

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 316 of 1989

this the 28th day of November, 1996.

HON'BLE MR V.K. SETH, ADMN. MEMBER
HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Jagdish Prasad Tewari, aged about 53 years, S/o
Sro Ram Pati Tewari, R/o Quarter No. II 97-C,
Railway Church Colony, Alambagh, Lucknow.

2. Chunni Lal Vishwakarma, aged about 52 years,
S/o Sri Pearey Lal Vishwakarma, R/o Shukla Bhawan
551 Naya Azad Nagar, Alamnagar, Lucknow.

3. Surya Bali Sonkar, aged about 57 years, S/o
Sri Visheshwar Dayal, C/o Senior Signal Inspector
Northern Railway, Charbagh, Lucknow.

4. Jai Narain Saxena, aged about 53 years, S/o
Sri Babu Ram Saxena, R/o C-1895 Mini LIG,
Rajajipuram, Lucknow.

Applicants

By Advocate : Sri Sharad Bhatnagar,
Sri P.K. Srivastava

Versus

Union of India through the General Manager, N.Rly;
New Delhi.

2. The Divisional Railway Manager, N. Rly; Lucknow.

3. The Senior Divisional Personnel Officer,
N. Rly; Lucknow.

4. Ashfaq Ahmad, at present working Mechanical
Signal Maintainer Grade-I under Chief Signal
Inspector I, N. Rly; Lucknow.

5. Latafat Husain, at present working as
Mechanical Signal Maintainer Grade-I under Chief
Signal Inspector II, N.Rly; Lucknow.

6. S.W. Hussain, at present working as Mechanical Signal Maintainer Grade-I under Chief Signal Inspector-~~I~~ N.Rly; Lucknow.

7. Raj Deo, at present working as Mechanical Signal Maintainer Grade-I under Dy. Chief Signal and Telecom Engineer. N. Rly; Lucknow.

Respondents

By Advocate : Sri Anil Srivastava

O R D E R

D.C. VERMA, MEMBER(J)

The four applicants of this case have claimed seniority above the respondents No. 4 to 7 and benefit under P.S. No. 2709 as was granted to respondent No. 4 Ashfaq Ahmad. The applicants have also claimed quashing of Annexure -7 to the O.A. dated 5/6.6.1989 by which the representation of the applicant No. 2 Chunni Lal for the above relief was rejected by the respondents.

2. By Railway Board's circular dated 15/17.9.64 circulated vide P.S. No. 2709 dated 16.10.1964, it was provided to give relief to the non-gazetted staff whose promotion to the higher grade is some time overlooked due to administrative error, which result in loss of seniority and pay (Annexure-6 to the O.A.)

3. The respondent No. 4 Ashfaq Ahmad and the applicants appeared in the trade test for promotion to MSM Grade-III in the year 1964 but they failed. Ashfaq Ahmad was, however, not relieved by the department to appear in the subsequent trade tests. The applicants, however, ~~all~~ appeared in the tests held prior to 1978.

6. S.W. Hussain, at present working as Mechanical Signal Maintainer Grade-I under Chief Signal Inspector-~~I~~ N.Rly; Lucknow.

7. Raj Deo, at present working as Mechanical Signal Maintainer Grade-I under Dy. Chief Signal and Telecom Engineer. N. Rly; Lucknow.

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After 1964 Ashfaq Ahmad was allowed to appear in the trade test in the year 1978 and cleared the same. In terms of PS No. 2709, it was proposed to grant seniority to Ashfaq Ahmad. To that end, notice dated 4.7.88 (Annexure-1 to the O.A.) was issued and it was proposed to place the name of Ashfaq Ahmad above the name of Sri Sant Kumar and below the name of Jagdish Prasad Bhargave to maintain the original seniority. The applicants' case is that on getting this notice, they represented to the department. However, as per papers on record the representation of the applicant No. 2 namely Chunnil Lal was rejected vide Annexure A-7 to the O.A.

4. The respondents/contested the case merely on two grounds. Firstly, that the applicant No. 4 Jai Narain Saxena alongwith one & another had already filed Writ Petition No. 620/70 before the Lucknow Bench of High Court on the matter of seniority, but the same was rejected vide orders dated 24.11.80 (Annexure C-2 to the Counter affidavit). The learned counsel for the respondents has specifically referred to para quoted below from the judgment of the High Court :

"In the writ petitions, objection has also been taken against the promotion of Latafat Husain, Rajdeo, S.W. Husain and Umrao Singh. These four persons were promoted in 1964. The contention of the petitioners is that these respondents, were though senior to the petitioners, were not qualified at the time of their promotion as they had not fulfilled the qualification relating to the requisite length of experience. We are not however, prepared to entertain this plea because their promotion

to

had taken place in 1964 while these writ petition were filed in 1970. As those promotions were not challenged for a period of six years and as in the meantime these respondents had already acquired experience on the higher post, the petitioners cannot be promoted/urge that the promotion of these respondents should be nullified merely on the ground that at the time when they were promoted in 1964 they had not fulfilled the qualification relating to length of experience. The petitioners themselves were not even eligible for promotion at that time."

5. The second contention of the learned counsel for the respondents is that the promotion was given to the respondent No. 4 to 7 in the year 1964 and hence the present petition which was filed in the year 1989 is not maintainable. Further in view of section 21 (2) of the Administrative Tribunals Act, 1985, as the cause of action had arisen to the applicants three years preceding the date on which the jurisdiction, powers, and authority of the Tribunal became exercisable under this Act, the Tribunal has no jurisdiction to entertain this O.A.

6. On reading the judgment of the High Court, it is clear that the claim of the applicant No. 4 namely Jai Narain Saxena was refused by the High Court on the grounds mentioned in para quoted above, the same issue cannot be now raised before this Tribunal.

7. It is nowhere stated in the O.A. that the respondent No. 4 namely Ashfaq Ahmad was juniors to the applicants. Contrary to this, it is mentioned in para 4.12 of the O.A. that the respondents No. 5 to 7 were junior to the applicants. This indirectly indicates that

Ashfaq Ahmad was senior to the applicants. This further, finds support from the findings of High Court as mentioned in para quoted above.

8. It is also not denied that the applicants were given an opportunity to appear in the trade test held during the years 1965 to 1978. The respondents' contention that Ashfaq Ahmad was not relieved to appear in the trade test after 1965 ~~xxxxxx~~ to 1978 is also not denied. Thus, apparently Ashfaq Ahmad was not to be blamed for not appearing in the trade test held between 1965 to 1978. This has been well termed as administrative lapse as Ashfaq Ahmad was not relieved by the administration during the said period. It is not the case of the applicants that all or any of them were not permitted by the administration to appear in the trade test during the aforesaid period. Thus, the claim of the applicants are not covered within PS No. 2709 and the applicants have been, therefore, rightly refused the benefit of PS No. 2709.

9. As per the relief claimed the benefit of PS No. 2709 has been claimed w.e.f. 1964. The Tribunal came into existence in November, 1985. In view of Section 21 (2) of the A.T. Act. This Tribunal cannot entertain such belated claim.

10. The learned counsel for the applicants has drawn our attention towards para 4.6 of the O.A. and has contended that the respondents No.

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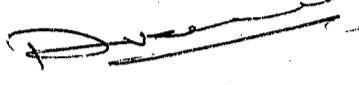
5,6 & 7 had not completed the required period of five years still they were permitted to appear in the trade test for promotion to higher grade. The learned counsel has, therefore, submitted that a discriminatory treatment was given to the applicants. If the applicants were also given such opportunity in earlier years they might have succeeded in their attempt. The contention of the learned counsel is that as ineligible person like the respondent Nos 5 to 7 were called to appear in the trade test held in June 1964, the same benefit was not granted to the applicants of the present O.A.

11. To our mind, the above contention of the learned counsel for the applicant has no merit and is against the principle of law. The Court and Tribunal is to enforce the rule of law. Even if some irregularity or mistake was committed by the respondents in the year 1964, On that basis, the respondents cannot be directed to commit another irregularity or mistake to provide similar benefits to the applicants. ~~The respondents cannot be directed to commit another irregularity or mistake to provide similar benefits to the applicants.~~

12. Besides the above, the promotion of the respondent Nos. 4 to 7 were upheld by the High Court vide its order dated 24.11.88 and that has become final so it cannot be disturbed by this Tribunal.

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13. In view of the discussions made above, none of the applicants can get any relief and the O.A. is liable to be dismissed and is dismissed. No costs.


MEMBER (J)


MEMBER (A)

LUCKNOW : DATED: 28-11-96
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