

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 2nd day of February, 2005

ORIGINAL APPLICATION No. 82/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

Pradeep Jha
s/o Shri Om Prakash Jha,
aged about 42 years,
r/o New Govind Nagar, Ramganj, Ajmer,
presently posted as Moulder Gr.II,
Office of the Dy.Chief Mechanical Engineer
(Carriage Workshop), Northern Western Railway, Ajmer.

.. Applicant

(By Advocate: Shri Vijendra Singh, proxy counsel to
Mr. R.N.Mathur)

Versus

1. Union of India through
General Manager,
Northern-Western Railway,
Jaipur.
2. Dy. Chief Mechanical Engineer
(Carriage Workshop),
Northern Western Railway,
Ajmer.
3. Shri Gulab singh,
Moulder Gr.II,
through Dy.Chief Mechanical
Engineer (Carriage Workshop),
Northern Western Railway,
Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar for respondent Nos. 1 and 2 and Mr. Ramesh Chand, for respondent No.2)

ORDER (ORAL)

The applicant has filed this Original Application, praying for the following reliefs:

- "(i) that the official respondents may be directed to treat the respondent No.3 junior in comparison to applicant on the post of Moulder Gr.III and Moulder Gr.II.
- ii) that the order dated 6.1.2003 (Annexure A/1), impugned order dt. 6.1.2003 (Annexure A/2) and order dated 23.12.2002 (Annexure A/6) may be set aside and quashed;
- (iii) any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant.

2. Briefly stated, the applicant was initially appointed as Khallasi in Locomotive Workshop on 2.8.1985. He was promoted to the post of Helper in the year 1987 and to the post of Skilled Artisan w.e.f. 6.2.1989 after passing the qualifying examination. It is further stated that the applicant was promoted as Moulder Grade-III w.e.f. 6.1.89 and he was again promoted on the post of Moulder Grade-II on 1.4.1996. The grievance of the applicant is that the respondent No.3 was initially appointed as Khalasi in the year 1979 and was promoted in the Semi Skilled category in the year 1982. He was further promoted to the post of Watchmaker (Ghadisaz) in the year 1992, which is  category but he refused to accept the

promotion. The respondent No.3 was promoted on the post of Moulder Gr.III in the year 1995 after promotion of the applicant in the year 1989. As such he could not have been shown senior to the applicant in the category of Moulder Gr.III and also in the category of Moulder Gr.II. The applicant has also filed representation against assigning of lower seniority as compared to respondent No.3 vide representation dated 17.12.2002 (Ann.A7) and subsequent representation dated 6.1.2003 (Ann.A8). The applicant has also challenged the promotion of respondent No.3 to the post of Moulder Gr.I vide order No.4/20003 dated 6.1.2003 (Ann.A2) which promotion has been effected treating the respondent No.3 senior to the applicant on the post of Moulder Gr.II.

3. Notice of this application was given to the respondents. Official respondents and respondent No.3 have filed separate replies. In the reply respondents No.3 stated that the present application is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. On merits, it has been stated that respondent No.3 being surplus in the Foundry section was absorbed and redeployed from the post of Falter-III to the post of Moulder Gr.III vide letter dated 14.3.1995. It is further stated that respondent No.3 was re-designated from the post of Falter-III scale Rs.950-1500 to the post of Moulder

Gr.III scale Rs. 950-1500 vide letter dated 11.7.95.

Similarly, respondent No.2 had conducted trade test of Moulder Gr.II scale Rs. 1200-1800 for which an eligibility list of employees was circulated vide letter dated 23.2.1996 in which name of respondent No.3 had appeared at Sl.No.1 and the applicant's name appeared at Sl.No.2. Photocopy of this eligibility list has been placed on record by respondent No.3 as Ann.R3. It is further stated that respondent No.3 and applicant were promoted from the post of Moulder Gr.III scale Rs. 950-1500 to the post of Moulder Gr.II scale Rs. 1200-1800 vide order dated 9.4.1996. In the said order, name of the respondent No.3 appeared at Sl.No.2 and name of the applicant appeared at Sl.No.3. Copy of this letter has been placed on record by respondent No.3 with his reply as Ann.R4. Thus, according to respondent No.3, the cause of action in favour of the applicant has arisen on 23.2.96 whereby name of respondent No.3 was shown at Sl.No.1 and name of the applicant appeared at Sl.No.2 in the eligibility list prepared for the purpose of promotion to the post of Moulder Gr.II. Further, according to private respondent, the cause of action has also arisen on 9.4.96 when name of the respondent No.3 was shown at Sl.No.2 in the promotion order issued vide letter dated 9.4.96 whereas name of the applicant appeared at Sl.No.3. According to respondent No.3, the application filed by the applicant is hopelessly time

barred. Thus, in view of the law laid down by the Apex Court in the case of Hukam Raj Khinvsara vs. UOI, SC SLJ 1998 (1) 226 and in view of the law laid down by the Apex court in the case of Ramesh Chand Sharma vs. Udhamp Singh Kamal, SC SLJ 2000 (2) 89, this application cannot be entertained being time barred.

3.1 Similarly, the official respondents in their reply have categorically stated that respondent No.3 was initially appointed as Khallasi on 15.3.1979 much prior to the appointment of the applicant as Khallasi as on 2.8.85. It is further stated that respondent No.3 was promoted in the semi-skilled Falter in the pay scale of Rs. 210-290 w.e.f. 24.3.82. In the meantime, as a result of restructuring of the posts by the Railway Board the incumbent holding the post of semi-skilled Falter were treated as skilled in the pay scale of Rs. 260-400 and accordingly in view of the order bearing No. CE/840/3-5 Part-5 dated 8.4.1983, the incumbent holding the post of semi-skilled Falter Gr.III (new) were treated as Falter Gr.III (new) w.e.f. 24.3.1982. Thus, the semi-skilled Falter were treated as skilled Falter Gr.III in the pay scale of Rs. 260-400 w.e.f. the date of promotion as semi-skilled Falter and benefits of pay and seniority were allowed to them in the skilled Falter (old) in the pay scale of Rs. 950-1500 after having passed the trade test and were given promotion in accordance with the

office communication bearing No.CE 840/3-8 Part-6 dated 17.6.1988. It is further stated that in the meantime, respondent No.3 was offered the post of Watchman (Ghadisaz) in the year 1992, in the pay scale of Rs. 950-1500, however, he refused the promotion. Since, respondent No.3, Falter Gr.III in the scale of Rs. 950-1500 was working in the Foundry Section/Department till his promotion to the post of Falter Gr.III as aforesaid, but on account of administrative decision the Foundry Section/Department was closed w.e.f. 31.10.1990 and the incumbents of the Foundry Section/Department were to be absorbed against the vacant posts in other sections/departments and for this purpose options were invited and the respondent No.3 vide his option dated 10.12.1993 opted for the post of Moulder in Brass Shop-34 Section and accordingly vide order dated 11.7.95, he was absorbed in the 33/34 Section/Department on the post of Moulder after he was declared successful in the trade test extending the benefit of seniority of the post of Falter Gr.III (old post). Hence, the averments made by the applicant to the fact that he was appointed to the post of Moulder Gr.III in the year 1995 is thoroughly misconceived and misleading.

4. Despite the reply filed by the respondents, taking the objection regarding limitation, the applicant has

not filed any rejoinder, though number of opportunities were granted to him in that behalf.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 At the outset, it may be stated that the applicant cannot be granted any relief for more than one reason. As can be seen from the reply filed by the respondents, it is clear that respondent No.3 was promoted from the post of Khallasi to the post of semi skilled Falter in the pay scale of Rs. 210-290 w.e.f. 24.3.82. Subsequently, on account of restructuring this semi skilled Falter category was treated as skilled in the pay scale of Rs. 260-400 in view of the office order dated 8.4.83 and the incumbent holding the post of semi skilled Falter Gr.III including the applicant were treated as skilled Falter Gr.III in the pay scale of Rs. 260-400 w.e.f. the date of promotion as semi skilled Falter and the benefit of pay and seniority were allowed to all the persons including the applicant after having passed the trade test and they were given promotion in accordance with office OM dated 17.6.88. Thus, the contention of the applicant that he was in semi skilled category which is equivalent to Group 'D' post and was only absorbed as Moulder Gr.II in the year 1995 whereas the ~~applicant~~ ⁱⁿ was promoted as Moulder Gr.III vide order dated 22.8.89 w.e.f. 1.1.89 cannot be accepted. In fact on

account of restructuring, the semi skilled Falter category was treated as skilled Falter Gr.III in the pay scale of Rs.260-400 from the date of promotion of the applicant w.e.f. 24.3.82 and benefit of pay as well as seniority was allowed to such category. Thus, we see no infirmity in the action of the respondents by treating respondent No.3 as skilled Falter Gr.III in the pay scale of Rs. 260-400 revised to Rs. 950-1500 which scale is equivalent to the post of Moulder Gr.III against which the applicant was promoted subsequently in the year 1989 w.e.f. 1.1.89. Thus, the applicant cannot be held senior to respondent No.3 simply because after closure of the department w.e.f. 30.10.90, the respondent No.3 was absorbed as Moulder Gr.III vide order dated 11.7.95 especially when respondents have extended benefit of seniority to the post of Falter Gr.III to respondent No.3 while absorbing him in the post of Moulder Gr.III. In case the applicant was aggrieved on account of absorption of respondent No.3 as Moulder Gr.III ^{and} assigning him seniority while taking into consideration the service rendered by respondent No.3 on the post of Falter Gr.III, he should have challenged such action at the relevant time within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985. Having not done so, the applicant cannot be allowed to agitate the matter of seniority at this stage especially when the applicant has not challenged

validity of the order whereby the benefit of seniority of the post of Falter Gr.III was extended to the respondent No.3 while absorbing him on the post of Moulder Gr.III vide order dated 11.7.95.

5.2 That apart, the respondents have also placed on record eligibility list as circulated by letter dated 23.2.96 (Ann.R3) which eligibility list was prepared for the purpose of conducting trade test to the post of Moulder Gr.II in the higher pay scale of Rs. 1200-1800. In the said eligibility list, name of the respondent No.3 find mention at Sl.No.1 whereas name of the applicant appeared at Sl.No.2. As such, at least as on 23.2.1996, the applicant was aware that the name of respondent No.3 has been shown senior to him in the said eligibility list but the applicant did not raise any grievance regarding his seniority as well as showing his name below respondent No.3 in the eligibility list prepared for the post of Moulder Gr.II vide letter dated 23.2.1996 (Ann.R3). Thus, the cause of action has arisen in favour of the applicant even on 23.2.96 but the applicant slept over the matter and did not choose to agitate ^{u matter} regarding his seniority qua respondent No.3. Further on the basis of eligibility list Ann.R3, the applicant as well as respondent No.3 were promoted to the post of Moulder Gr.II vide letter dated 9.4.1996 (Ann.R4) wherein the name of the applicant appears at Sl.No.3 whereas name of respondent No.3 appears at Sl.No.2. The applicant ^u

also
has L not challenged this order in this OA, as such validity of the promotion order dated 9.4.96 (Ann.R4) as well as the eligibility list dated 23.2.96 (Ann.R3) cannot be gone into. It is further settled position that the order which is not under challenge cannot be quashed and set-aside. On the basis of this settled position, once the applicant has accepted the appointment of respondent No.3 on the post of Moulder Gr.II over and above him, he cannot ~~challenge~~ be permitted to challenge promotion of respondent No.3 to the post of Moulder Gr.I vide order No. 4/2003 dated 6.1.2003 (Ann.A2) which is based on the basis of the seniority in Moulder Gr.II. Thus, we are of the view that the present application is not only hopelessly time barred but the applicant has not challenged the validity of the order(s) whereby respondent No.3 was extended the benefit of seniority on the post of skilled Falter Gr.III when he was absorbed on the post of Moulder Gr.III vide order dated 11.7.95 and also the eligibility list prepared for promotion for the post of Moulder Gr.II as circulated vide letter dated 23.2.96 (Ann.R3) and also promotion order dated 9.4.96 whereby respondent No.3 was shown senior to the applicant. As such, no relief can be granted to the applicant so long as these orders are not quashed and set-aside.

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6. Accordingly, the OA is bereft of merit and the same is dismissed with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)