

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING AT GWALIOR

Original Application No. 833/99

Gwalior, this the 27th day of February, 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN
HON'BLE SHRI G.SHANTHAPPA, MEMBER (J)

Ameer Mirja s/o late Sh.Sultan Mirja
Aged 52 years
Occupation Service
Posted as Machineman Gr.III
C & W, Gwalior.
R/o Loko Colony, Tansen Road,
Gwalior.
(By Advocate: Shri S.C.Sharma)

...Applicant

-versus-

1. Union of India through
General Manager,
Central Railway, Mumbai V.T.
2. The Divisional Manager,
Divisional Office,
Central Railway, Jhansi.
3. The Assistant Mechanical Engineer,
C & W, Central Railway, Gwalior.
4. Shri Anwar Khan,
Basic Machineman Gr.II
C/o Asstt. Mechanical Engineer,
C&W, Central Railway,
Gwalior.

...Respondents

(By Advocate: Shri H.D.Gupta through Sh. S.R.Bade)

O R D E R

By G.Shanthappa, Member (J)-

By filing this O.A. the applicant has sought the following main reliefs:-

- i) to quash the impugned order dated 12/29.1.1999 (A1)
- ii) to direct the respondents to refix the seniority of the applicant on the post of Machineman Gr.III and promote him on the post of Machineman Gr.II and Gr.I placing him over and above his juniors;
- iii) to direct the respondents to refix the salary and pay the entire back wages to the applicant alongwith 18% per annum interest thereon.

2. The brief facts of the case are that the applicant was initially appointed on the post of Khallasi on 17.2.1972.

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he appeared for professional examination of basic Machineman Semi skilled on 29.12.1978 and consequently the applicant and one Mohd. Shafi appeared in the trade test on 12.3.1983 and they successfully passed the same. The applicant's seniority has been fixed on the post of R.W.C.T. in the pay scale of Rs. 950-1500/- and his name figures at sl. no. 7 in the gradation list. The rolls of the employee having passed the professional examination maintained by the Divisional Mechanical Engineer the name of the applicant figures at sl. no. 50. The several juniors to the applicant, who are S/Shri Deep Kumar Trivedi, Amrishi Singh, Atar Singh Ashok Kumar Sharma, Anvar Khan etc. have been promoted on the post of Machineman Gr. I and Gr.II. Their promotion was without passing any trade test. One Shri Anwar Khan, who is junior to the applicant, was deemed to be skilled and had been promoted to Gr. II on 15.7.1996. There is a discrimination made by the official respondents. The applicant submitted his respondents to the respondents for the discrimination caused to him. The applicant had been making several representations. When the official respondents did not take any action, he had issued the legal notice. The applicant had filed OA No. 559/98 before this Tribunal and the Tribunal has disposed of the said O.A. directing the respondents to consider the representation of the applicant and pass a speaking order. The respondents in compliance of the Tribunal's directions, passed the impugned order at Annexure A-1 rejecting the representation of the applicant.

2.1 The applicant had amended the O.A. bring few facts on record. The respondents have issued letter dated 15.3.1983 sending the report of the trade test to the DME (C&W) Jhansi wherein the name of the applicant is at sl. no. 1 as per Annexure A/9. The second respondent thereafter asked the Carriage Foreman, Gwalior vide letter dated 6.11.1984 under whom authority the trade test of the employees was done.



The Carriage Foreman, Gwalior informed the DME, Jhansi that the trade test report of the employees including the applicant was sent personally and the trade test was carried out on the orders of AME, Gwalior and DME, Jhansi to fill up the vacant posts. The DME, Jhansi sent a letter to AME, Gwalior vide letter dated 28.7.1992 as reminder IV which was marked to AME who made a note on it that "No.50 Amir Mirja T/T pass inventory in office of DME, Jhansi dated 12.3.1993 handed over to APO(M) Jhansi.

2.2 The grievance of the applicant is that the benefit of upgradation and classifying the applicant in artisan staff as skilled Gr.III which was allowed w.e.f. 1.1.1998 from grade 210-290 to Grade 260-400/950-1500 vide Rly. Board Circular No. E(P&A) I-82/JPC/1 dated 3.11.1982. The said letter reveals that the case of the applicant was deliberately and negligently handled and has concealed the trade test of the applicant by the respondents for which they are liable. The applicant is also entitled to get the benefit of ~~xxx~~ upgradation since 1.7.1998 in the post of artisan Gr.III under the circular dated 23.9.1992. Alongwith the said particulars, the applicant has submitted some correspondence as mentioned above.

2.3 The applicant has also produced letter dated 23.9.92 at Annexure A-14 regarding Re-classification of Artisan staff in the Railways - relief of semi-skilled and un-skilled artisan staff. Under the said Railway Board's letter, the Railway Board has issued the two letters circulated by their office for their reference. In the said letters it has been stated that the semi-skilled grade post have already been upgraded to skilled grade III w.e.f. 1.8.1978 and almost all semi skilled posts operated on Central Railway have been covered in the grade of Rs. 260-400(RS)/950-1500(RPS) has been allowed. Under the said circular, the applicant is asking the relief for upgradation and classification of the applicant in the artisan staff as skilled Gr.III w.e.f.

1.1.1998.

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3. The respondents have filed their reply denying the averments made in the O.A. They have taken the specific contention that the applicant was promoted as basic Machineman grade Rs. 210-290 from 10.08.1983. He was promoted to the post of Machineman Gr. III in the pay scale of Rs. 950-1500 (RPS) w.e.f. 20.5.1993 vide order dated 31.10/1.11.1995. Now he is claiming promotion to the Machineman Gr. II and Gr. I at par with the alleged juniors. All the persons alleged to be juniors are, in fact seniors to the applicant as they all were promoted as Machineman Gr. III prior to the applicant as shown in Annexure A-I to the O.A.

3.1 The representation of the applicant was decided giving details therein that the alleged juniors are his seniors. As regards Sri Anwar Khan it is submitted that he is senior to the applicant and is working as Machineman Gr. II. In his representation he did not give any complaint in regard to his promotion. No details have been given as to how Shri Anwar Khan is junior to him.

3.2 The applicant was not due for trade test on 12.3.1983. The annexure A-3 belongs to Mohd. Shafi for passing the trade test on Blacksmith. It may be submitted that Mohd. Shafi belongs to Blacksmith trade while the applicant belongs to the trade of Machineman and thus there is no comparison in between them. It is further submitted that Mohd. Shafi is senior to the applicant.

3.3 The applicant was promoted as Helper Khalasi in Gr. Rs. 210-290 w.e.f. 18.1.1981 under cadre review of Artisan Staff. He was put to officiate as Machineman Gr. III from 18.5.1983 as local arrangement. Later he was regularly promoted from 20.5.1993 as Machineman Gr. III. In the seniority list annexed as Annexure A-4 the name of the applicant was wrongly shown in Gr. 950-1500 by clerical mistake.

3.4 Shri Deep Kumar, Amrik Singh, Atar Singh and Ashok Kumar were promoted on regularly basis from 22.6.82, 24.6.82

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24.6.1982 and 24.6.1982 respectively while Anwar Khan was promoted on regular basis from 18.3.1985. These promotions were made after they passed the trade test. The applicant has not filed the result of his trade test conducted on 12.3.1983 to verify if he was really sent and had passed the same. Thus the applicant is junior to the said Anwar Khan. It is denied that Anwar Khan was promoted without passing the trade test. Since Anwar Khan was senior to the applicant and on his turn he was promoted in Gr.II post from 15.7.1996. Hence it is denied that there has been any discrimination.

3.5 The applicant became basic Machineman from 10.08.1983 and at that time there was no question of sending him for trade test. The trade test is conducted when vacancies arise and that time there was no vacancy on the post of machineman Gr.III. He was regularised as Machineman Gr.III from 20.5.1993. Thus he is junior to all the persons named by him in para 6.6.

3.6 The applicant has not enclosed any document to show that he is senior to the alleged person. He has only compared with Shafi who belongs to different trade and his promotion was made in his trade of Blacksmith as per vacancy and thus his promotion cannot be compared with machineman like the applicant.

3.7 The applicant has not shown any fact as to how the decision given on his representation is not proper. Merely, the applicant has not been promoted to Gr.II, he has filed the present O.A. on imaginary facts that he is senior. In fact he is junior to all the alleged juniors. It is further submitted that seniority of the employee is reckoned from the date of regular promotion and the adhoc/officiating promotion is not counted for seniority. It is pertinent to mention that the applicant while working on officiating basis by way of local arrangement was reverted to his substantive post in the grade of Rs. 210-290 by order dated 3.1.1985 and was posted at B&D station but for administrative mistake he was not relieved and he did not

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join the reverted post and his officiating was therefore deemed from the date after 3.1.1985 on which date he was reverted. Even if he was not relieved, the position is that he was reverted to his substantive post w.e.f. 3.1.1985.

4. We have heard the learned counsel for the parties and perused the pleadings and other material available on record.

5. The case of the applicant is that he could not get the refixation of seniority for the post of Machineman Gr.III and also further promotion to the Machineman Gr.II and Gr.I. he is comparing his service with that of his socalled juniors that too with only one private respondent i.e. Anwar Khan. It is relevant to mentionhere that the service of the applicant and that of one Anwar Khan are that the applicant was appointed on 9.7.1974 in C&W later he was promoted as Helper Khallasi in the pay scale of Rs. 800-1150/- on 18.1.1981. Further he was promoted as Machineman in the same pay scale on 10.08.1983 and again promoted as Skilled Machineman in the scale of Rs. 950-1500/- on proforma basis on 20.5.1993. The applicant belongs to Ex-Optg. department as Skilled Porter Gr. Rs. 75-95(AE) at his own request,,he was transferred as C&W Khallasi in the grade of Rs. 70-85(AS). While the service particulars of Shri Anwar Khan are that he was appointed on 15.5.1974 and he was promoted as Helper Khallasi in the pay scale of 800-1150 on 28.6.1983 and subsequently he was promoted as Basic Machineman in the same scale on 7.6.1984 and he was further promoted as Skilled Machineman in the pay scale of 950-1500 on 18.3.1985. The said Anwar Khan belongs to Ex-Steam surplus staff arrived on transfer as Machineman Gr. Rs. 260-400(RPS) with full seniority in C&W Department. The persons with whom the applicant is comparing his service particulars belong to different wing. The applicant as well as theprivate respondent had passed the trade test. The seniority was maintained by the official respondents in the pay scale of Rs. 950-1500/- in which the applicant is at serial no. 7. In the said seniority list,

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the name of the private respondent is not shown because he belongs to a different wing. The applicant has not shown or produced any document to show that the private respondent is junior to him. The respondents have decided the case of the applicant by issuing the impugned order dated 12/29.1.1999 in which it is shown that the applicant was promoted as Basic Machineman in the grade of Rs. 210-290 on 10.8.1983. He was promoted to the post of Machineman Gr. III in the pay scale of Rs. 20.5.1993 w.e.f. 20.5.1993. Now the applicant is claiming promotion to the Machineman Gr. II and Gr. I at par with the alleged juniors. Infact so called juniors are senior to the applicant as they all were promoted as Machineman Gr. II prior to the applicant. Infact, the applicant is claiming the seniority against the persons who belong to different grade.

6. In the facts and circumstances of the case we are convinced that the applicant is not senior to the socalled juniors and he has also not be able to show any document to this effect whereas the respondents have clearly mentioned in their letter dated 12.1.1999 (Annexure A-1) which is challenged by the applicant in this O.A. that the so called juniors are infact senior to the applicant. Moreover, the applicant is comparing his service particulars to those who belong to different categories.

7. For the reasons stated above, the applicant has failed to prove his case for grant of relief, as prayed for, and the O.A. is accordingly dismissed. No costs.


(G. Shanthappa)

Judicial Member


(M.P. Singh)

Vice Chairman

/na/

Copy forwarded to

(i) Sri S. C. Shrivastava, Adv. (Retd.)

(ii) Sri H D Gupta, Adv. (Retd.)