

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 9th day of April, 2010

Original Application No.372/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Dwarika Prasad Meena
s/o Shri Ganesh Ram Meena,
r/o Ward No.8, Srimadhopur,
Distt. Sikar and voluntary retired on
9.8.2006 on the post of
Hammerman (Fitter) Grade-III,
North Western Railway,
Carriage Workshop, Ajmer.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India,
through General Manager,
North Western Zone,
North Western Railway,
Jaipur
2. The Chief Works Manager (Carriage),
North Western Railway,
Ajmer Division,
Ajmer.
3. Dy. Chief Mechanical Engineer (Carriage),
North Western Railway,
Ajmer Division,
Ajmer.

... Respondents

(By Advocate: Ms. Sonal Singh proxy counsel for Mr. Alok Garg)

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ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- I) That the respondents be directed to consider request of the applicant and to assign correct seniority and thereafter to allow due promotions from the date junior so allowed with all consequential benefits after due fixation of pay and allowance.
- II) That the respondents be further directed to revise pension and pensionary benefits after allowing promotions with due benefits including arrears w.e.f. 10.8.2006.
- III) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- IV) That the costs of this application may be awarded.

2. Briefly stated, facts of the case are that the applicant was initially engaged as Khallasi on 27.8.1976. He was removed from service w.e.f. 23.8.1982. The said order of removal was challenged by the applicant by filing OA No. 468/1987 before the CAT-Jodhpur Bench and the order of removal from service was substituted to that of stoppage of increments for three years with cumulative effect and also loss of seniority for the aforesaid period of 3 years. Consequent upon the judgment so rendered by the Tribunal, the applicant was reinstated in service vide order dated 29th August, 1988 (Ann.A/3). The grievance of the applicant is that vide Ann.A/4 he was allowed seniority treating him as appointee of 7.12.1992 and the date of appointment of the applicant has been shown as 27.8.76/28.8.88 whereas in terms of the judgment rendered by the

Jodhpur Bench of the Tribunal entire service of the applicant should not be forfeited and it was only three years of service which was not to be counted for the purpose of seniority. The grievance of the applicant is that persons junior to him has been granted promotion and also that the applicant vide representation dated 22.4.1997 (Ann.A/8) requested the respondents to correct the seniority but the said representation was rejected by the respondents vide order dated 18.6.1997 (Ann.A/9). It is further pleaded that further representation was also made to correct the seniority and to grant him due promotion vide letter dated 7.7.2001 and 10.7.2001. The applicant has further stated that junior persons to the applicant were promoted to the higher post of Grade-II and Grade-I and Junior Engineer as evident vide Ann.A/5 in the year 2003. The applicant has stated that thereafter he made number of representations to grant him correct seniority and due promotion vide Ann.A/12, A/13, A/14 and A/1 dated 16.5.2006. The applicant has pleaded that he has sought voluntary retirement on 9.8.2006 and he served notice for demand of justice dated 23.4.2007. It is based on these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have raised preliminary objection regarding the OA being time barred as according to the respondents the applicant is challenging seniority list Ann.A/2 on the premise that latest representation was made on 16.5.2006 which has not been received by the respondents. On

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merits, the respondents have stated that in terms of order dated 29.8.98, the applicant was placed between Shri Sunil Kumar, SL.No.3 and Shri Panna Lal, SL.No.4 vide office letter dated 20.10.1995 (Ann.R/2). It is further stated that the respondents had duly responded to all the representations made by the applicant. However, no representation dated 16.5.2006 was ever submitted by the applicant. The respondents have further submitted that vide letter dated 7.12.1993 (Ann.R/3), the applicant as well as other eligible persons were asked to participate in the trade test for Hammerman Gr.III (old) but the applicant refused to take trade test for the said post in the grade of Rs. 950-1500, as can be seen from letter dated 30.7.1993 (Ann.R/4). The respondents have also placed on record the undertaking given by the applicant dated 27.9.1993 (Ann.R/5) whereby the applicant has stated that he does not want to participate in the trade test for the post of Hammanerman Gr.III. It is further stated that thereafter the applicant made a representation dated 14.8.1995 for refixation of his seniority and the respondents through letter dated 20.10.1995 again fixed seniority of the applicant and under the prevalent avenue of promotion, the applicant was promoted to the post of Grade-III Fitter vide letter dated 12.2.1996 (Ann.A/7) after he has successfully cleared the trade test for Fitter Gr.III. The respondents have stated that no person junior to the applicant after correction of his seniority was promoted. The applicant was promoted to the post of Gr.III Fitter vide letter dated 12.2.1996 after he has successfully passed the trade test. In reply to the instances given by the applicant that 5 persons who are junior

to him namely S/Shri Chandan, Shailesh, Niranjana, S.S.Tank, Mahendra Singh and Chandra Singh, the respondents in para 4(12) have given particulars of the co-workers stated to be junior to the applicant, perusal of which shows that no doubt, Chandan, Shailesh Niranjana and S.S.Tank were initially appointed after the date of appointment of the applicant and also were granted status of semi-skilled Hammerman category later than the applicant, but the applicant was appointed in the skilled Gr.III after qualifying trade test on 28.2.1996, Shri Chandan was working against the post of MCF after earning promotion in Grade-II and Grade-I whereas Shri Shailesh Niranjana has also earned promotion in Grade-II and Grade-I. Similarly, S.S.Tank has also earned promoted in Grade-II much prior to appointment of the applicant in Skilled Gr.III. The respondents have stated that the instances given by the applicant of two persons namely Shri Mahendra Singh and Chandra Singh is of no consequence as they were not in the seniority list. Thus, according to the respondents, no person junior to the applicant was granted promotion.

4. The facts as stated by the respondents in the reply have not been controverted by the applicant.

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

6. We are of the view that the applicant is not entitled to any relief for more than one reason. As already stated above, prayer of the applicant is regarding grant of promotion to the applicant from the date when so called junior persons mention in para-12 were

granted such promotion. From the material placed on record, it is evident that the persons so promoted were granted promotion/appointment in Skilled Grade-III, Grade-II, Grade-I, MCF and Junior Engineer only after they have qualified the trade test. From the material placed on record, it is evident that the applicant was granted opportunity to qualify the trade test in the year 1993 but he refused to avail such opportunity. He qualified the trade test only in the year 1995 and thus was promoted in the skilled Grade-III vide order dated 12.2.1996. The so called junior person had already qualified the trade test in Skilled Grade-III and also in higher scale i.e. Grade-II prior to qualifying the trade test by the applicant in the year 1996. Thus, the so called junior persons were already holding higher post in Grade-II and some of them in Grade-I and MCF prior to regularization of service of the applicant in Skilled Grade-III. Thus, the so called junior persons who have attained promotion prior to the applicant cannot be said to be junior. In any case, it was open for the applicant to challenge validity of the order whereby the so called junior persons were granted promotion in Grade-III and further promotion in Grade-I, MCF and Junior Engineer. The applicant has not challenged validity of these orders in this OA. As such on this ground also, the applicant is not entitled to any relief.


7. Further according to us, the applicant is also not entitled to any relief on the basis of the law laid down by the Apex Court in the case of Puran Das vs Union of India and Others, 2006 SCC (L&S) 477. That was a case where the appellant before the Apex Court was deprived of the opportunity of acquiring requisite qualification

for promotion i.e. passing of trade test of Radio Operator Grade-II and Grade-I as he was initially placed under suspension on account of criminal case and subsequently removed from service in disciplinary proceedings. The order of removal was challenged before the High Court and the Hon'ble High Court allowed the writ petition thereby setting aside the order of removal with all consequential reliefs. The appellant was reinstated in service with all consequential reliefs and with arrears of salary. The appellant subsequently qualified the Radio Operator Grade-II and Grade-I test. Thus, he became eligible for promotion through departmental promotion test. A representation was made to grant such promotion from the back date when junior person to the appellant was granted such promotion but the said representation was rejected. The writ petition before the High Court was also dismissed. It is in this context, the Apex Court has held that no retrospective promotion can be given as appellant was not having requisite basic qualification at the time of consideration for promotion. According to the Apex Court, acquisition of qualification subsequently by the appellant would not entitle him for promotion from retrospective effect. The ratio as laid down by the Apex Court in the aforesaid case is squarely applicable in the facts and circumstances of this case. The applicant was removed from service vide order dated 23.8.1982 and he was reinstated in service on 29.9.1988. The so called persons junior to the applicant were granted promotion in Fitter Grade-III and Grade-II after passing the trade test prior to reinstatement of the applicant in the year 1988. Admittedly, the

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applicant qualified the trade test for fitter Gr.III in the year 1996 when he was granted such promotion on 12.2.1996. Prior to that, the applicant was also asked to appear in the trade test for Hammerman Grade-III in the year 1993 which opportunity the applicant refused to avail. Thus, the applicant cannot be held eligible for promotion in Fitter Grade-III retrospectively when the so called persons junior to the applicant were granted such promotion in Skilled Grade-III in the year 1981/1987 and they have been further promoted in Fitter Grade-II and Grade-I and MCF prior to passing of the trade test of Gr.III by the applicant on 28.2.1996, being not qualified at the relevant time.

8. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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