

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 353/89  
TAX No.

198

DATE OF DECISION

30-7-1991

Manmohan Singh and Ors.      Applicant (s)

B. S. MAINEE      Advocate for the Applicant (s)

Versus  
Union Of India & Ors.      Respondent (s)

Mrs. Raj Kumari Chopra      Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. U.C. SRIVASTAVA, VICE-CHAIRMAN (J)

The Hon'ble Mr. N.V. KRISHNAN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(of the Bench delivered by Hon'ble Shri N.V. Krishnan

The applicants were civilians working in the pay scale of Rs. 260-400 in the Military Engineering Services (MES, for short) as Refrigerator Mechanics. In accordance with the An.A-2 Military Engineering Services (Industrial Class III and Class IV posts) Recruitment Rules, 1971 - Rules, for short- they became eligible to participate in the trade test for promotion to the next higher post of Charge - Mechanic (Refrigerator) in the pay scale of Rs. 380-560, as they had rendered the prescribed minimum service of 3 years as Refrigerator Mechanic. Admittedly, they also passed the trade test prescribed for this purpose in 1978.

Their grievance is that though they have thus qualified themselves for promotion as Charge

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Mechanic (Refrigerator) and though a number of vacancies existed, they were not promoted to that post.

2. The applicants have also another grievance. The structure of the service was revised from 15.10.84 by the Ministry of Defence vide its letter of the same date (Annexure A 3), addressed to the Chief of <sup>the</sup> Army Staff. These orders are in pursuance of the pay scales recommended by the Third Pay Commission and the decisions taken by the Government of India on the recommendations of the Anomalies Committee and relate to the fitment of industrial workers of MES in the pay scales recommended by Third Pay Commission. One of the decisions taken was that, for certain common category jobs listed in Annexure-I to that letter- which includes the post of Refrigerator Mechanic also- an additional avenue of promotion was to be given by providing / inducting posts of Highly Skilled Grade-II posts in the scale of Rs.330-480 and Highly Skilled Grade-I post in the scale of Rs.360-560. The result was that whereas, earlier, the Refrigerator Mechanics in the pay scale of Rs.260-400 could get promoted only as Charge Mechanic (Refrigerator) in the scale of Rs.380-560, after this restructuring, additional promotional opportunities were made available. Thus, out of a total of 100 posts, 65 posts only will be in the skilled grade of

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Rs 260-400 (i.e. lowest grade, corresponding to the grade applicable to Refrigerator Mechanics), 20 posts will be Highly Skilled Grade-II (Rs.330-480) - which is an addition in the case of Refrigerator Mechanics - and the remaining 15 posts will be in the Highly Skilled Grade-I in the pay scale of Rs.380-560, corresponding to the post of Charge Mechanic (Refrigerator) which existed earlier. Thus the earlier two-tier structure was replaced by a three-tier structure.

3 By the OM dated 19.4.85 (Ann.A-4), the Ministry of Defence clarified, how the three-tier structure is to be operated. Point 3 above is relevant and is as follows:-

<u>Point</u>	<u>Answer</u>
(iii) Introduction of two higher grades for skilled workers on Bench Mark % ages (65:20:15)	Skilled tradesmen with 3 years service shall be promoted to Highly skilled Grade II subject to passing of Trade test to be laid down for this grade and to Highly Skilled Grade I after putting in a minimum of 3 years service in Highly Skilled Grade II subject to passing of Trade Test for Highly skilled Grade I to be laid down for the purpose, pending framing of the formal Recruitment Rules.

4 Subsequently, the Ministry issued another letter on 8th April, 1986 (Ann.A5). The instructions in the annexure thereto to the extent we are concerned, are in partial modification of the decision at Sl.No.3 extracted above in so far as it relates to the minimum qualifying service needed for appearing in the trade test.

In so far as promotion to Highly Skilled Grade-I is concerned, the instructions, are as follows:

" (a) In any unit in which Recruitment Rules are in existence, the workers satisfying the prescribed criteria shall be eligible for promotion to Highly Skilled Grade I with effect from 15.10.84.

(b) In any unit in which Recruitment Rules were not in existence, on 15.10.84, workers shall be considered for promotion after passing the trade test or after clearance by a DPC, as may be prescribed. However, in so far as the experience criteria is concerned, it shall be relaxed from the normal 2/3 years to one year, as a special one time concession. Workers qualifying the trade test shall be promoted to Highly Skilled Grade I with effect from 15.10.85. Pending finalisation of Recruitment Rules, administrative instructions prescribing the criteria to be followed in effecting promotions from Highly Skilled Grade II to Highly Skilled Grade I, will be issued by 31st May, 1986."

In so far as promotion to Highly Skilled Grade-II is concerned, it is sufficient to note that the Recruitment Rules, if they exist, should be followed. If the vacancies of the Highly Skilled Grade-II are to be filled-up merely on the basis of seniority without obligation to pass the trade test. An additional temporary quota of promotion to Higher Skilled Grade-II to the extent of 15% was also made, to be filled after passing the trade test, but we are not covered with this.

5. The grievance of the applicants in this background is that though they had passed the trade test for promotion to the grade of Charge Mechanic (Refrigerator) (Rs.380-560), which is

equivalent to the Highly Skilled Grade-I posts (HSG-I for short) - they have not been given promotion to HSG-I. Instead, persons who did not pass the trade test with them or did not pass any trade test thereafter are being promoted to HSG-I, ~~xxxxxxxxxx~~ which is contradictory to annexure A5 instructions dated 8.4.86 of the Ministry of Defence.

6. Manmohan Singh, the first applicant, submitted a representation dated 29.7.88 (Annex-1) to the second respondent i.e. Engineering-Chief Army Head Quarters, Delhi. He has stated in his representation that on the coming into force of the 3-grade structure- vide Annexure A3 letter- he was granted fitment in HSG-II w.e.f. 15.10.84. He, therefore, claimed that he should have been promoted to HSG-I from 15.10.85 in accordance with the instructions (An.A.5), now reproduced in para.4 above. This representation is stated to be still pending.

7. It is in these circumstances that the application has been filed seeking ~~xx~~ the following reliefs:

" 1. That the respondents may be directed to promote the Applicants to the post of Charge Mech. (Ref) H.S.Gde.I in the erst-while pay-scale of Rs.380-560, now Rs.1320-2000, against the available vacancies in the area prior to 15.10.84 with all consequential benefits.

2. Alternatively, the respondents may be directed to promote the Applicants who had passed the trade test for Charge Mech (Ref) in 1978/79 to Charge Mech (Ref) Highly Skilled Grade-I w.e.f. 15.10.84 as per the directions of Ministry of Defence contained in Annexure.5.

3. The respondents may also be directed to declare such of those persons who passed the trade test in 1987 and promoted to Ref: Mech, Highly Skilled Grade.I as Junior to the Applicants."

8. The respondents have filed a reply contending that the applicants are not entitled to any relief. It is submitted that though the applicants had passed the prescribed trade test in accordance with the Rules- which is <sup>a</sup> necessary condition for promotion to the post of Charge Mechanic (Refrigerator)- they could not be promoted, because, no vacancies were then available. Subsequently, the three-grade structure was introduced which classified the posts as Skilled, Highly Skilled Grade.II and Highly Skilled Grade.I and the promotion to Highly Skilled Grade.I could be made from Highly Skilled Grade.II. The applicants were too junior to get such promotion.

9. It is added that the Annexure-I representation filed by the first applicant already stands disposed of by letter No.1021/76/1154/EIC(3) dated 18.11.88

and a copy thereof is stated to be exhibited as R1, though that exhibit is not on our file.

10. It is further ~~said~~ pointed out that, in pursuance of the directions contained in the annexure to the letter dated 8.4.86 (Annexure A5), relating to the promotion to Highly Skilled Grade.I category, instructions have been issued from E-in-C's Branch vide letter No.90270/89/TGS/EIC3 dated 3.9.86, stated to be enclosed as enclosure R1(a) which is also not found in our file. According to these instructions promotion to HSG-I will only be from the category of HSG-II.

11. On the date of final hearing, none appeared on behalf of the respondents. We have carefully considered the arguments put forth by the learned counsel for the applicant and also perused the records.

12. Admittedly w.e.f. 15.10.84, a major structural change had taken place. Instead of a 2-tier structure which existed earlier, a 3-tier structure came into being from that date as will be clear from annexure A-3 letter. The Recruitment Rules in force till then had become obsolete. Therefore, the respondents cannot be faulted if recruitment and promotions to the 3-grade structure were made and in pursuance of the executive instructions, their actions cannot be assailed as was done by the applicant's learned counsel- on the ground that executive instructions cannot supercede the statutory rules. That contention, though correct, has no application in the present case.

13. In his representation, he has stated clearly in para 2(b), that on the introduction of the three-grade structure, he had been granted fitment in Highly Skilled Grade.II w.e.f. 15.10.84. This has not been denied in the counter-affidavit. He claims promotion to HSG.I <sup>from 15.10.85</sup> on the basis of the instruction.

A.5/~~XXXXXXXXXX~~. In regard to the substantive grievance of the applicants, we see from the records that only the first applicant's case (Man Mohan Singh), has been made out clearly in his representation of Annexure.I.

14. Therefore, the only point for consideration centres round the instructions relating to promotion to Highly Skilled Grade.I - reproduced in para.4 supra.

As contended by the applicant's counsel, that has to be read with the clarification given by the Annexure.A6 letter. This letter dated 5.1.87 states that persons who had passed the trade test for promotion to the post of Charge Mechanic Refrigerator under the earlier Rules, need not pass the trade test again - though stipulated in the <sup>the new</sup> extract of instruction referred to above, provided they have already been placed in Highly Skilled Grade.II post. Hence, the applicants are entitled to promotion from 15.10.85.

15. The respondents have not met this contention. We find force in this submission.

16. In so far as the first applicant is concerned he has already been placed w.e.f. 15.10.84 as Highly Skilled Grade.II worker. He had already passed the trade test of Charge Mechanic Refrigerator

in 1978. He has also rendered the qualifying service which has been relaxed to one year as on 15.10.85 He is therefore, eligible for consideration for promotion to the post of Highly Skilled Grade.I, without passing any further trade-test or being cleared by DPC in terms of the aforesaid instructions. The question as to whether he can be absorbed as a Highly Skilled Grade-I will, therefore, depend on his seniority vis.a.vis other HSG.II persons, whose case should also be considered in accordance with the aforesaid instructions and also keeping in view the number of posts available for such promotion.

17. That takes us to the third relief sought by the applicants. With the ~~restructuring~~ from 15.10.84, the Rules had become absolute. The applicants had, no doubt, passed the trade test in 1978, perhaps, earlier than others senior to them as Refrigerator Mechanics. They could claim preferential promotion to Charge Mechanic (Refrigerator) over those who had not passed the trade test with them or who had passed it later. However, the post of Charge Mechanic (Refrigerator) stood abolished on 15.10.84. In respect of the new set-up, the fact that the applicants had passed the trade test has no relevance because promotion is to be made from HSG.II. Therefore to HSG-I Grade his turn for promotion will depend on his seniority as HSG.II, in regard to which no prayer has been made.

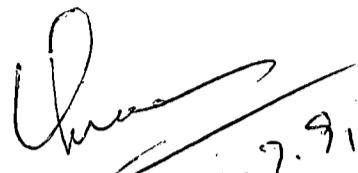
L if that post existed.

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18. The carelessness of the respondents in not ensuring that the documents listed in the reply affidavit have actually been exhibited as well as the absence of any representation on behalf of the respondents has handicapped us to a considerable extent. Therefore, in so far as the first applicant Man Mohan Singh is concerned, notwithstanding the averment made in the reply affidavit that the annexure A1 representation has been disposed of by the enclosure R1 letter dated 18.11.88, the second respondent is directed <sup>afresh</sup> to consider the Annexure A1 representation in the light of the observations made above and send a reply to the first applicant within 2 months from the date of receipt of this Judgement.

19. In so far as the other applicants are concerned, no specific averments have been made in regard to their individual cases as to whether they were absorbed as HSG.II w.e.f. 15.10.84 itself like the first applicant. The benefit of Annexure A6 will be available only if such is the case. If such be the case they may make a representation to the second respondent, like the Annexure-I representation made by the first applicant, within a period of 2 weeks from the date of receipt of this order and in case such representations are received by the second respondent, he is directed to dispose those representations within a period of 2 months from the date of their receipt in the light of the observations made by us.

20. The application is disposed of with the aforesaid directions. There will be no order as to costs.

  
20-7-91

(N.V. KRISHNAN)  
MEMBER(A)



(U.C. SRIVASTAVA)  
VICE-CHAIRMAN(J)