

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD

Date d : Allahabad this the ^{10th} day of Dec. 1996.

Coram : Hon. Mr. S. Das Gupta, Member-A
Hon. Mr. T. L. Verma, Member-J


ORIGINAL APPLICATION NO. 1496 of 1992.

Phool Chandra son of Sri Ram Das Prajapati,
at present posted as Skilled Optical Worker OPTO
Electronic Factory, Raipur, district Dehradun.
resident of R 55/18, OFD Estate Raipur, District
Dehradun.Applicant.

(C/A Sri R. Pandey)

Versus

1. Union of India through the General Manager,
OPTO Electronic Factory, Raipur, District
Dehradun.
 2. General Manager OPTO Electronic Factory,
Raipur, District Dehradun.
 3. Assistant Works Manager (Administration),
OPTO Electronic Factory, Raipur, District
Dehradun
 4. Works Manager Optical Division-I, OPTO Electronic
Factory, Dehradun.
 5. Sri H.R. Dixit, Works Manager, Optical Ist
Opto Electronic Factory, Dehradun.
- ...Respondents.

 (C/R 322 Km. Sadhna Srivastava)

O R D E R

(By Hon. Mr. T. L. Verma, Member-J)

The subject matter of challenge in this O.A. is order dated 16.9.1992 whereby the name of the applicant has been excluded from the list of candidates permitted to appear in the trade test of Optical Worker Highly Skilled Grade-II scale Rs.1200-1800.

2. The case of the applicant, as made out in the O.A. is that he was appointed as Optical Worker Semi Skilled on the Industrial Establishment at OPTO Electronic Project, Ordnance Factory, Dehradun on 6.6.1987. He was put on probation for a period of 2 years and after completion of period of probation, he was confirmed as Optical Worker with effect from 28.5.1991. According to the applicant he is eligible for promotion to the post of Optical Worker Highly Skilled Grade II which is the next stage of promotion in Optical Worker Skilled Grade. According to him, he is at Sr.No.15 of the seniority list of the Optical Workers. The respondents, initially promoted Optical Workers from Sr.No.1 to 9 of the Seniority list with effect from 31.7.1992 after they cleared the required trade test. The further case of the applicant is that by the impugned list dated 16.9.92, they have ~~permitted~~ ^{permitted} 14 more persons to appear at the trade test for promotion to the Post of Optical Worker H.S. Grade II. Though the name of the applicant is

.....3....

at Sr.No.15 of the seniority list (Annexure-A-2), he has been
bye-passed and persons below him in the seniority list
upto Sr.No.24 have been included in the list of candidates
allowed to appear at the said test. It has been stated
that Sri H.R.Dixit, Works Manager has been instrumental
in excluding the name of the applicant from the list of
persons cleared for appearing at the trade test because
he was displeased with the applicant as he had objected
to certain irregularities being committed during the trade
test held on 1.1.1992. Hence this application for issuing
a direction to the respondents to allow the applicant to
appear in the trade test or hold fresh trade test in
continuation of the trade test held in pursuance of
Annexure-A-4. The applicant has also sought a direction
to the respondents to consider the applicant as having been
promoted w.e.f. 7.11.1992 and to grant him seniority
accordingly in the seniority list of Optical Worker
H.S. Grade II.

3. The respondents have resisted the claim of the
applicant. In the counter-affidavit, filed on behalf of
the respondents, it has been stated that Industrial
Employees are considered for promotion to higher grade
based on their performance/earning and on passing

.....4.....

requisite trade test. ~~XXX~~ Further case of the respondents is that Departmental Promotion Committee met on 15.9.1992 to consider the suitability of Optical Skilled Employees for the purposes of clearing them for technical assessment for the post of Highly Skilled Grade II and as the earning/performance of the applicant was not upto the mark, ~~As such~~ he was not cleared for technical assessment by the Departmental Promotion Committee.

4. We have heard the learned counsel for the parties and perused the record carefully. The fact that the applicant is at Sr.No.15 of the seniority list of the Optical Workers, is not in dispute. It is also not in dispute that the applicant has not been permitted to appear at the trade test for promotion as Optical Worker H.S. Grade II. According to the respondents, permission to the applicant to appear in the examination was with-held by the Departmental Promotion Committee on the ground of unsatisfactory performance. Promotion to the post of H.S. Grade II is governed by the Ordnance Factories Grade 'C' and 'D' Industrial Post (Recruitment) Rules, 1989. According to the respondents, Industrial Employees are considered for promotion to the higher grades based on their performance/earnings and on passing requisite trade test. The performance of the applicant, it was submitted

.....5.....

was not upto the mark as such he was not cleared for Technical Assessment by the Departmental Promotion Committee.

5. Before we advert to the arguments advanced by the respective counsel for the parties, it may be pertinent to mention that the respondents were directed by interim order dated 20.12.1992 to permit the applicant to appear at the test provisionally. The respondents have, in the supplementary-affidavit, filed on 16.7.1993, stated that the trade test of the candidates mentioned in the impugned order had already been held by the time, the interim direction dated 20.10.1992 was received. However, trade test of the applicant was held on 18/19.3.1993. The applicant has secured pass mark in the said test. Thereafter on the basis of result of the trade test, latest assessment report and other service details such as ; attendance, p punctuality, and disciplinary history etc. were examined by the duly constituted technical Assessment Board, which recommended the promotion of the applicant to the post of Optical Worker Highly skilled Grade II in the pay scale of Rs.1200-1800

JK

6. In view of the above, the question for consideration is whether with-holding of the name of the applicant from the list of candidates cleared for Technical Assessment was justified. The learned counsel for the applicant urged that D.P.C. should have come into picture only after the applicant had been allowed

to appear at the trade test, and ~~he~~ had cleared the same. The action of the respondents in not permitting the applicant to appear in the trade test was not only unfair but, also contrary to rules. We have perused the S.R.O. and we find that according to schedule appended thereto promotions are to be made by the D.P.C. from eligible persons and on passing trade test. In the S.R.O. the D.P.C. has been mentioned before the trade-test. The sequence in which the D.P.C. and the trade test have been placed in the schedule clearly indicates that the D.P.C. has to clear the candidates for their technical assessment. That being so, we find no merit in the arguments of the learned counsel for the applicant

7. The D.P.C. has not permitted the applicant to appear at the trade test because his performance report from 1.8.1991 to 31.8.1992 is said to be not upto the mark. The percentage of wages earned by him during the aforesaid period was nil. Likewise the percentage of wage earned by him from 2.4.1992 to 1.8.1992 was only 40%. In para 6 of the rejoinder-affidavit, it has been specifically stated that the establishment of the respondents M/s. OPTO Electronic Factory, Raipur Dehradun is in the stage of inception and has adopted day work system only and the system of 'piece work' has not so far been adopted. The question of earning wage arises only where there is a system of payment by results. The applicant as we have already mentioned above, has specifically averred in the

.....7.....

rejoinder-affidavit that in this factory there is no system of 'piece work' and the applicant was deployed in day work. This averment has ~~be~~ not been controverted by the respondents by filing Supplementary Counter Affidavit. We are aware that OPTO Electronic Factory, Dehradun has ~~been~~ been recently established. That being so, we are inclined to accept the contention of the applicant that the said factory was not ripe for adopting 'piece work system'. The performance report of the applicant, however, indicates that the assessment of the applicant in other areas such as punctuality, integrity and attendance has not been adversely commented upon. He has been found to be regular in attendance. He is amenable to discipline and there was nothing adverse against his integrity. The performance report of the applicant excluding the percentage of wage earned, appears to be satisfactory.

8. In the facts and circumstances of the case, the decision of the D.F.C. to de-bar the applicant from appearing at the trade test on the ground that percentage of wage earned by him, is low, is not only unfair ~~also~~ is also highly arbitrary. Therefore, the same cannot be sustained.

9. For the reasons stated above, we allow this application and direct the respondents to give notional

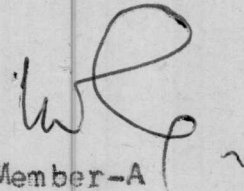
.....8....

~~-8-~~

promotion to the applicant from the date his juniors were promoted pursuant to the trade test held by the impugned order dated 16.9.1992 with all consequential benefits except arrears of salary. No order as to costs.



Member-J



Member-A

(pandey)