

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No.2007/94

NEW DELHI, THIS THE 10<sup>th</sup> DAY OF DECEMBER, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN  
HON'BLE MR.K.MUTHUKUMAR, MEMBER(A)

Shri Ashok Kumar  
S/o Shri Dip Chand  
R/o RZ 767/34 Raj Nagar  
Palam Colony  
New Delhi-110 045.

... Applicant

(BY ADVOCATE SHRI SURINDER SINGH)

Vs.

1. The Union of India-through:  
The Defence Secretary  
Ministry of Defence  
South Block  
Central Secretariat  
New Delhi-110 011.
2. The Joint Director of Personnel (Civ)  
Air Headquarters  
Vayu Bhawan  
New Delhi-110 011.
3. The Air Officer Commanding  
A.M.S.E. Air Force  
Palam  
New Delhi-110 010.

... Respondents

(NONE FOR THE RESPONDENTS)

ORDER

JUSTICE K.M.AGARWAL:

By the impugned order dated 8-9-1994, the promotion granted to the applicant as Carpenter HS-II w.e.f. 20th of January 1993 was cancelled on the ground that the promotion order was irregular.

2. Briefly stated, the applicant was initially appointed as a semi skilled Carpenter in 1984. He was posted at Meerut. On being declared surplus at Meerut, he came to be absorbed as skilled Carpenter with the 3rd respondent at Delhi w.e.f. 18-1-1990. On completion of 3 years service and after passing the trade test, he was considered for promotion to the post Carpenter HS-II by a duly constituted D.P.C. He was found fit by the D.P.C. and accordingly he was promoted to the said post with effect from 20-1-1993. Subsequently he was

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informed that his promotion order was likely to be cancelled as he did not possess I.T.I. Diploma and was, therefore, considered to have been irregularly promoted. The applicant represented, but failed to persuade the respondents that the promotion was as per rules and, therefore, regular. Ultimately by the impugned order, his promotion was cancelled.

Being aggrieved, the applicant has filed the present O.A. for the present relief. It may be mentioned that he had withdrawn his earllier O.A. 988/94 on 17-5-1994. The reason given for withdrawing the earlier O.A. in paragraph 7 of the present O.A. is:

"...O.A. 988/94 was withdrawn as six months had not elapsed between representation made by the applicant and filing of O.A. Copy of order dated 19-5-94 is placed at Annexure A-11."

A-11 contains no reason of withdrawal of O.A. 988/94 and the reason given in paragraph 7 of this O.A. is ex-facie wrong, because the impugned order was not in existence on the date of previous O.A., or on the date of its withdrawal. In fact the previous O.A. was pre-mature and that might be the reason for its withdrawal. Be that as it may. As the order impugned was not in existence at the time of withdrawal of the earlier O.A., the present O.A. cannot be said to be barred by the principle of res-judicata.

3. A counter has been filed and the claim is denied, but at the time of hearing, no one appeared to represent the respondents.

4. After hearing the learned counsel for the applicant and perusing the record, we are of the view that at the relevant time column 11 of the schedule to the recruitment rules, Annexure A-10 provided the method of recruitment for the post of Carpenter (Highly Skilled Grade II) as follows:

"By promotion failing which by transfer failing both by transfer on deputation/re-employment (for ex-service men) failing all, by direct recruitnemt."

*Jm*

In column 8 of the said schedule, "Educational and other qualifications required for direct recruits" are mentioned as follows:

"Industrial Training Institute Certificate in the appropriate/akin field or trade viz. Carpenter with 3 years experience;

OR

Ex-servicemen in appropriate trade viz. Carpenter, Rigger with 3 years service."

Column 9 thereof specifically deals with promotees by saying "Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees" and then mentions:

"Age ... .. NO  
Educational quali-  
fications ... .. Yes."

It is, thus, clear that the educational qualifications mentioned in column 8 were necessary both for the direct recruits and for the promotees. It is not disputed that the applicant did not possess Industrial Training Institute Certificate in any field or trade. The applicant cannot, therefore, urge that the impugned order of cancellation of promotion order is bad. We are supported in our view by a decision of the Supreme Court in State of M.P. v. Shyama Pardhi, (1996) 7 SCC 118.

5. The learned counsel for the applicant submitted that on fair and correct reading and interpretation of the qualifications prescribed under column 8 of the schedule would mean that either the candidate must possess Industrial Training Institute Certificate, or 3 years experience as a Carpenter. Accordingly it was argued that as the applicant possessed 3 years experience as a Carpenter, his promotion to HS-II was regular. The argument is fallacious and cannot be accepted. The qualifications required for the post were two-fold: one educational and the other experience

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qualification. The heading of column 8 is also material, which mentions "Educational" and "other qualifications" required for the post and accordingly supports our view.

6. For the foregoing reasons, this O.A. fails and it is hereby dismissed, but without any order as to costs.

*Km*

(K.M.AGARWAL)  
CHAIRMAN

*Kms*

(K.MUTHUKUMAR)  
MEMBER (A)