

CENTRAL ADMINISTRATIVE TRIBUNAL 19
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 08.11.2011

OA No. 56/2009

Mr. Nand Kishore, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter on 02.12.2011 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat
86

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

02.12.2011

OA No. 56/2009

Mr. Nand Kishore, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

DB not formed today. List it on 05.01.2012.

Anil Kumar
(Anil Kumar)
Member (A)

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05-01-2012

OA No. 56/2009

Mr. Nand Kishore, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard. O.A. is disposed of
by a separate order on the
separate-sheets for the reasons
recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 56/2009

DATE OF ORDER: 05.01.2012

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER.
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Rafique Mohammed S/o Shri Safique Mohammed, aged about 47 years, working as Black Smith, under IOW (Construction), North Western Railway, Phulera, in scale Rs. 3050-4590, R/o Luharo Ka Mohalla, Nareyana, Tehsil Sambhar, District Jaipur (Raj.).

...Applicant

Mr. Nand Kishore, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur.
3. Chief Administrative Officer (Construction), North Western Railway, Jaipur.
4. Yusuf S/o Abdul Karim, working as MCF under PWI Kishangarh, North Western Railway, in scale Rs. 5000-9000.
5. Rohitas S/o Mangal, working as Black Smith, Grade-I, under PWI, Reengus, North Western Railway, in scale Rs. 5000-8000.

...Respondents

Mr. Anupam Agarwal, counsel for respondent nos. 1 to 3.

None present for respondent nos. 4 & 5.

ORDER (ORAL)

The brief facts of the case, as stated by the applicant, are that the applicant was initially appointed in the Railway as Blacksmith in the pay scale of Rs. 260-400 on 12.07.1981 under PWI (C), Phulera, North Western Railway and he was granted temporary status on 01.01.1984. It is submitted on behalf of the



applicant that he has passed the trade test on 16.06.1986. The respondent no. 3 has circulated a list of candidates to fill up 20% vacancies of Group 'D' in which 50 candidates were placed on panel vide respondents letter dated 15.03.1994 and the name of the applicant appears at Sl. No. 15 of the said list. It is also not disputed that the services of the applicant was regularized on 10.09.1997 on the post of Gangman in the pay scale of Rs. 775-1025. Earlier, the applicant filed an OA No. 469/1997, and the same was decided by this Bench of the Tribunal vide order dated 05.03.1998 observing as under: -

"6. In the circumstances, we direct that the respondents shall consider the applicant's case for regularization against a Group-C post against 25% promotion quota, if the applicant is found to be senior enough and he falls within the zone of consideration depending upon the availability of vacancy as per rules in the light of the provisions contained in item-3 of the Railway Board's instruction dated 9.4.97, referred to above. In regard to any other grievance, the applicant may make a representation to the concerned authority and if he is still aggrieved, he may file a fresh OA."

The applicant submits that in compliance with the said order of the Tribunal, the respondent no. 3 has issued a letter dated 11.09.2000 stating that appointment in Group 'C' is not possible because there are no vacancies of 25% quota in the division.

2. Further, the applicant submits that the respondent no. 2 issued a seniority list dated 31.12.1988 (Annex. A/6) in which private respondent nos. 4 & 5 have been shown junior to him, and these two private respondents, who were working as Blacksmith, have been further promoted. It is not disputed that till date, the applicant is working as Blacksmith but has not been promoted at par with the private respondents. The applicant also



obtained the information through the Right to Information Act. As per the information furnished under the Right to Information Act, 12 posts of Blacksmith are lying vacant. Vide letter dated 28.08.2010 (Annex. A/13), it is also informed that in the Jaipur Division, no vacancy has been filled up against 25% quota. Thus, the candidature of the applicant for promotion deserves to be considered against 25% quota.

3. Per contra, the official respondents have submitted that the applicant is not entitled to claim the promotion on the post of Blacksmith Grade-I and MCF as admittedly he is substantive Gangman holding his lien as such. It is further submitted that a screening of casual labour was done to fill up 20% vacancies in which applicant was also found suitable for the post of Gangman, and thereafter for regularization of all the casual labours, a screening was done by construction department on different dates. As per recommendation of Dy. CE (C), Ajmer, the applicant was found fit for the post of Gangman vide letter dated 21.01.1997. Accordingly, his services were regularized by office order dated 31.07.1997 / 11.09.1997 under A.En., Phulera. It is also contended on behalf of the official respondents that the applicant since his engagement had worked under PWI (C) Phulera which comes under construction department while the private respondents worked under PWI (R) Phulera which comes under open line, Jaipur Division. As per service record, the applicant had worked in construction department since his engagement including TS while the private respondents since their initial engagement remained under Jaipur Division. They



were regularly appointed in the year 1989 & 1994, respectively, on the post of Hammer Man and thereafter, as per avenues of promotion, promoted as Blacksmith Grade-III, II & I and then MCF. As per letter dated 11.09.2000, the applicant has already been regularized on the post of Gangman in Jaipur Division and as per AVC of Gangman, if any notification to fill up the vacancies is issued and the applicant is applied for trade test, and if he declares successful in the trade test and participates in the selection procedure as per rules, the applicant will be considered for promotion as there is no bar to consider him as per rules in the selection to be notified in future as per AVC, but as claimed by the applicant, he is not entitled to be promoted.

4. Having considered the rival submissions of the respective parties and upon careful perusal of the material available on record, it is not disputed that the services of the applicant has been regularized on the post of Gangman and he is still working as Gangman, and so far as the promotion of the applicant at par with the private respondents as they were promoted is concerned, we are fully convinced with the submissions made on behalf of the official respondents that the claim of the applicant is not similar to the private respondents because their services were regularized on the post of Hammer Man in the year 1989 & 1994, respectively, and they got their further promotion as per rules and avenues of promotion in their department / unit, while the applicant is substantive group 'D' Gangman holding his lien at Jaipur Division working as Blacksmith on work charge / ad-hoc basis in construction department, therefore, the case of the



applicant rightly was not considered at par with the private respondents. Further, we have considered the submissions of the official respondents as submitted in their reply and as admitted by the learned counsel appearing for the official respondents to the extent that the applicant would be promoted on his turn as per rules as the applicant has a right of consideration and there is no direct avenue of promotion from the post of Gangman to Blacksmith Grade-I, which is the different category having different avenues of promotion, thus, the case of the applicant would be considered in the ranker quota on the basis of his lien on his turn.

5. Having considered the averments made by the official respondents in their reply and during the course of the arguments that the case of the applicant would be considered in ranker quota on the basis of his lien on his turn as per rules, we find no illegality in the action of the official respondents, and it is expected from the official respondents that as and when the vacancy arises, the case of the applicant for promotion shall be considered objectively in accordance with the provisions of law.

6. With these observations, the Original Application stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)