

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1998/2004

New Delhi, this the 20th day of April, 2005

Hon'ble Shri Justice M.A.Khan, Vice-Chairman(J)
Hon'ble Shri S.K. Naik, Member(A)

Naresh Kumar Baond
H No 25, A 2 Block
Sector 15, Rohini, Delhi-85 .. Applicant

(Shri C.K. Sharma, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence, New Delhi
2. Chief of Naval Staff, Naval Hqrs.
New Delhi
3. Principal Director
Dte. Of Marine Engg.
Integrated Hqrs., New Delhi .. Respondents

(Shri Parvinder Chauhan, Advocate)

ORDER

Shri S.K. Naik

The applicant Shri N.K.Baond, working as Draughtsman Grade-I (erstwhile Head Draughtsman), has filed this OA on 16th August, 2004 and has sought relief to stay the order dated 27.4.2004 of the respondents for holding qualifying Examination for promotion to the post of Chief D'Man. The other relief sought by him pertains to giving a chance of promotion to him to the next rank of Chief Draughtsman without appearing in the aforesaid departmental examination.

2. While hearing the OA on 20.8.2004 the Tribunal did not find adequate cause for grant of any stay. It however admitted the OA. Respondents have filed their counter reply and the applicant has filed his rejoinder. Counsel for the applicant has contended that after the 1982 Arbitration Award on the restructuring and renaming of the cadre of D'man in various Departments/Ministries of Government of India, Ministry of Defence also adopted the same. In the process, the post of Sr. D'man and Head D'man were clubbed as a single category and were called D'man Grade-I. Though a Head D'man enjoyed a higher scale of pay than Sr. D'man, all the Head D'man were placed enblock senior to the Sr. D'man as the pay scale of the new post of D'man Grade I was the same as that of the erstwhile Head D'man. As per the policy of the Statutory Recruiting Order (SRO), no promotional examination of D'man Grade-I to Chief D'man can be ordered unless the SRO as laid down by the

Government of India is amended as has been stated in Naval Hqrs. letter dated 16.10.1985. He further submits that though SRO has not been amended but the Naval Hqrs. contrary to the spirit of their letter unilaterally have been conducting promotional examination for the post and have also promoted some juniors to the rank of Chief D'man without amending the SRO. No other ground has been advanced.

3. Respondents have contested the OA. Learned counsel for the respondents has raised two preliminary objections. He has submitted that the applicant is debarred from approaching this Tribunal as he had earlier filed OA 750/1997, which was dismissed, seeking the same relief and further that he has not impleaded those D'man Grade-I who would be adversely affected as they are necessary parties and are required to be impleaded. OA therefore suffers from nonjoinder of necessary parties and is liable to be dismissed, he contends.

4. On the merits of the case, the learned counsel has submitted that the relief sought by the applicant is simply not tenable as it pertains to a direction from the Tribunal to promote him to the post of Chief D'man without undertaking qualifying test/examination which has been prescribed in the RRs. Contending that restructuring of the cadre of D'man has no relevance with that of recruitment to the post of Chief D'man, the counsel has submitted that the stand taken by the applicant that in the absence of any amended or revised SRO, respondents are debarred from making any recruitment is fallacious. He has submitted that even prior to the restructuring of the cadre of D'man and subsequent thereto, the post of Chief D'man has been filled up from amongst the feeder cadre of now D'man Grade-I by holding qualifying examination. There is no policy decision either not to fill up the post until SRO is amended nor is there any change with regard to the feeder cadre which only changes the earlier nomenclature of Head D'man to D'man Grade-I. He has further stated that the applicant having earlier appeared in the qualifying examination and having failed has now resorted to raising a new point on the plea of there being no amended SRO, which is not tenable. Besides he contends that the Tribunal cannot give any direction to fill up the post de hors the Rules. Drawing our pointed attention to page 47 of the paper book, which is the RRs for the post of Chief D'man, he has submitted that in Col.12 therein it has been clearly stated that Head D'man (now Grade-I) with three years regular service in the grade and who passed in the departmental qualifying test would be eligible for promotion. He has therefore submitted that since the RRs categorically provide for departmental qualifying test, the applicant cannot seek exemption from the same de hors the Rules. He has also denied any departure from the Rules and stated that nobody has been appointed without clearing the qualifying test.

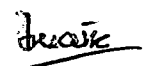
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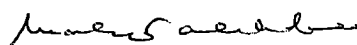
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5. We have heard the learned counsel for the parties and have also perused the records.

6. We notice that when recruitment to the post of Chief D'man has no bearing on the restructuring of various posts in the cadre of D'man below that level, the applicant has unnecessarily tried to mix up the issue as if his chance for promotion to the post of Chief D'man has been unduly affected by such an exercise. We also find from the RRs that the post of Chief D'man is to be filled up by promotion from the feeder cadre of Head D'man who were required to undergo departmental qualifying test. In the changed scenario the post of Head D'man has been done away with and a new post i.e. D'man Grade-I has emerged by clubbing the posts of erstwhile Head D'man and Senior D'man. The argument advanced by the learned counsel for the applicant that the Head D'man continues to be stated in the R/Rules for promotion to the post of Chief D'man, in our view, merits no consideration as under the restructuring scheme the post of Head D'man has given way to that of D'man Grade-I and the RRs clearly stipulate passing of departmental qualifying test. We are therefore of the view that no direction can be given to the respondents to exempt the applicant from the same de hors the Rules.

6. In the result, we find absolutely no merit in this OA and the same is accordingly dismissed, with no order as to costs.


(S.K. Naik)
Member(A)


(M.A.Khan)
Vice-Chairman(J)

/gtv/