

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 643/89
T.A. No.

198

DATE OF DECISION 30-11-89

Shri Nandan Singh Applicant (s)

Shri O.P. Sood Advocate for the Applicant (s)

Union of India & Others Respondent (s)

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

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

This application was originally filed by two applicants who were working as Labourers in the E.M.E. Directorate, Army Headquarters, New Delhi, claiming that they were duly promoted w.e.f. 1.8.1987 to the post of Vehicle Mechanic (Mate) and that their pay and allowances should be fixed accordingly w.e.f. that date. During the pendency of the application, the first applicant (Ram Singh) filed MP-1093/89 seeking permission to withdraw the application on the ground that he has been duly promoted by the respondents. The application is, however, being pursued by the second applicant (Shri Nandan Singh).

Or

2. The case of the applicant is that he was initially recruited as Labourer in the pay-scale of Rs.750-940 (revised) in the Army Headquarters Static Workshop, E.M.E., New Delhi and he was subsequently confirmed in the said post. The next promotional post for him is Trademan (Mate) in the pay-scale of Rs.800-1150 (revised).

3. According to the Recruitment Rules for the post of Trademan (Mate), a Labourer with three years of regular service and who qualifies the prescribed departmental test, is eligible for promotion. The post is to be filled by promotion failing which by transfer, failing both, by transfer on deputation/re-employment (for Ex-servicemen) and failing all, by direct recruitment.

4. The version of the applicant is that during June/July, 1987, the Officer Commanding, Army Headquarters Static Workshop, published Daily Order Part I stating that there were three vacancies of Vehicle Mechanics and on that basis, invited the names of desirous Labourers who had completed three years' service to appear in a trade test and interview for Tradesmen (Mate). Applicants 1 and 2 submitted their names and they were trade-tested and interviewed by the Board of Officers constituted for making the selection. Three persons were declared successful out of whom two were the applicants. The names of all the three successful persons, including both the applicants, were published in the Daily Order Part II dated 31.8.1987 (vide Annexure A-2, p.16 of the paper-book). It was mentioned in the said order that the three persons mentioned therein, had been promoted to Vehicle Mechanic (Mate) against the existing vacancy of Vehicle Mechanic and that they would continue to draw rates of pay pending

Q

fixation of pay in the scale by the L.A.O. (A.H. Quarters). Their pay has, however, not been fixed as yet and that they are continuing to draw the pay of the post of Labourer.

5. The applicants have alleged that respondent No.3 (Officer Commanding, Army Headquarters Static Workshop) has in the meanwhile appointed S/Shri Ved Prakash and Negi to the post of Vehicle Mechanic, contrary to the Rules.

6. The applicants submitted representations to Respondent No.3 on 20.1.1989. Respondent No.3 informed them vide his letter dated 25.1.1989 that Trade Test was conducted to select only one person and one person has been promoted. Two other vacancies which existed were meant for SC/ST candidates and for other vacancies, there was a ban on filling up the same.

7. The respondents have denied the aforesaid contentions in the counter-affidavit filed by them. They have also drawn our attention to the Daily Order Part II issued on 31.8.1988 whereby the orders of promotion in respect of S/Shri Ram Singh and Nandan Singh were cancelled (vide Annexure A-1 to the counter-affidavit, pp.38-39 of the paper-book).

8. The contentions of the respondents may be summed up as follows:-

(a) During July, 1987, three vacancies of Vehicle Mechanics were available out of of which the first one was to be filled up by a general candidate and the remaining two by candidates belonging to the Scheduled Caste community. The two vacancies earmarked for Scheduled

Castes were carried forward vacancies.

Thus, there was only one vacancy available for promotion of general candidates. The applicant No.1 figured at Sl.No.2 and applicant No.2 figured at Sl.No.3 of the panel prepared after the Trade Test and interview. The person who figured at Sl.No.1, was promoted in the vacancy available for the general candidates.

According to them, this was in accordance with the Model 40-Point Roster maintained by them.

(ii) It was subsequently decided that out of the remaining two vacancies earmarked for candidates belonging to the Scheduled Caste community, one could be filled up by a general candidate in view of the provisions of the O.M. of the Department of Personnel dated 9.2.1982.

~~✓~~ The panel prepared vide Daily Order Part II dated 31.8.1987, was cancelled vide Daily Order Part II dated 31.8.1988. One of the two vacancies reserved for Scheduled Castes was carried forward and the other was filled by promoting the person who figured at Sl.No.2 of the panel (Applicant No.1 who has thereafter withdrawn his application). Thereafter, the respondents took up the matter for dereserving the remaining one vacancy but this was not agreed to by the Army Headquarters vide their letter dated 3rd July, 1989. In

view of this, the applicant who figured at Sl.No.3 in the panel, could not be promoted. One more vacancy has been created by the retirement of a Vehicle Mechanic w.e.f. 1.12.1988. According to the respondents, this cannot be filled up due to the ban orders in force. They have, however, stated that no outsider would be recruited against the vacancy and that it would be filled by promotion as per the Rules.

(iii) Merely because the applicant's name is borne on the panel of selected candidates for promotion, it has been contended that he is not entitled to claim promotion as a matter of right till a suitable vacancy arises.

(iv) The applicant's case for fixation of pay was wrongly sent to the local Audit office. No entry has been made in the records as regards his promotion to Vehicle Mechanic (Mate). The applicant continues to perform the same duties and functions as Labourer.

(v) With regard to the induction of two persons on deputation, the respondents, while admitting the same, have contended that this was done in view of the existing instructions according to which Armed Forces personnel due to retire within a period of one year, could be taken on deputation. Such deputation has nothing to do with the Model 40-Point Roster as

it is neither a promotion nor a direct recruitment. Even if these deputations did not take place, the applicant could not have similarly been promoted.

9. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. We have also perused the relevant files made available to us after the conclusion of the oral arguments. The non-promotion of the applicant, despite his passing the Trade Test and interview, is due to want of vacancies. We do not see any infirmity in the order dated 31.8.1988 whereby the previous order dated 31.8.1987 was cancelled. The earlier order had been passed without verifying the number of vacancies available for persons belonging to the general category.

10. We also do not see any infirmity in the appointment of two persons as Vehicle Mechanics on deputation as the same has been done in accordance with the relevant instructions. The posts occupied by them are not taken into account in the Model 40-Point Roster.

11. In the above background, the question arises whether the applicant is entitled to any relief. His name is already borne on the panel for promotion to the post of Vehicle Mechanic. In view of this, as and when a vacancy for a general candidate is available, we are of the opinion that he should be promoted to the next available vacancy open to a general candidate, without subjecting him to another Trade Test and interview. The legal position is that the mere circumstance that a person has been put on a panel for promotion does not

mean that he would have been automatically promoted to the higher post. However, being empanelled for promotion confers upon him the limited right of being considered for promotion (vide M.M. Siddiqui Vs. Union of India, 1978 (2) SCC 349 at 351). Once a candidate is selected and his name is included in the Select List for appointment, he gets a right to be considered for appointment as and when vacancies arise (vide S. Govindaraju Vs. K.S.R.T.C. & Another, A.T.R. 1986 (2) S.C. 362 at 364).

12. In the light of the foregoing, we hold that while the applicant is not entitled to any of the reliefs prayed for at this stage, the respondents are directed to consider the case of the applicant for promotion in the next available vacancy of Vehicle Mechanic (Mate) in the general category or without subjecting him to any further Trade Test and interview. The application is disposed of with the above directions. The parties own or will bear their ~~own~~ costs.

Subhash
(I.K. Rasgotra) 30/4/87
Administrative Member

Amritpal
30/11/89
(P.K. Kartha)
Vice-Chairman (Judl.)