

**Central Administrative Tribunal
Principal Bench**

**OA No.1004/2013
MA No.779/2013**

New Delhi, this the 09th day of October, 2017

**Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Shri Umesh Chand Saxena,
Technician grade-II, under
Senior Divisional Electrical
Engineer (RS),
Ghaziabad.

...Applicant

(By Advocate : Ms. Meenu Mainee)

Versus

Union of India : Through

1. General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
North Central Railway,
State Entry Road,
New Delhi.
3. Divisional Electrical Engineer (RS),
Northern Railway,
Ghaziabad.

...Respondents

(By Advocate : Shri P.K. Yadav)

ORDER (ORAL)

Mr. V. Ajay Kumar, Member (J) :-

Heard both sides.

2. The applicant, a Technician Grade-II in the North Central Railway, filed the OA seeking the following reliefs:-

- “8.1 That this Hon’ble Tribunal may be graciously pleased to allow this OA and direct Respondents to hold a trade test for the applicant for the post of ancillary category and promote him into the post of Technician grade-I from the date from which his junior has been promoted.
- 8.2 That this Hon’ble Tribunal may be pleased to award any other or under the facts and circumstances of the case.
- 8.3 That the cost of these proceedings may kindly be granted in favour of Applicant and against the respondents.”

3. The applicant earlier filed OA No.2138/1993 and the same was allowed by this Tribunal on 19.07.1999, as under :-

“6. Accordingly, we dispose of this OA with a direction that the respondents to consider his case for taking the Trade Test for promotion as Helper Khallasi irrespective of his seniority on the basis of the earlier service as Electrical Khallasi after his diversion from the post of regular Gangman. In case such a Trade Test has been held and the applicant has undertaken the Test, the respondents may now declare the result and if successful promote him and fix his seniority as per the rules on the subject. In the alternative, he will be allowed to take the test for promotion

to the post of Helper Khallasi as and when it is next held.

7. The OA is disposed of as above. No order as to costs.”

4. In compliance of the aforesaid orders, the respondents fixed the pay scale of the applicant w.e.f. 01.07.1993 as Elect. Khallasi. Thereafter, the applicant filed OA No.3082/2009, seeking that the benefits granted to his junior, one Shri Shailender Kumar may also be granted to him. The said OA was disposed of by this Tribunal on 24.09.2010, as under :-

“Heard the learned counsel for the parties.

2. We do not find any anomaly in the pay scale at par with junior Shri Shailender Kumar (respondent No.4), who being declared surplus was adjusted as Technician I. Learned counsel for the applicant assails Notice dated 20.9.2008 to contend that by an order dated 10.5.2007 since the seniority being corrected, the benefit of promotion is given as Helper Khalasi from 3.9.1992 instead of 1.3.1993 with fixation but arrears have not been paid.

3. As the non-fixation of the seniority at an appropriate time is an error committed by the official respondents, applicant should not be put to the disadvantageous position on this account, this OA stands disposed of by directing official respondents to pay the arrears to the applicant within a period of two months from the date of receipt of a copy of this order. No costs.”

5. When the applicant's representations were not answered for granting all the benefits at par with his junior Shri Shailendra

Kumar with effect from respective dates, the applicant filed the instant OA. The applicant explained his grievances in paragraph No.4.13, which reads as under :-

“That it is respectfully submitted that Shri Shailendra Kumar by virtue of having been promoted as helper khallasi in September 1992 had become eligible for being considered for the post in ancillary category in which post he was given further promotion and became technician grade-I, the applicant who was senior to Shri Shailendra Kumar but on account of his depressed seniority he was not considered for ancillary category and therefore, when under the direction of this Hon’ble Tribunal the applicant has been declared senior to Shailendra Kumar the applicant ought to have been given the benefit of promotion to grade I as was given to Shri Shailendra kumar and the respondents ought to have conducted a trade test of ancillary category to promote the applicant as technician grade I i.e. full benefit of direction of this Hon’ble Tribunal giving seniority to the applicant over and above Shri Shailendra Kumar was not made available to the applicant.”

6. The respondents, vide their counter and also through their counsel have not disputed the aforesaid facts and entitlement of the applicant being senior to said Shri Shailendra Kumar. However, the only objection of the respondents is that since the applicant did not shoulder the responsibility during the relevant period, he is not entitled for any monetary benefits. In support of the said submission, the learned counsel for respondents also placed reliance on the decision of the Hon’ble Apex Court in **Union of**

India and Another Vs. Tarsem Lal and Others (2006) 10 SCC 145.

7. Once the respondents admit that injustice was done to the applicant and that his junior was granted certain benefits ignoring his claims, he was also naturally entitled for the same with effect from the respective dates on which the said junior of the applicant got benefits. The rules or the decision, on which the respondents placed reliance, are not prohibiting granting of the benefits to the applicant on notional basis, if the applicant was prevented from shouldering the responsibilities, without justification.

8. In the circumstances, the OA is allowed and the respondents are directed to grant all the benefits to the applicant with effect from the respective dates on which his junior, Shri Shailendra Kumar, was granted the same, with all consequential benefits, such as refixation of pay, pension etc., however, notionally. He is not entitled to any monetary benefits. This exercise shall be completed within 90 days from the date of receipt of a certified copy of this order. No costs.

MA No.779/2013

In view of the above order passed in OA, the MA also stands disposed of.

(Nita Chowdhury)
Member (A)
'rk'

(V. Ajay Kumar)
Member (J)