

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 440 OF 2005[Patna, this Wednesday, the 28th Day of May, 2008]C O R A MHON'BLE MR. SHANKAR PRASAD, MEMBER [ADMN.]
HON'BLE MS. SADHNA SRIVASTAVA, MEMBER [JUDL.]

Gore Lall, aged 48 years, son of Late Mobali, resident of Railway Colony, Daulatpur, Railway Quarter No. 723[C] P.O. & P.S.: Jamalpur, District Munger [Bihar].

APPLICANT.By Advocate :- Shri Gautam Bose.

Shri Vikash Jha.

Vs.

1. The Union of India through the General Manager, Eastern Railway, 17, Neta Ji Subhash Road, Kolkata-1.
2. The Divisional Railway Manager, Eastern Railway, Maldah Town, District Maldah Town [West Bengal].
3. The Chief Engineer [Principal Chief Engineer], Eastern Railway, Headquarters Office, Fairley Place, Kolkata-1.
4. The Section Engineer [P.Way], Eastern Railway, Jamalpur.
5. The Assistant Engineer [Line], Eastern Railway, Jamalpur, District Munger.
6. The Sr. Engineer [Buildings], Eastern Railway, Headquarters Office, Kolkata.
7. Ajit Kumar Gaya, son of name not know, at present working as Welder III under P.W.I., Sealdah [West Bengal].
8. Md. M.Alam, son of name not know, at present working as Welder III, P.W.I., Gaya.
9. Sujit Ghosh, son of name not known, at present working as Welder III under P.W.I., Howrah.

RESPONDENTS.By Advocate :- Shri N.K.Sinha, ASC.O R D E RShankar Prasad, M[A] :- Aggrieved by the order dated 01.09.2004 rejecting

his appeal against the promotion order 4/2004, the applicant has preferred the present OA. He seeks the following relief :-

“8.1 The applicant prays that the prayer which has been made in paragraph No.1 of this application be allowed i.e., his services to the post of Welder Grade III be regularised and proforma promotion be given after setting aside the order dated 01.09.2004 issued by the Sr. Engineer [Weldings], Headquarters, Eastern Railway, Kolkata.

8.2 The applicant be given other consequential benefits of fixing correct seniority, refixation of correct pay and also pay already deducted illegally from the salary for the period from March, 2001 to January, 2002 be refunded to the applicant.

8.3 Any other relief or reliefs be given as the applicant may be found entitled to.”

2. [a] The facts lie in a narrow compass. The applicant appears to have been transferred vide Sr. DEN, Maldah [Coord.] Office order dated 02.03.1988 in his capacity as a Welder Khalasi. It appears that applicant was promoted [as per the applicant]/ allowed to work [as per the respondents] as Welder Helper temporarily on an adhoc basis vide order dated 11.01.1990. It is claimed by respondents that this post was a headquarter controlled post. Annexure-A/5 is the seniority list of staff of Site Welding Organisation, etc. dated 17.04.1995 and the name of applicant is at sl.no.28. In terms of Chief Engineer/W/Hqrs. Letter the applicant was reverted to the post of Khalasi Helper in the scale of Rs. 2650-4000, vide order dated 01.03.2001. The Asstt. Engineer [L], Jamalpur has written a letter dated 03.04.2001 [Annexure-A/4] asking the headquarters to promote and post him as Welder Helper in view of his past performance. Orders passed, if any, in this regard are not on record.

[b] Annexure-A/6 is the provisional seniority list of Site Welding Organisation, etc. dated 10.06.2003. Two lists are enclosed namely that of Welder Grinder III in the scale of Rs. 3050-4590 and that of Khalasi Helper in the scale of Rs. 2650-400. The name of applicant appears at sl.no.10 of the latter list.

[c] The respondents issued office order no. 4/2004, dated 28.05.2004 promoting 14 persons including the applicant as Welder Grinder III. The applicant submitted a representation dated 19.07.2004. It was contended that -

[I] He had submitted representation against reversion.

[II] He was not called for the Trade Test on 28.12.2001, which was held immediately after his reversion. He was deliberately declared unsuitable in the trade test held on 24.01.2002 & 15.02.2002. The result was not formally declared.

[III] Four of my juniors have been granted promotion to Welder Grinder. [It appears that one of them Sujit Ghosh was promoted on 01.02.2002 as per seniority list referred to in [b] above].

^{d/w} [i] The impugned order is passed thereafter. It refers to following -

[a] that you were wrongly promoted as it is a headquarter controlled post. The order promoting you was cancelled to impart justice to other persons.

[b] that you had failed in Trade Test organized on 15.02.2002.

[c] that when you cleared the Trade Test in Sept./Nov. 2003, you were promoted.

[d] No further correspondence will be entertained.

[ii] Annexure-A/9 is the order dated 20.12.2004 regarding fixation of pay of applicant. It indicates that he had not submitted any representation against the seniority list.

4. The grievance of the applicant is that he was reverted after 12 years of officiation without putting him to notice resulting in loss of pay. He was failed in Trade Test with malafide intention and juniors were promoted. Rejoinder is filed.

5. The respondents have defended their action.

6. We have heard the learned counsels. ^{d/w}

7. Rule 10 of CAT [Procedure]Rules is a bar to raising multiple causes of action. Consequential relief can be sought for.

8. The relief sought for and the submissions made in the OA make it clear that the applicant is challenging his reversion of March, 2001. It is well settle that repeated representations do not result in condonation of delay [S.S.Rathore Vs. State of M.P.; AIR 1990 SC 10]. There is no Misc. Application for condonation of delay. It is true that respondents have not raised this question. The Apex Court in R.C.Sharma Vs. V.S.Kamal[2000 SCC (L&S) 53] has held that if no Misc.Application for condonation of delay is moved, the OA should not be examined on merits.

9. Coming to the facts, we notice that applicant is at sl.no.28 of the seniority list of 1995. It is undoubtedly a headquarter controlled post. Yet the local official promotes him/permits him to work on adhoc temporary basis. His pay is, however, fixed in the grade of Welder Grinder III. The respondents have referred to this in para 3[v] of their reply. This aspect has not been controverted in ^{A rejoinder} reply.

It is well settled that principles of natural justice are not a straight jacket formula and have to be applied to facts of each case. The Apex Court in AMU Vs. Mansoor Ali Khan [2000 SCC (L&S) 965] has held that where service of notice would have made no difference principles of natural justice are not attracted.

10. The question as to whether the improper fixation of pay in the scale of pay Rs. 950-1500 could be corrected or has been corrected is not raised in the present OA. We refrain from making any comment except that it is always open to administration to correct errors within reasonable time in accordance with law.

11. In view of the above discussions, there is no merit in the OA and it deserves to be dismissed. It is time barred. It is, accordingly, dismissed. No costs.


[Sadhna Srivastava]/M[J]


[Shankar Prasad]/M[A]