

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

THIS THE 28th DAY OF OCTOBER, 2010

Original Application No.595 of 2003

(U/s 19 of Administrative Tribunal Act, 1985)

Brij Behari Lal Sharma, Son of Late M.B.L. Sharma,
Resident of MIG 1806, Sector- 7, Awas Vikas Colony
(Pandit Deen Dayal Upadhyaya Puram), Sikandra, Agra

.....Applicant


Present for Applicant : Shri R.S. Gupta, Advocate.

Versus

1. Union of India through Secretary,
Ministry of Defence,
New Delhi.
2. Director General of E.M.E,
Army Head Quarters,
D.H.Q Post Office,
New Delhi-1100-11
3. Record Officer, E.M.E Records,
Sikandrabad
4. Commandant-509, Army Base Workshop,
Agra Cantt.


.....Respondents

Present for Respondents : Shri S.N.Chatterji, Advocate.



ORDER**(Delivered by Dr.K.B.S.Rajan,Member(J))**

The facts, being admitted obviate debate. The applicant was inducted in 509 Army Base Workshop in the Instrument Mechanic Electrical (IME) Trade in 1971 and in 1988 he had qualified in the supervisory test conducted by the respondents. He was placed in the grade of Master Craftsman on 16-04-1994. The applicant, on the basis of Recruitment Rules, 2002 for appointment by promotion to the post of Chargeman I, claimed that he should be considered for the same as he fulfilled the conditions specified by the Rules. His request was, however, rejected by the respondents, as, according to them the applicant did not fulfill the requisite qualifications. Annexure A-8 and A-9 refer. Thus, the applicant was considered only for promotion to the post of Chargeman - II, vide Annexure A-10. The applicant has thus, come up before this Tribunal challenging the above orders and has prayed for quashing of the same and also for a direction to the respondents to consider his case for promotion to Chargeman Gr. I from 01-06-2002 from which date others had been considered and promoted. The main ground of challenge is that the respondents have wrongly interpreted the relevant provisions of Recruitment Rules, by stretching certain conditions which are not fulfilled by him.



2. The lone question in this case is interpretation one part of the Rules relating to appointment to the post of Chargeman I by the method of promotion. The term is as under:-

"Master Craftsmen with 4 years regular service in the grade and who have qualified supervisory test prior to 01 Jan 1996."

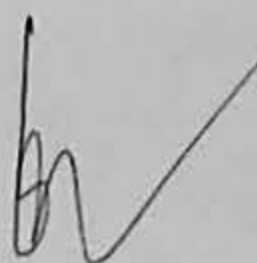
3. The contention of the Respondents is that the cut off date "01 Jan 1994" is not only for qualifying in the Supervisory Test but in respect of four years experience as well and in the case of the applicant, since he has been Master Craftsman only from April 1994, he does not fulfill the requisite conditions and hence he could not be considered for promotion to the post of Chargeman Gr. I under the aforesaid provision.

4. Arguments were heard on the above. The interpretation adopted by the applicant is -

- (a) Master craftsman with 4 years regular service in the grade;
- (b) qualified the supervisory test prior to 01-Jan 96.

5. On the other hand, the interpretation adopted by the respondents is-

- (i) Master Craftsman with 4 years regular service in the grade prior to 01 Jan 96.

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- (ii) Qualified the supervisory test prior to 01 Jan 96.

6. The rider "prior to 01 Jan 96" has been used only once and the same is after the term , "qualified supervisory test". That, this rider is applicable only with reference to qualifying the supervisory test is evident from Note 1 which reads as under:-


"Note 1: After all MCM who have qualified the supervisory test prior to 01 Jan 96 are promoted, this casual (?) will become inoperative and only chargeman II will be considered for promotion to Chargeman-I."

7. If the rider of prior to 1 Jan 1996 were to apply for four years service as well, the above note would have been accordingly worded and not in the fashion as it exists.

8. Thus we have absolutely no hesitation to hold that the interpretation of the respondent is thoroughly misplaced and that made by the applicant is the correct interpretation.

9. If the above interpretation of applying the rider of 01 Jan 1996 only to qualifying the supervisory test is adopted, the applicant became eligible to consideration for promotion to the post of Chargeman.

10. The respondents have on a wrong interpretation, rejected the request of the applicant for consideration to the post of Chargman, vide orders dated 25-07-2002 (Annexure A-8), order dated 31-10-2002 (Annexure A-9) and order dated 04-04-2003



published in DO Part I dated 25-04-2003 (Annexure A-10). These are accordingly quashed and set aside.

11. Respondents are, therefore, directed to consider the promotion of the applicant with effect from July 2002, when others including juniors (vide Seniority dated 01-06-2002) to the applicant were considered and if the applicant is found fit for the same, necessary orders thereof shall be passed, promoting the applicant as Chargeman Gr. I and the exact date as Chargeman I should also be specified.

12. The promotion shall be on notional pay basis, as the applicant had not actually performed the functions of Chargeman I.

13. Consequential promotion to the next Higher post should also be accordingly considered from the date any of the juniors to the applicant had been considered and promoted and here again, the promotion shall be notional.

14. On promoting the applicant (subject to his fulfilling the qualifications etc as applicable to these posts), the last pay drawn shall be arrived at, which would form the basis for working out the pension and other terminal benefits to the applicant.

15. The applicant has since retired and as his entitlement would be restricted to calculation of pension and other terminal

benefits and the difference thereof shall be payable to him. To make it clear, there shall be no element of arrears of pay and allowance and all the payments would be restricted to pension and terminal benefits.

16. Necessary orders revising the PPO and other orders relating to terminal benefits, be issued to the applicant, alongwith a statement of due and drawn to enable the applicant to ensure that he is paid all his dues.

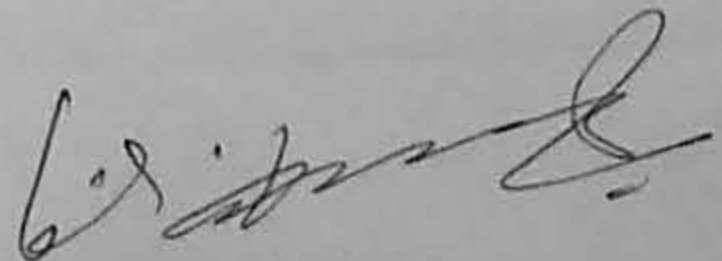
17. This order shall be complied with, within a period of four months from the date of communication of this order. In case of delay in complying with the order in making the payment, respondents shall pay interest @ 9% from 01 November, 2010 till the date of payment and in case such a delay has been caused due to inaction on the part of the respondents, the amount paid as interest shall be recovered from the erring officers, after putting the said officers to notice, as the public money shall not be drained due to the inaction on the part of the respondents.

18. Though this case deserves cost, the sober conduct of the respondent's counsel has dissuaded from saddling the respondents with cost. Hence, no cost.



MEMBER (A)

Shashi/



MEMBER (J)