

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

New Delhi, Monday the 3rd of January, 1994.

O.A. No.1690 of 1988.

HON'BLE MR. J.P.SHARMA, MEMBER(J).
HON'BLE MR. B.K. SINGH, MEMBER(A).

Om Parkash,
son of Shri Behari Lal,
Electrician,
Garrison Engineer (P),
Hissar.

...Applicant

(By Advocate: Shri V.S.R.Krishna)

Versus

1. The Secretary,
Ministry of Defence,
Govt. of India, South Block,
New Delhi.

2. The Engineer-in-Chief,
Army Headquarters, Kashmir House,
New Delhi.

3. The Garrison Engineer (P),
Hissar.

...Respondents

(By Advocate: Shri M.L.Verma)

O R D E R (ORAL)

Hon'ble Mr. J.P.Sharma, Member(J):

The applicant who initially joined as Garrison Engineer (North) Ambala in 1968 has given an option for the new unit of Hissar and was posted as Electrician by the order dated 19-12-83. The next promotion is to the post of Highly Skilled Gr.I for which the applicant has taken trade test in January, 1986 and again in July, 1986. The result of both these tests ^{not} was declared. However, these trade tests were cancelled ^{under} by the order of Engineer-in-Chief dated 4-7-85 and conveyed to Chandimandir headquarter by the order dated 19-4-86. Again a D.P.C. was held in September, 87 and applicant was also considered along with others but he was not promoted. Again in

January, 1988, DPC considered the applicant's name and he was empanelled but he was not given the promotion. The applicant made a representation on 15-10-87 (annexure A-5) and the applicant was informed that his representation has been forwarded to the competent authority. It is stated by the learned counsel that no reply to the said representation has been received and the applicant filed the present application in September, 1988 and prayed for the grant of reliefs that the applicant should be deemed to have been promoted to the post of Charge Electrician from the date the person junior to him has been promoted with all consequential benefits.

2. A notice was issued to the respondents who contested the application and opposed the grant of reliefs on the ground that the trade tests held in 1986 and 1987 were cancelled under E-N-C Branch's letter of July 85. In the trade test held in July 86, the Board which conducted the test was cancelled and as ~~was~~ not duly constituted by the order of September 86. The applicant's seniority has to be counted areawise and there is no all-India gradation of seniority for the trade to which the applicant belongs. Regarding empanellment of the applicant in 1988, it is stated by the respondents that by Ministry of Defence letter dated 24-6-87 and E-N-C letter dated 17-5-88, the panel was not approved. The applicant has also filed rejoinder to the aforesaid reply reiterating the stand taken earlier in the original application. We heard the learned

counsel for the parties at length and perused the records. Basically, the grievance of the applicant is that in spite of clearing the trade test, the applicant was not promoted to Highly Skilled Gr.I. The applicant, however, was given promotion to Highly Skilled Gr.II on regular basis by the order of 30-4-86 with seniority benefits w.e.f. 15-10-84. However, we find on record the document filed by the applicant himself at page 16 of the paper book (annexure A-5) where the date mentioned is 15-10-85. This point is not so much relevant because the applicant has been allowed to take the trade test and that was only possible when he was eligible to take the same. Regarding non-declaration of the result of the trade test held in 1986 and cancellation of the further trade test held in 1987, that has been done in pursuance of the direction issued by E-N-C to all the commands under the Indian Army. The learned counsel, however, emphasises in a similar trade test held in Jan., 86 in Ambala, the result was declared and promotions effected while in the case of Hissar, this procedure has not been followed which culminates into discrimination between similarly situated persons in two different units. However, for want of relevant data as to when this information reached Ambala whether before or after the declaration of the result, we cannot presume that the result of Ambala has been declared in derogation of the orders of the E-N-C referred to above. The applicant did not make any representation against the same also and it was only in 1987 that he has represented

after taking the trade test of 1987. Regarding the cancellation of trade test of 1987, the respondents have specifically taken the stand that the Board was not rightly constituted. The applicant in the rejoinder has not specifically challenged this aspect of the matter. Thus, the applicant cannot get any relief of the passing of the trade test held in the years 1986 and 87 and we, therefore, do not find it just and proper to issue any direction in that regard either for declaration of result or for a direction to make out what was the necessity and circumstances under which the said results were ^{/not} declared.

3. However, it is on record that the applicant has been empanelled in January, 88 and this fact is not disputed in the counter filed by the respondents. In the reply, the respondents only averred that in view of the letter dated 17-5-88, the panel has not been approved. While going through to the contents of that letter enclosed with the counter (annexure A-7), this only goes to show that the existing number of vacancies cannot be increased. It is undisputed fact that the applicant is the seniormost besides, he belongs to S.C. category. Irrespective of reservation, he will take his own place being seniormost in the H.S.Gr.II in the Hissar unit. When the trade test was held and he has been empanelled, he comes within the zone of appointment and the respondents have to consider his case for making an appointment to the existing

vacancy. The learned counsel for the respondents, however, argued that mere empanellment does not give a vested right. This position of law cannot be disputed but at the same time when there is a vacancy existing when there is no ground to scrap the panel, a person on panel has to be considered for posting to the existing vacancy.

4. There is a averment in the counter also that 15% of the sanctioned strength has been lowered down. The applicant has given a statement in the form of a chart in para IV of the grounds which goes to show that there were vacancies in the year 1988. The respondents in their reply to this particular averment in para IV of the application did not deny specifically and only referred to earlier averments made in para 6.1 to 6.10 of the reply. The learned counsel for the applicant, however, pointed out to the copy of the E-N-C Army Headquarter letter dated 6-6-86 and highlighted para 17 to show that the post already existing cannot be decreased. Relevant para 17 of the said letter is quoted below :

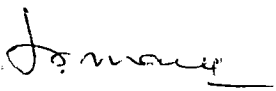
Para 17 : General - 3rd line : delete "The no. of posts to be sanctioned as per staffing pattern will not exceed 15% of the existing authorised strength of the feeder categories in CWE Area in the Skilled Grade of Rs.260-400. ADD - "The existing no of posts sanctioned as per staffing pattern if found more than 15% of the existing authorised strength of the feeder categories in the CWE Area will not be disturbed. However, in case the existing sanctioned posts are found less than 15% of the same will be made upto 15%. "

5. Having given a careful consideration to all these aspects, since the applicant has already appeared in the trade

test for Highly Skilled Gr.I and has been empanelled, he has to be considered for appointment against the vacancy existing at the relevant time. There is nothing on record to show that there was no vacancy at the relevant time and there has been reduction in the cadre lowering the strength of the cadre of Highly Skilled Gr.I.

6. In view of the above facts and circumstances, the present application is disposed of with the direction to the respondents to consider the promotion of the applicant on the basis of trade test passed by him and empanelled on that basis in January, 88, and give him posting to the grade of Highly Skilled Gr.I if found fit, eligible and suitable, according to rules, and he will get his promotional benefits only from the date he joins the promotional post. Respondents to comply with these directions within three months. Cost on parties.


(B.K.SINGH)
MEMBER (A)


(J.P.SHARMA)
MEMBER (J)

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