

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

MA 552 of 2001
(OA 90 of 1996)

Present : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman
Hon'ble Mr. B.P. Singh, Administrative Member

Nanda Dulal Dutta

- VS -

Ministry of Defence

For the Applicant : Mr. R.K. De, Counsel
Mrs. B. Banerjee, Counsel

For the Respondents: Mr. M.S. Banerjee, Counsel

Date of Order : 3.7.02

O R D E R

PER MR. JUSTICE G.L. GUPTA, VC

This is an application under Section 27 of the Administrative Tribunal Act, 1985 whereby the applicant prays for execution of the order dated 23-8-1999 passed in O.A. 90 of 1996.

2. The relevant facts are that 196 applicants filed O.A. on 17-1-1996 seeking declaration that the fitters in RFI are entitled to be upgraded from the skilled grade to the highly Skilled grade on the basis of the policy decision of Government of India, clarified vide subsequent order and upheld in the judgement dated 4-12-1989 in TA No.1369 of 1986 (Chiranjit Kanungo and Ors - Versus - Union of India & Ors.) and also the judgement dated 22.8.94 in O.A.923 of 1990 (Durgapada Mukherjee & Ors - Versus - Union of India & Ors.) with consequential benefits. The O.A. was resisted by the respondents by filing reply and ultimately the Tribunal decided the case on 23-8-99. The operative part of the order is reproduced hereinafter :-

"In the result, the O.A. is allowed and the respondents are directed to consider the promotions of the applicants in the Fitter skilled grade in the RFI against the upgraded

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posts in higher category on the basis of authorised strength as sanctioned by the Ministry of Defence under their order dated 15-10-84 and clarified subsequently by the order dated 19.4.85, within 4(four) months from the date of communication of this order. We also make it clear that if some of the applicants have already retired or otherwise ceased to be in service on account of death etc., the service benefits shall be extended to them and to their legal heirs in appropriate cases as per extant rules with all consequential benefits.

We pass no order as to costs".

3. In the reply the respondents' case is that they have implemented the order of the Tribunal and that the applicants could not be given benefit of the higher scale as they did not come within the authorised strength of the employees on the relevant date i.e. 15-10-1984. It is stated that it was not the direction of the Tribunal to give promotion against 211 available posts.

4. We have heard Id. Counsel for the parties and perused the documents placed on record. It may be pointed out that the applicants had also filed CP(c) 4 of 2000 in the same matter alleging that the respondents did not implement the order of the Tribunal which was decided vide order dated 21-12-2001 wherein it was clearly held that the respondents have not violated the order of the Tribunal and they have not committed contempt of the order of the Court.

5. It is relevant to state that arguments had been heard on the instant M.A. also along with CP(C) 4 of 2000 on 14-6-2002, but inadvertently the particulars of the MA were not mentioned in the order dated 21-12-2001 and therefore, the MA was not treated as disposed of, and it has been listed again before us.

6. Mr. De, Id. Counsel for the applicants made the same contentions which were made when the matter was heard along with CP(C) 4 of 2000. Relying on the case reported in 1992 SCC L&S (Ashok Sowda and Anr. - Versus - State of Karnataka), he submitted that the

applicants must be given the benefit of the order of the Tribunal dated 23-8-1999.

7. On the other hand Mr. Banerjee, Id. Counsel for the respondents contended that the Court has already decided all the points raised in the order dated 21-12-2001 and the application should be dismissed.

8. We have given the matter our thoughtful consideration. It is evident that no new point has been raised in the MA. All the points which have been raised in the MA have already been considered by us in the order dated 21-12-2001.

9. OA 90 of 1996 was disposed of on the basis of the direction given in the earlier case. The relevant portion of the order dated 4-12-1989 passed in TA 1369/86 is reproduced hereinafter :-

"We, therefore, allow TA 1369 of 1986 with a direction to the respondents to consider the case of the applicants for promotion on the basis of the authorised strength as clarified in Annexure-C within 90 days from date. There is no order as to costs".

It is obvious that the respondents were directed to consider the case of the workmen for their promotion on the basis of the authorised strength. A similar direction was given in the order dated 23-8-1999 in O.A. 90 of 1996.

10. In the order dated 23-8-1999 the direction was that the respondents would consider the case of the applicants for promotion and if eligible, they shall be entitled to be promoted in the higher grades. It cannot be accepted that there was positive direction to give promotion to the applicants of O.A. 90 of 1996. The respondent authorities were required to consider the case of the applicants for promotion keeping in view the authorised strength as sanctioned by the Ministry of Defence under their order dated 15-10-1984 and clarified vide order dated 19-4-1985. It is significant to point out that the Tribunal had directed that the service benefits would be

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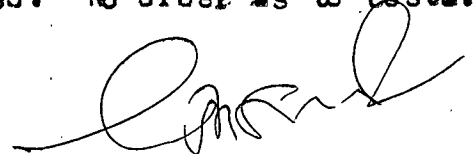
extended to all the persons who had retired or otherwise ceased to be in service on account of death. The use of word 'applicants' in the order obviously meant workmen because the Tribunal had given directions to give benefit of the order to all the eligible fitters even though they had expired or retired and they were also 'to be' given promotion on the basis of the authorised strength. If as per the authorised strength on a particular date the persons senior to the applicants were entitled to promotion in the higher grade, the applicants cannot claim promotion from the same date. The respondents cannot be compelled to give promotion to the workmen at a particular time in excess of the authorised strength. It was never the intention of the Tribunal to grant promotion to 196 applicants, whatever may be the circumstances.

11. As to the case relied upon by Mr. De it may be pointed out that their Lordships had passed the order in the peculiar circumstances of the case. The fact situation in that case was that the two petitioners had appeared in the examination and interview, but they were not selected and the persons who got higher marks in written test and interview were given appointment. The contention of the applicants in the case was that the Rules provided 33.3% marks for Viva-Voce whereas a Supreme Court decision had laid down that there could not be more than 15% marks for interview. Their Lordships noticed that if 15% marks were kept for interview, the petitioners would have been selected in preference to some of the candidates who had been given appointment as they had got higher marks in written test. The Ruling does not assist the applicants.

12. Consequently, we do not find any case in favour of the applicants. The application is dismissed. No order as to costs.



Member (A) 030702



Vice-Chairman