacancy as such, but the work of welder was still available and that is why the work of welder was taken from the applicant. The work was taken by a Competent Authority. Even if it is accepted that the work was taken by the incompetent authority, the competent authority did not take any objection or they have not taken any action against the incompetent authority. The work has been taken from the applicant and the salary has not been paid for that particular work. As such it will be hit by the Article 23 of the Constitution of India. As the applicant has passed the Trade Test and he was also doing the work of a welder, he is entitled to the pay in the said grade as a regular welder. Accordingly the respondents are directed to pay the applicant the pay scale and salary of the welder from the date he started performing the duty of the welder within a period of 3 months from the date of communication of this order. No order as to the costs.

Member

(A)

Vice-Chairman

Dated: 31st March, 1993, Lucknow.

(tgk)