

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 25.08.2014.

Pronounced on 9th September

Original Application No.33/2010

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Syed Viqar Hussain, aged about 60 years S/o Syed Shahenshah Hussain R/o 92 Khema-E-Rozan, Mashaganj, District Lucknow.

-Applicant.

By Advocate: Sri Irsad Ali.

Versus.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Senior Divisional Mechanical Engineer, Northern Railway, Diesel Shed, Alambagh, Lucknow.
4. Senior Divisional Personnel Officer, Northern Railway, D.R.M. Office, Hazratganj, Lucknow.

-Respondents.

By Advocate: Sri S. Verma.

ORDER

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

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- (1) *To direct the respondents to pay the arrear of salary from 1.5.1997 to 8.5.2002 at the current rate of bank interest.*
- (2). *To direct the respondents to consider the case of promoting the applicant on the post of Electric Fitter Grade II and Electric Fitter Grade I from the date his juniors have been promoted and to pay all arrears of consequential benefits arising there alongwith current bank rate of interest.*
- (3). *To direct respondents to consider the applicant for promotion on the post of Master Crafts Man from the date his junior is promoted and to fix the pension of the applicant on the said post and to pay the arrears of salary alongwith current bank interest.*
- (4). *To quash the order dated 9.6.2009 passed by respondents no.2 contained in Annexure No.10."*

2. The facts of the case are that the applicant was appointed on the post of Electric Cleaner on 25.05.1966 and was promoted on the post of Electric Fitter on 18.02.1974. He superannuated from the post of Electric Fitter Grade-I on 31.05.2008. The applicant become mentally ill on 21.11.1985 and remained absent from work till he recovered health and gave his joining on 01.05.1997. As the respondents did not taken him back in service, he filed O.A.No.314/2001, which was allowed on 17.07.2001 with the direction the respondents to allow the applicant to join his duties and to pay him salary from the date of joining. It was also provided in the order that the respondents shall complete the departmental proceedings for the period of absence within a period of six months from the date of communication of this order. The applicant was finally allowed to join on 08.05.2002 in the office of Respondent No.3. The disciplinary proceedings, which were initiated in 1993, when he was on sick leave was required to be completed with 6 months as directed in the order passed in O.A.No.314/2001. But, the D&AR proceedings was cancelled by an order dated 31.08.2005. Further, the

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applicant gave various representations for promotion to the post of Electric Fitter Grade II Electric Fitter I on the same date when his juniors Ram Kishan and Paras Nath were promoted. Further, the same Ram Kishan and Paras Nath were promoted as Senior Technician (MCM/DSL (Electric) on 19.12.2006 in the pay scale of Rs.5000-8000. The applicant was promoted as Electric Fitter Grade II on 4.10.2005 and as Electric Fitter Grade I on 20.02.2007.

3. He filed O.A.No.356/2009, which was disposed of by this Tribunal vide order dated 22.10.2008 with a direction to the respondent no.2 to decide the pending representation dated 27.12.2007 of the applicant through a reasoned and speaking order within a period of three months. The respondents passed the impugned order dated 31.08.2005 denying him a). salary for the period 01.05.1997 to 08.05.2002 and b). promotion at par with his juniors have been turned down. Hence this OA.

4. The respondents have refuted the claim of the applicant by filing counter reply stating therein that it is not disputed that the applicant was appointed on the post of Electric Cleaner on 25.5.1966 and was promoted as Electric Fitter on 18.02.1974. The applicant remained absent from duty from 21.07.1985 to 08.05.2002 and disciplinary proceedings was started against him for remaining absent without leave. The applicant filed O.A.No.314/2001, which was decided on 17.7.2001 with a direction to the respondents to allow the applicant to join his duties and to pay him salary from the date of

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joining and to complete disciplinary proceedings within a period of 6 months but the respondents refrained from expressing any view about the long absence from duty. He joined w.e.f. 08.05.2002. As the disciplinary proceedings initiated with the charge sheet of major penalty for unauthorized absence could not be completed, the charge sheet was cancelled by an order dated 31.08.2005 by which the following decisions were taken ".....But, it has come to light that the D&AR proceedings which were required to be completed within a period of 6 months of issue of order have also not been completed. As a result the other D&AR proceedings shown as outstanding against him also stands cancelled and the charges against him are levelled i.e. the charge sheet shown as outstanding against him stands cancelled. But since the employee remained absent for a long time the same needs to be regularized by the competent authority. In terms of Rule 1343 (5) (b) of Establishment Code the period of absence to be treated as LWP."

5. However, it is not disputed by the applicant that he remained out of work for about 17 years. In this interim period persons belonging to his cadre become eligible for various promotions for which they had to pass the requisite Trade Test. As the applicant was not available on duty the benefits of clearing a trade test could not be availed by him. He passed the requisite Trade test for promotion to the post of Electric Fitter Grade II and was promoted w.e.f. 04.10.2005 and as Electric Fitter Grade I on 20.02.2007. In terms of Boards letter dated 05.02.1987 and 22.03.2010, in the Artisan category, an employee must have worked for a period of two years in

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the particular grade/category for promotion to next higher grade/category and this condition was applicable for the applicant also (Annexure -10). As he could not completed 2 years service as Technician Grade-I (Electric Fitter Grade I) in the scale of Rs.4500-7000 prior to his retirement as such he could not be promoted as MCM in the scale of Rs.5000-8000.

6. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

7. We have heard the learned counsel for both the parties and perused the entire material available on record.

8. It is noticed that the applicant in the present OA claimed multiple reliefs in his OA which are not consequential to each other. The O.A. is liable to be dismissed on the ground of plural remedies ad per Rule 10 of CAT (Procedure) Rules, 1987. The first relief is with regard to payment of arrears of salary from 01.05.1997 to 08.05.2002 whereas, the relief no.2 and 3 are with regard to promotion to the post of Electric Fitter Grade-II and Electric Fitter Grade-I from the date his juniors have been promoted and to pay all arrears of consequential benefits and also promotion to the post of Master Crafts Man from the date of his juniors is promoted and to fix the pension of the applicant on the said post and to pay the arrears of salary alongwith interest. In this case, relief no.1 had already been subject matter of relief

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sought in O.A.No.314/2001. It is seen from the order while the applicant was allowed to join duty and the disciplinary proceedings with regard to the long absence of the applicant instituted by charge sheet for major penalty like dismissal was to be separately adjudicated upon. The applicant does not deny that he was absent from duty from 21.07.1985 to 08.05.2002 therefore, under the principle of 'No work no pay' he cannot be given arrears of salary. Moreover the applicant had not challenged the order dated 31.08.2005 by which the DAR proceedings were dropped and the period of absence was treated as leave without pay.

9. With regard to relief no.2 and 3, it is not disputed that prior to being consider the promotion of Electric Fitter Grade-II and Grade-I each person is required to qualify the trade test as also put in minimum 2 years of service in particular post as required in Rules 214 of IREM, which reads as under:-

"214. (a) Non-selection posts will be filled by promotion of the senior most suitable Railway servant Suitability whether an individual or a group of Railway Servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway servant may be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered.

(b) When, in filling of a non-selection post, a senior Railway servant is passed over the authority making the promotion shall record briefly the reason for such supersession.

(c) In respect of promotions to non-selection post, the following principles should be followed :-

*(i) **Staff in the immediate lower grade with a minimum service of 2 years service in that grade will only be eligible for promotion.** The service for this purpose includes service, if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at*


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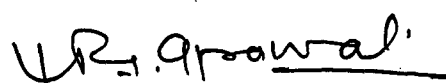
the time of actual promotion and not necessarily at the stage of consideration.

- (ii) *The number of eligible staff called for consideration should be equal to the number of existing vacancies plus those anticipated during the next four months due to normal wastage (i.e. retirement/superannuation), likely acceptance of request for voluntary retirement, staff approved to go on deputation to other units, staff already empanelled for ex-cadre posts, creation of additional posts already sanctioned by the competent authority and due to staff likely to go out on transfer to other Railways/Divisions. However, in the case of promotion by trade test, the vacancies should be calculated on the basis of existing vacancies plus those anticipated to occur during the next four months."*

10. As the applicant had only rejoin the service effectively from 2002 benefit of promotion other than already been given can be given in terms of the said rule.

11. In view of the above, the O.A. is liable to be dismissed and is accordingly dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member-A


(Navneet Kumar)
Member-J

Amit/-