

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00104/2012

Pronounced on : 06.03.2020
(Reserved on : 17.02.2020)

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

...

1. Mangi Lal Joshi S/o Shri Gulab Chand, aged 50 years, Pipe Fitter in the office of Garrison Engineer, MES (North), Bikaner R/o Mohto Ka Chowk, Bikaner.
2. Mohan Singh S/o Shri Baga Ram, aged 50 years, Pipe Fitter in the office of Garrison Engineer, MES (North), Bikaner R/o Near Narain Niketan, Tilak Nagar, Bikaner..
3. Manohar Lal S/o Shri Choru Lal, aged 59 years, Pipe Fitter in the office of Garrison Engineer, MES (North), Bikaner R/o Opposite Jail Sadar, Sonaron Ki Guwad, Bikaner.

...APPLICANTS

BY ADVOCATE : Mr. Vijay Mehta.

VERSUS

1. Union of India, through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer MES Air Force, Bikaner.
3. Garrison Engineer, MES (North), Bikaner.
4. Ram Pratap, Pipe Fitter HS-II, in the office of Garrison Engineer, MES (Air Force), Suratgarh, District Sri Ganganagar.

RESPONDENTS

BY ADVOCATE: Mr. Rameshwar Dave, for R1 to R3.
 None for R/4

ORDER

...

Per Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicants are seeking the following reliefs:

"8(i) That applicants prays that they may kindly be permitted to file and pursue this OA jointly. They pray that the respondents may kindly be directed to grant promotions on the post of HS-II to the applicant with all consequential reliefs from the date the respondent No.4 has been granted promotion. They may also be granted seniority accordingly. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

2. Brief facts of the case as submitted by the applicants are that the applicants are working on the post of Pipe Fitter SK under the respondent No.3. They have passed trade test for being promoted to the post of HS-II on 25.12.2002. The names of applicant appeared at Sl. No.8 to 10 in Annexure-A/1 dated 07.12.2002. Though the applicants had passed trade test for HS-II in the year 2002, they have yet not been granted promotion but to their surprise they came to know that the respondent No.4 who has passed trade test for HS-II on 18.02.2008 has been granted promotion to the post of HS-II vide order dated 23.09.2011 issued by the respondent no.3. The name of respondent No.4 appears at Sl No.192 in Annexure-A/2 order dated 23.09.2011.

3. On learning about the said Annexure-A/2, the applicant submitted identical representations dated 23.01.2012 (Annexure-A/3) through proper channel to the respondent No.2 requesting him to grant them promotion to the post of Pipe Fitter HS-II. The respondent No.3 did not oblige the applicants with a line in reply though he is duty bound to

decide the representation. Therefore, the respondent No.2 has deprived the applicants from promotion.

4. It is submitted that the respondents are required to grant promotion giving preference to those who had qualified first by passing trade test for promotion. Such employees are required to be granted promotion in preference to those who have qualified later on. The respondents are also duty bound to hold meetings of the DPC in the month of April or May each year to take decision for granting promotions. The applicant reserves his right to submit the OM issued by the Union of India from time to time in this respect. However, the respondents have utterly failed to take appropriate action within time set for these purposes and have thus illegally deprived the applicants from promotion and consequential seniority. Thus, the applicants have filed the present OA.

5. In reply, the respondents submitted that the Ministry of Defence vide letter dated 14.06.2010 issued a policy directive for restructuring of cadre of Artisan Staff in Defence Establish in modification of the recommendation of VIth Pay Commission. As per Para 3 (b) of the said letter, the placement of the individuals on the post of Resulting from restructuring shall be made w.e.f. 01.01.2006, in relaxation of the condition, if any, i.e. trade tests etc. as one time measure. Accordingly, promotion/placement to the grade of Pipe Fitter (HS-II) has been ordered w.e.f. 01.01.2006 and onwards by HQ CWE (AF) Bikaner vide letter dated 23.09.2011 in respect of private respondent No.4 and many others on the basis of service seniority in the feeder grade of Pipe Fitter (Skilled)/Mate (Pipe Fitter) to fill up vacant posts resulting from restructuring of Cadre of Artisan Staff in Defence Establishments as per para 3 (b) of Government Sanction letter dated 14.06.2010.

6. It is further submitted that the representation dated 23.01.2012 (Annexure-A/3) submitted by the applicant has been considered at appropriate level suitably and replied by HQ CWE (AF) Bikaner vide letter dated 07.02.2012 and further communicated to them through AGE B/R/1 vide GE (N) Bikaner letter dated 29.02.2012 informing the applicant that promotion orders have been issued in accordance with the letter dated 23.09.2011 and 14.06.2010.

Preference in promotion sought by the applicants to have first qualified by passing Trade Test for promotion over to those who have qualified later on is not correct as per Government order. The promotion/placement has been ordered w.e.f. 01.01.2006 in relaxation of the conditions, if any, i.e. trade test etc., as one time measure as per the para 3 (b) of Government order dated 14.06.2010. The placement has been ordered irrespective of the fact whether an employee in a grade has passed qualifying promotion trade test or not.

7. All the three applicants and private respondent No.4 have equal seniority w.e.f. 18.05.1995 in the grade of Pipe Fitter (SK) but the private respondent No.4 is senior to the applicants in the grade of Mate (P/Ftr) with seniority dated 16.10.1986. Merely passing trade test first does not confer any right to the applicants to claim seniority from such date. Hence, the applicants are not entitled to get any relief from this Tribunal.

8. In rejoinder, the applicants submitted that the respondents have made submissions with reference to letter dated 14.06.2010 which was not in existence when the applicants passed trade test for promotion to the post of HS-II on 25.12.2002. From perusal of letter dated 14.06.2010 (Annexure-R/1) it shall be apparent that the same is not applicable for grant of promotion in the year 2002. The respondents have full knowledge that before Annexure-R/1 letter dated 20.05.2003

issued for restructuring of the cadre was operative. The respondents have denied promotion to the applicants due to Annexure-R/1 which was not in operation when the applicants passed trade test for promotion to the post of HS-II.

9. The respondents have not said a single word as to why they did not grant promotion to the applicant even though they had passed trade test in the year 2002 for the post of HS-II. The OM dated 08.09.1998 provides a mandate to the authority to convene DPC every year in the month of April or May. They have given no reasons for not convening DPC for so many years. It is further submitted that this Tribunal has time and again held that the sole objective of conducting trade test is to enable the candidate to become eligible for consideration for promotion. It has been held that the same is required to be brought to its logical end within the frame work of the scheme which governs cases of promotion of the employee so far as such eligible candidates are concerned.

10. It has further been held that consideration of promotion of such candidates cannot be taken away due to making of any new policy. These decisions of this Tribunal have been upheld by the Hon'ble Rajasthan High Court. The Full Bench of this Tribunal vide its order dated 27.03.2013 has also upheld these decisions. Though the respondents are duty bound to send reply to the representation submitted by the applicant, but they did not send any reply to the representation and thus the applicants were deprived by their promotion.

11. In additional affidavit, the respondents submitted that passing of trade test is one of the eligibility criteria for considering the individual for further promotion as well as recommending the financial up-gradation under ACP/ MACP Scheme. All the individuals may be

considered for promotion if they fulfill all the eligibility criteria for promotion i.e. seniority, passing of trade test prior to the year against the vacancy marshaled. It is further submitted that considering the recommendation of BOO dated 05.0.2011, 08 individuals from Pipe Fitter SK have been promoted to Pipe Fitter HS-II against the vacancy of 2007 to 2010 vide CWE (AF) Bikaner Letter No.10240/340/EIC-II dated 23.09.2011. All these individuals are senior to the applicant and therefore the respondent No.4 Shri Ram Pratap was found eligible for promotion to Pipe Fitter HS-II w.e.f. 01.04.2010 against the vacancy for the year April 2010.

12. The applicant passed the trade test in December 2002, but they are juniors to applicant. All the individuals were considered for promotion against the vacancy 2010 who have passed the trade test till April, 2010, hence, the applicants were considered for promotions and rejected due to less vacancies. It is also submitted that due to stay order from the Hon'ble CAT, Jodhpur 06 promotions of Pipe Fitter HS-I to MCM was held up which was released in 2013 after pronouncing of the judgment in particular court case.

The CWE (AF) Bikaner issued promotion orders vide letter dated 02.08.2013 and 6 eligible individuals were promoted as per seniority from Pipe Fitter SK to Pipe Fitter HS-II. As these orders filled up the backlog vacancies of Pipe Fitter HS-II w.e.f. 2006 onwards and therefore in the same order dated 02.08.2013 the date of promotion was also reviewed of the individuals who have already been promoted.

13. In this order dated 02.08.2013, the date of promotion of the respondent No.4 as Pipe Fitter HS-II has also pre-poned from 01.04.2010. *The passing of trade test it is the case of Respondent, is not the right of the applicants and as per the policy other parameters and eligibility criteria for promotion also be considered.*

14. Heard Shri Vijay Mehta, learned counsel for the applicant and Shri Rameshwar Dave, learned counsel for the respondents No.1 to 3 and perused the material available on record.

15. *The basic controversy in this case is whether passing of a trade test or the seniority in the cadre is important for the promotion in the respondent department.*

16. It is the case of the applicants that the applicants were entitled to promotion as they had passed the trade test before the private respondent No.4. He also stated that present case is squarely covered by the judgment of Hon'ble High Court of Rajasthan passed in DB Civil Writ Petition No.2020/2014 (The Union of India & others vs. Gopal Singh & ors.) decided on 23.02.2017) in which the Hon'ble High Court of Rajasthan has held as under:-

"The arguments advanced by learned counsel for the petitioners is that the order impugned is fundamentally erroneous in view of the fact that the promotions accorded to the eligible persons were withdrawn and subsequently thereto the eligible persons were promoted. The respondent no.1 original applicant despite having knowledge of all subsequent events did not chose to challenge the order giving promotions to other eligible persons including the respondent No.2 to 7, who were also applicant along with respondent No.1 Gopal Singh in the original application. Learned counsel appearing on behalf of the respondent No.1 failed to satisfy us as to what cause survives after demotion of the persons, who were erroneously promoted despite being failed in the trade test.

In view of it, we are of considered opinion that the directions given by the Tribunal are not at all justified and the order deserves to be set aside. Accordingly, this writ petition is allowed to the extent it relates to respondent no.1 Gopal Singh. The order dated 03.09.2013 passed in Original Application No.2/2008 is declared illegal and therefore, is set aside. Respondent Mr. Gopal Singh, however, shall be at liberty to prefer an original application afresh, if his grievance survived pertaining to promotion of other persons to the post of Electrician Highly Skilled, Grade-II subject to just direction available to other parties."

17. **The learned counsel for the applicants also states that the respondents have denied promotion to the applicants due to Annexure-R/1 which was not in operation when the applicants passed trade test for promotion to the post of HS-II.** The respondents have not said a single word as to why they did not grant promotion to the applicant even though they had passed trade test in

the year 2002 for the post of HS-II. The OM dated 08.09.1998 provides a mandate to the authority to convene DPC every year in the month of April or May. **They have given no reasons for not convening DPC for so many years. Learned counsel for the applicant further submitted that this Tribunal has time and again held that the sole objective of conducting trade test is to enable the candidate to become eligible for consideration for promotion.** It has been held that the same is required to be brought to its logical end within the frame work of the scheme which governs cases of promotion of the employee so far as such eligible candidates are concerned. It has further been held that consideration of promotion of the applicants cannot be taken away due to making of any new policy.

18. Per contra, learned counsel for the respondents advances the arguments that in the seniority list Annexure-A/1 & A/2, the applicants are juniors to the private respondent No.4. The respondents also made a case that merely passing the trade test is not sufficient for being eligible for promotion and as such in terms of the para 3 (b) and (c) of the Ministry of Defence letter dated 14.06.2010, the petitioners did not have the requisite seniority for being eligible to promotion.

19. **Learned counsel for the respondents also submitted that due to the stay order from the Hon'ble CAT, Jodhpur Bench, 06 promotions of Pipe Fitter HS-I to MCM was held up which was released in 2013 after pronouncing of the judgment in particular court case.** He further averred that the applicants have neither covered by the 2006 policy which was pronounced post restructuring of the cadre and also not covered by the clause providing for enbloc seniority.

20. We have considered the rival submissions of both the parties and perused the pleadings available on record. We are not convinced with

the arguments of learned counsel for the respondents that due to stay order from the Hon'ble CAT, the promotions of the applicants are held up and it appears that there should be other reasons for not processing for the promotions cases or for not convening DPCs. To say that the applicants are not entitled for the reliefs claimed for merely because they have not challenged the seniority list which is not relevant looking to the facts and circumstances also does not appeal as an argument.

21. The matter of promotion must also be governed by the principles of natural justice which appeared to have been clearly violated in the manner in which cases of promotion has been processed by the respondents.

22. It is seen in the present case the review DPCs have not been convened timely and therefore, the applicants have lost their promotion, if any, and if the review DPCs has been convened timely, then the applicants has very good chance to get his promotion/seniority.

23. In view of the discussions made hereinabove and in the absence of the Respondents challenging the fact that no DPCs have been held from the year 2002 to 2010, it is a fit case for granting relief to the applicants. Therefore, the respondents are directed to convene the Review DPC for the promotion to the post of HS-II of the year 2002 to 2010 after marshaling the vacancy available at that time, and consider the case of the applicants as per rules.

24. The OA is thus allowed as stated above with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

//rss//