

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

O R D E R

D.B. CIVIL WRIT PETITION NO.5087/2005

under Article 226 & 227 of the
Constitution of India.

Union of India & Anr. Vs. Maher Singh & Ors.

Date of order : 30th Jan., 2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA

HON'BLE MR. JUSTICE R.P. VYAS

Mr. Kamal Dave for the petitioners.

Mr. Vijay Mehta) for the respondents.
Mr. R.S. Saluja)

BY THE COURT : (HON'BLE R. BALIA, J.)

Heard learned counsel for the parties.

The petitioners challenge the order of the Central Administrative Tribunal allowing the original application filed by respondent No.1, Maher Singh.

The Original Application No.93/2003 was preferred by Maher Singh challenging the order dated 31st March, 2003 by which the respondent

No.2, Mukesh Chand, non-applicant No.3 before the Tribunal was promoted as Technician Grade I (Tool Hardener).

The Tribunal allowed the original application noticing that the question of channel of promotion was not in dispute. However, it strained its reasoning by wandering into the field of proper channel of promotion to a post to which the applicant was to be promoted and through which the contesting respondent was to be promoted.

While in para 15, the Tribunal clearly states that the question of channel of promotion was not in dispute, in para 10, it laid emphasis that the Tribunal has strived to gather information as regards the channel of promotion for the post of Technician (Spring Smith), Technician (Tool Hardener) and as to whether they are combined cadre or to be filled by option or in any other manner. Thus, it appears that Tribunal chanted this course on its own. Discarding the material placed before the Tribunal on the ground that documents placed by the respondents cannot be taken to be the proper channel of promotion, the Tribunal jumped to the

conclusion that no information is available about the proper channel of promotion. The applicant was entitled to relief vis-a-vis promotion offered to private respondent Mukesh Chand.

On this premise, the learned counsel for the petitioner contended that the Tribunal has decided the case on the basis which was not the case of the original applicant himself nor the relief was founded on intelligible different channel of promotion to be followed for the purpose of promotion to the post of Technician Gr.I (Tool hardener). We were taken through the pleading of the parties; namely the original application submitted by the applicant-non-petitioner No.1 and reply submitted thereto by the present petitioner.

From the perusal of the pleadings, it is apparent that only contention on the basis of which the applicant has laid his claim was that he was entitled to be promoted to the post of Technician Grade I (Tool Hardener) before the respondent No.2 could be promoted because he was senior to the respondent at all stages of his service.

However, from the facts which were not in dispute at any stage, it is apparent that the original applicant, non-petitioner No.1 was older in age, entered into service as class IV prior to the respondent No.2 and was also promoted to the post of Hammer Man on 14.5.1982 prior to respondent No.2, who was promoted as Hammer Man on 26.9.1982. In the seniority list up to that stage, the original applicant- Mehar Singh's number was 31 as against the respondent No.2, Mukesh Chand's number at 34. Even until the stage of promotion to the Technician Gr.III, this position continued. However, thereafter when a promotion post become available as Technician Gr.II (Spring Smith), non-petitioner No.1 Mehar Singh was first offered the promotion in July 1992 but he declined. On his disinclination to accept that promotion in July 1992, the opportunity was offered to the non-petitioner No.2 Mukesh Chand and he having accepted the offer was promoted on 8th July, 1992 as Technician Gr.II (Spring Smith). The non-petitioner No.1 was promoted into the cadre of Technician Grade II only on 11.11.1992 after said Mukesh Chand. From the material placed on record, to which particular trade the applicant was promoted is not disclosed. He has referred only to his

promotion as Technician Grade II. His entire case was that he was senior to the respondent No.2, he was a member of Scheduled Caste and he was otherwise competent to be promoted. The contention which is now raised in defence of the order of the Tribunal on behalf of the respondent No.1 is that the channel of promotion is from trade to trade and on Technician Grade II (Tool Hardener) the Spring Smith was not eligible.

We regret to sustain this contention to support the conclusion reached by the Tribunal. It was not at any stage of the case of the applicant that the respondent No.2, Mukesh Chand was not eligible to be promoted as Technician (Tool Hardener). On the contrary, the entire case of the applicant proceeded on the premise that the respondent No.2 was not entitled to be considered prior to the case of the applicant, which contention inheres into it that he was not contending against the eligibility of the respondent No.2 but was confined only to contend that his promotion should have been prior to the respondent No.2 on the basis of his original seniority. This is also reflected from the relief claimed by the applicant that he be promoted with effect from the date any person

junior to him has been so promoted.

From the chronology of promotion, as noticed above, it is apparent that as per date of promotion to post of technician Grade II, the original applicant lost seniority over the respondent No.2 as he was promoted on the post four months after the respondent No.2 was promoted, for which he alone was to be blamed having declined to accept promotion in the first instance.

In that view of the matter, we are of the opinion that the order of the Tribunal cannot be sustained. Accordingly, the writ petition is allowed. The order of the Tribunal is quashed and the original application filed by the respondent No.1 is also dismissed. No order as to costs.

[R.P. VYAS], J.

[RAJESH BALIA], J.

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