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CAT/17/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

OA 835/96
O.A. No. CP 160/96
T.A. No. in OA 835/96

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DATE OF DECISION

21-8-97

Shri Harnam Singh

Petitioner

Mrs Meera Chhibber

Advocate for the Petitioner(s)

Versus
Scientific Advisor, Govt. of
India, M/o Defense.

Respondent

Shri P.H. Ramchandani

Advocate for the Respondent(s)

CORAM

The Hon'ble Shri S.R. Adige, Member (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 835/96
C.P. 160/96

New Delhi this the 21 th day of August, 1997

Hon'ble Shri S.R. Adige, Member(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 835/96

1. Shri Harnam Singh,
S/o Shri Jai Singh,
H. No. 137/B, Guru Dwara Chowk,
Tyagi Market, Prem Nagar,
Dehradun.
2. Shri Sarvan Kumar,
S/o Shri Ram Chander,
Wing No. 13/2, Prem Nagar,
Dehradun.
3. Shri Nathu Ram,
S/o Shri Prabhu Dutt,
Vigyan Vihar, Raipur,
Dehradun.
4. Shri Salak Chand,
S/o Shri Jawahar Singh,
House No. 12/18, Khatri Mohalla,
Dehradun.
5. Shri Nain Singh,
S/o Shri Puran Singh,
25, Q.A.V. College Road,
Dehradun.
6. Shri Bal Karan Singh,
S/o Shri Kidda Singh,
House No. 32/1, Patel Road,
Dehradun.
7. Shri Om Prakash,
S/o Shri Mehanga Ram,
7/1, Wing No. Prem Nagar,
Dehradun.
8. Shri Sohan Singh,
S/o Shri Gokal Singh,
13/30, Man Singh Wala,
Dehradun.
9. Shri Surender Kumar,
S/o Shri Jagat Ram,
94/1, Race Course,
Dehradun.

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10. Shri P.S. Thapa,
S/o Shri Devi Singh,
R/o Vill & PO -Ranjanwala,
Raipur,
Dehradun.
11. Shri Nand Ram,
S/o Shri Mangat Ram,
Vill - Sunder Wala,
Raipur,
Dehradun.
12. Shri Sadhu Ram,
S/o Shri Hazari Ram,
R/o House No. 187, Uppar
Raipur, Gali Bus Stand,
Dehradun.
13. Khajan Singh,
S/o Shri Baru Singh Negi,
Village- Sunder Wala,
Raipur,
Dehradun.

...Applicants.

By Advocate Mrs Meera Chibber.

Versus

1. Scientific Advisor,
Govt. of India,
Ministry of Defence,
Dept. of Research and Development
Organisation, Sena Bhawan,
New Delhi.
2. Union of India
To the Secretary,
Ministry of Defence,
South Block,
New Delhi.
3. The Director,
Instrument Research & Development
Establishment,
Raipur, Dehradun.

...Respondents.

By Advocate Shri P.H. Ramchandani.

CP 160/96

Harnam Singh,
S/o Shri Jai Singh,
R/o House No. 137/B,
Guru Dwara Chosk,
Jyogi Market, Prem Nagar,
Dehradun.

...Applicant.

By Advocate Mrs. Meera Chibber.

Versus

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1. Shri A.J. Kalam,
Scientific Advisor to
Govt. of India,
Ministry of Defence,
Dept. of Research and Development
Organisation, Sena Bhawan,
New Delhi.
2. Shri Vijay Kapoor,
Secretary to the
Ministry of Defence,
South Block,
New Delhi.
3. Shri O.P. Nijhawan,
The Director,
Instrument Research & Development
Establishment,
Raipur, Dehradun.
4. Shri N.K. Goel,
Senior Administrative Officer,
Instrument Research and Development
Establishment, Raipur,
Dehradun.

... Respondents.

By Advocate Shri P.H. Ramchandani.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

With the consent of the parties this application was heard together with CP 160/96 in which the applicants have alleged that the respondents have disobeyed the interim order passed by the Tribunal dated 24.4.1996, not to declare the results of the trade test to the post of Chargeman Grade-II held on that date.

2. In the application, the applicants, 13 in number, have challenged the action of the respondents in issuing the order dated 22.3.1996. By this order, the applicants who were working at Instruments Research and Development Establishment, (IRDE), Raipur, Dehradun, have been redesignated as Tradesmen 'A' in the pay

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scale of Rs.380-560 from the post of Precision Mechanics (for short 'PMs') in the revised scale of Rs.1400-2300 (pre-revised scale of Rs.425-700) and the order dated 19.4.1996 whereby they were asked to report for a trade test to be held on 24.4.1996 for promotion to the post of Chargeman Grade-II. The applicants have challenged the above orders on the ground that they are illegal, untenable, unconstitutional and violative of Articles 14 and 16 of the Constitution.

3. The brief facts of the case are that the applicants are working as 'PMs' at IRDE, Raipur, Dehradun, which is part of the establishment under Respondents 1 and 2. According to them, they were promoted as 'PMs' after passing the trade test to the said post. They were initially placed in the scale of Rs.380-560. Some other applicants who were working as 'PMs' in another laboratory under the Respondents at Bangalore had approached the Tribunal (R. Anbalagan & Ors. Vs. Union of India & Ors) (O.As 793-810 of 1989 and O.As 223-236 of 1990) which were decided on 17.5.1990 in which certain directions were given to the respondents. In this judgement, the Tribunal had followed the earlier judgement of the Hyderabad Bench of the Tribunal in T.S. Prasad & Ors. Vs. Union of India & Ors. (TA No. 156 of 1986), decided on 10.11.1986. Pursuant to the decisions of the Tribunal, Respondent 2 passed the order dated 20.2.1992 conveying the sanction of the President for allocation of pre-revised pay scale of Rs.425-700 (revised pay scale of Rs.1400-2300) to the 'PMs'. The applicants state

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that they were also given the pre-revised pay scale of Rs.425-700 in 1992 and their pay was accordingly fixed in the higher scale and arrears of salary were also paid. Subsequently, another application was filed before the Tribunal (Bangalore Bench) (O.A. 600/91) wherein the applicants had sought a direction from the Tribunal that they should be given promotions on ad hoc basis as Chargeman Grade-I and to the higher levels. The Bangalore Bench of the Tribunal by order dated 6.4.1993 had directed the department to convene a review DPC as per the orders then in force and consider the suitability of the applicants for regular appointment as Chargeman Grade-I and above with effect from the date they became eligible on the lines of the action taken with regard to similarly situated cases in LRDE of Defence and Research Development Organisation, Bangalore. The applicants are aggrieved that they have been ignored for the notional promotion to the higher grade of Chargeman Grade-I. They had submitted a representation on 5.5.1995 and subsequently, to which they state that they have not received any reply. The learned counsel for the applicants has contended that under the relevant recruitment rules Chargeman Grade-II and 'PMs' in the scale of Rs.425-700, with three years service were eligible for promotion to the post of Chargeman Grade-I. They have contended that the deduction in their pay scale and rank are without any basis, irrational and illegal. They have also contended that the impugned letter dated 19.4.1996 asking them to appear for the trade test for promotion to the post of Chargeman Grade-II was also unwarranted

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and illegal as they have already passed the trade test earlier. No show cause notice was issued and they were not given any opportunity to represent against the deduction of pay or redesignation, before putting them in the lower grade of Tradesman 'A' and taking away the benefits the respondents themselves had given earlier.

Mrs Meera Chibber, learned counsel, has submitted that the 13 applicants have been appointed in 1982-83 against the sanctioned posts of 'PMs' in IRDE, Dehradun for a special project. She has also referred to the letter issued by Respondent 2 to Respondent 3 dated 22.12.1995 in which it has been mentioned that their proposal for Tradesmen 'A', 'B' and C etc. in their permanent establishment may be deferred for the time being. In the circumstance, the learned counsel has prayed for appropriate directions to be given to the respondents to implement the judgement of the Tribunal (Bangalore Bench) in O.A.600/91 dated 6.4.1993 and to grant them promotions to the post of Chargemen Grade-I and above on notional basis as were given to the other PMs.

4. We have perused the reply of the respondents and heard Shri P.H. Ramchandani, learned Senior counsel. The main contention of the respondents is that after coming into effect of SRO 221/81 w.e.f. 22.8.1981, recruitments had to be made in accordance with this order. The learned counsel contended that the applicants have been recruited as 'PMs' by mistake between ~~between~~ 20.7.1982 and 21.3.1983 which are in

contravention of the provisions of SRO 221/81 and, therefore, they cannot take advantage from those orders. He contends that as the applicants were in the same grade of Rs.380-560 as Tradesmen 'A', a mistake had been committed in the nomenclature while appointing the applicants. He submits that only the 'PMs' appointed/promoted prior to 1977 or before abolishing of the post of 'PMs' by SRO 221/81 were to be given the higher pay scale of Rs.425-700. He submits that in terms of the judgement of the Bangalore Bench dated 17.5.1990 (O.As 793-810/89 and 223-236/90), only those 'PMs' who were appointed after 1.12.1980 and prior to the abolition of the posts in September, 1981 and their redesignation were to be treated as 'PMs' and to be given the higher pay scale of Rs.425-700 from the date of their initial appointment. However, the IRDE Dehradun had inadvertently and by another mistake given the higher pay scale to the applicants as 'PMs' on 24.6.1992, even though they were not entitled to it, as their appointment itself was wrong. In the circumstances, Shri Ramchandani, learned counsel, contends that the applicants are nothing but Tradesman 'A' and can only be given promotions as Chargeman Grade-II as given to similarly situated employees in other Defence Laboratories and cannot be given any of the reliefs claimed.

5. SRO 221/81 has been published on 7.8.1981. By this order, certain amendments were carried out in the Defence Research and Development Organisation, (DRDO) Ministry of Defence, (Group 'C' and

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Group'D) Industrial Posts Recruitment Rules, 1977. The respondents have contended that after the coming into force of this SRO, the industrial trades of DRDO were grouped together and categorised as Tradesmen 'A', 'B', 'C' and 'D' and appointments/promotions in these categories were required to be done as per the SRO from August, 1981 onwards. Their main contention is that the applicants were recruited as 'PMs' between July, 1982 and March, 1983 in contravention of the recruitment rules by mistake and also given the higher pay scale of Rs.425-700 by mistake. However, it is seen from the letter issued by Respondent 2 to Respondent 1 dated 17.9.1981, that they had conveyed the sanction of the President to the creation of various posts in IRDE, Dehradun in connection with Phase-III of the project on 'Design and Development of Main Battle Tank (MBT). In this sanction letter, it is clearly mentioned that seven posts of 'PMs' were sanctioned for this project. Nothing has been placed on record by the respondents to show that the sanction was, in fact, meant for the posts of Tradesmen 'A' and not 'PMs' in IRDE. The contention of Shri Ramchandani, learned counsel that this was done by mistake is difficult to accept when the letter of sanction itself clearly mentions the creation of certain additional posts in IRDE, Dehradun in connection with phase-III of the MBT Project. In addition, there were six other existing posts of 'PMs' against which the applicants were appointed after passing the trade test as PMs. The order issued by the IRDE dated 13.12.1982 also clearly states that five of

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the applicants have been declared passed in the trade test and promoted to the grade of 'PMs' against the existing vacancies. We cannot, therefore, fail to note the action of the respondents to sanction additional posts of 'PMs' in September, 1981 after SRO 221/81 was published in August.

6. It is also relevant to note that the additional posts in IRDE were sanctioned against Phase-III of MBT Project which shows that it was ^{an} ~~an~~ on going project. It was also confirmed during arguments that after coming into force of SRO 221/81 the respondents have appointed only the applicants as 'PMs' and employees in other defence laboratories as Tradesmen'A'. Nothing has been placed on record by them to show categorically that the sanction of the posts of PMs was not really for 'PMs' but for Tradesmen'A', as now contended. In view of the above facts, the respondents' submission that they committed a mistake in respect of these 13 applicants in IRDE, Dehradun, because Tradesmen'A' happen to be in the same scale of pay as 'PMs' is difficult to accept. These 13 applicants who were appointed as 'PMs' against the sanctioned posts of 'PMs' belong to a separate class. Therefore, the apprehension voiced by Shri Ramchandani, learned counsel, that if the higher pay scale of 'PMs' are given to the applicants, the other persons who were appointed as Tradesmen'A' in other laboratories would also raise similar claims appears to be irrelevant as obviously they cannot claim to be similarly situated for all purposes.

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7. Apart from the ^{fact is} that the applicants have been wrongly appointed as 'PMs' by mistake, the respondents have contended that their subsequent orders passed nearly a decade later on 20.2.1992 and 24.6.1992 giving them the higher pay scale as 'PMs' were also done by mistake. This was corrected by the order dated 21.6.1995 putting them in the lower scale of Rs.380-560. However, the payments made to them have been allowed to be retained by them. The Tribunal in the order dated 6.4.1993 in O.A.600/91 (Bangalore Bench) had observed that under the relevant recruitment rules after promulgation of SRO 246/81 published in the gazette on 12.9.1981, 'PMs' in the scale of Rs.425-700 with three years regular service in the grade were made eligible for promotion directly as Chargeman Grade-I. It was also observed in this judgement that the Defence Research and Development Organisation has not been following a consistent stand in respect of these cases. (emphasis added). They also found that there were similar cases covered by O.As 293-300/90 where also the issue was the date of promotion of 'PMs' to Chargeman Grade-I. The applicants have stated that by the order dated 25.12.1994 issued by IRDE, Raipur, Respondent 3 had promoted 14 'PMs' other than the applicants (out of which three had expired/retired) as Chargeman Grade-I, Assistant Foreman and Foreman.

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8. From the above peculiar facts, therefore, it is seen that the applicants were holding sanctioned posts of 'PMs' after passing the test, and also given ^{to} ~~enjoying~~ the grade of Rs.425-700 for over a decade. In O.A.600/91, the Tribunal taking into account the facts and circumstances of the case directed the department to convene a review DPC as per the orders then in force and consider the suitability of the applicants for regular appointment as Chargemen Grade-I and above on the lines of similar actions taken by them. This judgement dated 6.4.1993 and the earlier judgement of the Bangalore Bench of the Tribunal, dated 17.5.1990 have become final and binding and have also been implemented by the respondents. What the respondents are now trying to do is to put the clock back. In the particular facts and circumstances of this case, we are not impressed by the arguments advanced by Shri Ramchandani, learned counsel, that the respondents have made a series of mistakes which they now wish to correct by downgrading the applicants to 'Tradesman'A' and give them the lower pay scale and then promote them to the post of Chargemen Grade-II. This post is admittedly in the same pay scale, as granted to the applicants from the date of appointment as 'PMs' in 1982-83, and promoting them to Chargeman Grade-II at this stage will, therefore, not be consistent with the rules/law as laid down in these cases. Looked at from any angle, therefore, we cannot but reiterate the comments of the Tribunal in the judgement dated 6.4.1993 that the DRDO has not been following a consistent stand in respect of these cases. In the

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facts and circumstances of the case, we respectfully agree with the conclusions arrived at in the judgement of the Tribunal in O.A.600/91.

12. In the result, the application succeeds and is allowed. The impugned orders dated 22.3.1996 and 19.4.1996 are quashed and set aside. The respondents are directed to convene a review DPC as per the rules then in force and consider the suitability of these applicants for promotion as Chargemen Grade-I and above from the date they have become eligible on the lines of the action taken in the cases of other similarly situated Precision Mechanics in DRDO Laboratories with consequential benefits in accordance with law. This action shall be taken within three months from the date of receipt of a copy of this order.

10. It is made clear that this application is being allowed in the peculiar facts and circumstances of this case, as noted above.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Adige
(S.R. Adige)
Member (A)