

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**



OA No.1097/2004

New Delhi this the 29th day of November, 2004.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. SARWESHAR JHA, MEMBER (A)**

1. Julious,
T.No.758,
S/o late Mr. Pritam Masih,
R/o T-63, Khazan Basti,
New Delhi-110 046.
2. Ram Jiwan,
T.No.661,
S/o Shri Jogeshwar,
R/o D-520, Gali No.62,
Mahavir Enclave Pt.III,
New Delhi-110 059.

-Applicants

(By Advocate Shri Sushil Sharma)

-Versus-

1. Union of India,
through the Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Director General of Ordnance Services (OS-20),
MGOs Branch,
Sena Bhawan,
Army Headquarters, DHQ PO,
New Delhi-110 011.
3. The Commandant,
Central Ordnance Depot,
Delhi Cantt-110 010.
4. CSO, Personal Officer (Civ),
Establishment (NI) Section,
Central Ordnance Depot,
Delhi Cantt-110 010.

-Respondents

(By Advocate Mrs. Avnish Kaur)

O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Applicants impugn respondents' order dated 31.10.2003
where despite qualifying in the trade test for promotion from



Packer 'O' to Packer Special it has been informed that on fresh authorization trade-wise to be finalized by Depot Man Power Committee promotion would be accorded in turn.

2. Applicants appeared in the trade test for promotion for Packer Special and were declared passed vide notification dated 1.2.2003. Out of 11 who passed the trade test only four had been promoted. Subsequently, it was transpired that vide Telegram dated 9.4.2002 for promotion to Mates and Tradesman it has been decided to freeze further DPC at Depot level till fresh authorization of promotion is finalized by the Headquarters.

3. In this background, Shri Sushil Sharma, learned counsel of applicants states that S/Shri Srikishan and Rajpal who figured in the list of successful candidates who had passed the trade test had been promoted vide order dated 1.2.2003. As such the freezing has not been made applicable to them.

4. Shri Sushil Sharma further contended that in so far as promotion to Special Packer is concerned, as the post of Special Packer has not been enumerated in the freezing order, the same would not apply. As such the two incumbents were promoted despite freezing, meeting out differential treatment to applicants is violative of Articles 14 and 16 of the Constitution of India.

5. On the other hand, Mrs. Avinash Kaur, learned counsel of respondents vehemently opposed the contentions and stated that due to freezing of further DPC except four incumbents nobody else has been promoted and those who had been promoted were before the freezing of DPC. The cases of applicants would be considered after fresh authorization is accorded.

6. On careful consideration of the rival contentions, we find that the contentions raised by applicants for promotion of S/Shri

Srikishan and Rajpal have not been specifically rebutted by respondents. If freezing was imposed on 9.4.2002 and the result of trade test was declared on 1.1.2003, promoting four individuals on the DPC held prior to freezing and promotions of S/Shri Srikishan and Rajpal despite freezing the same treatment having not been meted out to applicants is an invidious discrimination and not in consonance with Articles 14 and 16 of the Constitution of India.

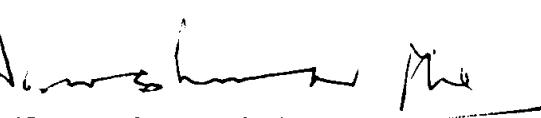
7. Though one has no right to promotion but consideration of promotion is a fundamental right which has not been accorded to applicants. The ground raised that fresh authorization is awaited is not further clarified as despite a lapse of about more than one year no decision as to fresh authorization has been taken by the Depot Power Committee.

8. It is trite law that if one is similarly circumstanced, forming a class, cannot be meted out differential treatment. If the intelligible differentia has no reasonable nexus with the object sought to be achieved, principle of equality enshrined under Article 14 is violated. For want of reasons and explanation as to how S/Shri Srikishan and Rajpal had been promoted despite freezing clearly shows that this freezing has no effect on promotion. As such applicants cannot be deprived of their legitimate right of consideration for promotion to the posts of Packer Special.

9. Moreover, we find that despite freezing a trade test was held by the respondents for Packer Special on 9.9.2003, which shows that freezing is not going to affect the promotion in this grade. Denial of promotion to applicants from due date has further jeopardised and adversely affected their right of further promotion where the incumbency period of eligibility for further promotion is a relevant criteria.



10. In the result, for the foregoing reasons, OA is allowed. Impugned order is set aside. Respondents are directed to consider applicants for promotion to the post of Packer Special from the date their colleagues have been promoted and in that event they would be entitled to all consequential benefits. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.



(Sarweshwar Jha)
Member (A)



(Shanker Raju)
Member (J)

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