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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 670/93 : Date of order 26.4.95

Naseem Beg : Applicant

V/s

Union of India & Others : Respondents.

For the applicant : Mr. R.N. Mathur.

For the respondents : Mr. M. Rafiq

CORAM

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Mr. O.P. Sharma, Member (Administrative)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE)

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri Naseem Beg has prayed that the respondents may be directed to treat the applicant as Mason Grade III w.s.f. 18.10.82 and as entitled to get seniority on the post of Mason Grade III from the aforesaid date or from the earlier date on which he was promoted on the aforesaid post on temporary basis. He has further prayed that the communication of Annexure A-1 dated 17.11.93 and the decision taken in "PNM" meeting may be treated as cancelled. His yet another prayer is that the respondents may be directed to promote the applicant on the post of Mason Grade II under the upgradation scheme, and the respondents may be further directed not to compel the applicant to change his cadre from Mason to CBR.

2. The facts as stated by the applicant are that he was appointed as substitute Khatasi in the Railways in 1974. Thereafter he got promotion to the post of Caneman in December, 1980. Thereafter, he was further promoted to the post of Mason vide the order dated 13.2.82 (Annexure A-2). He passed the trade test for the post of Mason. He was appointed on the post of Mason on substantive basis by order dated 23.10.82 (Annexure A-3) wherein the applicant's name appears at serial no. 17. After occupying the post of Mason vide the order dated 23.10.82, he

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drew the pay of the said post. Pay slip for the month of August, 1988, as an illustration, showing him as holding the post of Mason is at Annexure A-4. He was never informed that he had been reverted from the post of Mason. However, since the designation of the applicant in the service record continued to be to that of Caneman, he applied for changing the designation to that of Mason in the service record. Vide communication dated 23.8.91 (Annexure A-6), the Shop Superintendent, Ajmer, under whom the applicant was posted informed respondent no. 2 that the applicant had been working on the post of Mason vide order dated 23.10.82, but had still been shown in the records as Caneman. The Shop Superintendent, therefore, sought necessary information in this regard. However, in the "FNM" meeting, the respondents came up with a case that the applicant had been demoted from the post of Mason Grade III to that of Caneman on 20.11.83 and that in accordance with the changed avenue of promotion, a Caneman is not entitled to get promotion on the post of Mason, as he is now entitled to get promotion on the post of CBR. (Annexure A-7). Accordingly, communication Annexure A-1 dated 17.11.93 was sent informing inter alia that the applicant ^{that} may seek promotion as CBR. Thereafter verbal order has been issued to relieve the applicant from the post of Mason and pay him the salary of Caneman. The applicant's case is that since he has continued all throughout on the post of Mason and since the communication dated 17.11.93 is the first one indicating that he has been reverted from the post of Mason to that of Caneman, the respondents' action in treating him as reverted to the post of Caneman is wholly unjustified.

3. The respondents in their reply have stated that scale of pay of Caneman and that of Mason is the same, namely, Rs. 950-1500. The applicant was posted as Mason vide the order dated 23.12.82. Subsequently the post was surrendered by the

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appropriate authority by letter dated 20.10.83 and as a consequence of this, the applicant was reverted to his original post of Caneman w.e.f. 23.12.83. Vide Shop Superintendent-28, C & W, Ajmer, letter dated 23.12.83 and was transferred back to his Gang, No. 19/28. A copy of the order dated 22.2.83 by which the post was surrendered, has been presented by the respondents as Annexure P-1. Since the applicant was reposted to the post of Caneman w.e.f. 23.12.83, he cannot seek to challenge an order passed as far as back as 23.12.83. The applicant was also called for the trade test for further promotion from the post of Caneman to CBR on 22.5.87 and 25.1.87 but he refused to appear in the trade test.

4. During the arguments, the learned counsel for the applicant stated that the respondents have neither placed on record any order reverting the applicant from the post of Mason to that of Caneman nor have they presented a copy of the communication dated 23.12.83 sent by the Shop Superintendent (A) C & W, Ajmer, on 23.12.83 showing that the applicant had reported for duty on his original post of Caneman. Therefore, there was nothing on record to show that the applicant had in fact been reverted to the lower post of Caneman at any stage. The learned counsel for the respondents sought further time to present a copy of the document dated 23.12.83 to substantiate the contention that the applicant had been reverted to the post of Caneman in December.

5. We have heard the learned counsel for the parties and have gone through the records.

6. The document presented by the applicant as discussed above show that he was promoted on the post of Mason on regular basis and he continued on the said post all throughout. It was for the respondents to produce the documentary evidence to show that the applicant had in fact been reverted to the post of Caneman and had joined the said post in December, 1983. No

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order of reversion has been presented before us. Even the copy of the communication dated 23.12.83, under which the applicant had been stated to have reported for joining duty as Caneman has not been presented, although a reference to this communication has been made in the reply. If it is the case of the respondents that the applicant had indeed been reverted to the post of Caneman, and that he joined duty on the said post, it was for them to substantiate their case by producing necessary documents. This (the time of hearing) is too late a stage for the respondents to produce any further documents to embellish their case. Since the applicant had no reason to believe that he was working on the post of Caneman, he was justified in refusing to appear in the trade test for the post of CBR. Even Annexure A-6 dated 28.8.91 from the Shop Superintendent, Ajmer, shows that as early as August, 1991, the applicant had been working on the post of Mason. Therefore, the observation in Annexure A-1 dated 17.11.93 that the applicant had been reverted to the lower post of Caneman vide order dated 23.12.83 is not substantiated by record. Even if the post of Mason was surrendered, yet the applicant continued to hold that post for as long as ten years, thereafter. Therefore, the applicant is entitled to hold that post as he has already passed the trade test for the said post. (The application was made on 26.11.93 and an interim order was issued by the Tribunal on 1.12.93 staying the operation of order Annexure A-1)

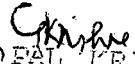
7. In the circumstances, the application is allowed. The respondents are directed to continue the applicant on the post of Mason as if he held the post from the date

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on which he was originally promoted to this post. No order can be given at this stage regarding the further reliefs claimed by the applicant. The OA is disposed of accordingly, with no order as to costs.


(O.P. SHARMA)
MEMBER(A)


(GOPAL KRISHNA)
VICE CHAIRMAN