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Date of order :29.6.99

O.A.No. 259/1996

Krishna Kumar S/o Shri Jetha Ram aged 30 years, Fitter  
General Mechanic SK, Office of the Garrison Engineer ,  
Sriganganagar.

..... Applicant.

Vs.

1. Union of India through the Secretary to the  
Government, Ministry of Defence, New Delhi.
2. Garrison Engineer, Sriganganagar.
3. Commandant Works Engineer, Sriganganagar.
4. Chief Engineer, Bhatinda Zone, Bhatinda (Punjab).

..... Respondents.

Present :

Mr. Vijay Mehta, Counsel for the applicant.

Mr. K.S.Nahar, Counsel for the respondents.

GRAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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ORDER

( Per Mr. A.K.Misra, J.M. )

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The Applicant has filed this O.A. with the  
prayer that the respondents be directed to arrange  
Trade Test for the post of FGM HS-II for the applicant  
and consequently promote him on the post of FGM HS-II

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from the date his juniors were promoted, with all consequential benefits from that date.

2. Notice of O.A. was given to the respondents who have filed their reply. In the reply, the respondents have stated that all the affected individuals were informed in the month of February 1995 that Trade Test is being held during the last week of February 1995. Thereafter, programme of Trade Test was circulated by the Presiding Officers on 18.3.1995 for the Trade Test to be held on 23.3.1995. A wide publicity was given. All the installations were informed by telephonic message and in writing to inform all the affected individuals. As a result of this notification, out of 30 eligible candidates 24 appeared in the Trade Test. The applicant did not appear in the Trade Test in spite of notification, therefore, he has no right to be considered and promoted on the post of FGM HS-II. The OA deserves to be dismissed.

3. It is the case of the applicant that he had no information in respect of the Trade Test being held on 23.3.1995. He was on rest on 22.3.1995. Since no wide publicity was given to the Trade Test programme, the applicant was deprived from appearing in the Trade Test examination and consequently <sup>from</sup> his promotion whereas his juniors have undertaken the Trade Test and being promoted to the higher pay scale.

4. During the pendency of the O.A., the Trade Test for the post in question was held by the respondent.

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and the applicant appeared in the Trade Test. He cleared the Trade Test and consequently was promoted to the post of FGM HS-II vide respondents order dated 2.6.1999. The order of promotion of the applicant and one Shri Subhash Chander has been presented before us today in the Court.

5. We have heard the learned counsel for the parties and gone through the case file.

6. The learned counsel for the applicant has argued that in absence of wide publicity of the proposed Trade Test for the post of FGM HS-II, the applicant could not appear in the said Trade Test. The respondents have not been able to show that notification was pasted on the notice board and they also could not show that each individual was informed in writing in respect of Trade Test being held, as proposed and, therefore, the applicant could not appear in the Trade Test in absence of proper information. Now, he had appeared successfully in the Trade Test and been promoted, therefore, he should be deemed to be notionally promoted on and from the date his junior was promoted on the post of FGM HS-II.

7. On the other hand, the learned counsel for the respondents submits that the applicant at the relevant time was posted in the Unit of G.E., Sriganaganagar and from that Unit 24 eligible candidates appeared in the Trade Test. If the notification in respect of proposed Trade Test was not given wide publicity, how

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such a large number of candidates could appear in the Trade Test. Therefore, it should be taken that applicant has evolved an excuse relating to his absenteeism in the examination on the ground of publicity of The OA is also time-barred, the notification, as such, the applicant deserves no relief.

8. We have considered the rival arguments. There is nothing on record to show that the notification relating to the proposed Trade Test in question was placed on the notice board for the general information of the eligible candidates. There is also no material on record to show that each individual was informed by the Incharge Officer in respect of the proposed examination. In view of this, the reason advanced by the applicant cannot be categorised as wholly baseless. No doubt 26 eligible similarly situated candidates of the same station had appeared in the examination, therefore, in all reasonableness, it can be believed that notification had ~~not~~ come in the knowledge and notice of the candidates. It may just be possible that because of applicant's remaining on leave or remaining on night duty, he was not informed or he could not gather information relating to the Trade Test in question. From the record, it also appears that applicant has not been slumbering over his rights. Soon after the Trade Test was held, the applicant vide Annex.A-2 requested the concerned authorities that while he was on night duty on 23<sup>rd</sup> and 24<sup>th</sup> of March, 1995, Trade Test for the post of FGM HS-II had taken place but he was left out, therefore, applicant's Trade

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(B)

Test be undertaken. Then again, he, vide representation dated 29.7.1995 (Annex.A-3), requested that Trade Test be taken and he be promoted. Then again, vide Annexes. A-4, A-5 and A-6 he continued to represent and remind to the concerned authorities in respect of his earlier representations for taking Trade Test etc. However, no action was taken by the concerned authorities, therefore, he was driven to the Tribunal for redressal of his grievance. In his detailed representation dated 29.7.1995 (Annex.A-3), the applicant had informed the authorities that he had no information in respect of the Trade Test being held and he was not informed in writing also about the Trade Test being held, therefore, the authorities could have redressed his grievance by permitting him to appear in a supplementary Trade Test. But, no such steps were taken by the authorities concerned. Therefore, the contention of the applicant that he was deprived of his chance of appearing in examination and consequent promotion is well founded. Since the applicant has now been promoted to the post in question, the only thing which is required to be considered is whether the applicant should be compensated in terms of money awarded to him as damages or the respondents be directed to fix his seniority notionally. The post of FGM HS-II is a selection post and, therefore, in our opinion, the applicant can get the pay of that post only from the date he has assumed the charge. But since he was deprived to appear in the examination in absence of proper information, therefore, it would be just

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and proper to award him notional seniority in the grade of FGM HS-II from the date his junior was promoted to the post in question.

9. We have also considered the point of limitation as raised by the respondents. In our opinion, the OA is not barred by limitation. The Trade Test was held on 23-24/03/1995. The applicant made a detailed representation (Annex.A-3) on 29.07.1995 which remained unreplied. Thereafter, the applicant issued reminders after reminders till April, 1996 but received no reply. He filed O.A. on 23.07.1996 i.e. within six months of the last reminder. Hence, the OA can not be said to be time barred. The objection of the learned counsel for the respondents is, therefore, rejected.

10. The O.A., therefore, deserves to be accepted in part.

11. The O.A. is, therefore, partly accepted. The applicant is held to be notionally promoted on the post of FGM HS-II on and from the date his junior has been promoted on the said post. The respondents are directed to assign ~~notional~~ seniority to the applicant on the post of FGM HS-II from the date his junior has been promoted within a period of three months from the date of this order or in any case before the respondent undertake exercise in respect of next <sup>higher</sup> promotion related to the post of FGM HS-II. However, the applicant shall only be entitled to get his emoluments of FGM HS-II

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from the actual date of assuming the charge of the post in consequence of respondents order dated 2.6.1999.

12. Parties are to bear their own costs.

*Gopal Singh*  
( GOPAL SINGH )  
Administrative Member

*29.6.99*  
( A.K.MISRA )  
Judicial Member

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MEHTA

Ready  
Wells  
14/1/99

Re: [unclear]  
16/7/99

Part II and III destroyed  
in my presence on 06/7/2006  
under the supervision of  
Section Officer (I) as per  
order dated 06/7/2006

Section Officer (General)