

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 6th day of June 2002.

Original Application no. 1315 of 1998.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A).

1. Sobran Singh, S/o Sri Ram Swaroop,
Packer mate (T. No. 4318), C.O.D., Agra.
2. Brajendra Singh, S/o Sri Latory,
Packer mate GP (3) T. No. 1747, COD Agra.
3. Mahendra Singh, S/o G. Ram, Packer Mate Gp (2)
T No. 4302 COD Agra.
4. Jaswant Singh, S/o Sri Sripal, Packer Mate
GP (2) T No. 4345 COD, Agra.
5. Durshashan, S/o Sri Narayan, Packer mate Gp (2)
T no. 2433 COD. Agra.
6. Raj Bahadur, S/o Sri . Lal, Packer mate Gp (TFC),
T no. 3589 COD Agra
7. Ram Singh, S/o Sri Kishan Lal,
Packer mate Gp (TFC) T no. 1868, COD Agra.
8. Salim Khan, S/o Sri S. Khan, Packer Mate Gp (3)
T no. 2887, COD, Agra.
9. Bharat Singh, S/o Sri Pooran Singh, Packer mate Gp (2)
T no. 1906, COD Agra.
10. Kamal Singh, S/o Sri J. Lal, Packer mate Gp (2)
T no. 3933 COD Agra.
11. Rakesh Chand, S/o Sri Johari Lal,
Packer mate Gp (2) T no. 3993, COD, Agra.
12. Jai Bahadur Singh, S/o Sri J. Singh, Pa-ckermate GP ()
T no. 2969, COD Agra.

... Applicants

By Adv : Sri A.K. Jaisawal & Sri A.P. Srivastava

Versus

1. Union of India, through the Secretary, Ministry of Defence,
AHQ, New Delhi.

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2. Director General of Ordnance Services, MGO Branch, AHQ, New Delhi.
3. The Commandant Central Ordnance Depot, Agra.
4. Sri Talewal Singh, S/o Sri Sukhram, Packer, Gp-I, T no. 3907, COD Agra.
5. Amar Singh, S/o Sri Deep Chand, Packer, Gp (I) T no. 3588 COD Agra.
6. Sri Joti Prasad, S/o T no. 66 Packer Gp(1) COD Agra. R/o Village and Post Dhanoly Distt. Agra.
7. Sri Vijay Kumar, T no. 2929 Packer GpI by COD Agra
8. Sri Sobha Singh, T no 2029 Packer, RSSD COD Agra.
9. Sri Mohan Chand Sharma, T no. 2716 Gp (CASD) DGO, COD Agra.
10. Sri Udai Bir Singh, T no. 2890 Packer Gp-III, COD Agra.
11. Sri Raja Ram, T no. 2100 Packer (Tfe Br.) IV, COD Agra.
12. Sri Suresh Chand, T no. 1969 Packer, Tfe Br COD Agra.
13. Sri Om Prakash T no. 3262 Packer (Gp-VI) I COD Agra.
14. Sri Desh Bhakt, T no. 4321 Packer Gp VI COD Agra.
15. Sri Anand Lal, T no. 1905 Packer Gp (Tfe Br.)III, COD Agra.
16. Sri Birpal Singh, T no. 2848 Packer Gp-III, COD Agra.
17. Sri Nemi Chand, T no. 105 Packer Gp III, COD Agra.
18. Sri Ram Prasad, T no. 1510 Packer Gp I, COD Agra.
19. Sri Hakim Singh, T no. 3122 Packer Gp V COD Agra.
20. Sri Shiv Ram Singh, T no. 2185 Packer Gp I COD Agra.
21. Sri Janak Singh, T no. 1022 Packer Gp VI COD Agra.
22. Jai Pal Singh, S/o Sahi Ram Ex T no. 3722 Packer Gp II COD Agra, R/o Vill & Post Harchana, Distt. Bulanshar.
23. Sri Raj Bahadur, T no. 2198 Packer (Tfe Br.)I, COD Agra.
24. Sri Mool Chand, T no. 1197 Packer Gp-VI, COD Agra.

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25. B.S. Yadav, T no. 1000 Packer (Tfe Br) II COD Agra.
26. Sri Moti Lal T no. 2720 Packer CASD, COD Agra.
27. Sri Raja Ram, T no. 2010 Packer, Gp RSSD COD Agra.
28. Sri Suresh Kumar, T no. 4230 Packer (Tfe Br)V, COD Agra.
29. Sri Munni Lak T. no. 713, Packer RSSD COD Agra.
30. Prem Singh, T no. 2804 Packer Gp III, COD Agra.
31. Sri Baboo Lal T no. 97 Packer Gp SMB, COD Agra.
32. Om Prakash, T no. 3606, Packer Gp V COD Agra.
33. Sri Om Prakash, T no. 1212, Packer Gp I COD Agra.
34. Sri Tara Chand, T no. 1605 Packer GP III COD Agra.
35. Sri Chandrashwar T no. 1626, Packer Gp III COD Agra.
36. Sri Baboo Lal T no. 1199 Packer Gp VI COD Agra.
37. Sri Ramesh Chand T no. 2907 Packer Gp 3 COD Agra.
38. Sri Raman Lal, T no. 915 Packer Gp III COD Agra.
39. Sri Manak Chand T no. 905 Packer Gp IV COD Agra.
40. Sri Umesh Singh, T no. 1206 Packer Gp CASD COD Agra.
41. Sri VS Chahar, T no. 1009 Packer Gp IV COD Agra.
42. Sri Mata Prasad, T no. 4315 Packer Gp II COD Agra.
43. Sri Nannumal T no. 667 Packer Gp STG, COD Agra.
44. Sri RB Gautam T no. 806 Packer, Gp VI COD Agra.
45. Sri Ram Singh T no. 2420 Packer Gp III COD Agra.
46. Sri Hori Lal, T no. 2172 Packer Gp TFC COD Agra.
47. Sri Shahed Singh, T. no. 3934 Packer Gp V COD Agra.

... Respondents

By Adv : Sri A. Mohiley

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA filed under section 19 of the A.T. Act, 1985, applicants 12 in number have challenged the impugned order dated 16.7.1998 passed by respondent no. 3 declaring that the respondents no. 4 to 47 are senior to the applicant and have prayed that the order dated 16.7.1998 and seniority list DO

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Part I no. 2802/ADM dated 10.11.1994 (Ann 1) and panel list of DO Part I dated 13.1.1993 (AnnA3) be quashed alongwith the entire Board proceedings and respondents be directed to determine inter-se seniority of the applicants and respondents on the post of Packermate, prepare correct seniority list and then grant promotion on the post of Packer and they be placed above the respondents in order of their seniority with all consequential benefits.

2. The facts, in brief, giving rise to this OA are that applicants and respondents no. 4 to 47 were initially appointed as Mazdoor in Central Ordnance Depot Agra (in short COD) and are confirmed. Prior to 10.10.1999 the permanent mazdoor could get appointment directly on the post of Packer after passing trade test but by DO Part I office order no. 1719/ADM dated 10.11.1991 a new post of Packermate was created in between Mazdoor and Packers. One had to qualify in trade test to be promoted from Mazdoor to Packermate. The seniority list of the Mazdoor for promotion to the post of Packermate was published on 27.5.1992 (Ann A-5). Objections were filed but no action was taken by respondents. Thereafter, a seniority list of Packermate for promotion to the post of Packer was published on 10.11.1994 by respondents (Ann A2). Aggrieved by this the applicants have filed this OA which has been contested by respondents by filing counter reply.

3. Heard Sri A.K. Jaisawal learned counsel for the applicant and Sri Ashok Mohiley learned counsel for the respondents and perused records.

4. Sri A.K. Jaisawal, learned counsel for the applicants submitted that the applicants were employed earlier on the



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post of Mazdoor than respondents as would be seen from the comparative statement filed as Ann A-7. The posts of Packermate and Packer has to be filled on seniority cum fitness basis but this has not been followed either in the case of promotion as Packermate or promotion as Packer and the policy of pick and choose has been adopted. No order for drawing panel for promotion of respondents 4 to 47 was declared. Thus the action of official respondents is wholly illegal and arbitrary. Vacancies were not notified and the promotion to the post of Packer has been done in piecemeal manner. The learned counsel submitted that the rules were not followed, there was no notification for holding trade test, the result of applicants was withheld and respondents were given promotion on 13.12.1991 on the post of Packermate (Ann A6). Such promotion, done not in accordance with rule, is liable to be set aside. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in Maharashtra State Road Transport Corporation and others Vs. Rajendra Bhimrao Mandve & Ors. in which it has been held that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

5. The learned counsel for the applicants further submitted that the respondents no. 1 to 3 deliberately and arbitrarily delayed in finalising the selection process. On this ground alone the result of respondents should be quashed. The learned counsel has placed reliance on judgments of Hon'ble Supreme Court in Dwarka Rai Vs. Chairman Sanyukta Kshetriya Gramin Bank 1998 (2) LBSER 286 and Surendra Nath Singh & Ors Vs. State of Bihar AIR 1998 SC 1941.

6. Sri A.K. Jaisawal also submitted that if the

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respondents no. 4 to 47 were allowed to pass the trade test earlier, they gained extra qualification. Such an action is not legal because the promotion to the post of Packermate has to be made on seniority subject to passing Trade Test. The learned counsel has placed reliance on full Bench decision of this Tribunal Hyderabad Bench in M Satyaseela Reddy Vs. Union of India & Others ATJ, 1997-2001 page 66.

7. Sri A.K. Jaisawal also submitted that initial appointment of respondents 4 to 47 was not as per rules ie Seniority subject to passing trade test and, therefore, such arbitrary action is liable to be quashed in view of judgments of Hon'ble Supreme Court in the following cases :-

- i. Dr. Anuradha Bodi & Ors Vs. Municipal Corporation of Delhi & Ors, AIR 1998 SC 2093.
- ii. Chandigarh Administration UT Chandigarh & Ors Vs. S.K. Sharma (1992)CSJ (Se) 217.

laying down that if the initial appointment is not made according to the rules, subsequent regularisation does not entitle an employee for seniority.

8. The learned counsel for the applicant finally submitted that respondents no. 4 to 47 were promoted to the post of Packermate because of ~~formitious~~ ^{un} _{fit} circumstances as such they cannot march over the seniority of applicants as held by Hon'ble Supreme Court in Indian Council of Agricultural Research and others Vs. T.K. Surya Narayan & Ors AIR 1998 SCC (L&S) 359 and also Kuldip Chand Vs. U.O.I. & Ors AIR 1996 SC 706. Appointing juniors over seniors is discriminatory and violative of article 14 and 15 of the Constitution. The learned counsel for the applicants cited several other cases in support of his above argument.

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9. Resisting the claim of the applicants Sri Ashok Mohiley, learned counsel for the respondents submitted as per the Government orders dated 20.8.1976 feeder cadre of Packers (OG) was held as Mazdoor and promotions were granted on seniority cum fitness basis. However, after issue of Arbitration Award, Ministry of Defence letter dated 4.1.1989 in case of Packers, the feeder cadres for promotion were revised as Packer Mate instead Mazdoor. At the time of implementation of Arbitration Award number of Mazdoors had already qualified for the Post of Packer (Ordinary), and were awaiting promotion. These respondents are the same persons whom Sri Sobaran Singh applicant no. 1 has made party in this OA. The learned counsel for the respondents submitted that 83 Mazdoors stood qualified for the post of Packer (Ordinary) and since there were 192 posts of Packermate lower than Packer (Ordinary) available, the Departmental Promotion Committee (in short DPC) was convened by order dated 13.12.1991. DPC gave its recommendations for granting promotion from the post of Mazdoor to Packer Mate, hence the panel was drawn on 10.1.1992. ^{and other applicants} ⁱⁿ Applicant no. 1 Sobaran Singh ⁱⁿ had not qualified the requisite trade test for his promotion as Packer Mate, on or before 10.1.1992. Accordingly he and other applicants could not be considered by the said DPC.

10. The learned counsel for the respondents finally submitted that applicants and respondents no. 4 to 47 are working in different groups/Branches/Sub Depots of COD Agra and the revised policy that promotion to post of Packer (Ordinary) would be done from Packer Mates was circulated for information of all. The procedure has been correctly followed and the promotions have been correctly ordered.

11. We have heard the counsel for parties, have carefully considered their submissions and perused records. Admittedly the first promotional post for Mazdoor is that of Packer Mate and, thereafter, the Packer Mates are eligible for promotion to the post of Packer on seniority cum fitness basis. From perusal of impugned DO Part I order of Respondent no. 3 dated 10.11.1994 we observe that the applicants as well as respondents no. 4 to 47 are working in different groups/Branches/Sub Depot of COD Agra. The respondents have given a comparative chart regarding date of appointment, seniority as Mazdoor, date of passing the trade test of Packer (ordinary) and date of Promotion as Packer Mate etc. It appears from the perusal of the same that applicant no. 1 passed the trade test for Packer Mate on 11.1.1992 where as Respondents no. 4 and 5 passed the trade test of Packer on 25.11.1987 and 29.4.1985. In such a case we find force in the submission of learned counsel for respondents that on creation of post of Packer Mate on implementation of Arbitration Award, 192 posts of Packer Mate were created and 83 Mazdoors who had already qualified the trade test of Packer (ordinary) were promoted as Packer Mate. It was not necessary for such Mazdoor that they were subjected to another trade test for Packer Mate because the post of Packer (Ordinary) is higher than that of Packer Mate. We do not find substance in the submission of learned counsel for the applicant that respondents adopted pick and choose policy . We also do not agree that the criterion for promotion of Mazdoors to Packer Mate was altered by the respondent no. 3. The applicants, who could not clear the trade test earlier than the respondents no. 4 to 47, cannot claim the promotional post in preference to respondents only on the ground that they joined as Mazdoors earlier than respondents no. 4 to 47 and

they are senior to the respondents. Seniority alone as Mazdoor cannot be taken as a ground for promotion to the post of Packer Mate because without passing the trade test one cannot be promoted as Packer Mate. In the present case the promotion to the post of Packer Mate has been given correctly to the respondents nos 4 to 47 and the applicants could not be considered for promotion by DPC held in October 1991. We find no illegality in the action of respondents. The case law cited by the learned counsel for the applicants on various points during the course of hearing will not be helpful. We do not find any merit in the case and any ground to interfere.

12. The applicants have challenged the promotion of respondents as Packer Mate and through this OA filed on 18.11.1998. The cause of action to the applicants arose in 1992 and it was appropriate for applicants to have challenged the same within period of limitation which they have not. The seniority list of Packer Mate for promotion to the post of Packer (Ordinary) declared vide impugned order dated 10.11.1994 (Ann A2) is the outcome of promotion done during 1992. Therefore, the OA, is liable to be dismissed on the ground of limitation. ^{in Abey}

13. In the facts and circumstances and our aforesaid discussions, OA is dismissed as it lacks merit and also on the ground of limitation.

14. There shall be no order as to costs.



Member (A)



Vice-Chairman

Dated : 06/06/2002

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