

**Central Administrative Tribunal
Principal Bench**

OA No.1157/2013

Reserved on : 28.03.2017

Pronounced on :06.04.2017

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Tulsi Ram,
S/o. Sh. Tara Chand,
R/o. T-35/C, Shri Ram Road Railway Colony,
Civil Lines,
Delhi-54.

....Applicant

(By Advocate : Mr. Yogesh Sharma)

Versus

1. Union of India, through The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi.
3. The Assistant Personnel Officer/ Engg.
DRM's Office, Northern Railway,
State Entry Road, New Delhi.
4. The Sr. Section Engineer (Works)
Northern Railway, Baroda House,
New Delhi.

...Respondents

(By Advocate : Mr. P. K. Yadav)

ORDER

Hon'ble Mr. P. K. Basu, Member (A) :

The applicant was appointed as Khalasi on 21.01.1981. In the seniority list of applicant dated 16.05.2011 and January, 2007, he had been shown senior to one Sh. Jai Naraian and another Trilok Chand. In 2007 seniority list of Khalasi, the applicant is at Sl. No. 29 and Jai Narain and Trilok Chand are at Sl. No. 35 and 38 respectively. In the seniority list dated 16.05.2011 the applicant is

at Sl. No. 17 and Jai Narain and Trilok Chand at Sl. 20 and 22. Applicant states that recently he came to know that some workers, who were junior to him, namely Sh. Jai Narain and Sh. Trilok Chand, have been promoted to the post of skilled artisan grade whereas the applicant is not. The applicant made representations to the Additional Railway Manager's office dated 09.06.2011 and 30.06.2011 pointing out this anomaly and requesting for consideration of his case for promotion to the post of Artisan Grade from the date of promotion of his juniors.

2. From the RTI replies, the applicant came to know that the junior persons to him were called for the trade test vide letter dated 04.09.2006 for the post of Mason in which 18 persons were called for trade test including two juniors namely Jai Narain and Trilok Chand and after they were declared passed in the trade test, promoted as Artisans vide order dated 03.10.2006.

3. The case of the applicant is that he was working at Northern Railway, Baroda House at that time and that no notice was placed in the notice board at Headquarters (Baroda House) regarding the trade test being conducted nor any such notice or information was given to the applicant. As a result, no one from Baroda House could apply.

4. The applicant had filed O.A 315 of 2012 but this was withdrawn by him with liberty to give representation to the authorities on the ground that when the trade test was held the applicant was not informed about it while he was posted at Baroda House. Vide order dated 31.01.2012, the O.A was dismissed as withdrawn with the above liberty. The applicant made a

representation on 09.02.2012, as a result of the liberty granted by the Tribunal, but having received no reply, has filed the instant O.A.

5. The short answer of the respondents on the question of notice for trade test is that demand notice for trade test was displayed on the notice board of all the SSE/ADEN/E. However, it is not specifically asserted that the notice was also available at Baroda House. In para 6, the respondents have also mentioned about two grades of Khalasi etc. However, we do not think that it is germane to the issue at hand. The issue is whether the applicant got a fair opportunity to take the trade test in 2006. It is admitted that the applicant thereafter took the trade test in 2011 and was promoted.

6. The applicant is seeking promotion to the post of Artisan from the date of promotion of his juniors i.e., with effect from 03.10.2006 as per the following prayer :-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned orders dated 25.07.2011 declaring to the effect that the same are illegal, unjust and arbitrary and consequently pass an order directing the respondent to consider the case of the applicant for his promotion to the post of Artisan/Skilled category (Mason) from the date of promotion of his junior i.e., with effect from 03.10.2006 with all the consequential benefits including re-fixation of pay, seniority and arrears of difference of pay and allowances.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 03.10.2006 and 04.09.2006 only to the extent by which the applicant was not called in the trade test and not considered for promotion.

(iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with the cost of litigation.”

7. The applicant has also quoted para 228 of IREM which provides as follows :-

“228. Erroneous Promotion.-(I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :-

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.”

8. In this regard the reply of the respondents is as follows :-

“In reply to Para 4.3, the averments are admitted to the extent of matter of record because previously as per fifth central pay commission (before the year 1.1.2006) there were different seniority list for the post of work Khalasi in Engg. Department for different grades i.e. Grade Rs.2550-3200 separate and Rs.2650-4000 separate. But after the implementation of the sixth Central Pay Commission. Since the year 1.1.2006 onwards the Seniority list of Grade Rs.2550-3200 and 2650-4000 had been merged as a single seniority list of P.B.-1 Rs.5200-20200 + Grade Pay Rs.1800 as per P.S. No. 13500/1 (Railway Board's Letter No. EC-VI/2008/1/RSRP/1 dt. 4.9.2008, BRE No. 103/2008. A copy thereof is Annexed herewith as **Annexure R-4**. Further as per Railway Board Letter No. E-NG/I/2009/PM1/4 dt. 26.9.12 in this new Seniority list of work Khalasi of Pay Band 1 Rs.5200-20200 + 1800. The names of those employees in Grade Rs.2650-4000 were kept above the names of those employees in Grade Rs.2550-3200. Copies thereof are annexed herewith as **Annexure R-5, R-6 and R-7**.”

9. It would mean that the respondents have not challenged the applicant's contention above. The only issue on which the whole case revolves is whether the applicant who was posted at Baroda House had knowledge of the trade test conducted in 2006. According to the applicant the respondents did not put up a notice in Baroda House. The respondents reply skirts this issue and it is not categorically stated that the notice was indeed put up in Baroda House. It also seems unlikely that the aspirants for this promotional post would not have applied, had such notice been put up in Baroda House.

10. We also take notice of the fact that in 2011 the applicant did pass the trade test and got his promotion which means that he is competent enough to pass the trade test. Benefit of doubt and preponderance of probability should go in favour of applicant. We, therefore, allow the O.A and direct the respondents to grant the applicant benefit of promotion from the date of his immediate juniors i.e., 03.10.2006 with all consequential benefits. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Mbt/