

## U.P. State Road Transport Corporation, Central Workshop Vs Mohammad Shariph

**Court:** Allahabad High Court

**Date of Decision:** Nov. 9, 2006

**Citation:** (2006) 10 ADJ 716 : (2007) 112 FLR 520

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. This writ petition is directed against the award dated 5.8.1988 given by the Presiding Officer, Industrial Tribunal III, U.P. Kanpur in

Adjudication Case No. 71 of 1986. Through the said award respondent No. 1, a worker in petitioner-Corporation has been declared entitled to

the promotion to the post of skilled labourer and to receive wages of skilled labourer. Respondent No. 2 was working as unskilled labourer. In

between unskilled labourer and skilled labourer there is another category i.e. semi skilled labourer. The Industrial Tribunal through the impugned

award directed a sort of double promotion to the petitioner.

3. The only ground given by the Industrial Tribunal is that petitioner was doing the job which was also being performed by skilled labourers.

However, the petitioner Corporation asserted and the same was not disbelieved by the Industrial Tribunal that in their workshop there was no

sharp division of work and any type of work could be performed by any of the five types of labourers i.e. unskilled, semi skilled, skilled, Specialist

and Specialist Grade I. Industrial Tribunal further held that two previous employees of the petitioner viz. Hari Singh and Aziz Ahmad were doing

certain skilled jobs which after their retirement were being performed by respondent No. 1. Petitioner contended that there were six more

employees in the unskilled grade who were senior to the respondent No. 1, hence no promotion could be granted to respondent No. 1 by passing

the impugned award. The Industrial Tribunal did not consider the case of other six persons. They were not even parties in the case before the

Industrial Tribunal.

4. In workshops different types of jobs may require different types of operations, some may be simple and some complicated. Different types of

workers may be required to complete a particular job. Respondent No. 1 did not plead that he was the only unskilled worker who was competent

to perform higher type or more complicated jobs and he alone was doing the said job. In such scenario it was not legally permissible for the

Industrial Tribunal to direct promotion and that also double promotion. Respondent No. 1 in his supplementary counter affidavit sworn on

17.8.2006 has admitted that since December, 2002 he has been promoted to the skilled category and is getting the wages admissible to the

employees of the said category (para 7). it has also been stated that the previous three categories of skilled, specialist and specialist Grade I have

now been merged in to one category called "skilled".

5. In fact by the impugned award the Industrial Tribunal has criticized the entire promotion policy of the petitioner and has tried to lay down precise

policy of promotion which was wholly beyond the scope of the reference and jurisdiction of the Tribunal. In fact, the respondent No. 1 had sought

his promotion from the lowest rank to the highest one i.e. from unskilled to Specialist Grade I category. Reference was also made to that effect.

6. Learned Counsel for the petitioner has cited several authorities including the following in support of petitioner's case:

1. K. Samantaray Vs. National Insurance Co. Ltd.,

In this authority it has been held that no employee has a right to be promoted but has right to be considered for promotion.

2. State of West Bengal and Anr. v. T.K. Ghosh and Ors.. 2005 S.C.C. 760.

In this authority it has been held that employees though discharging similar duties but possessing different qualifications having a bearing on quality

of work discharged, can be treated differently.

3. BHEL and Anr. v. B.K. Vijav and Ors. 2006 S.C.C. 11.

In this authority it has been held that there is no automatic promotion to a higher post and consequential pay scale thereof. It has also been held that

status acquired for the purposes of a particular statute (UP. Factories (Safety Officers) Rules, 1984 in the said case), does not necessarily affect

the status in general hierarchy of organization of employees.

7. Accordingly, writ petition is allowed. Impugned award is quashed.

8. It is needless to add that allowing this writ petition will not affect in the least the promotion of respondent No. 1 which has been granted to him

since December, 2002.