

Reserved
(On 08.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 24th day of April 2018

Original Application No 330/01653 of 2010

Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. Gokul Chandra Pati, Member – A

Ved Prakash Shukla, S/o Nawab Chandra Shukla, R/o Village Mathapar, Post Office – Itahua Chandauli, District Deoria.

. . . Applicant

By Adv: Shri A.D. Singh, Shri P.K. Jaiswal & Shri R.K. Tiwari

V E R S U S

1. Union of India through its General Manager, N.E. Railway, Gorakhpur and others.
2. Divisional Rail Manager – North Eastern Railway, Gorakhpur.
3. Chief Karkhana Manager / Signal, Gorakhpur Camp, Gorakhpur.
4. K.C. Chaubey, S/o Late Ram Naresh Chaubey, Technician Grade II (E.F.R.) Signal Workshop, Gorakhpur Cantt. Gorakhpur. Under the Control of DWM Signal Workshop, NER, Gorakhpur.

. . . Respondents

By Adv: Shri R.K. Rai & Shri Gautam Chaudhary

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

This O.A. is filed under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- i. to issue a order or direction in the nature of certiorari quashing the impugned rejection order dated 22.03.2010 passed by Resp. No. 3.*
- ii. to issue a order or direction in the nature of mandamus considering the facts and circumstances of the case, directing the Respondent No. 3 to consider the claim of the applicant and to promote applicant on higher post on the pay scale of 4000 – 6000 and all consequential benefit may be given to applicant since 29.11.2006.*
- iii. to issue any other order or direction as deemed fit in the circumstances of the case.*

iv. to award costs to the applicant."

2. Facts in brief as stated in the OA are that the applicant was appointed on compassionate grounds as Khalasi on 27.09.2000 under Signal department of the North Eastern Railway at Varanasi. He was transferred to the office of the respondent No. 3 at Gorakhpur vide order dated 18.07.2003 and he joined there on 30.07.2003 as stated in the impugned order dated 22.03.2010 (Annexure No. 8). Vide order dated 01.11.2003, the applicant was promoted to Helper Grade I by respondent No. 3. Some employees stated to be junior to the applicant had joined the office of respondent No. 3 were promoted to Technician Grade II (in short TG III).

3. It is stated that on 02.04.2004, the applicant was deputed to Signal Section Engineer (Annexure No. 3) for which he was deprived from appearing in the Trade Test examination for the post of TG III. Hence, the applicant moved a representation to be promoted to TG III on the ground that his juniors have been promoted. Then a list was prepared for the employees to appear in the Trade Test for TG III in which applicant's name was not there although he claimed to be senior to some other employees whose name was included. On being approached by the applicant the list was corrected by the respondents including applicant's name (Annexure No. 5).

4. Since the applicant was still not promoted, he filed an OA No. 32 of 2000 which was disposed of by this Tribunal vide order dated 12.01.2010 (Annexure No. 7), directing the respondents to decide the representation by passing a reasoned order. In response, the respondent No. 3 passed the impugned order dated 22.03.2010 (Annexure No. 10) rejecting the

representation of the applicant. In this OA, this order dated 22.03.2010 has been challenged mainly on the following grounds:-

- i. Since junior employees have been included in the list for promotion to TG III, but applicant's name is not included.
- ii. Applicant could not appear in the trade test for TG III on 02.04.2004 as he was deputed to Signal Section Engineer office on duty.
- iii. Corrected list for promotion includes name of the applicant.
- iv. Impugned order of rejection is arbitrary and against the law of natural justice.

5. Respondents filed Counter Reply stating that the applicant was transferred to the office of respondent No. 3 from Varanasi on his own request. Hence, his seniority was placed at bottom. Then the applicant was promoted to the rank of Helper – I and allotted General Shop as per order dated 24.05.2005 (Annexure CA-4). It is stated that the seniority list of Helper – I is prepared Shop-wise, while seniority list of Helper – II is prepared common for all shops. In the seniority list of General Shop for Helper – I, the applicant's name is at Sl. No. 19 (Annexure CA – 5). A notification dated 08.11.2006 and 24.11.2006 for promotion from Helper – I to TG III based on vacancies in different trades / shops was issued. For General Shop, number of vacancy as TG III was 14 out of which 11 were for general category. Since applicant's position in seniority was 19, he could not be promoted in General Shop (as his name was included in the List – B employees ready for promotion) at Sl. No. 7. Due to lack of vacancy in the General Shop the applicant could not be considered or promoted. Accordingly, the representation of the applicant was rejected

vide order dated 22.03.2010. It is further stated that in General Shop, no employee junior to the appellant has been promoted as TG III.

6. The applicant has filed Rejoinder Affidavit, stating that the respondents have wrongly divided the shop as General shop and relay shop and promoted the employees by pick and choose policy, not following the rules. He cited the example of Shri K.C. Chaubey, who being his junior was promoted and it is stated that promotions are in violation of the A.P.C. Rules, copy of which is enclosed at Annexure RA-2 to the rejoinder. The applicant also filed a supplementary reply in which he submitted that in the joining letter dated 30.07.2003 the seniority of the employees working in the workshop be counted from the date of their joining at Gorakhpur Karkhana and the Ticket numbers are known as seniority number. On 20.10.2003 twenty surplus employees of Engineering department had also joined in the aforesaid workshop. According to the transfer letter dated 18.07.2003 the seniority of the employees will be counted according to the date of joining and the applicant joined earlier than the other 12 employees. It is also mentioned that as per the A.V.C. Rules, the seniority should be centralized.

7. In the supplementary counter reply filed by the respondents, it is submitted that a seniority list of the various employees working in the pay scale of Rs. 2550 – 3200 including the Khalasi, Helper and Safaiwala on 01.04.2004 (Annexure No. SCR-1), wherein the applicant was placed at Sl. No. 22 and one Shri Krishna Chandra Chaubey was placed at Sl. No. 35. Aptitude / Trade Test of the employees working in the pay scale of Rs. 2550 – 3200 was held and they were promoted as Helper – II under

Pay Scale of Rs. 2650 – 4000 in different units / establishments w.e.f. 01.11.2003 vide order dated 24.05.2005 (Annexure No. SCA-2). The final seniority list of Helper – I in the pay scale of Rs. 2650 – 4000 (Semi Skilled Artisan) under different shops was published vide order dated 06.11.2006 (Annexure No. SCA-3) after inviting the objections and published on the notice board. As per the Railway Establishment Manual persons engaged as Khalasi are having hierarchy of skilled artisan Grade III thereafter Skilled Grade II and Skilled Grade I as per Rule 159 of the Indian Railway Establishment Manual (in short IREM) after Trade Test amongst the lower grade they are promoted to the higher post in respective category / skill acquired. The promotion to higher Group 'D' are governed under Rule 180 to 187 of the IREM Vol. I where it has been stated that after systematic training to unskilled post, they should be considered for semi skilled post trades under the prescribed trade test against 50% quota set for promotion and likewise promotion to higher skilled grades. It is stated that the employees in different shops are promoted as per the provision of the IREM in their respective shops / trades after acquiring necessary skills in their respective trades and their seniority list are maintained Ship-wise in different shops. Since the applicant and Shri K.C. Chaubey were assigned to different shops, their seniority cannot be compared. Shri K.C. Chaubey was promoted in the relay shop on the post of TG-III to TG-II and applicant canot claim parity with him.

8. In the rejoinder affidavit filed by the applicant he has reiterated almost the same points as stated in the OA and supplementary affidavit.

9. The matter was heard. Learned counsel for the applicant argued that applicant's juniors have been promoted to the grade of TG-III ignoring his claim. On the other hand, the respondents' counsel argued that the promotion is being done shop-wise and in the applicant's shop i.e. general shop, no employee junior to the applicant has been promoted. The counsels of both the parties have filed their written arguments also in time with their respective pleadings.

10. The relevant question to be decided in this case is whether the promotion to the grade of TG-III from grade of Helper-I is to be considered as per shop-wise based on shop-wise seniority list as contended by the respondents, or it is to be considered in a centralized manner as contended by the applicant.

11. It is the case of the applicant that as per the Rules for promotion of the A.V.C. of Signal Workshop staff as enclosed to the rejoinder affidavit (Annexure RA-2), the applicant is entitled to the promotion based on the common / centralized seniority list vide notification dated 23/25.04.2005 and 15/20.06.2005 and that the respondents have adopted wrong method of promotion, which is illegal and arbitrary. It is also stated in the written argument filed by the learned counsel for the applicant that the respondents have also given promotion to SC/ST employees in violation of the judgment of Hon'ble Apex Court. Hence, the impugned order is illegal and is liable to be quashed.

12. The case of the respondents as summarized in the written argument filed by the counsel comprises the followings:-

- The representation dated 26.02.2010 filed by the applicant for promotion to TG-III was rejected by the respondents as per the impugned order dated 20.03.2010 (Annexure No. 1 to the OA).
- The applicant was transferred from Varanasi on his own request as Khalasi on 30.07.2003 and in the seniority list, the applicant was at serial no. 22 and that of Sri K.C. Dubey was 35. Khalasi with common seniority list are promoted to Helper-II and assigned to help an Artisan staff as per passing of their Trade and they gradually improve to the level of skilled category in different shops. Then final seniority list as Helper-I on next promotion was prepared for different shops and these are prepared shop-wise and published on 6.11.2006 (Annexure SRA-3) in which the applicant was placed at serial no. 19 in the General shop and Sri K.C. Dubey was placed at serial no. 10 of Relay shop.
- Promotion to higher skilled Group D posts are under the para 180 to 187 of IREM and it is done shop-wise. The applicant after passing the trade test was promoted to Helper-I (skilled artisan) as per procedure in para 159 and 187 of IREM, Vol-I and with recommendation of Aptitude Test committee, he was posted to General shop and he was placed at serial No 19 of the seniority list (Para 13 of written arguments) and was promoted to TG-III on 8.11.2006 in General shop.
- Sri K.C. Chaubey was similarly posted to Relay shop and having different seniority, he was promoted to TG-III and then to TG-II.

13. We have considered the submissions and pleadings of the parties in this case. The respondents have explained that as per the provisions of IREM, Vol-I. The relevant para 183 and para 187 of IREM Vol-I state as under:-

“183. Signal and Telecommunication Engineering Deptt. 50% of vacancies in skilled grades should be open for promotion of semi-skilled artisans/Basic Tradesmen provided they attain the standards prescribed in the relevant trade test The Railway administrations should give systematic training to unskilled men for promotion to semi-skilled posts. Systematic training should also be given to semiskilled artisans for promotion to skilled categories. The period of training may be prescribed by the individual railway administrations. In individual cases the period of training may be reduced.

187. Promotion to skilled categories Semiskilled artisans and basic tradesmen are eligible for promotion to skilled grades if they pass the prescribed trade test against 50% quota set apart for promotion as provided in para 159.”

From the above provisions of IREM, it is clear that for promotion in Signal and Telecommunication Engineering department, 50% of the vacancies

will be filled up from semi-skilled to skilled category if they pass the prescribed trade test. Hence, for this purpose, skill-wise seniority is to be maintained so that semi-skilled employees can be promoted to higher skilled employee. This will not be possible if an employee, on promotion in a particular skill is posted to a shop requiring different skills.

14. The applicant did not challenge his allotment / assignment to the General shop on the basis of the test conducted by the respondents and his seniority fixed in General shop after his promotion to Helper-I, where the seniority list is maintained shop-wise vide the notification dated 06.11.2006 (Annexure SCR-3) to Supplementary counter reply) showing shop-wise seniority. The serial number of the applicant in the seniority list of Helper – I was 19 in General shop, which was not objected by him. Due to inadequate vacancy of higher posts in General shop, the applicant could not be promoted as stated by the respondents in the Counter, where as Sri K.C. Chaubey, being in a different shop was promoted as vacancies were available in that Shop. Having accepted the seniority assigned in the General shop, it is not open to the applicant now to challenge it and claim to be promoted based on the common seniority which was valid prior to his promotion as Helper-I. It is not the case of the applicant that any junior in his shop, where applicant's seniority is maintained, has been promoted overlooking his case. The respondents have also explained the need for maintaining the list shop/skill-wise, so that an unskilled worker can gradually upgrade his skill in his allotted trade and go to higher skilled post. On the other hand, if a skilled worker is promoted to a higher skilled worker in another shop/skill, which is different from his skill where he has achieved proficiency, then it will hamper the quality of work.

15. In addition to above, we are also not able to accept the contention that as per the A.V.C. rules, copy of which is enclosed as Annexure RA-2 of the rejoinder affidavit filed by the applicant, the promotion is to be done in a centralized manner, based on the common seniority list. As Helper-I, the list is not centralized, but it is shop-wise and no specific provision of the rule has been cited by the applicant to support his contentions.

16. In view of above, we are of the view that the applicant has failed to justify his claim based on existing rules/ guidelines and as such, the OA lacking merit is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(Gokul Chandra Pati)
Member (A)

/pc/

(Justice Dinesh Gupta)
Chairman