

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 142 of 1990 (L)

## Versus

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

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. K. Obayya, A.M.)

The applicant who is chargeman Grade 'A' in Locomotive Workshop, Charbagh, Lucknow Northern Railway has filed this application seeking a promotion to the post of Deputy Shop Superintendent on Scale Rs. 2000/- - 3200/- and seniority over respondent no. 4 to 8.

2. The applicant joined service as a Trade apprentice in the year 1959 and was promoted to the post of skilled Welder in the year 1962, thereafter he was further promoted to the post of Chargeman 'B' (Rs. 425-700/-) in the year 1980 and also as Chargeman 'A' (Rs. 550-700/-) on 14.9.1981. However, he was reverted from the post of Chargeman Gr.'A' to the Post of Chargeman 'B' vide order dated 23.9.1984. On his representation the reversion order was quashed. The contention of the applicant is that his promotion to the post of Chargeman 'A' was in a reserved quota by superseding his seniors, who were not fit for promotion because of the record. Further, w.e.f. 1.1.84 and there was restructuring of the cadre by which five posts of Deputy Shop Superintendent( Rs. 700-900/-) were created. Though, he was eligible for consideration

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but his name was not included for consideration while his juniors have been called. His further contention is that respondent no. 5 was given proforma ~~for~~ promotion w.e.f. 4.11.1981 and his seniority over the respondent no. 4 to 8 was a settled issue as ~~he~~ was promoted earlier.

3. The respondents, in their counter-affidavit stated that the applicant was promoted as Chargeman 'A' w.e.f. 1.1.1984 on regular post and that he is 6<sup>th</sup> candidate seniority for consideration for promotion to the post of Deputy Shop Superintendent. The examination scheduled to be held on 30.4.1990 was postponed. It is their case that the applicant was promoted on 14.9.1981 on work charged post on adhoc basis and since that was not over regular post, he can not claim of seniority ~~with~~ others. It is stated that respondent no. 4 Prahalad Gupta was working on regular post while the applicant was on work charged post. Prahalad Gupta was senior to the applicant in the lower grade. The reversion of the applicant was after completion of work on expiry of the sanction of work charged post. In the counter-affidavit, filed by the respondent no. 4 it is stated that the applicant's promotion as charge-man 'B' was irregular as there was only one vacancy in the reserved quota against which 3 candidates were in panel and his promotion was on 21.8.81 as chargeman Grade 'A' while the applicant was promoted <sup>applicant</sup> on 14.9.1981 as such it can not be said that the ~~is~~ senior to him, ~~him~~ in point.

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4. We have heard the counsel of the parties. We have also carefully examined the record. This case raises two issues- that of seniority of the applicant and what flows there from namely, the eligibility for promotion to the higher post. Admittedly the applicant was promoted on 14.9.1981 to the post of charge-man 'A' against reserved quota because the vacancy was at point no.1 and that was the point to the reserved category. There were seniors to the applicant even among schedule caste (N.K. Nasker, Satrughan Lal and Ram Mishan, etc) but though their cases were considered, they were over-looked on the ground that the record was not good and they were not fit for promotion. Thereafter, the applicant continued on the said post till the order of reversion, was issued on 23.9.1984. The contentions of the respondents is that the applicant's promotion was on a worked charge post which continued from time to time and that after the work was over, he was reverted. This does not appear to be a correct position. It is noticed after the promotion of the applicant, there were several representations made by the same his seniors including N.K. Nasker and his seniority position was reviewed and one point of time N.K. Nasker, who was also Schedule Caste candidate, was placed above the applicant. That is how, the applicant was reverted. The reversion order of the applicant was quashed by General Manager. The post of charge-man 'A' was a selection post where seniority cum merit was a criteria. The applicant was promoted because his seniors were considered unfit for promotion. By virtue of his position he became senior over some of his seniors overlooked. The seniority

question of the applicant was reviewed from time to time and every time it was categorically stated that Chandrika Prasad was promoted against the reserved quota, on 14.9.1981 and that prahlad Gupta was promoted, it was as a General Candidate. If the reservation point on 1 was utilised for work-charged ~~it~~ it has not taken away the right of the candidate for promotion against a regular vacancy; and he should have been adjusted against the regular vacancies in which Shri Prahalad Gupta, respondent no. 4 was promoted. The letters dated 17.2.1988, and 21.12.1989 re-iterate the position. The applicant was promoted earlier against point no. 1 in the Roster that the being case, the applicant was entitled for promotion over others Schedule Caste candidates and also General Candidates who were promoted after 13.9.1981. In this view of the matter the order of assigning seniority to the applicant was w.e.f. 1.1.1984 i.e. as a result of restructuring of the cadre is erroneous and the department should assign seniority to the applicant from the date of his initial promotion i.e. 14.9.1981, in Charge man 'A' grade.

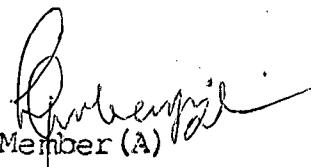
5. So far as the question of the promotion to the next higher post of Deputy Shop Superintendent is concerned vide the order dated 26.4.1990 of the Tribunal by way of interim order; the respondents were directed to consider the case of the applicant and permit him to appear in the selection examination. It was also indicated that <sup>the</sup> result of the selection shall remain subject to the decision of the tribunal.

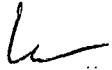
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examination; as he has failed in the written examination this time he has no case for promotion merely on the basis of seniority. The application is allowed in part and under the circumstances, parties to bear their costs.

  
Member (A)

  
Vice-Chairman

Lucknow Dated 7th August, 1992.

(RKA)