

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.511/94

Date of order: 15/1/98

1. Raghuvir Singh, S/o Shri Kishore Singh
2. Bal Kishan, S/o Shri Mohan Lal
3. Prem Chand, S/o Shri
4. Manohar Lal, S/o Shri Shiv Nath
5. Kanhiyalal Gaur, S/o Shri Ganeshi Lalji
6. Vijay Kumar, S/o Shri Surender Kumar Gaur
at present working on the post of Trade Fitter Gr.III in O/o
Millwright Shop, Deptt. No.10, Loco, Western Rly, Ajmer Divn, Ajmer.
C/o Kanhiya Lal Gaur, Hathi Bhata, H.No.12/183, Ajmer.

...Applicants.

Vs.

1. The Union of India through General Manager, W.Rly, Churchgate, Mumbai.
2. The Divisional Rly Manager, Western Railway, Ajmer Divn, Ajmer.
3. Deputy Chief Mechanical Engineer, Loco Workshop, W.Rly, Ajmer.
4. Sr. Personnel Officer, W.Rly, Ajmer (Rajasthan).

...Respondents.

Mr.J.K.Kaushik) - Counsel for applicant.

Mr.Shiv Kumar)

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

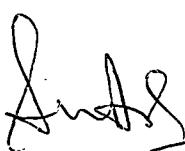
Hon'ble Mr.N.P.Nawani, Administrative Member.

PFR HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicants make a prayer

(i) to quash the impugned order dated 18.2.94 passed by respondent No.2;
(ii) to direct the respondents to assign correct seniority to the applicants in Fitter Gr.III as per law/rules on the basis of passing of trade test with all consequential benefits.

2. Facts of the case as stated by the applicants are that they were trade tested for the post of Skilled Fitter vide letter dated 30.6.83 and were promoted on the post of Skilled Fitter Gr.III vide letter dated 2.6.83 and 19.7.83. But all the applicants were reverted to the post of Khallaesi vide order dated 2.5.88. The same was challenged and the order of reversion was quashed vide the order of the Tribunal dated 20.1.89. Thereafter respondent No.2 issued notice of reversion dated 21.4.89 to the applicants. The applicants filed separate CAs which were disposed of vide order dated 25.11.93. The applicants filed reply to the show cause notice vide representation dated 24.12.93 which was disposed of vide order dated 18.2.94. It is stated that at the time of promotion of the applicants to the post of Skilled Fitter in 1987, there were no semi-skilled post to



pass the trade test, therefore, unskilled Khallasis were allowed to pass the trade test of Skilled Fitter and when the workman passes the trade test of higher post, he is automatically considered to pass the trade test for the lower post. It is stated that the applicants have passed the trade test for the post of Fitter Gr.III on 30.6.83 and they have also been promoted to the said post but they have not assigned any seniority in Fitter Gr.III and the respondents are bent upon to revert the applicants. It is stated that reverting the applicants and not assigning the correct seniority to them on the basis of passing the trade test is illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India and the service conditions of Govt servant cannot be changed arbitrarily in this way with retrospective effect. Therefore, the applicants filed this O.A for the relief as mentioned.

3. Reply was filed. In the reply it is stated that the applicants were promoted to the post of Skilled Fitter temporarily. It is also stated that at the time of promotion to the post of Skilled Fitter in 1983, all Semi-skilled posts were upgraded w.e.f. 1.8.78 and AVC was not decided. Therefore, the applicants were trade tested and promoted on temporary basis. It is further stated that both the Trade Unions have decided on 20.3.85 that the employees who have been promoted directly from Khallasi to Skilled Post will have to make room for their erstwhile seniors or have to face reversion. Therefore, the applicants were asked to appear in the trade test of DIT/AP for giving them proper place in the seniority. The applicants were promoted on temporary basis to the post of Fitter Gr.III, as such seniority cannot be assigned to them. For assigning proper seniority, the applicants were called for trade test of non-skilled post but the applicants refused. Therefore, the show cause notice was issued. Therefore, the applicants are not entitled to any relief sought for.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is an admitted fact that both the Trade Unions have taken a decision in this regard on 20.3.85. Para vi(a) of the joint decision of both these Unions is important which is reproduced as below:

"vi(a) After implementation of the upgradation of semi-skilled posts to skilled Grades w.e.f. 1.8.78 in the month of April '83 and onwards while filling up the post of old skilled trades either left over semi-skilled/Jamadar/Kh.Helper, Gr.210-290 or even Khallasi Gr.196-232 have been called (where left over Semi-skilled/Kh.Helper/Jamadar are not available) and or semi-skilled (New Skilled) Gr.260-400 have not been called the plea that they are in the same grade. Now that the position of new skilled towards old skilled decided, hence erstwhile will have to be interpolated with reference to stand juniors already promoted and in case juniors do have to face reversion so as to make room for their erstwhile .. new skilled."

6. According to this joint decision dated 20.3.85 the employees who have been promoted direct from Khallasi to Skilled Fitter will have to



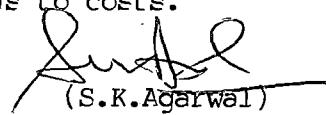
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make room for those who are senior to them and are working as DIT/AP (NSK). In view of this the applicants who were directly promoted from Khallasi to Skilled Fitter cannot claim seniority over the then DIT/AP who are senior to them in feeding category (Khallasi) and promoted earlier than the applicants to the post of Semi-skilled Fitter upgraded to the new Skilled Post as the applicants were promoted to Fitter Gr.III on temporary basis, therefore, seniority cannot be assigned to them and to assign proper seniority, applicants have to undergo trade test of non-skilled post for which the applicants have been called and they have refused. The joint decision taken by both the Unions on 20.3.85 which is to be implemented w.e.f. 1.4.83 has not been challenged in this O.A. We do not find any basis/ground to quash the letter dated 18.2.94. Therefore, the applicants have no case and this O.A appears to be devoid of any merit and liable to be dismissed.

7. We, therefore, dismiss this O.A with no order as to costs.


(N.P.Nawani)

Member (A)


(S.K.Agarwal)

Member (J).