

Central Administrative Tribunal
Principal Bench: New Delhi.

AT

Regn.No.OA-45/89(L)

Date of Decision: _____

Abdul Habib

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant.

.... Shri R.C.Saxena, Advocate.

For the respondents

.... Shri A.Bhargava, Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Admn.)
Hon'ble Shri J.P.Sharma, Member(Judl.)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant who was painter Grade-I, under District Controller of Stores Northern Railway, Charbagh, Lucknow, moved this application under Section 19 of the Administrative Tribunals' Act No.XIII of 1985, assailing the orders E/91 dated 9.4.1986 (Annexure A-1), 561 E/85 dated 5.8.1988 (Annexure A-2), and order No.E/163 dated 6.8.1988 (Annexure A-3) passed by the Deputy Controller of Stores (Respondent No.2) by which the promotion of the applicant which was made with effect from 1.8.1978 was held to be fortuitous and it was considered on a non-fortuitous upgraded post only with effect from 1.1.1984.

2. The applicant claimed the following reliefs:

"To quash the impugned order dated 9.4.1986, 5.8.88 and 6.8.1988 passed by respondent No.2 adversely affecting applicants seniority and promotion and allow the benefits of upgraded post of Painter Grade I in scale Rs.1320-2040 w.e.f. 1.1.1984 to the applicant treating him as senior to Shri S.K.Bajpai, respondent No.4 and Shri Ram Dularey, Painter Grade I retired from service in 1986, further directing the respondents to pay off the entire arrears of salary and allowances, thus found accrued."

3. The brief facts of the case are that the posts of Painter and Polisher belong to one group of artisan staff and promotion to grade II is made from Grade III of Painter and Polisher after passing a trade test. There were six

posts of Painter and Polisher in Grade III i.e. four of Painter trade and two of Polisher trade. In 1978 there was 45% upgradation of posts in the artisan staff of stores depot. The administration, after considering the views of both the Unions of Railway Employees, it was agreed upon that the distribution of the higher grade posts to the different trades shall be by grouping these trades in six groups. ~~for the purpose of distribution of the higher grade posts.~~ Painters and Polishers constituted one group. Before upgradation in 1978, there were one post of Painter in Grade II and one post of Polisher in Grade I. After the upgradation two posts of Painter Grade II and one post of Grade I became available for allowing benefit of upgradation to the incumbents in the group of Painter/Polisher having total strength of six posts of Painters/Polishers in Grade III.

4. The applicant joined the Railway as Khalasi in June, 1953 and he was promoted after passing trade-test as Painter Grade II with effect from 1.8.1978 by the order dated 18.7.1980 (Annexure-A-7). The respondent No.4, Shri S.K. Bajpai who belongs to Polisher trade, joined the Railway as Khalasi in December, 1953 i.e., after the applicant and he was promoted to the post of Polisher Grade II with effect from 1.4.1983 by the order dated 14.8.1984 (Annexure A-16). There was another Ram Dularey who also belonged to the Painter Trade and has since retired, joined Railway in 1949 as Khalasi, as such being senior to the applicant, was promoted to the grade of Painter Grade II with effect from 10.5.85 by the order dated 7.6.85 (Annexure-A-17), as he failed in the trade-test and become junior to the applicant.

5. The respondents published a seniority list on 1.1.85 showing the name of the applicant above the aforesaid

Ram Dularey of Painter trade and above the name of respondent No.4 Shri S.K. Bajpai of Polisher trade (Annexure-A-18).

6. The case of the applicant is that he was rightly given the benefit of upgradation on the upgraded post of Painter Grade II and in 1987 as Painter Grade I as he was the senior-most incumbent but respondent No.2 acted in a malafide manner and issued order dated 11.9.81 to the applicant to show cause why he be not reverted from Grade II post of Painter as the same is to be allowed to the Polisher trade. However, the matter was finally closed down in the meeting dated 5.3.1983 between the administration and the union representatives and the show cause notice was withdrawn. (Annexure A-20). The respondent No.2 also issued order dated 23.4.1983 withdrawing the show cause notice (Annexure A-21).

7. However, in spite of the above order respondent No.2 by the order dated 12.2.1986 ^(Annexure A-22) informed the applicant that the promotion of the applicant to Grade II would be with effect from 1.1.1984 instead of 1.8.1978. The respondent No.2 further filled the post of Grade II of the Polisher and Painter group by giving promotion to Grade II to the Polisher Trade holder Shri S.K. Bajpai respondent No.4. The benefit of upgraded post of Grade II was also given to Shri Ram Dularey with effect from 1.4.1984 of the Painter trade. Aggrieved by the aforesaid order dated 12.2.1986 the applicant moved an application under Section 19 of the Administrative Tribunals Act, 1985 before the Additional Bench of Allahabad and the ^{of the C.A.T.} said Bench quashed the said order with the direction that the applicant be heard and given an opportunity to explain and represent his case and after hearing him the order be passed. The administration issued a fresh show cause notice on 23.4.1988 on which an order was passed on 5/6th August, 1988

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holding that the promotion to Grade II of the applicant ^{w.e.f.} 1.8.1978 was fortuitous, which had been regularised as non-fortuitous from 1.1.1984 and aggrieved by the order, the present application has been filed.

8. The official respondents contested the application and stated that there was wrong implementation of the upgradation in the case of Polisher trade and wrongly these posts were given to the Painter trade which included in the post of Polisher trade of Grade II. It is stated that the upgradation of 45% posts was allowed from 1.8.78 in the artisan category and Painter and Polisher of different trades were included in one group. The seniority of both Painter and Polisher trade was maintained separately. Of the 45% upgradation, 25% were given to Grade II and 20% to Grade I in the whole group and as such Painter and Polisher Group were allotted one post in Grade I and the other in Grade II. The mistake has been committed by giving both the posts of Grade I and Grade II to the Painter trade and the Polisher trade was ignored. The post of Grade II was given ^{to} the applicant although the same was to be given ^{who} to the Polisher trade. One Ram Dularey was senior to the applicant in Painter trade was skipped over in the seniority as he failed in the trade test.

9. The respondent No. 4 Shri S.K. Bajpai ^{who} was the senior-most in the Polisher trade, made a representation regarding the upgradation of 45% posts and its incorrect implementation putting forward his claim for one of the Grade II post of the group of Painter and Polisher. A show cause notice was given ^{to} the applicant on 11.9.1981 but this was withdrawn as stated above after joint meeting of the Administration and the Union representatives. However, it is further contended that representations from the Polisher trade as well as N.R.M.U Stores branch were ^{not} received.

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against the filling of one Grade II post. in the category of Painter Trade ignoring the rightful claim of the Polisher trade by deviation from the fixed criteria and the rules. The Railway Headquarter had fixed J.C.M./many times but the same could not be held for one reason or the other and the headquarter, therefore, as well as C.O.S. authorised Deputy C.O.S. Alambagh to decide the issue at this level. Deputy C.O.S. Alambagh took the views of both the unions of Railway employees, N.R.M.U. and U.R.M.U. and both the unions were of the opinion that the third post which was given to the Painter Trade by deviation should be allowed to be filled in by the Polisher Trade and the promotion was set right by holding the promotion of the applicant as fortuitous from 1.8.1978 and as non-fortuitous from 1.1.1984. In these meetings the applicant, Abdul Habib as Branch President of N.R.M.U. was present and consented to the minutes of the meeting (Annexure CA-10). As a result of the above, the respondent Shri S.K. Bajpai of the Polisher trade was allowed upgradation in Grade II w.e.f. 1.12.78 and was given proforma fixation from that date when one Mangal of the same Trade retired. The promotion of the applicant was regularised as non-fortuitous w.e.f. 1.1.84 and he was not reverted. A show cause notice was issued to the applicant and after considering the representation the orders were passed on 6.8.1988 as said above. Shri S.K. Bajpai, respondent however, was actually paid for the up-graded Grade II post only from 1.4.1983 which ^{post} was sanctioned by PS-8488. Thus according to the respondents, the applicant has not suffered at all and his case has not gone by default or discrimination and in fact the orders ^{were} passed to correct the mistake which had crept in due to wrong implementation of upgradations in the group of Painter and Polisher. Shri S.K. Bajpai, respondent No.4 also filed a separate

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reply almost stating the same facts as given out in their reply by the official respondents. It is further stated that respondent No.4 made successive representations to the authorities as a result of which he has been given his dues factually from 1.4.1983 though the advantage of upgradation was given in proforma manner from 1.12.1978. The applicant, therefore, has no case.

10. We have heard the learned counsel for the parties at length and have gone through the records of the case. The main grievance of the applicant is that he being senior in the joint seniority of the Painter and Polisher of group artisan, his promotion to Grade II post w.e.f. 1.8.78 be made non-fortuitous. The learned counsel for the applicant based the arguments on the fact that the promotion which was effected in 1978 cannot be reopened after 10 years. It is further contended by the learned counsel that once a show cause notice given in 1981 was withdrawn then the matter cannot be reopened ^{again} to the disadvantage of the applicant by passing the impugned order. Both these contentions have been repelled by the learned counsel for the respondents successfully. From the perusal of the record it is clear that the position before upgradation was as below:

<u>Painter</u>	<u>Polisher</u>
1. Ramjan Ali	Ram Sagar
2. D.D.Rao	Mangal
3. Ram Dularey	S.K.Bajpai (Respdt.No.4)
4. Abdul Habib (applicant)	

It is evident from the record that Ramjan Ali, D.D.Rao and Abdul Habib, all the three in the Painter trade, were given the advantage of upgradation. Ramjan Ali was given a post in Grade I and D.D.Rao and Abdul Habib were given the posts in grade II. While no such post of Grade II

had gone to the polisher trade. What the administration has now done is on retirement of Mangal on 1.12.1978, the advantage of upgradation was given to Shri S.K. Bajpai respondent No. 4 next senior in the polisher trade. The applicant, therefore, should have no grudge because it had already been decided in joint meeting of Union of Railway Employees and the applicant was himself the Branch President of one of the unions. What the administration has done is a correction of a mistake.

11. The Administration on receipt of scheme of 45% upgradation with effect from 1.8.1978 in the artisan category, ^{divided} /all the 11 categories of artisan staff ~~were~~ ^{divided} in six groups and two posts of grade II were kept floating. While allotting the higher grade II post future criteria was laid down to give equal opportunity to all categories which were observed in a memo dated 6.4.1979 (Annexure AC-1). Accordingly, the group consisting of Painter and Polisher ~~was~~ ^{to} given two higher grades posts one in grade I and the other in Grade II. Both the posts were given to Painter trade, ~~grade I~~ ^{to} /Ramjan Ali and Grade II to D.D. Rao. The applicant, Abdul Habib and respondent No. 4 Shri S.K. Bajpai gave a joint application ^{to} on 22.5.80 /the Deputy C.O.S. Alambagh, Lucknow Annexure A-II for correct implementation of 45% upgradation in category of Polisher and Painter. In consequence thereof, a J.C.M. was held between the administration and union representative ^{that} of the applicant and it was decided on June 10, 1980, /the group ^{post} of Polisher and Painter be given one /of Grade II (Annexure A-13) However, this post was given by mistake to the applicant, Abdul Habib who belongs to painter trade while it should have been gone to Shri S.K. Bajpai of the polisher trade and the order dated 13.7.1980 (Annexure A-7) was passed to give promotion to Grade II to the applicant, Abdul Habib w.e.f. 1.8.78. Thus, it is obviously ^{wrong} / implementation of the criteria

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fixed for upgradation in the order dated 6.4.1979 (Annexure AC-1) 12. The administration and N.R.M.U. again held a meeting on 24.7.1981 and the point of distribution of posts of Grade I and Grade II amongst Painter and Polisher trade was taken up and it ^{was} decided in the meeting that junior-most be served with a show cause notice as to why he should not be reverted. (Annexure CA-3). It is in pursuance of this ^{that was} notice issued on 11.9.1981 to the applicant. However, this notice which was issued on 11.9.1981 became ineffective because of the decision of the Tribunal as the applicant was not heard on the show cause notice and the orders were passed by the administration without hearing the applicant in 1986. The Administration has only issued a fresh notice in compliance with the directions of the Tribunal on 23.4.1988 on which the impugned order has been passed. We find that the conclusion arrived at and the order passed by the Administration do not suffer from infirmity because the applicant had been wrongly allotted grade II post by the order of July, 1980 with effect from 1.8.1978 and it should have gone to the polisher trade. Ramjan Ali and D.D. Rao of the Painter trade already having two posts, the third post of polisher trade was wrongly allotted to the applicant. The contention of the learned counsel for the applicant that ^{in the} informal meeting of ^{held} the C.O.S. and U.R.M.U. on 5.3.1983, the show cause notice was withdrawn (Annexure A-20) will ^{have} no effect on the claims of respondent No. 4 Shri S.K. Bajpai. Shri S.K. Bajpai had made a representation on 16.8.1983 after the decision of the above meeting and sent reminders to the same effect on 13.9.1983, 25.10.1983, 5.10.1984, 3.12.1984 (Annexure CA-5 to 8). On the above representation the COS Headquarter had authorised Deputy COS Alambagh to dispose of the matter (Annexure CA-9). The respondents considered the matter after taking the views of both the unions N.R.M.U. and URMU and it was unanimously agreed that the third post of grade II which was given to the Painter trade by deviation should ^{be} allowed to be filled

in by the Polisher trade. Thus what has been done now is to set right the earlier mistake by giving the applicant fortuitous upgradation to Grade II with effect from 1.8.78 and regularising the same on non-fortuitous post from 1.1.1984. ^{should} The applicant ^{has to be} have no grudge as he was himself present and was the branch president of URMU and ^{any} bound by the decision taken jointly in the said meeting (Annexure CA-10). The case of the applicant, therefore, is devoid of ^{any} merit on facts.

13. The contention of the learned counsel for the applicant that once a matter ^{which} was decided and show cause notice in 1981 ~~was~~ withdrawn cannot be ~~reopened~~ has no basis because the applicant himself was a party to various agreements which took place in J.C.M. and administration and both the unions ^{relevant} and the applicant was branch president of N.R.M.U. at the ^{State of} time.

14. In the case of U.P. & Ors. Vs. Sanghar Singh, reported in 1974 SLJ 474, it has been held that the order of reversion does not attract Article 311 of the Constitution. If the order of reversion entails in penal consequences, only then the provisions are attracted.

15. Further reliance has been placed by the respondents on Ravinder Nath Tiwari Vs. Divisional Superintendent of Education and Another, reported in 1979 SLJ page 97, where the Hon'ble High Court of Madhya Pradesh held that even if ~~an~~ employee has been promoted on the basis of wrong seniority list, his subsequent reversion is not reduction in rank.

16. In Gulab Chand Vs. State of Rajasthan reported in 1979 SLJ page 163, Hon'ble High Court of Rajasthan held that if promotion in officiating capacity is made against the rule by mistake and subsequently the order of promotion was revoked after consideration of representation, there is no error of law and order of revocation of promotion is correct. The same view has been taken in the Employer Employees Law Reporter, 1989 Vol.I page 59, Sumant Lal Maena Vs. Union of India by the Allahabad Bench of the Central Administrative

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Tribunal.

17. The learned counsel for the applicant has also referred to certain case-laws but ~~they are~~ not relevant for the decision of the point ~~at~~ issue. The authorities cited by the learned counsel for the applicant are N.G. Prabhu and anr. Vs. Chief Justice and another, reported in 1973 Vol.II SLR 521, where Kerala High Court held that if some posts in a cadre are upgraded, senior officials in the cadre would automatically get higher scale of pay as it is not a case of promotion because the official continued to hold the same post. In the present case it is not disputed that respondent No.4 Shri S.K.Bajpai is the senior most in the Polisher trade and there is a separate seniority list of Painter trade as well as polisher trade though they constituted together one group for the purpose of upgradation. Another authority relied upon by the learned counsel for the applicant is P.S.Kapoor and Ors. Vs. Union of India, reported in 1979 Lucknow Law Journal at page 290. The authority is besides the point because in this cited case the post of Foreman Grade B was only redesignated and upgraded but the post itself was not changed and no selection ^{was} /to be held and the selection so made, therefore, was without authority of law, and struck down.

18. In view of the above discussion it is evident that the impugned order has been passed in accordance with law and the decision taken for correct implementation of the 45% upgradation of posts in the trade of Painter and Polisher under the Deputy C.O.S.Alambagh, Lucknow. The applicant has not at all been discriminated nor any injustice has been done to him and he has enjoyed the monetary benefits of promotion from 1.8.1978 till regularisation from 1.1.1984.

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He has also not been reverted. Shri S.K. Bajpai, respondent No. 4 a Polisher trade has rightly been given the Grade II post in Polisher Trade. The application is devoid of any merit and the same is hereby dismissed with costs on parties.

J.P. Sharma
(J.P. Sharma)
Member (judl.) 16.8.90

P.C. Jain
(P.C. Jain)
Member (Admn.)

Proposed annexed by me.

J.P. Sharma
J.P.

16.8.90.