

CENTRAL ADMINISTRATIVE TRIBUNA LUCKNOW BENCH LUCKNOW

Original Application No. 57/2005

Lucknow this, the 30th day of June, 2008

**HON'BLE MR. SHANKAR PRASAD MEMBER (A)
HON'BLE MR. M. KANTHAIAH, MEMBER (J)**

Hamendra Kumar, aged about 58 years,
S/o Late Chandra Mohan Rai, R/o 6-4, Nawaiya
Ganesh Ganj, IIIrd Lane, Lucknow.

Applicant.

By Advocate: Sri R. C. Saxena.

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Chief Signal & Telecommunication Engineer (Construction) North Eastern Railway, Gorakhpur.
3. Chief Administrative Officer (Construction) North Eastern Railway, Gorakhpur.
4. Divisional Signal & Telecommunication Engineer, North Eastern Railway, Ashok Marg, Lucknow.
5. Divisional Railway Manager (P), N.E. Railway, Ashok Marg, Lucknow.

Respondents.

By Advocate: Sri N.K. Agarwal.

Order

By Hon'ble Mr. Shankar Prasad Member (A):

In this round of litigation the applicant seeks quashing of the order dated 12/13.3.2003 and a direction to respondents to consider his case for promotion at par with his junior Sri P.C. Srivastava or at least with Mr. M.R. Mukherjee ^{and} to cancel his order of repatriation and to regularise his services as a clerk as a special case.

2 (a) The facts lie in a narrow compass. The applicant was absorbed as a Khalasi on 22nd October 1970. He was spared on 8.1.81 to join ^{re an} ^{wing} Construction. He was promoted on ⁸

ad hoc basis as Junior Clerk on 15.1.81 and continued as such till he was repatriated. He ~~preferred to~~ performed O.A. 45/2002 earlier, Para 6 and 7 of the decision are as under:

“6. We have carefully considered the submissions made on behalf of the parties. There is no dispute about the facts that the applicant was sent on deputation to construction division as Khalasi and there he enjoyed promotion before his colleagues in the parent Deptt. Could get promotion. The applicant was continued on deputation for a period of 20 years, the order of repatriation has not been passed on 12.12.2001. As the applicant has served against group C post for about 20 years, considering these facts in our opinion, it will be harsh for the applicant if he is asked to join as Khalasi. He may be accommodated on ad hoc basis against any Group C Post. In the mean time his claim for promotion may be considered.

7. For the reasons stated above, we dispose of this O.A. with the direction to respondent No. 2, 4 and 5 to consider the claim of the applicant for promotion if his juniors have been promoted as stated by the applicant within a period of three months from the date of receipt of this order. During this period applicant shall be accommodated against a Group C post in accordance with rules purely on ad hoc basis on which basis he will not get any right.”

(b) When the orders were not passed during the stipulated period CCP 59/2003 was preferred. During the pendency of the O.A. order dated 12/13.03.2003 was passed. The C.C.P. was rejected stating that legality of the order can be challenged only in a regular proceeding. It is thereafter that the present O.A. has been filed.

3. A perusal of the impugned order 12/13.3.2003 shows the following position.

- (1) the lien of applicant was in Lucknow division, while that of Shri ~~was~~ Srivastava ~~was~~ in Izzat Nagar Division.
- (2) He did not exercise an ~~option~~ for participating in the trade test for the post of ESM/MSM while Sri Mukherjee participated and was successful.
- (3) The ad hoc promotion granted in “construction” can not be regularized

4. The applicant has challenged this order saying that he never received the ~~an for participation in the test.~~ notification to exercise his option. He has also challenged his repatriation to his substantive post in open line.

No rejoinder is filed.

5. The respondents have defended their action.

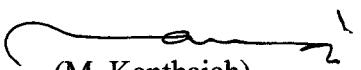
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6. The Apex Court in Inder Pal Yadav and Ors. Vs. U.O.I. and Ors. 2005 (11) SCC

301 has held that a person in construction cannot resist his repatriation to open line.

7. Para 189 of IREM lays down the procedure for filling up 33 1/3% of posts of Clerks/Typists by promotion. Para 174 (b) makes it clear that remaining posts have to be filled by direct recruitment. *In case of Construction* Did the applicant clear similar tests would be the crucial issue. Para 149, 150 of IREM provide that posts of ESM III/ TSM III have to be filled up 50% by promotion and 50% by direct recruitment. Para 183 provides semi skilled artisan/basis man can be promoted provided they have attained the standards prescribed in the relevant trade test.

8. Even though applicant is seeking promotion from the date of promotion of junior nothing is stated about the availability of posts on that day. The so-called junior is not joined. It is well settled that an applicant has to approach the Tribunal before a parallel right is created. The decision in Delhi Rohtas Light Railway Vs. District Board Bhojpur AIR 1993 SC 802 refers. The Apex Court in R.N. Bose Vs. U.O.I. AIR 1970 SC 470 has held that each person is entitled to sit back and consider that his appointment and promotion shall not be set aside. He has also not been impled as a party.

9. In view of the above, there is no merit in the O.A. It is dismissed. No costs.


(M. Kanthaiah)
Member (J) 30.06.2008


(Shankar Prasad)
Member (A)