

AP

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No. 3100/2004

New Delhi this the 2<sup>nd</sup> day of August, 2006

**Hon'ble Mrs. Meera Chhibber, Member (J)  
Hon'ble Mr. V. K. Agnihotri, Member (A)**

S.C.Chaturvedi,  
MES-461398  
Mech. Refg SK, O/O GE(S) Meerut,  
Under CWE Meerut Cantt, Meerut

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

Applicant

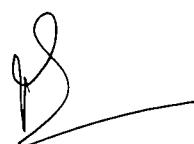
VERSUS

Union of India through:

1. The Director General (Pers.),  
E-In C's Branch,  
DHQ Army Headquarters,  
Kashmir House, New Delhi-11
2. The Joint Director General (Pers),  
Chief Engineer, Engineer Branch,  
Central Command , Lucknow-2
3. Chief Engineer, Bareilly Zone,  
Sarvatra Bhawan, Station Road,  
Bareilly Cantt-243001.
4. Head Quarters,  
Commander Works Engineer,  
29-J, The Mall Meerut Cantt., Meerut-25001.

Respondents

(By Advocate Shri R.N. Singh )



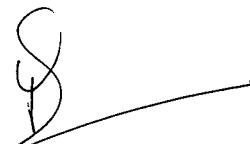
## ORDER

( Hon'ble Mrs. Meera Chhibber, Member (J))

By this OA, applicant has challenged order dated 25.2.2004 (page 13).

He has also sought a direction to the respondents to grant him the benefit of promotion to the grade of Charge Mechanic(Refrigeration) from the date he qualified the said trade test in the year 1977 i.e. with effect from September, 1977 with all consequential benefits, like arrears of pay and allowances, seniority and further promotion etc.

2. It is submitted by the applicant that he has been serving as Refrigeration Mechanic for the last more than 30 years i.e., with effect from June 1973. He appeared and passed the trade test for promotion to the grade of Charge Mechanic (Refrigeration) in September, 1977 but in spite of it till date neither, he has been given promotion nor he has been considered against one of the four vacancies available to be filled on the basis of trade test conducted in the year 1977. He has further submitted, the very fact that the trade test was held in 1977 shows that vacancies were available otherwise, they would not have held trade test. Similar trade tests have been held in the subsequent years 1978-1980 also but no DPCs were held.



3. It was only in the year 1984 that DPC was convened and promotions were given on the basis of seniority of those candidates who had cleared the trade test in the year 1984 by ignoring the applicant, even though he had qualified the trade test as back as in 1977. Grievance of the applicant is, that respondents have promoted number of persons who had passed the trade test after the applicant but he has been ignored for promotion. He relied, on letter dated 14.2.1990 to state that till the persons who had passed the trade test, are promoted, fresh trade tests were not to be held. He has thus submitted that respondents have violated their own instructions. He has thus prayed that the relief may be granted to him.

4. Respondents, on the other hand, have opposed this OA by explaining that promotions under three grade structure came into force w.e.f. 15.10.1984, one time relaxation was given by the competent authority and promotions were to be given based on seniority as per the Ministry of Defence letter dated 8.4.1986. Applicant's name figured in the seniority list of 1984 at serial No.35, whereas promotions from Regd./Mech.(SK) to Highly Skilled Grade II were ordered only for 15 personnels, therefore, all the persons who were promoted were senior to him.



5. They have explained that applicant did pass the trade test during 1977 but that only makes him eligible for promotion to the next higher grade, subject to availability of vacancies. DPC for promotion could not be held due to non availability of vacancies which is evident from the fact that even those persons who had passed the trade test in 1976 i.e. earlier than the applicant, could also be promoted only in 1984 and thereafter, under three grade structures as one time relaxation on the basis of seniority. As per the directions of higher HQs, a review DPC for promotion of the applicant was held in CWE Meerut wherein Board of officers recommended the name of applicant at serial No.7 in the seniority and that he may be promoted in his own turn. In order to substantiate their claim, they have submitted that Shri V.K.Tomar passed the trade test in 1972 and he is quite senior to the applicant. Even he could be promoted only in 1981 when vacancy became available. From 1977 to 1984, only one vacancy was available against which Shri V.K.Tomar was promoted. Therefore, the relief as claimed for by the applicant cannot be granted to him.

6. They have further explained that three grade structure for promotion to HS-II is purely on the basis of seniority under one time relaxation but



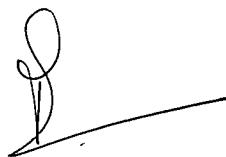
according to revised syllabus dated 25.8.1992, passing of trade test for CH/Mech (Refg.) was made necessary to Highly Skilled II. Accordingly, applicant was granted financial up-gradation under ACP Scheme for the grade of HS II w.e.f. 9.8.1999 and CH/Man in the grade of Rs.5000-8000 w.e.f. 9.8.1999. No trade test for Ch/Mech (Refg.) was held in 1984 but only DPC was held for promotion to grade of HS II and HS I on implementation of three grade structure under one time relaxation on the basis of seniority and not based on passing of trade test. Therefore, all these persons whose names have been given by applicant were promoted based on seniority under one time relaxation. They have thus prayed that the OA being devoid of any merit may be dismissed.

7. Even though applicant has not filed any rejoinder in the OA but counsel for applicant submitted that by administrative instructions, the respondents could not have done away the requirement of passing trade test as stipulated in the Recruitment Rules.

8. We have heard both the counsel and perused the pleadings as well. We had repeatedly asked the applicant to show us the RRs but no such RRs were annexed with the petition. Therefore, the contention that by



administrative order, RRs could not have been done away with cannot even be looked into because the most essential requirement was to at least annex the RRs so that his contention could have been tested. Generally in the RRs, there is always provision for power to give relaxation. Moreover, these are policy decisions taken by the Administration depending on the exigencies of service. Respondents have explained that three grade structure was introduced on 15.10.1984 and it was also decided as one time relaxation that promotion should be given to HS Grade II on the basis of seniority and not subject to qualifying the trade test as per the Ministry of Defence letter dated 8.4.1986. The said letter has been annexed by the respondents in their counter affidavit but the same has not been challenged by the applicant. If applicant felt that the said letter was contrary to the RRs, it was open to him to challenge the same by amending his OA but no such effort was made. On the contrary applicant did not even bother to file a rejoinder. Therefore, the averments made by the respondents in their counter affidavit are deemed to have been admitted by the applicant in law. In what circumstances, relaxation was granted could have been explained by the respondents, only if, applicant had challenged the letter by which relaxation was granted.

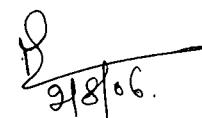


9. In fact in the OA, applicant's whole case is that since he had qualified the trade test in the year 1977, therefore, he was entitled to be promoted also from 1977. However, counsel for applicant could not show us any rule which states that immediately on passing the trade test, the employee had to be given promotion as well. Respondents have explained, in their counter affidavit, that there were senior persons who had qualified the trade test prior to applicant, for example, Shri V.K.Tomar, who had passed the trade test in 1972 i.e. 5 years before the applicant but even he was promoted in the year 1981 only, when the vacancy became available. In these circumstances, the relief claimed by the applicant that he should be promoted as Ch/Mech (Refg.) w.e.f. September 1977 is totally misconceived and cannot be granted. Even otherwise there were many persons who had passed the trade test earlier to the applicant but could also be promoted only in the year 1984 i.e., only after three grade structure came into being. After all promotion can be given only when vacancy is available. Respondents have categorically stated that from 1977 to 1984 there was <sup>only one B</sup> ~~no~~ vacancy, which fact has not been controverted by the applicant. Therefore, the basic contention of applicant that he is entitled to be given promotion from the same year when he passed the trade test is without any merit. Even otherwise applicant has himself

stated that the persons whose names are given at page 14 had also passed the trade test, therefore, the requirement of passing the trade test was very much complied with. Therefore we find no merit in the OA. Accordingly OA is dismissed. No order as to costs.



( V.K. Agnihotri )  
Member (A)



( Mrs. Meera Chibber )  
Member (J)

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