

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 3/5/2012

O.A. No. 45/2000.

1. Prahlad Singh son of Shri Gopal Singh, aged about 42 years, at present working on the post of Senior Khallasi in the office of the Inspector of Works (Traffic Workshop), Western Railway, Jaipur, resident of House No. 8, Barwara House, Ajmer Road, Jaipur.
2. Shri Anand Singh son of Shri Gopal Singh, aged about 42 years, at present working on the post of Senior Khallasi in the office of the Inspector of Works (Traffic Workshop), Western Railway, Jaipur, resident of Krishna Puri, Hatwara Road, Jaipur.

... APPLICANTS.

v e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Sr. Divisional Commercial Manager, Western Railway, Jaipur Division, Jaipur.

... RESPONDENTS.

Shri P. V. Calla, counsel for the applicants.
Shri S. S. Hasan, counsel for the respondents.

CORAM

Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)

Two applicants of this OA are working on the post of Senior Khallasi in the office of Inspector of Works,



Jaipur (Traffic Workshop) Jaipur, in Group 'D' category. While working as a helper Khallasi, applicant No. 1, Prahlad Singh, was trade tested on 04.11.1992 for the post of Basic Trades Man (BTM) and was posted on that post on 30.12.1992. Applicant No. 2, Anand Singh, as similarly trade tested on 11.12.1995 and posted as BTM by order dated 30.01.1996. A notification dated 05.11.1997 was issued for conducting trade test for promotion to the post of Artisan Grade-III in the pay scale of Rs. 950-1500/3050-4590. Both the applicants were considered eligible and were called to appear in the trade test in which they duly participated. However, this trade test was cancelled by letter dated 03.12.1997. A provisional seniority list dated 26.07.1997 was issued and objections were invited. The applicants made their representations which were disposed of by letter dated 15.12.1999. The applicants have assailed this seniority list dated 26.07.1999 by filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985. Their prayer is that the respondents be directed to place their names in Sr. No. 1 and 2 in the seniority list and to declare the result of the applicants for the post of Artisan staff Grade-III.

2. A reply to this OA has been filed by the respondents and they have denied the claim of the applicants.

3. It has been stated by the learned counsel for the respondents that conducting a trade test for the



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3. It has been stated by the learned counsel for the respondents that conducting a trade test for the




post of BTM was, an erroneous action in as much as category of BTM had been abolished way back in the year 1982 vide Railway Boards letter No. E/P&(A) I-82/JC dated 13.11.1982 and it has been admitted that conducting a trade test for BTM category was mis-exercise. It has further been clarified that the pay scale of BTM and helper Khallasi is the same and the applicants have been assigning correct seniority as helper Khallasi. Their turn for promotion to artisan grade-III will come as per their seniority position and not by virtue of their holding the post of BTM.

4. Learned counsel for the applicant, Shri P. V. Calla, submitted that the claim of the applicants rests primarily on the fact that taking a trade test to the post of BTM was an administrative action, The applicants had duly qualified in the said test and had been posted as BTM, They cannot be denied their further advancement. Having become BTM they became senior to other helper khallasis, who at the relevant time, when the trade test was conducted, had refused to appear or were held ineligible. His contention was that once having been promoted as BTM they became senior to other helper khallasi and, therefore, they were correctly called to appear in the trade test for the post of Artisan Grade-III. In this background, the learned counsel argued, the respondents cannot withhold their result and ~~revise~~ their seniority to their detriment.




5. Learned counsel for the respondents opposed the contention of Shri P. V. Calla, on the ground that a mistake committed by the department cannot create a right in favour of the applicants. The category of BTMs was itself abolished. In the year 1982, the question of Trade testing and promoting the applicant as BTM would not have arisen in the year 1992 and 1995. While admitting that it was a lapse on the part of the departmental functionaries he stressed that lapse would not give any benefit to the applicants. If this was permitted, it would result in injury to the legal rights of others.

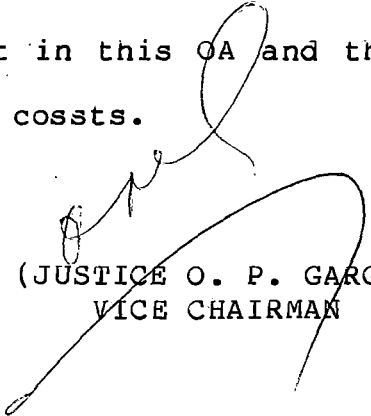
6. We have considered the rival contentions carefully. The fact that the category of BTM was abolished in the year 1982 has not been rebutted by the applicant. It is a matter of record. What is distressing to us is to note that the departmental functionaries have betrayed their rank, ignorance of rules and knowledge of their subject. When BTM category was abolished in the year 1982 itself, we are left wondering as to how the BTM posts remained on the sanctioned strength of this cadre. It raises the question about the competence of the departmental functionaries who maintained the 'Book of Sanction', conducted the trade test and even posted the two applicants as BTMs. Be that as it may, such irregular action against the rules and against the policy cannot be construed to have created a right in favour of the



applicants. By getting posted as BTMs they enjoyed better status over their seniors for some time. We cannot permit the illegality to be perpetuated by accepting the prayer of the applicants. They cannot be granted any right to hold a post which under the policy should not have even existed under the departmental rules. A mistake was evidently committed & necessary rectification has been done. The seniority assigned to the applicants as helper Khallasi suffers from no illegality or infirmity. If the applicants had been allowed promotion to the post of Artisan grade-III in preference to their seniors in the cadre of helper Khallasi that would in fact have meant compounding the illegality. The law does not prohibit correcting a mistake and it has been so done in this case.

7. We do not find any merit in this OA and the same is dismissed. No order as to costs.


(A. P. NAGRATH)
MEMBER (A)


(JUSTICE O. P. GARG)
VICE CHAIRMAN