

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

...

Original Application No. 323 of 1998

this the 27th day of October, 2004.

HON'BLE MR A.K. BHATNAGAR, MEMBER(J)  
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

Ram Prasad, S/o Sri Chhote Lal, R/o Village & Post Puramufi,  
District Kaushambi.

Applicant.

By Advocate : Sri D.P. Singh.

Versus.

1. Union of India through Engineer-in-Chief, Army Headquarters, IHO Post, New Delhi.
2. The Commander Works Engineer, Military Engineering Service, Headquarter, Allahabad.
3. The Asstt. Garrison Engineer (Independent), Manauri, District Allahabad.

Respondents.

By Advocate : Sri Amit Sthalekar.

ORDER

PER S.C. CHAUBE, MEMBER(A)

The applicant has impugned the order dated 2.2.1998 of Commander Works Engineer, Allahabad (in short C.W.E.) and order dated 16.3.1998 passed by Asstt. Garrison Engineer (in short A.G.E.), Manauri, Allahabad, whereby promotion of the applicant has been cancelled.

2. The facts, as per the applicant, are that he was initially appointed as Mazdoor in the year 1964. He was transferred from MES (Air Force), Bamrauli to MES (Air force) Manauri as Mazdoor. In the year, 1983, he was promoted as Mate and further promoted as Motor Pump Attendant Skilled in the year 1986. Thereafter, he was de-designated.

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as FGM SK (Fitter General Mechanic Skilled) and since then he has been working as FGM SK. The next promotion of the applicant was FGM HS.II.

3. In the year, 1995 the eligible candidates of the department were called-for trade test for promotion of FGM HS-II. The applicant alongwith other candidates also appeared in the trade test and was declared successful as would be clear from Part II order no. 39 dated 6.10.1997 issued by the AGE (Independent), Manauri, Allahabad (respondent no.3). Thereafter, the respondent no.2 issued orders for promotion of about 79 candidates as FGM, HS II in which name of the applicant figured at sl. no. 1 (Annexure-4). Since there were certain discrepancies of MES number and name of the candidates, as such AGE, Manauri informed CWE, Allahabad and prayed for correction. The CWE vide his letter dated 18.6.1997 made amendment in his promotion order dated 9.4.1996 in which MES/450844 Ram Prasad, it was directed to read MES/431609 Ram Prasad, apart from two other candidates Shafiq Ahmed and Shyam Lal. Thereafter, respondent no.3 issued part II order no. 27 dated 7.7.97 through which applicant was promoted from FGM SK to FGM HS II in the pay-scale of Rs.1200-1800/- with retrospective effect from 29.2.1996 (Annexure-8). He was also given annual increment as and when due. After the fixation, the applicant was paid arrears of salary w.e.f. 29.2.1996. However, by order dated 16.3.1998 respondent no.3 cancelled the promotion of the applicant without any show-cause notice, which is bad in law, besides being arbitrary and without jurisdiction.

4. According to the applicant, the sole basis of cancellation of promotion of the applicant is based on CWE's letter dated 2.2.1998. Further, respondents have not disclosed even the reasons for cancelling the amendments made in MES number of applicant vide order dated 18.6.1997. As cancellation of

*S. N. Nair*

promotion of the applicant was in violation of the principles of natural justice, it amounted to punishment for which no opportunity what-so-ever has been provided by the respondents before issuing the order dated 16.3.1998 to the applicant. As the applicant has been given promotion after being declared successful in the trade test on permanent basis, as such his promotion order cannot be cancelled in arbitrary and illegal manner. According to the applicant, he is still working as FGM HS II and has been not relieved so far in pursuance of the impugned order dated 16.3.1998.

5. Respondents, on the other hand have vehemently denied fact of the/promotion of the applicant as FGM HS II. According to them, the trade test of the Industrial personnel is conducted and controlled by Headquarter CWE, Allahabad (respondent no.2). As per the available records in the Headquarter CWE, Allahabad, the applicant had not passed the trade test for promotion to FGM HS.II. They have further clarified that the authority quoted in the said part II order pertains to the promotion order in respect of MES/450844 Sri Ram Prasad, FGM SK of G.E. (Airforce), Bamrauli and not the applicant whose MES no. is 431609 and who is working in AGE (I), Manauri. Thus, according to the respondents, the applicant has obtained the above promotion by fraudulent means and wants to continue to hold the said post in spite of the fact that he had never appear in the trade test, nor has he passed in the trade test for promotion to the post of FGM HS II. They have further denied that the name appearing at sl. no. 1 of the promotional list pertains to MES/450844 Sri Ram prasad FGM SK of GE (Air force), Bamrauli, who has been promoted as FGM HS II and posted in situ. Therefore, the applicant's claim is/void <sup>not only</sup> but also untenable.

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6. The respondents have, however, admitted that consequent on issue of promotion order by respondent no.2 the AGE (I), MES, Manauri, Allahabad (respondent no.3) got confused and since a man of identical name and post was also working in their office, therefore, they issued a letter to the respondent no.2 requesting for correction of MES number for sl. no. I to read as MES no. 431609 against the name of Sri Ram Prasad. Further, according to the respondents, the applicant was working in AGE (I), MES, Manauri, Allahabad and was not due for promotion being not qualified and also junior. yet he managed to get himself promoted knowing fully that neither he had qualified for promotion, nor he was serving in GE (Aif force), Bamrauli as clearly mentioned in the promotion order. Respondents have further submitted that this anomaly came to light when a representation was received from MES/432219 Sri Ganga Singh, Fitter General Mechanic SK of AGE (I), Manauri. This anomaly was also brought out by UPMES Works Union, Allahabad. After verification and scrutiny of the office record, it was found that due to some confusion at lower level<sup>and</sup> ~~and~~ the name being similar MES/431609 Sri Ram Prasad, FGM SK of AGE (I), Manauri was wrongly promoted instead of MES/450844 Sri Ram Prasad FGM SK of GE (Air Force), Bamrauli. This explains, according to the respondents, why the applicant's promotion was cancelled vide orders dated 2.2.1998 and 16.3.1998. Thus, the applicant, according to the respondents, cannot take the advantage of erroneous promotion and try to put blame on the respondents. As regards promotion of other two individuals namely Shafi Ahmed & Shri Shyam Lal are concerned, they are in order and, therefore, the same did not require any correction or amendment to that effect. They have also stated that the question of giving any opportunity of hearing to the applicant, in such cases, does not arise. On the other hand, the applicant is guilty of fraud and concealment of

*S. Hanafi*

facts.

7. we have perused the pleadings and heard the counsel for the parties.

8.7 There is lot of substance and force in the contention of the respondents that after scrutiny of the record, it has clearly been established that the applicant with MES no.431609 was wrongly promoted instead of MES/450844 Sri Ram Prasad, FGM SK of GE (Air Force), Bamrauli, Respondents have further clarified that since the applicant had never appeared in the trade test, nor had he qualified in the trade test, therefore, he could not have been /promoted to the post of FGM H.S.II. Therefore, he was not entitled for promotion to the post of FGM HS II, ~~but~~ yet he accepted out the promotion order and never pointed/the anomaly to his higher authorities.

9. We also agree with the contention of the respondents that the applicant cannot take the advantage of erroneous promotion order and thereafter lay the blame at the doors of the Department. Since the petitioner himself has not come with clean hands and infact is asking for promotion <sup>was</sup> for which he neither entitled nor the same <sup>was</sup> due to him, ~~nor~~ we are unable to observe any violation of the principles of natural justice in this case by the Department.

10. A close reading of the Counter affidavit filed by the respondents makes it amply clear that before promotion to the post of FGM HSII, passing the trade test was a mandatory provision, without which a person could not be promoted. In this connection, we are inclined to recall the decision of the Hon'ble Supreme Court in the case of ICAR VS. T.K. Suryanarayan & Ors. reported in 1997 (5) SLR 217, wherein the apex court has held that incorrect promotion either given erroneously by the department by mis-reading the said Service Rules or such promotion given

*S. Nambiar*

pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In the present case, the applicant has been erroneously given promotion by the department. Therefore, he cannot claim promotion without passing the trade test. In our view, cancellation of the order of erroneous promotion given to the applicant is justified and tenable.

11. For the aforesaid reasons and case law cited above, the O.A. is bereft of merits and is, therefore, liable to be dismissed. Accordingly O.A. is dismissed.

12. We make no order as to costs.

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MEMBER (A)

*J*  
MEMBER (J)

GIRISH/-