



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: April 09, 2024

+ W.P.(C) 5045/2024

(68) UMESHWAR PRASAD

..... Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Himanshu Pathak, SPC with Ms. Aastha Gupta, GP and Mr. Ram Niwas Subedar for respondents

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

A) To issue appropriate directions to the respondent to give the benefits of all the three promotions to the petitioner, to which the petitioner was entitled during his service period and all other legal increments and benefits as provided under the law and fix the monthly pension amount to the Petitioner as per Pension Rules of Central Government.

B) Direct the respondent to pay the arrears of increased salary for the post of promotional posts. of Charge Mechanic, Supervisor NT-2/Sr. Supervisor NT-1 (one) and Administrative Officer to the Petitioner since 1993, the date from which the Petitioner was entitled for promotion to the aforesaid posts.



C) Direct the respondent to compensate the Petitioner for the promotions, to which he was entitled during his entire service period and to pay the arrears of salary, to which he was to be paid during his service period and fix the monthly pension as per law, laid down on the subject.

D) To grant any other relief(s), which this Hon'ble Court may deem fit under the facts and circumstances of the case, to the petitioner in the interest of justice.

2. The petitioner was appointed as Trade Welder in General Reserve Engineering Force (GREF), Border Road Organization, Indian Army on January 11, 1984.

3. It is the petitioner's case that, on May 5, 2007, the petitioner obtained Law Degree, and as such he is entitled to be promoted to the post of Administrative Officer. The respondents did not give promotion to the petitioner. On March 27, 2012, a representation was submitted by the petitioner, followed by a legal notice dated May 30, 2012. In reply to the legal notice, the respondents did not accede to the request of the petitioner.

4. The petitioner filed a writ petition being W.P.(C) No. 2061/2021 before this Court. The said writ petition was disposed of on February 16, 2021, directing the petitioner to make a proper application to the respondents for his promotion. The petition was dismissed as withdrawn with liberty to file a fresh petition.

5. In November 2022, the petitioner sent a representation and notice to the respondents seeking promotion w.e.f. 1993 to the post of Charge Mechanic or Supervisor NT-2 or Sr. Supervisor NT-1 or Administrative Officer. The respondents rejected the representation. The petitioner has also made a reference to some litigation initiated by him before the Guwahati High Court and the Central Administrative Tribunal, Principal Bench, New



Delhi.

6. Today the counsel for the respondents has filed a compilation of documents consisting of 31 pages, before this court. The same is taken on record. It is clear no promotional channel was available from the post of Trade Welder. Subsequently, the rules were amended providing a promotional post of Charge Mechanic from the post of Trade Welder. It is the stand of the respondents that the case of the petitioner was considered for promotion to the post of Charge Mechanic in the year 1996 but the petitioner was not found fit for promotion. It is their stand that the petitioner has not challenged his non-promotion till date.

7. It is also the stand of the respondents that the petitioner is not eligible for promotion to the post of Supervisor NT-2 or Supervisor NT-1.

8. It is also the respondents stand that, merely because the petitioner has obtained a law degree, the same shall not give him entitlement to the post of Administrative Officer. In other words, the promotion to post of Administrative Officer has to be under Recruitment Rules and not otherwise. So in that sense the prayers made in the petition cannot be granted.

9. The petitioner has refused to accept the compilation of documents which has been filed by the counsel for the respondents in the Court today.

10. Be that as it may, we find that, at page 7 of the compilation of documents, which are Recruitment Rules' to the post of Charge Mechanic the same contemplates that, to the extent of 10% of the vacancies of Charge Mechanic are to be filled by promotion from Trade Welder with five years of regular service.

11. It is the case of the respondents that the petitioner was not found fit for promotion to the post of Charge Mechanic, (in the year 1996), which he



has not challenged. It is too late in the year 2024 for the petitioner to challenge/to seek the promotion to the post of Charge Mechanic. Even otherwise, we find that the petitioner retired in January 2021. Even on that count, after retirement, his case cannot be considered when his non-promotion remained unchallenged from 1996 till 2021.

12. In so far as, the plea of the petitioner for promotion to the post of Supervisor NT-2 or Supervisor NT-1 is concerned, the stand of the respondents is clear from the communication dated November 30, 2022, wherein, in paragraph 6, the following has been stated :-

“The feeding category for promotion to Supvt NT-2 is LH(Adm). The trade welder is not the feeding category for promotion to Supvt NT-2/NT-1 as per the recruitment rules of the department. Moreover no powers are vested with the Cadre Controlling Authority or Head of Department to promote any of the employee’s out of turn and by-passing the laid down Recruitment Rules. Hence your request for giving you a promotion to post of Supervisor NT-2/NT-1 is not possible as per the existing rules and provision.”

13. Noting the above stand, it is clear that the post Supervisor NT-2 or Supervisor NT-1 is not a promotional post of Trade Welder. If that be so, the petitioner is not eligible for promotion to the said post(s) and cannot be granted. The plea of the petitioner that, he being a law graduate and as such entitled to the post of AO, is without merit.

14. We have been informed that though the petitioner was not found fit for promotion to the post on Charge Mechanic, but he has been granted the financial upgradations w.e.f. 1994, 2004 and 2014.

15. In the facts of this case, we are of the view that the present petition filed by the petitioner is hit by delay and latches. In so far as promotion to



the post of Supervisor NT-2 or Sr. Supervisor NT-1 are concerned, in view of the stand taken by the respondents more particularly in paragraph 6 of the communication dated November 30, 2022, as reproduced above, the petitioner is not entitled to promotion to the posts of Supervisor NT-2 or NT-1.

16. The petition being without merit is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

APRIL 09, 2024/akr