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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 670/97

New Delhi: this the 19 day of JULY 2000.

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH MEMBER (J)

Prem Parkash,  
S/o Shri Vidya Sagar,  
R/o C-243/7, Ordnance Factory Estates,  
Dehradun (UP) ....Applicant.

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India  
through  
the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. The Director,  
Directorate of Technical,  
Development and Production (Air),  
Ministry of Defence, 'H' Block,  
New Delhi.
3. The Officer-in-charge,  
AAIW-Khamaria,  
Jabalpur-482005.
4. The Chief Resistant Inspector,  
OCRI, DTD & P (Air),  
Ministry of Defence,  
Raipur Post Office,  
Dehradun (UP)
5. Sh. O. P. Tyagi,  
Chargeman II, Dep'tt. of AAIW,  
Ordnance Factory Muradnagar,  
Distt. Ghaziabad (UP) ....Respondents.

(By Advocate: Shri S. M. Arif)

ORDER

MR. S. R. ADIGE, VC (A)

Applicant impugns respondents' order dated 19.11.93 (Annexure-A2) and order dated 10.5.96 (Annexure-A1) by which Respondent No. 5's seniority has been amended and he has been placed above applicant in seniority.

2. Applicant admits that while he was appointed as

Armourer (Examiner Skilled grade) on 9.2.63, Respondent No.5 was appointed as such before him on 1.2.63. A trade test was held by respondents for promotion to the post of Examiner Grade I (Now Examiner HSG II). Six persons were recommended for promotion on their qualifying in the trade test, including applicant and Respondent No.5, in which applicant was shown as junior to Respondent No.5 (para B of respondents' reply).

3. At the time Respondent No.5 qualified in the trade test, he was undergoing a minor penalty of withholding 2 increments without cumulative effect vide respondents' order dated 12.7.82. His penalty period would have ended on 1.10.84, but because of certain reasons it actually expired on 31.3.85. On completion of the penalty period, Respondent No.5 was promoted as Examiner Gr.I vide order dated 22.4.85 (Annexure-RI) and assumed charge on 26.4.85, and his seniority was fixed as per his position in the panel drawn by the Trade Test Board dated 12.4.84. Applicant represented that the seniority of Respondent No.5 as Examiner Gr.I should be reckoned with effect from the date of his assumption of duties i.e. 26.4.85 and not from the date of his qualifying in the trade test and drew support from respondents' Circular dated 15.7.87 (Annexure-RII). Respondents state that the case was referred to DP & T, who also advised that Respondent No.5 on completion of the term of the penalty may be given seniority from the date of actual promotion. As such the seniority of Respondent No.5 was reviewed and he was made junior to all those who qualified in the trade test held on 12.4.84 irrespective of his seniority drawn by the Trade Test Board.

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4. Subsequently respondents held a trade test for promotion to the post of Examiner Highly Skilled Gr. I on 27/28.3.90. Applicant as well as Respondent No. 5 came within the consideration zone, qualified in the trade test and were promoted as Examiner HS Grade I w.e.f. 30.5.90.

5. Subsequently one Shri T.N. Dutta, Examiner HSG I who had been given seniority as HSG II w.e.f. 15.10.84 claimed seniority over Respondent No. 5 who was promoted as Examiner HSG II w.e.f. 26.4.85 after expiry of the penalty period. As seniority of Respondent No. 5 as Examiner HSG II was to reckon from the date of his actual promotion vide DP & T's letter dated 18.5.92 (Annexure-R V), he was made junior to those who were promoted along with him based on the trade test held on 27/28.5.90, but were given seniority as Examiner, HSG II w.e.f. 15.10.84.

6. Meanwhile C & AG issued a general clarification on 30.8.90 (Annexure-A22) that a Govt. servant who is found fit for promotion by the DPC held after the imposition of the penalty need not be considered again for promotion by the subsequent DPCs merely because he could not be promoted during the life of the panel due to currency of the penalty. After the expiry of the penalty period the official concerned will be promoted from the same panel in which he was originally empanelled. On his promotion, his pay and seniority in the higher post will be fixed according to his position in the panel from which he was promoted. In the aforesaid Circular dated 30.8.90 it was stated that the same would take effect from the date of its issue.

7. Based upon the Circular dated 30.8.90, respondents

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were advised by DP & T vide letter dated 30.12.92 (Annexure-RV I) that there would be no objection to the revision of the seniority of Respondent No.5 in accordance with the clarification dated 30.3.90, and by the impugned order dated 19.1.93 his seniority was accordingly revised and by impugned letters dated 10.5.96 applicant's representation was rejected. It is against these two impugned letters that this OA has been filed.

8. We have heard applicant's counsel Shri Yogesh Sharma and respondents' counsel Shri Arif.

9. Shri Sharma has contended that C & AG's clarificatory circular dated 30.3.90 was prospective in character and was to take effect only from the date of its issue. It therefore could not be made applicable in past cases such as that of Respondent No.5.

10. Respondents in their reply have invited attention to Govt. Decision No.21 below Rule 11 CCS(CCA) Rules which provides that if on the basis of disciplinary proceedings any punishment on an Govt. employee is imposed( other than removal, dismissal or retirement ) and meanwhile it is decided to promote him, his promotion would take effect only after the expiry of the penalty (other than censure) but his seniority in the higher grade may be determined on the basis of the rank obtained by him in the competitive exam. Nothing in the aforesaid decision No.21 makes it applicable to selection posts alone as contended by applicant in his rejoinder, and there is merit in respondents' contention that these instructions are clearly applicable in the present case, and date back to 1965 much before the issue of C & AG's Circular

dated 13.8.90.

11. In the light of the above, the rulings relied upon by Shri Yogesh Sharma viz. Dharampal Vs. Board of School Education 1997(3) SLR (DB) 711 and Ashok Kumar Banerjee Vs. UOI 1997(1) SLR 432 do not avail applicant and the OA warrants no interference. It is dismissed. No costs.

*Kuldeep Singh*  
( KULDIP SINGH )  
MEMBER(J)

*R. Adige*  
( S. R. ADIGE )  
VICE-CHAIRMAN(A)

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