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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 15, 9, 2000

OA 78/95

Udai Singh, Painter Grade-III under B.R.I. Agra Fort, W/Rly.

... Applicant

v/s

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Dvl.Rly.Manager, W/Rly, Kota Division, Kota.
3. Sr.Dvl.Mech.Engineer (E), W/Rly, Kota Division, Kota.
4. Shri Jagdish, Painter Grade-I under B.R.I. Agra Fort, W/Rly.

... Respondents

CORAM:

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN

HON'BLE MR. N.P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr. Shiv Kumar

For the Respondents ... Mr. Manish Bhandari

O R D E R

PER HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays that the respondents may be directed to promote the applicant on the posts of Painter Grade-II and Painter Grade-I from the due dates with all consequential benefits including the arrears of difference of pay at par with his juniors.

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2. The contention of the applicant is that he was earlier B.T.M. Painter/Brush Painter w.e.f. 24.1.83 and was confirmed as such vide order dated 4.12.86 and taking his services as BTM Painter/Brush Painter w.e.f. 1983 the applicant should be promoted to the next cadre of Painter Grade-II and Grade-I etc. with effect from the date his juniors have been promoted to the post of Painter Grade-II and Grade-I respectively. The applicant stated that earlier he was reverted from the post of Painter to the post of Mhalasi vide order dated 5.10.88 (filed at Annexure A/2 in this application) and against this order the applicant had preferred OA No.862/92 (470/89) and the said application was allowed by this Tribunal vide order dated 2.3.94 and the order of reversion dated 5.10.88 (Annexure A/1 in OA 862/92 and Annexure A/2 in the present OA) was quashed by this Tribunal by giving the finding that the applicant was serving as Brush Painter with effect from January, 1983 and he could not have been reverted back. The contention of the department in the said OA was that the applicant did not pass the trade test and his promotion was by an incompetent person. This Tribunal did not express any opinion regarding the

applicant's not passing the trade test in that OA. The commission of enquiry has observed that the applicant was working as a Painter/Brush Painter only and he has not been promoted to the post of Painter Grade-II. This post was not considered by this Tribunal at that time.

It is also stated by the applicant that he took the trade test in the year 1991 but his result was withheld vide Annexure A/3 dated 9.10.91 only because the said OA (No.862/92) was pending before this Tribunal. Thereafter the Tribunal has disposed of the said OA vide order dated 2.3.94 (Annexure A/5) but the respondents are not considering his case for promotion to the post of Painter Grade-III at least on the basis of the result declared regarding the trade test held in the year 1991 vide Annexure A/3. The further case of the applicant is that his juniors have been promoted including respondent No.4 (Shri Jagdish) Grade-II and as Painter/Grade-I and not giving promotion to the applicant would be discriminatory and illegal. Therefore, the applicant is entitled to be promoted as against respondent No.4 and ~~as~~ other juniors w.e.f. they were promoted to the post of Painter Grade-II and Painter Grade-I respectively.

3. By filing counter, the respondents have denied the case of the applicant. They have stated that the applicant was holding the post of Khalasi on substantive basis and his promotion as Painter was only on ad hoc basis. They have further stated that the applicant did not pass the required trade test for his regular promotion to the post of Painter Grade-III. In fact the applicant underwent the trade test in the year 1991 and declaration of his result was withheld in view of the pendency of the OA (No.862/92) and after disposal of the said OA the applicant's case has been considered, and Annexure R/1 dated 31-1-96 has been issued and accordingly the applicant has been promoted to the post of Painter Grade-III by according him seniority between Mohd.Yasin and Ramjani in the post of Painter Grade-III. They have also stated that the applicant was a Khalasi belonging to Open Line and the respondent No.4 was a Khalasi belonging to Bridge Section and the applicant cannot claim seniority over and above the other respondent No.4 who belong to ~~Bridge~~ Section and the applicant has been given seniority that he was entitled as to the Khalasi of a Open Line. The respondents have also

brought to our notice a separate seniority list maintained for Bridge Khalasies vide Annexure R/2 and Khalasies of Open Line vide Annexure R/3. They have also stated that the applicant's name is not found in Annexure R/2, whereas the name of respondent No.4 appears at Sl.No.1. The name of applicant has been interpolated in Annexure R/3 at Sl.No.101-A of the Open Line. Thus, the respondents have stated that the claim of the applicant against respondent No.4 cannot be maintained and accordingly they have prayed for dismissal of the OA.

4. From the pleadings and also the contentions raised by the learned counsel for the parties we find that there are few things which are admitted. It is admitted that the applicant was working as BTM Painter/Brush Painter and vide Annexure A/2 dated 5.10.89/~~xx~~ was reverted as Khalasi. An ~~xxxxxx~~ It is also not in dispute that the order ~~xxxxxx~~ of reversion dated 5.10.93/was was quashed by this Tribunal vide order dated 2.3.94 in OA 862/92 (OA 470/89). It appears that originally the said OA (No.862/92) was instituted before the Jodhpur Bench of the Tribunal in the year 1989 and after constitution of the Jaipur Bench it has been renumbered as OA 862/92.

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The contention of the respondents is that even after setting aside the order of reversion the applicant continued as a BTM Painter/Brush Painter as an ad hoc promotee and he would be entitled to regular promotion as Painter Grade-III only after passing the trade test. We also notice that in the order of this Tribunal dated 2.3.94, that passed in OA 862/92, no doubt the reversion order was quashed, but this Tribunal did not give any finding as to the status of the applicant as BTM Painter/Brush Painter whether it was an ad hoc promotion or a regular promotion after the trade test. It is admitted on behalf of the applicant that he took the trade test in the year 1991 and his result was withheld because of the pendency of the said OA (No.862/92) before this Tribunal. It is also not in dispute that after the disposal of the said OA vide order dated 2.3.94 the applicant has been promoted as Painter Grade-III by placing him between Mohd. Yasin and Ramjani vide Annexure R/1 dated 31.1.96. But the case of the applicant is that he should be treated as Painter Grade-III right from the year 1983 and he should be accorded seniority over and above the juniors promoted meanwhile to the post of Painter Grade-II and Painter Grade-I. In our considered opinion, the case of the

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applicant that he should be treated as Painter Grade-III right from the year 1983 cannot be accepted. This Tribunal while setting aside the order of reversion from the post of Painter Grade-III to the post of Khalasi did not give any finding that the applicant was a regular promotee in after passing the required trade test Painter Grade-III/ right from the year 1983. It is not in dispute that for the purpose of promotion from the post of Khalasi to the post of Painter Grade-III passing of trade test is absolutely necessary, and accordingly the applicant did take the trade test in the year 1991 but the declaration of result was withheld vide Annexure A/3 dated 9.10.91 only because the said OA (No.862/92) was pending before this Tribunal. From this fact ~~xxxix~~ also it is clear that the applicant took the required trade test for the purpose of his regular promotion from the post of Khalasi to the post of Painter Grade-III/ We also find from Annexure A/3 that Mohd. Yasin and Ramjani also ~~ta~~ had taken the trade test alongwith the applicant and in Annexure A/3 their names are found at Sl.No.4 and 9 respectively. In these circumstances, the applicant would be entitled to the benefit whatever Mohd. Yasin and Ramjani got by passing the trade test vide order dated

9.10.91. The applicant has not demonstrated and proved before us, with documentary evidence, ~~to show~~ that respondent No.4 (Shri Jagdish) belong to the Khalasi of Open Line, to which the applicant belong. On the other hand, vide Annexure R/2 we find that respondent No.4 (Shri Jagdish) belongs to the Bridge Section and if that is so, the applicant cannot claim any seniority over ~~as~~ a person who belong to some other Line with different seniority.

5. For the above reasons what we have to see ~~is~~ the consequence that would follow from the applicant's taking the trade test and withholding of his result vide Annexure A/3 dated 9.10.91. As we have stated above, the result of his trade test for the purpose of promotion to the post of Painter Grade-III was withheld only because the pendency of the said OA (No.862/92) before this Tribunal. The said OA has been disposed of on 2.3.94 by setting aside the order of reversion. Consequent upon the disposal of the said OA, the respondents have promoted to the applicant vide Annexure R/1 dated 31.1.96. The applicant has been given the seniority in the promotional post of Painter Grade-III between Mohd. Yasin and Ramjani since the applicant

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had passed the trade test conducted in the year 1991.

Annexure R/1 does not make it clear as to from which date the applicant has been given the promotion as against his junior Ramjani. From the order Annexure R/1 it appears that Ramjani was ~~xxxx~~ promoted prior to passing of this (Ann.R/1) ~~xxxx~~ order dated 31.1.96. ~~xxxx~~ reason for not promoting the applicant as on the date Ramjani was promoted appears to be the pendency of OA 862/92. The fact also remains that the applicant has been declared passed in the same trade test in which Ramjani was also declared successful. ~~xxxx~~ On the basis of Annexure R/1 it is clear that Ramjani was junior to the applicant. In these circumstances, the applicant would be entitled to his promotion with effect from his junior Ramjani was promoted ~~xxxxxx~~ the consequential benefits. ~~xxxxxx~~ The contention of the applicant that his services as a Painter right from the year 1993 should be taken cannot be accepted for the reason that his earlier promotion was only on ad hoc basis and it was not a regular promotion after passing the trade test. Therefore, we have to hold ~~xx~~ that the applicant is entitled to

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promotion to the post of Painter Grade-III only on the basis of the trade test held in the year 1991 and not for the period earlier thereto. It would be unreasonable to deny the monetary benefit, if any, if the applicant has not been accorded from the date of his junior Shri Ramjani has been promoted. In other words, the applicant would be entitled ~~as~~ to all consequential benefits with effect from the date his junior Shri Ramjani has been promoted.

~~Therefore~~ Therefore, Annexure R/1, restricting the applicant's claim only regarding the seniority and without according to him other financial benefits would be unreasonable.

Accordingly, we pass the order as under :-

Application is allowed in part by declaring that the applicant is entitled to promotion to the post of Painter Grade-III on regular basis with effect from his junior Shri Ramjani was promoted, with all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.


(N.P.NAWANI)
MEMBER (A)


(B.S.RAIKOTE)
VICE CHAIRMAN