

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 299 OF 2006[Patna, this *Friday*, the *28th* Day of May, 2010]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

HON'BLE MR. SUDHIR KUMAR, MEMBER [ADMN.]

Naqui Ahmad, son of Late Md. Idris, Technician Grade-I, resident of Mohalla
– New Colony West Dharampur, P.S.- Sadar, District – Samastipur.

.....APPLICANTBy Advocate :- Md. Kamran.

Vs.

1. The Union of India through the Chief Rolling Superintendent, East Central Railway at Hajipur.
2. The Chief Works Manager [CWM], Eastern Central Railway, Samastipur.
3. The Assistant Personnel Officer, East Central Railway at Samastipur.
4. Brij Mihari Mishra, Ticket No. 318, son of Kishun Deo Mishra, Technician Grade-I at Samastipur.
5. Girish Chandra Srivastava, Ticket No. 378, Son of Sudarshan Prasad Srivastava, Technician Grade-I at Samastipur.RESPONDENTS.

By Advocate :- Shri B.B.Kumar, ASC.

Shri M.P.Dixit [Respondents No. 4 & 5]


O R D E R

Justice Anwar Ahmad, M[J] :- This OA has been filed by the applicant, Naqui Ahmad, for publishing and declaring his result of MCM, Welder Trade, and for his promotion in the MCM in the pay scale of Rs.5000-8000/-, with the further direction to pay the entire arrears of difference of pay on account of promotion.

2. Learned counsel for the applicant submits that the applicant is a Technician Grade – I. He submits that an advertisement was published from

the Office of the Assistant Administrative Officer [Works], E.C.Railway on 25.04.2005 [Annexure-1] to fill up six vacant seats of Master Craftsman [for short, MCM] out of which three posts were for Carriage & Wagon [C&W] Fitter, one for Revetting trade, one for Painting trade and one for Welding trade. He submits that a test was held on 04.10.2005 in the Office of the DRM, Samastipur. He further submits that six candidates for the aforesaid test, including the applicant as the only candidate for the trade of Welder appeared. He submits that the result of five participants was declared vide Annexure-2 but the result of the applicant was withheld. He submits that he made inquiry and came to know that one B.B.Mishra [respondent no.4] had made representation for his promotion on the ground of seniority.

3. Learned counsel for the applicant further submits that the applicant was initially appointed on 06.02.1981 as a IVth grade workman in Samastipur loco. He was promoted as semi-skilled worker in the year 1983. Thereafter he was selected for absorption in skilled category and was ordered to undergo six months training vide Annexure-3. He was promoted in the grade of skilled workman after declaring successful in the training under order dated 04.02.1985 [Annexure-3/1]. He submits that while the applicant was undergoing training, his two associates, namely, B.B.Mishra and G.C.Srivastava [respondents no.4 & 5] were given adhoc promotion as skilled workman against the post of reserved category for SC/ST under order dated 18.01.1985 [Annexure-4]. He submits that Shri Mishra was given Grade II promotion in the year 1990 on the basis of his adhoc promotion, whereas the applicant was given Grade II promotion in the year 1991. So, the applicant

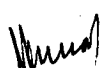


made a representation vide Annexure-5/1, but his representation was not entertained. He submits that the applicant, along with Shri Mishra and others, was given promotion in the Grade I post under letter dated 13.10.1995 and Shri Mishra was shown junior to him in the gradation list of Grade-I vide Annexure-6. He submits that though Shri Mishra was made junior to the applicant, but Mishra was given one increment more than that of the applicant and hence, the applicant submitted a representation.

4. Learned counsel for the applicant further submits that the department published the seniority list of entire workshop employees in the year 2003 in which the name of the applicant figures above Shri B.B.Mishra and the vacancy for the promotion in Senior Technician was published in which the applicant, being senior to Shri Mishra, was selected for test vide Annexure-1. Six candidates had appeared in the test in which the result of five candidates, except that of the applicant, was declared and the result of the applicant was withheld on the ground that Shri Mishra has made representation challenging the seniority.

5. Learned counsel for the applicant submits that Shri B.B.Mishra [respondent no.4] was given adhoc promotion vide Annexure-4 and he was never given regular promotion. He submits that his adhoc promotion was also not proper as the approval of the Railway Board as per the Railway Board's rule was not obtained vide Annexure-B to reply to the written statement.

6. Learned counsel further submits that the applicant was senior to Shri B.B.Mishra [respondent no.4] and in the final seniority list published on 01.04.2003 the applicant was shown senior to Shri Mishra vide Annexure-C



to reply to the written statement. He further submits that the seniority list was again revised and published in the year 2006 and the applicant's name figure at sl.no. 1, whereas the name of Shri Mishra at sl.no.2, i.e., to say that the applicant was declared senior to Shri Mishra vide Annexure-D to reply to the written statement. He, therefore, submits that the result of the test of the applicant should have been published and the applicant be promoted but in instead thereof the respondents issued an order dated 08.03.2007 [Annexure-E to reply to the written statement] in which Shri Mishra was ordered to be shown at sl.no.1 and the applicant at sl.no.2 in the seniority list dated 28.02.2006 [Annexure-D] without giving show cause and giving an opportunity to the applicant to raise objection against the change in seniority. He submits that thereafter the respondents declared Shri Mishra eligible in the test held on 08.04.2008 vide office order no. 63 of 2008, dated 16.04.2008 and thereafter promoted him under office order no. 65/08 dated 06.05.2008. The learned counsel submits that this action on the part of the respondents is arbitrary and not legal, and hence, fit to be quashed and set-aside. The learned counsel, on the basis of the aforesaid submissions, submits that the OA be allowed.

7. Learned counsel for the official respondents submits that, of course, the applicant was made senior to Shri B.B.Mishra [respondent no.4] in the gradation list/seniority list but when the mistake was detected the corrigendum dated 08.03.2007, vide Annexure-E to reply to the written statement was published whereby Shri Mishra was shown senior to the applicant. He, therefore, submits that as Shri Mishra was senior to the



applicant, he [respondent no.4] was given promotion and the applicant was refused promotion.

8. Learned counsel for the private respondents submits that the applicant was all along junior to the private respondents and the respondents got regular promotion and not adhoc promotion after being found successful in the trade list as is evident from Annexure-4. He further submits that the respondent no.4 has not been promoted on the basis of adhoc promotion but on the basis of his regular promotion. He further submits that Annexure-6 is not the seniority list but it is a list of fixation of pay. He, therefore, submits that there is no merit in the OA and the same is fit to be dismissed.

9. From the perusal of Annexure-4 it is quite clear that the private respondents were given adhoc promotion and not regular promotion as contended by the learned counsel for private respondents and hence, his submission is not sustainable. The learned counsel for the private respondents is correct in his submission that Annexure-6 is not the seniority list, rather it is a list of fixation of pay. In this list the name of the applicant is shown above the name of the private respondents and thus, at best an inference can be drawn that the applicant is senior to the private respondents.

10. It is admitted by the learned counsel for the official respondents that the applicant was shown senior in the gradation list/seniority list published in the years 2003 and 2006 vide Annexures-C & D to reply to the written statement. This seniority list was changed by the respondents under order dated 08.03.2007 [Annexure-E to reply to the written statement] by placing respondent no.4 [Shri B.B.Mishra] above the applicant in the seniority


Mishra

list of the year 2006 [Annexure-D] without giving any show cause or opportunity to the applicant to raise objection against the change to be made. This act on the part of the respondents is against the principles of natural justice and violative of all settled rules and norms. So this order is not proper and in accordance with law and hence, it is fit to be set-aside and it is set-aside.

11. The private respondents were given adhoc promotion on 18.01.1985 vide Annexure-4. No chit of paper has been filed on behalf of the official or private respondents to show that the private respondents after adhoc promotion were given regular promotion.

12. Considering the facts and circumstances of the case, rival submissions made and discussion made above, we are of the view that there is merit in the OA and the same is fit to be allowed.

13. In the result, the OA is allowed and the respondents are directed to publish the result of the test of Welder trade held for promotion in senior technician in the scale of Rs.5000-8000/- and in the event of success of the applicant, to promote him with due date and pay all consequential benefits. This exercise is to be completed within three months from the date of receipt/communication of this order. No costs.


[Sudhir Kumar]/M[A]


[Anwar Ahmad]/M[J]