

(2017) 04 RAJ CK 0051
In the Rajasthan High Court
Case No : 9843 of 2010

The Union of India

APPELLANT

Vs

Duli Chand S/o Shri Mani Ram

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Citation : (2017) 04 RAJ CK 0051

Hon'ble Judges : DR. Pushpendra Singh Bhati

Bench : SINGLE BENCH

Advocate : Navneet Singh, Manoj Bhandari

Final Decision : Allowed

Judgement

1. The workmen working in the Military Engineering Services (in short, "MES") are allocated under different Divisions placed under the jurisdiction of Commander Works Engineer. No common seniority list of the workmen is maintained. A separate seniority list of each workman allocated under different commands is maintained.
2. At the lowest rank, is the post of Mazdoor. The next promotion is that of a Mate, then Wireman, followed by that of skilled Workman Grade-II, and skilled Workman Grade-I and lastly, Master Craftsman.
3. As per policy, if a holder of any aforementioned post seeks and is granted transfer to another Division under the command and control of a different Commander Works, he is

placed at the bottom of the seniority list of the transferee Division.

4. The respondent was appointed as a Mazdoor on August 29, 1983 under the jurisdiction of Commander Works (Bikaner).

While working under said command and actually under the Garrison Engineer(AF), Suratgarh, the respondent requested the Commander Works Engineer to transfer him on humanitarian grounds to Sriganganagar. The request was accepted. The respondent was transferred under the command of the Commander Works at Sriganganagar on December 19, 1987. The post to which he was transferred was that of a Mazdoor.

5. But for reasons which are not forthcoming on record, the promotional post available to the petitioner being that of a Mate and not Wireman, the Commander Works Engineer at Bikaner permitted the respondent to take the test for promotion to the post of a Wireman and on February 23, 1987 his name was recommended for being appointed as a Wireman. But no order of promotion was issued. As noted above, on December 19, 1987 the respondent joined as a Mazdoor under the Commander Works, Sriganganagar.

6. Working as a Mazdoor under the command of the Commander Works, Sriganganagar, the respondent earned promotion to the post of Mate on March 24, 1990. Thereafter to the post of skilled Workman Grade-II and therefrom skilled Workman Grade-I. Being an Electrician, the orders referred to the respondent being promoted as an Electrician on February 9, 1999.

7. The respondent claims to have sent various representations praying that his selection for promotion to the post of Wireman with effect to the empanelment by the Selection Board on February 23, 1987 be given effect to.

8. The request was turned down for the reason the

respondent while working as a Mazdoor had requested to be transferred on humanitarian grounds from Bikaner Division to Sriganganagar Division. Before he could be promoted at Bikaner Division, he stood transferred as a Mazdoor to Sriganganagar Division. He joined at the transferee Division without demur and continued to work as a Mazdoor. Placed at the bottom of the seniority list of Mazdoors on his transfer to Sriganganagar Division, he earned promotion.

9. In the year 2006 the respondent filed O.A. No.-66/2006 before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur, which on noting the aforesaid facts directed the respondent to be promoted as a Wireman on September 19, 1987 with notional benefits till November 22, 2005 and thereafter on actual basis.

10. We are of the opinion that the impugned order has to be set aside for various reasons. Firstly on account of a gap of 18 years in approaching the Tribunal. It may be true that during this period the respondent kept on making representations and there is no material that the same were rejected, save and except the communication dated January 27, 2006, but if a representation made is not decided within a reasonable period, cause of action to sue accrues. The second reason would be that the respondent joined as a Mazdoor in Sriganganagar Division without demur. He was placed at the bottom of the seniority list of Mazdoors in said Division. Based on the vacancy position he earned further promotions to the higher posts in said Division. We do not know what promotions the respondent would have earned, keeping in view the vacancy position in the promotional posts had he continued to work in Bikaner Division.

11. It also assumes importance to note that with effect

from February 15, 1999 the respondent was promoted to the post of an Electrician in the transferee Division. The implementation of the impugned order would require a complete reworking of the promotions effected in the transferee Division and perhaps the creation of a supernumerary post to pay the arrears to the respondent, an exercise which cannot be directed to be carried out after 20 years of the cause of action if at all any accrued to the respondent.

12. The petition is accordingly allowed. Impugned order dated April 7, 2010 passed by the Jodhpur Bench of the Central Administrative Tribunal is set aside. O.A. No.-66/2006 filed by the respondent is dismissed.

13. Parties shall bear their own costs all throughout.