

Central Administrative Tribunal
Principal Bench

O.A.No.1339/2002

Hon'ble Shri Govindan S. Tampi, M(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of January, 2003

Gela Ram, Carpenter
MES-353147, 406, Pocket-I
Paschim Puri
New Delhi - 110 063.

... Applicant

(By Advocate: None)

Vs.

1. The Secretary
Government of India
Ministry of Defence
New Delhi - 110 011.
2. Engineer-in-Chief
Army H.Q., D.H.Q.P.O.
New Delhi-11.
3. The Chief Engineer
HQs., Western Command
Chandi Mandir.
4. The Chief Engineer
Delhi Zone
Delhi Cantt.
5. C.W.E. Delhi, Delhi Cantt.
6. G.E., Red Fort, Delhi. ... Respondents
(By Advocate: Sh. R.N.Singh)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

None appeared for the applicant even on second call. We proceed to decide the OA under Rule 15 of the CAT (Procedure) Rules, 1987. Accordingly, heard the arguments of the learned counsel for respondents.

2. Applicant, through this OA, impugns respondents' order dated 30.4.2001 whereby his request for fitment in the pay scale of Rs.4000-6000 as Carpenter (HS) against 20% vacancies has been turned down. He also impugns letter dated 19.4.2000 as well letter dated 30.1.2001. He has sought for the following reliefs:

- a) direct the Respondents to place the Applicant in the pay scale of Rs.4000-6000 meant for Carpenter (HS) with effect from the date prior to the date his juniors were given Rs.4000-6000 pay scale and accordingly work out the difference in the pay and quantum of pension and other pensionary benefits;
- b) direct the Respondents to make payment to the Applicant of difference of pay and pension and other retiral benefits which were arbitrarily denied with interest as claimed by Applicant vide his representation dated 9.9.1997.
- c) direct the Respondents to show the seniority list to the Applicant;
- d) issue such other appropriate order or orders, direction or directions;"

3. Applicant joined the post of Carpenter on casual basis in M.E.S. in C.W.E. Delhi Area and was appointed on regular basis w.e.f. 15.7.1964 as Carpenter. He was promoted as Cabinet Maker on 16.7.1983 which was a skilled category in the pay scale of Rs.260-400.

4. In 1987, post of Carpenter was upgraded to skilled category and clubbed with Cabinet Maker. This restructuring has an effect that there were two categories, namely, Carpenter (Skilled) and another category designated as Carpenter (HS-II) with present pay scale of Carpenter (Skilled) and Carpenter(HS) in the pay scale of Rs.3050-4590 and Rs.4000-6000 respectively.

5. The methodology prescribed for fitment in pay scale of Rs.4000-6000 was 20% of the authorised combined strength of amalgamated categories of

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(10)

Carpenter and Cabinet Maker in C.W.E. area were to be fitted as per the seniority and next 15% were to be fitted after passing the trade test for Carpenter.

6. Being aggrieved by denial of scale of Carpenter, and non-accord of an opportunity to clear the Carpenter (HS) in the year 1986, applicant preferred several representations, finally vide communication dated 19.4.2000 his request was examined and rejected. He preferred another representation and was informed on 11.4.2001 that his earlier request has been reiterated.

7. On 25.4.2001 the B.S.O. Red Fort wrote a letter to the G.E. Red Fort to act in accordance with Paragraph 3 of letter dated 19.4.2001 and has communicated vide letter dated 15.1.1998. On examination of the case it was found that the name of applicant did not fall in 20% as he was junior and he is also not entitled against the 15% quota to be filled up from the category of those who cleared the trade test, as he has never been offered to clear the trade test and seniority list was not shown, the action of respondents is arbitrary.

8. It is further stated that on account of having passed trade test for Cabinet Maker in 1968, a right has been vested and as well as a legitimate expectation to clear higher pay scale of HS Gr.II. As applicant had retired in the pay scale of Rs.3050-4590, he is entitled to the scale of Rs.4000-6000 and working out of the retiral dues as per the new scale.

9. According to applicant, earlier orders passed show non-application of mind and are bald without any reasons. It is stated that on restructuring the post of Carpenter and Cabinet Maker by amalgamating the same, onus on the department to offer two opportunities to clear the trade test according to the seniority.

10. It is contended that stand of respondents clearly amounts to the breach of official public duty of mandatory character. Whereas on representation, no merit has been found, the BSO, Red Fort has written a letter to the GE, Red Fort on 19.10.2000 to take note of the grievance of applicant.

11. In so far as passing the trade test for Carpenter HS-II against 20% quota, it is contended that one Bachi Ram, Carpenter was promoted to Carpenter (HS-II) w.e.f. 15.10.1984 without passing trade test, which smacks of arbitrariness and discrimination. Applicant contends that CWE Delhi has not included the applicant among his equals, namely, Cabinet Makers which deprived him of consideration and his fitment in the restructured post of Carpenter HS Grade-II and Grade-I on the basis of his higher qualifications.

12. On the other hand, respondents' counsel Shri R.N.Singh vehemently opposed the contentions of applicant and stated that the OA is barred by limitation as well. During the proceedings in OA No.1319/2001 and MA 387/2002, the matter was heard and lastly on 19.4.2002 it has been withdrawn with

liberty, this would not extend the period of limitation as the cause of action which had occurred earlier and the relief prayed clearly barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

13. It is stated that the post of Carpenter and Cabinet Maker were clubbed in 1987 vide respondents' notification dated 24.6.1987. Promotion to the post of Carpenter HS Gr.II against 20% vacancies as on 15.10.1984 were to be filled merely on the basis of seniority without qualifying in the trade test.

14. It is further stated that Cabinet Makers were ranked senior to Carpenters as they were already holding a higher grade and Carpenter being a feeder category for promotion to Cabinet Maker. Accordingly, applicant could not be promoted as Carpenter HS Gr.II on 15.10.1984 whereas others who were senior to applicant as Cabinet Maker were promoted against 20% vacancies of Carpenter HS Gr.II.

15. Moreover, 15% of the posts are to be filled subject to passing of trade test by 30.6.1986, those, who passed the trade test, have been promoted as Carpenter HS Gr.II. Applicant though senior to them could not be considered as he had not undergone the requisite trade test. As qualified persons were already held and unless the qualified list is exhausted no fresh trade test can be held. Since

1986, as the trade test has not been cleared by applicant, he is not eligible for corresponding promotion as per rules.

16. In so far as the benefit under ACP Scheme is concerned, the same has been made effective from 9.8.1999 whereas applicant superannuated on 1.8.1999, he is not eligible for benefits under the ACP Scheme, the same have been denied as per law.

17. In so far as trade test is concerned, it is contended that vide publicity is made for conducting the trade test, applicant had not made any efforts to appear in the trade test.

18. In so far as the seniority list is concerned, the same has been considered by CWE down upto the level of AGE against the affected employees, representation of applicant has been meticulously considered and rejected and he has no legal claim enforceable before this Court.

19. In the rejoinder, applicant has reiterated his contentions taken in the OA.

20. We have carefully considered the rival contentions of the parties and perused the material on record. Applicant who was promoted as Cabinet Maker on 16.7.1983 and by an order dated 11.7.1988 post of Cabinet Maker and Carpenter were clubbed together, promotion to the Carpenter HS Gr.II against 20% vacancies as on 15.10.1984 were to be filled on the

basis of seniority without prerequisite of qualification in trade test. Cabinet Makers who have ranked higher to the Carpenters and holding higher Grade, Carpenter being the feeder category, have been placed rank senior, those who were senior to applicant, namely, Surinder Kumar, Gian Chand, Ram Kumar and Tara Chand were promoted against 20% of the vacancies in Carpenter HS Gr.II, name of applicant has not come within the consideration zone.

21. In so far as 15% of the posts were to be filled, pertaining to quota of trade test, it is stated that the requisite trade test has to be cleared by 30.6.1986. Applicant despite having notice of the said test has not made any substantial progress to apply for the same or to participate, accordingly those persons, namely, Piarey Lal and Mukand Singh were promoted as Carpenter HS Gr.II on 29.9.1986 as applicant has not undergone the trade test, he has no right to be considered against the same.

22. Representation of applicant to this effect was rejected, but he had slept over his right and took resort to this OA despite withdrawing the OA after final arguments which would not, in any event, extend the period of limitation as the cause of action had arisen in 1986 itself, present proceedings is clearly barred by delay and latches.

23. However, on merits as well as applicant has neither attained seniority under 20% quota for HS Gr.II and has also not qualified the trade test, as

prescribed in the year 1986, the orders passed by the respondents cannot be found fault with and on examination have been found to be legally sustainable.

24. In the result, having no claim even on merit, the OA is accordingly dismissed without any order as to costs.

S. Raju
(Shanker Raju)
Member(J)

(Gowindan S. Tampi)
Member(A)

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