

(RESERVED ON 15.02.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the 26th day of **March 2018**.

ORIGINAL APPLICATION NO. 435 OF 2008

HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Anil Kumar, son of Shri Chhadammi Lal, working as Driver (Goods) under Crew Controller, Diesel Lobby, N.E. Railway, Kashganj.
.....Applicant

VE R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (Personnel), North Eastern Railway, Izat Nagar.
3. Girish Chand Joshi S/o Shri Jeevan Cahndra Joshi working as Driver (Passenger) under Chief Crew Controller, kashipur.
4. Mihir Bhattarcharya S/o Shri Narsingh Prasad Working as Driver (Passenger) under Chief Crew Controller, Bareilly.
5. Rakesh Kumar Gangwar S/o Shri Rajendra Singh Working as Driver (passenger) under Chief Crew Controller Diesel Lobby Farrukhabad.

.....Respondents

Advocate for the Applicant : Shri Vinod Kumar

Advocate for the Respondents : Shri P.N. Rai

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-(A))

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) *The Hon'ble Tribunal may graciously be pleased to issued a Writ, order or direction in nature of certiorari quashing the impugned order dated 11.04.2007 (Annexure A-1) passed by Respondent no. 2.*
- (ii) *The Hon'ble Tribunal further may be pleased to issue a Writ, order or direction in nature of mandamus directing the*

respondents to promote the applicant on the post of Fireman-I w.e.f., 21.09.1989 and further on the post of Fireman-I w.e.f., 21.09.1989 and further on the next higher posts i.e., Diesel Assistant Driver (Goods) and Driver (Passenger) etc. with all consequential benefits including seniority and arrears of salary with interest.

- (iii) The Hon'ble Tribunal may further be pleased to issue any other Writ, order or direction which is deemed fit and proper in the circumstances of the case.*
- (iv) Cost of the application may also be awarded in favour of the applicant.*

2. The brief facts of the case as per the O.A. are that the applicant was appointed as Fitter Khalasi on 14.06.1982. He was posted as Engine Cleaner w.e.f., 23.01.1985 after passing the prescribed test. Due to a mistake, the applicant was placed at Sl. No. 114 of the seniority list dated 15.10.1987 of Engine Cleaners, which was corrected when he represented before the respondents and consequently his name was placed in between Sl. No. 70 and 71 i.e, below the name of Shri Hakik Ahmad and above the name of Shri Pitwa Oran.

3. The respondents issued order for promotion to the post of Fireman-II in the grade pay of Rs. 825-1200/- and respondent 3, 4 & 5 were promoted vide letter dated 25.04.1986, however, the applicant was not promoted from the date his juniors were promoted. When the applicant represented before the respondents several times, he was given proforma promotion to the post of Fireman-II w.e.f., 25.04.1986 vide letters dated 14.10.1991 and 20.08.1992 (Annexure A-2 and A-3 to the O.A.). Later, the juniors were further promoted as Fireman-I in the grade pay of Rs. 950-1500/- vide letter dated 21.09.1989 (Annexure No. A-4 to the O.A.), however, the applicant was not promoted. The applicant represented before the respondents in this regard and when no action was taken by the respondents, the applicant filed O.A. No. 1284 of 1994 which was disposed of by this Tribunal vide order dated 10.09.2002 (Annexure No. A-5 to the O.A.) with the direction to respondent no. 2 to consider the representation of the applicant after giving opportunity of hearing to the parties who may be affected by the order.

4. The respondents, thereafter, sent a letter dated 27.06.2003 (Annexure no. A-6 to the O.A.) to the applicant, by which he was informed that due to mistake his name was kept above the name of Shri Pitwa Oran i.e. respondent no. 5 though Shri Pitwa Oran was posted on 26.05.1984 whereas the applicant was posted on 23.01.1985. It was further mentioned that Shri Pitwa Oran and Shri Girish Chand Josh had applied in reference to previous notification, for which they were senior to him, hence, he was not entitled to proforma promotion on the post of Fireman-II in respect of Shri Pitwa Oran and Shri Girish Chand Joshi.

5. The applicant challenged the letter dated 27.06.2003 by filing O.A. No. 508/2004 before this Tribunal and this Tribunal vide letter dated 07.12.2006 (Annexure No. A-7 to the O.A.) allowed the O.A. with direction to the respondents to restore the previous order where by the applicant was given proforma promotion to the post of Fireman Grade-II with reference to his juniors and consider the applicant for further promotion to the grade of Fireman-I as per rules with all consequential benefits. In compliance of the order dated 07.12.2006, the respondent no. 2 vide letter dated 11.04.2007 (Annexure No. A-1 to the O.A.) restoring the proforma promotion given to him on the post of Fireman-II vis-à-vis Pitwa Oran was restored. It was also mentioned in the aforesaid letter that Shri Pitwa Oran has been given promotion on the post of Fireman-I against the reserved post for S.T. and not against general seniority, hence applicant is not entitled for promotion as Fireman-I in reference to Shri Pitwa Oran. It was also mentioned that the name of Shri Girish Chand Joshi is senior to him. Thus, the benefit of promotion to the post of Fireman-I in reference to Shri Girish Chand Joshi was not admissible to him. The applicant being aggrieved by the letter dated 11.04.2007 issued by the DRM, furnished a representation dated 18.07.2007 (Annexure No. A-8 to the O.A.) wherein he submitted that although the names of Shri Girish Chand Joshi is at Sl. No. 9 of the seniority list but he was appointed on 18.09.1985 on the post of Engine Cleaner, whereas the date of appointment of the applicant on the post of Engine Clear is 23.01.1985. It was also submitted that Shri Mihir Bhattarcharya and Rakesh Kumar Gangwar are also junior to the applicant.

6. The applicant further submitted in the O.A. that Shri Girish Chand Joshi, Mihir Bhattacharya and Rakesh Gangwar were promoted to the post of Fireman-II w.e.f., 25.04.1986 and Fireman-I w.e.f., 21.09.1989. Since, the applicant was also treated to be promoted as Engine Cleaner w.e.f., 23.01.1985 and Fireman-II w.e.f., 25.04.1986 and given proforma promotion, he is also entitled for promotion as Fireman-I w.e.f., 21.09.1989 from the date his juniors were given promotion as Fireman-I. It has also been submitted by that the seniority is to be determined from the date of appointment on the post and not otherwise.

7. The respondents have filed counter affidavit in which it has been stated that the applicant was appointed as Khalasi in the Railways, and later on he was posted as Engine Cleaner and thereafter he was promoted to the post of Fireman-II. When he was working as Fireman-II, he claimed for proforma promotion to the post of Fireman-II as well as promotion to the post of Fireman-I. The applicant was not promoted to the post of Fireman-I, as his case was not found fit and in order for promotion. Being aggrieved, the applicant O.A. No. 1284 of 1994 before this Tribunal and this Tribunal directed the respondents to decide the representation of the applicant. The representation of the applicant was decided on 08.05.2003/27.06.2003 but the applicant was not satisfied and filed another O.A. i.e. O.A. 508 of 2004 wherein this Tribunal vide order dated 07.12.2006 allowed the O.A. In compliance of the order dated 07.12.2006, the respondents passed the order dated 11.04.2007.

8. It has been stated in the Counter that the entry on the post of Engine cleaner has been allowed to the applicant treating the date 23.01.1985 by way of category change on the post of Engine Cleaner whereas the change of category of Engine Cleaner of Shri Pitwa Oran is 26.05.1984. It has also been stated that since the grade of Engine Cleaner is the lower of Group D employee hence the seniority of the Engine Cleaner is assigned on the basis of entry to the lowest grade in different categories. As per office record the entry into the post of Group D of the applicant Shri Anil Kumar is later on of the respondent no. 3, 4 & 5 (Girish Chandra Joshi, Mihir Bhattacharya & Rakesh Kumar Gangwar). It is also stated that the respondents have determined the seniority of respondent no. 3, 4 and 5 as per their date of appointment. Shri Girish Chand Joshi was

appointed on 08.02.77, Shri Mihir Bhattacharya on 28.05.1982, Shri Rakesh Kumar Gangwar on 18.03.1977 and the applicant was appointed on 19.06.1982, hence, the applicant is junior to the above mentioned respondents.

9. The applicant has filed rejoinder affidavit reiterating the facts stated in the O.A. In reply, the counsel for the respondents have filed supplementary counter affidavit basically reiterating the facts stated in the counter affidavit. Then the applicant filed a Suppl. Affidavit on 5.12.2014, where it was stated that the respondent No. 3 and 5 were promoted as Engine Cleaner w.e.f. 18.09.1985 and respondent No. 4 and the applicant were promoted w.e.f. 23.01.1985. Hence, the applicant claims seniority above the respondent No. 3 and 5 and promotion to Fireman-I with reference to respondent No. 3 and 5 who are juniors to the applicant as claimed by him. In reply, the respondents filed Suppl. Counter on 12.05.2015 by which it was stated that respondent No. 3 and 5 were appointed as Sub Engine Cleaner on 8.02.1977 and 18.03.1977 respectively and they were regularized as Sub Engine Cleaner. Thus it is contended that they were senior to the applicant.

10. Vide order dated 5.10.2015, the respondents' counsel was directed by the Court to clarify with reference to Annexure A-4 order dated 21.09.1989 (which notified the list of employees who qualified the selection for Fireman-I) if any examination was taken place and if the applicant participated in the examination and whether he was qualified. In reply, the respondents filed Suppl. Counter Reply dated 24.10.2016, stating that the name of the applicant was not there in the order dated 21.09.1989 and no specific reply about participation of the applicant in the examination was mentioned.

11. Heard learned counsels for both the parties who reiterated their contentions as per their respective pleadings. Learned counsel for the applicant has furnished subsequent to the hearing a copy of the judgment of Hon.ble Apex Court in the case of Mohinder Singh Gill & Anr vs The Chief Election Commissioner & Ors reported in 1978 AIR 851. The cited case, apart from other issues, has also dealt with the applicability of principle of natural justice for administrative decision making.

12. We have considered the pleadings and the submissions of the parties. The claim of the applicant is based on the fact that his juniors have been promoted as Fireman-I ignoring the case of the applicant. Similar claim of the applicant in respect of the post of Fireman-II was accepted by the respondents earlier and then by this Tribunal vide order dated 7.12.2006 in OA No. 508/2004 (Annexure A-7). But the claim for promotion to the post of Fireman-I was not accepted by the respondents citing his seniority vis-avis the private respondents, Since the claim in respect of Fireman-II was accepted from 25.04.1986. The respondents' plea that the applicant was not found fit for the post of Fireman-I as stated in para 3 of the Counter and that comparison with the respondents 3 and 5 will not help the applicant as they were senior to the applicant as they were appointed initially in Group-D post. However, in the impugned order dated 11.04.07 (Annexure A-1), it is not stated whether the applicant was considered for promotion to Fireman-I and if so, whether he was not found suitable or not, as stated in para 3 of the Counter.

13. In the Suppl. Counter affidavit dated 24.10.2016 filed by the respondents as per the order dated 5.10.2015 of this Tribunal, it was not stated categorically if any examination was conducted for promotion to Fireman-I and whether the applicant participated in it. It was stated therein that in the order dated 21.09.1989 (Annexure A-4), name of the applicant was not included. But since the applicant was not promoted initially to Fireman-II by 21.09.1989 and he was promoted w.e.f. 25.04.1986 vide order dated 14.10.1991 (Annexure A-2), he could not have been considered for promotion to Fireman-I on 21.09.1989, when his juniors were promoted to the post of Fireman-I vide order at Annexure A-4.

14. When the order dated 14.10.1991 was cancelled by the respondents, the decision was challenged by the applicant in OA No. 508/2004 and this Tribunal vide order dated 7.12.2006 (Annexure A-7) had directed the respondents to restore applicant's proforma promotion as Fireman-II as per earlier order dated 14.10.1991 and to consider his case for further promotion to Fireman Grade I as per rules with consequential benefits. In compliance of this order dated 7.12.2006 of the Tribunal, the respondents have passed the impugned order dated 11.04.2007 (Annexure A-1), by

which the promotion of the applicant as Foreman-II was restored as per order dated 14.10.1991, but his promotion to Fireman-II was rejected. **But the order dated 11.04.2007 did not specifically mention whether the applicant's case was considered for promotion to Fireman-I as per rules as directed by this Tribunal vide order dated 7.12.2006. In order to consider the applicant for promotion to Fireman Grade I, he should be considered for such promotion from the date of his eligibility as per the rules and instructions that were applicable as on his date of eligibility, assuming his status as Fireman-II w.e.f. 25.04.1986.** As this has not been done, as would appear from the impugned order dated 11.04.2007, it is clear that the order dated 7.12.2006 of this Tribunal with regard to consideration of the applicant's case for promotion to Fireman-I has not been complied.

15. In view of above, this OA is disposed of with the direction to the respondents to consider the case of the applicant for promotion to the post of Fireman Grade I as per the rules and instructions applicable as on the date when the applicant will be eligible for being considered for promotion to Fireman Grade I assuming his status to be Fireman Grade II with effect from 25.04.1986 and if the applicant is found suitable for such promotion, then necessary order shall be issued by the respondents/competent authority, promoting him from the date he would be found suitable for promotion to the post of Fireman Grade I as per rules, allowing all consequential benefits and such order shall be passed as per the applicable rules and communicated to the applicant within three months from the date of receipt of a copy of this order.

16. The OA is disposed of as above. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(JUSTICE DINESH GUPTA)
MEMBER-J

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