

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-433/2004

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New Delhi this the 30<sup>th</sup> day of November, 2004.

Hon'ble Shri Shanker Raju, Member(J)  
Hon'ble Shri Sarweshwar Jha, Member(A)

Sh. Harninder Singh Rawat,  
S/o late Sh. Jeet Singh Rawat,  
CMO (ord Gde) AGE E/M  
Red Fort, Delhi-6.

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Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through  
the Secretary,  
Ministry of Defence, Government of India,  
South Block, New Delhi.

2. The Chief Engineer,  
Headquarter MES,  
West Command,  
Chandimandir.

3. The Commander Works Engineer,  
MES, Delhi Cantt.

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Respondents

(through Ms. Chetna Rao, proxy for Sh. A.K. Bhardwaj, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Heard the learned counsel.

2. Applicant impugns respondents' order dated 16.12.2003 whereby his request for promotion has been turned down though he appeared in the trade test in 1990.

3. Learned counsel of the applicant contends that the same controversy has racked up in OA-1007/2003 which was set at rest by an order dated 4.1.2004 by a Bench of this Tribunal wherein reliance on the decision dated 12.9.2002 in OA-480/2002 had been placed. Facts of the said case are that the juniors have been accorded upgradation

whereas the said benefit was denied to the applicants therein on the ground that they could not qualify the trade test or later qualified and the applicants were accorded benefit of upgradation to the CMD Grade-II with all consequential benefits.

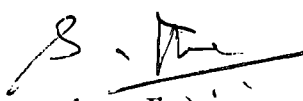
4. Learned counsel of the respondents contended that as applicant had failed to appear in the trade test on his own volition in 1990 is not entitled for the benefit of upgradation.

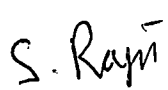
5. Drawing our attention, learned counsel of the applicant produced before us 'DPC FOR Motor Driver Grade-I : apr'90' and the order passed by the respondents on 15.3.1990, where under the column 'Name of MT Drivers, who could not pass Grade-I examination but intended to appear' the name of the applicant figures therein and he was not allowed to appear. As such, he is entitled to the benefit of upgradation from the date his immediate junior was granted.

6. In our considered view applicant, in all fours, is covered by the ratio of the decision (supra) as he is similarly circumstance. The contention of the learned counsel of the respondents that he could not appear in 1990 in the trade test on his own volition is misconceived though the applicant was ready and intended but was not allowed to appear in the required trade test.

7. In this view of the matter, he has been meted out a differential treatment, which is in violation of Articles 14 & 16 of the Constitution of India. Accordingly, the applicant is entitled to the upgradation from 1.1.1996.

8. For the reasons recorded above, OA is allowed. Impugned order is set aside. Applicant is entitled to the benefit of upgradation to the post of CMD Grade-II w.e.f. 1.1.1996 with all consequential benefits. Respondents are accorded three months' time to comply with the above directions. No costs.

  
(Sarweshwar Jha)  
Member(A)

  
(Shanker Raju)  
Member(J)