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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 463 of 1988

Allahabad this the 9th day of July 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. D.S. Baweja, Member (Admn.)

Om Prakash Srivastava S/o Shri J.S.Lal Srivastava
A/ a 40 years, Electrician, Aerial Delivery Research
and Development Establishment, Post Box No.51,
Station Road, Agra.

APPLICANT.

By Advocate Sri Satish Dwivedi

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. The Deputy Secretary, Ministry of Defence, Govt. of India, New Delhi.
3. The Director General, Defence Research and Development, New Delhi.
4. The Director, Aerial Delivery Research and Development Establishment, Agra Cantt.-282001
5. The Administrative Officer, Aerial Delivery Research and Development Establishment, Agra Cantt.-282001.

RESPONDENTS.

BY Advocate Sri Amit Sthalekar.

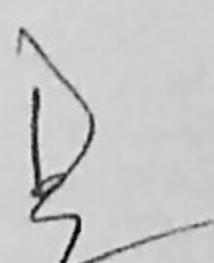
O R D E R

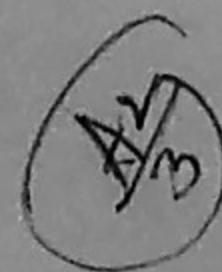
By Hon'ble Dr. R.K. Saxena, Member (J)

This application has been moved under
Section 19 of the Administrative Tribunals Act,
1985 for seeking the relief of promotion from
skilled grade of Rs.260-400 to highly skilled

grade II of Rs.330-480 w.e.f. 15/10/1984 without holding any trade test; the order dated 4/4/88 annexure-4 be quashed and direction was sought to the respondents to fill up two vacant posts of highly skilled grade II from amongst the employees of skilled grade by promotion on the basis of seniority.

2. The brief facts of the case are that the applicant was appointed as Electrician under the respondents on 14/3/69. The post of Electrician comes under 'C' category which is also known as common category. The posts of 'C' category were divided into 3 categories namely Highly Skilled Grade I (Rs.380-560), Highly Skilled Grade II (Rs.330-480) and Skilled Grade (Rs.260-400) by an order dated 15/10/1984. It is said that the Secretary, Ministry of Defence had issued a letter on 11.4.1985 directing that the employees who came under category 'C', might be promoted to the post of Highly Skilled Grade II (Rs.330-480) on the basis of seniority only without holding any trade test. This was the relaxation which was given only for one time. It was further provided in the said letter that the employees who were so promoted, would be entitled to the benefit of the said post w.e.f. 15/10/1984.





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3. The contention of the applicant is that despite the clear directions, the respondent no. 4 failed to implement the said order in the Aerial Delivery Research and Development Establishment (for short A.D.R.D.E.), Agra, while other Establishments had implemented the said order and the benefit was given to the employees working there. The result, according to the applicant, was that he continued on the post of Skilled Grade (Rs. 260-400) for the last several years. It is further averred that if the respondents had ~~recommended~~ ^{implemented} the directions given in the letter dated 11/4/85 the applicant would have been promoted to the highly skilled grade of Rs. 330-480. Since the applicant suffered a lot, this O.A. has been filed with the reliefs already indicated.

4. The respondents filed counter-reply of Sahabuddin in which the claim of the applicant has been denied. It is contended that the O.A. was not maintainable because departmental remedies were not exhausted. It is further said that the petition was very belated because the promotion has been sought from the year 1984. It is stated that there was no policy to give relaxation in respect of promotion. The industrial posts of Defence Research and Development Organisation (for short D.R.D.O.) are grouped through statutory Recruitment Rules in five categories. They are

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as follows;

Posts	Pay Scale <u>Pre-revised</u>	Revised
1. Tradesman 'A' (Highly Skilled Gde.I)	Rs. 380-560	Rs. 1320-2040
2. Tradesman 'B' (Highly Skilled Gde.II)	Rs.330-480	Rs. 1200-1800
3. Tradesman 'C' (Skilled)	Rs. 260-400	Rs. 950-1500
4. Tradesman 'E' (Semi-skilled)	Rs. 210-290	Rs. 800-1150
5. Helper (Un-skilled)	Rs. 196-232	Rs. 750-940

5. The applicant, according to the respondents, is holding the post of Tradesman 'C' and his promotion to the next higher grade i.e. Tradesman 'B' or Tradesman 'A' could be made in accordance with the rules. The requirement of the rules is that the promotion could be made on the basis of seniority subject to qualifying the trade test. It is furthered that since the applicant has not qualified the trade test, he was not given promotion to the higher grade. Refuting the contention of the applicant for promotion without trade test based on the letter dated 11/4/85, it is asserted that the administrative instructions could not supersede the statutory Recruitment Rules. It is, therefore, urged that the prayer of the applicant is devoid of merit.

6. As regards the implementation of the letter dated 11.4.85 in other units of defence such as C.O.D., Agra, it has been averred on

behalf of the respondents that the claim of the applicant was based on false assumption because employees of C.O.D., Agra and the employees of A.D.R.D.E. were not governed by the same set of Recruitment Rules. It is contended that the applicant is governed by the statutory Recruitment Rules and, therefore, the comparison between two units was in no way justified.

7. The respondents contradicted the averment made in para 6 of counter-reply by stating in para 19 that there were only 4 categories of Tradesman because the post of Tradesman 'D' had been abolished vide Gazette~~e~~ Notification dated 01.4.1983 (ann.C.A.-1) Besides, it is also pointed out that the Ministry of Defence had formulated a policy under which the percentage of posts was determined. According to that policy, the post of highly skilled Grade I and highly skilled Grade II for common category jobs was 15% and 20% respectively. Remaining 65% posts were of skilled grades. It is also pleaded that the letter dated 15/10/84 of Ministry of Defence provided that higher grade would be depending on the functional requirement. Thus, it is pleaded that the higher posts did not get automatically sanctioned in all the establishments and promotions could not be made automatically. For these reasons, the claim of the applicant has been opposed by the respondents.

8. No rejoinder was found in the file and it appears that the applicant did not choose to file the same.

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9. We have heard the learned counsel for the applicant and the respondents; and have perused the record.

10. The main question for decision in the case is whether the applicant should be promoted from skilled grade to higher skilled grade II without undergoing the trade test. The learned counsel for the applicant placed reliance in this connection on the letters dated 15/10/84(annexure-1), dated 8/4/86 (annexure-2) and dated 20.10.87(annexure-3). So far as the first letter annexure-1 is concerned, it deals with two categories of employees, first category consists of semi-skilled grade Rs.210-290 and the other category consists of highly skilled grade I Rs.380-560, highly skilled grade II Rs.330-480 and skilled grade Rs.260-400. In the case of semi-skilled grade whose job title was shown in the first paragraph of this letter were allowed to be upgraded but the upgradation in the second category was allowed only after undergoing the trade test. Besides, the subject of this letter is "Fitment of industrial workers of E.H.E. in pay scales recommended by the Third Pay Commission" Admittedly, the applicant belongs to A.D.R.D.E. and not to E.H.E. It appears that there had been some confusion if the letter annexure-1 is applicable to the industrial workers of the A.D.R.D.E. and to clarify the said confusion, the letter dated 08.4.86 was issued and the detailed procedure

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of promotion was prescribed through annexure appended therewith. This procedure also speaks of trade test before a Tradesman is promoted. The third letter annexure A-3 specifically deals with the employees of D.R.D.O. in its paragraph no.3 and clarifies that all promotions should be regulated in accordance with the provisions contained in the Government letter dated 15/10/84 (annexure-1).

11. The contention of the respondents is that the promotion is governed by the statutory rules which have been framed in connection with the employees of D.R.D.O., Ministry of Defence. The copy of these rules has been brought on record and has been marked as annexure C.A.-1. A perusal of these rules shows that Tradesman 'C' can be promoted as Tradesman 'B' and Tradesman 'B' can be promoted as Tradesman 'A' but, their ~~conditions~~^{conditions} of eligibility have been clearly laid down. The incumbent is required to qualify the departmental trade test before he has promoted. Here in this case, we are concerned with the rules dealing with the Tradesman 'C' only because the applicant is continuing as Tradesman 'C'. When he has ^{to be} promoted as Tradesman 'B', he is required to qualify the departmental trade test held from time to time for the concerned post. In this way, it is clear that the incumbent of the post of Tradesman 'C' can be promoted as Tradesman 'B' only when he qualifies the trade test. The statutory

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rules provide the said condition which is also provided in the letters annexure-1, 2 and 3.

12. The applicant, as is clear from his representation annexure-6, had appeared in the trade test which was held on 6th and 8th of October, 1987 but it appears that he failed. When an employee undergoes the trade test or departmental examination and he fails, he cannot be allowed to challenge the holding of the test or examination on such grounds as are mentioned by the applicant.

13. In our opinion, the promotion of Tradesman 'C' to Tradesman 'B' can be done only in accordance with the Recruitment Rules, which provided for trade test. Since, the applicant has not qualified the said trade test, he cannot claim promotion without undergoing the said trade test. Thus, we do not find any merit in the O.A. and the same is, therefore, dismissed. No order as to costs.

S. A. (mcj)
Member (A)

I. Durbar
Member (J)

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