

Central Administrative Tribunal

Patna Bench, Patna

O.A.No.: 627 of 1996.

(Patna, this Thursday, the 30th Day of June, 2004).

C O R A M

Hon'ble Smt. Shyama Dogra, Member (Judicial).

Hon'ble Shri Mantreshwar Jha, Member (Administrative).

Bipat, aged about 55 years, son of Late Ram Das Paswan, resident of village & P.O.: Kamalpur, District Khagaria, presently working under Inspector of Works, N.E.Railway, Thanabihpur, Distt.: Bhagalpur (Bihar) ..... APPLICANT.

By Advocate :- Shri Sudama Pandey.

Vs.

1. The Union of India through General Manager, N.E.Railway, Gorakhpur (U.P.).
2. The Divisional Rail Manager (P), N.E.Railway, Sonpur (Saran).
3. The Divisional Rail Manager (Engg.), N.E.Railway, Sonpur (Saran). .... RESPONDENTS.

By Advocate :- Shri P.K.Verma.

O R D E R  
(ORAL)

Shyama Dogra, Member (J) :- This OA has been preferred for directions to the respondents to pay the applicant the proper scale of pay of Fitter Gr.III (Rs.950-1500/-) and Fitter Gr.II (Rs.1200-1800/-) against the ~~post~~ the applicant had been working and shouldering the higher responsibilities alongwith prayer for payment of all consequential benefits as permissible under law.

2. The applicant, who belongs to Scheduled Caste category, joined the Railway service as a Casual Fitter Khalasi in the year 1959 and was promoted as Fitter ~~Gr.III~~ Gr.III ~~on the scale of~~ Rs.950-1500/- w.e.f. 03.10.1992 and Fitter Gr.II in the scale of Rs.1200-1800/- with immediate effect on 31.08.1993, vide Annexures-5 & 1 respectively. His pay was also re-fixed accordingly vide Annexure-5, dated, the 10th February, 1995, filed with the supplementary rejoinder.

3. The main submission of the applicant is that he had been duly promoted on the said post in the

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aforesaid pay-scales after qualifying the trade test held by the Railways for the purpose as per seniority-cum-suitability and no departmental case whatsoever has ever been pending against him. The applicant has also alleged discrimination for grant of scale of Rs.1200-1800/- quo one J.Chattri who is junior to the applicant but enjoying the said pay-scale of Rs.1200-2040/- w.e.f. 31.08.1994.

4. The respondents have filed written statement and contested the claim of the applicant particularly, on the ground of limitation as well as on the fact that on receipt of one complaint enquiry was conducted when the matter was examined by the Beat Inspector and it was found that the applicant was wrongly given the benefits of promotion as Fitter Gr.III w.e.f. 03.10.1992 and also the Fitter Gr.II due to re-structuring of the cadre. Copy of said report has been placed on record alongwith copy of complaint vide Annexures-R/1 & R/2. So far as the factual position is concerned, the same is not denied by the respondents particularly, to the effect that the applicant has qualified two trade tests held for the purpose of promotion to the post of Fitter Gr.III and Fitter Gr.II in the above referred pay-scales. Main submission of the respondents is that since the applicant got illegal and irregular promotion in higher grades; therefore, the same was not given effect and he has wrongly alleged that he has shoudered higher responsibility of higher grade.

5. So far as the payment of scale of Rs. 1200-2040/- is concerned, it is submitted by the learned counsel for the respondents that there is no such scale and hierarchy of scale revised from time to time is Rs.950-1500/- and thereafter, Rs.1200-1800/-, and, therefore, the claim of the applicant is not genuine on the ground that the said Shri Chattri has also not been made party against whom the discrimination has been alleged by the applicant.

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6. The applicant has filed rejoinder and reiterated his claim mainly on the ground that the complaint (Annexure-R/1) on the basis of which the enquiry was conducted, has been filed by one Shri K.P.Singh who was working as Goods Clerk at Thana Bihpur and was inimical to the applicant due to some quarrel with the family members. It is also pleaded by the applicant that no copy, whatsoever of the said report, has ever been supplied to the applicant. Even the ~~order~~ <sup>order</sup> report of his promotion ~~has~~ <sup>never</sup> been cancelled. Therefore, mere report of the said Beat Inspector cannot dis-entitle the applicant for grant of said pay-scale for the said promotional post on which he had worked for the said period. He has not even been reverted to the lower post to dis-entitle him for grant of the relief as claimed for by him and, therefore, withholding of said claims without hearing the applicant while condemning him unheard amounts to <sup>the principle of</sup> violation of natural justice.

7. It is also submitted by the learned counsel for the applicant that due to such arbitrary action on the part of the respondents the pension of the applicant has been wrongly fixed in the lower scale though he has been retired as Fitter Gr.II which has caused financial hardship to the applicant for no fault of his as it is not the case of the respondents that he has been promoted on some mis-representation or fraud on his part, but the applicant has been promoted after duly qualifying the trade test. Therefore, any fault or irregularity being committed by the Railways cannot be a reason to deny him his genuine claim.

8. We have heard the learned counsel for the parties and carefully gone through the record. After perusal of Annexures-2 & 5, it is amply clear that the applicant has been promoted firstly, to the post of Fitter

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Gr.III in the year 1992 with the scale of Rs.950-1500/- and thereafter, to the post of Fitter Gr.II in the scale of Rs.1200-1800/- w.e.f. 31.08.1993. The respondents have not placed on record any document showing therein that these orders of promotions were recalled or cancelled at any point of time after receipt of report of said Beat Inspector. The present application is not time barred since recurring monetary benefits are involved. Moreover, it is not denied by the respondents that the applicant has got these promotions after duly qualifying the trade test held for the purpose. The only ground being taken by the respondents in the said report dated, the 23rd June, 1995, is that on the basis of some confusing remarks while treating the applicant as semi-skilled artisan he has been allowed to appear in the trade test on 23rd June, 1992, and on declaring him successful he has been promoted to the post of Fitter Gr.II in scale of Rs.950-1500/- and thereafter, further promoted on restructuring on the post of Fitter Gr.II in the scale of Rs.1200-1800/-. Resultantly, the applicant without getting the scale of Rs.800-1150/- qualified these tests for these two posts and promoted thereafter which was irregular, whereas, initially he should have been given these promotions as per his seniority on the basis of his option in any of these specified trades that too after his regular appointment therein.

10. After careful consideration of these reports it is found that the respondents have not placed on record the said confusing report on the basis of which some remark was given in the favour of the applicant which entitled him to appear in the said trade test. Even the respondents have not supplied the copy of the said report or the copy of the enquiry being conducted by the Beat Inspector vide letter dated, the 23rd June, 1995, which is in clear violation of principles of natural justice. Moreover, report of Beat Inspector cannot supersede orders of promotion issued by competent and higher authorities without quashing thereof by some authority.



11.

Moreover, respondents have not placed

on record any document, whereby, the applicant has been either reverted to the post lower to the post of Fitter Gr.II or any order of cancellation of these promotion orders. However, it appears that all these had happened due to some administrative error and not due to some mis-representation or fraud on the part of the applicant. Therefore, the applicant should not suffer for such fault as admittedly he had qualified these tests almost 12 years back and he has since retired while fixing his pension in the lower post to the post of Fitter Gr.III, whereas, he was promoted twice; firstly, on the post of Fitter Gr.III (Rs.950-1500/-) and thereafter, on the post of Fitter Gr.II (Rs.1200-1800/-) and his pension should have been fixed accordingly.

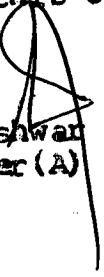
12. It appears that the applicant had shouldered higher responsibility which is clear from the fact that he has got two promotions; one in the year 1992 and another in the year 1993, and had it been not so, the applicant would not have been subsequently promoted to the post of Fitter Gr.II from the post of Fitter Gr.III and order for fixation of his pay had been passed accordingly vide Annexure-5 filed with the supplementary rejoinder, dated, the 10th February, 1995. Therefore, we are of the considered opinion that he is entitled for grant of benefits of these scales from the date of his promotion on the said post for the foregoing reasons.

13. In view of overall analysis of the matter and observations, as made hereinabove, we are of the considered opinion that the applicant has succeeded in substantiating his submission as submitted in the OA. Therefore, the respondents are hereby directed to pass appropriate orders for the payment of these scales to the applicant for the post of Fitter Gr.III (Rs.950-1500/-) w.e.f.

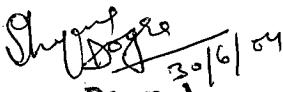
01.10.1992 and Fitter Gr.II (Rs.1200-1800/-) w.e.f. 31.8.93

and to fix his pension accordingly within a period of four months from the date of receipt/production of a copy of this order.

14. With these observations and directions, as above, this OA stands disposed of with no order as to costs.

  
(Mantreshwar Jha)  
Member (A)

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(Shyama Dogra)  
Member (J)