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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 30.11.2000

O.A. No. 66/96

Reva Chand Nagori son of Shri Harlalji, aged about 44 years, by caste Scheduled Caste, resident of House No. 9, Fort Road, Inside Nagori Gate, Jodhpur - Presently working as Electrician H.S. II in the office of Garrison Engineer (Army), Jodhpur.

... Applicant.

versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, Rajaji Marg, New Delhi.
3. Commander Works Engineer (Army), Multan Lane, Jodhpur.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. B.S. Rathore, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for quashing the order dated 7.2.96 vide Annexure A/1 with a further direction to the respondents to upgrade/promote the applicant with effect from 16.10.81 instead of 5.12.92 in view of the Government letter dated 11.05.83 (Annexure A/2) to the Post of Electrician H.S. grade I in the grade of Rs. 380-560, alternatively, atleast with effect from 15.10.85 from which date the similarly situated person have been promoted, with all consequential benefits. The further prayer of the applicant is that atleast a direction be issued to the respondents to promote the applicant as

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Electrical H.S. grade I from the date his batch mates have been promoted. In support of the prayer, the applicant submitted that he was appointed as Switch Board Attendant (SBA, for short) with effect from 4.1.77 in the grade of Rs. 210-290 (Semi Skilled). He stated that on the basis of the Government of India, Ministry of Defence, letter dated 11.5.83 issued on the basis of the recommendation of the Third Pay Commission, the Government introduced fitment policy for the Industrial workers in M.E.S. and provided upgradation of posts from Semi Skilled Grade to Highly Skilled Grade II and from Highly Skilled Grade - II to Highly Skilled Grade - I respectively, in respect of the jobs enumerated in Annexure A/2. He further submits that on the basis of Annexure A/2, the applicant's post should be upgraded from Semi-Skilled to Skilled H.S. II and to H.S.I with effect from 16.10.81. Thereafter, there was a letter vide Annexure A/3 dated 4.7.85, stating that fitment of certain common categories of skilled jobs to be provided Highly Skilled Grade II and Highly Skilled Grade I depending on the functional requirement @ 65% (from Semi Skilled Grade), 20% (from Highly Skilled Grade II) and 15% (from Highly Skilled Grade I) on the basis of the strength in a group. Therefore, the applicant should have been promoted from the category of Semi Skilled SBA to H.S. Grade-II and H.S. Grade-I with effect from 1981. Therefore, his promotion to the H.S. Grade II with effect from 15.10.84 vide Annexure A/4 dated 30.12.87 was itself illegal. He further submitted that for his further promotion from H.S. Grade II to H.S. Grade I in the year 1991, no departmental test was required. However, he appeared in the departmental test for H.S. Grade I in the year 1991 and accordingly, he was declared successful vide Annexure A/6 dated 26.06.92. Thereafter, he was promoted vide order dated 22.12.95 (Annexure A/16) from H.S. Grade II to H.S. Grade I, but the said promotion was given effect to with effect from 5.12.92. The applicant contended that such promotion from H.S. Grade II to H.S. Grade I should have been with effect from the year 1981 instead of 5.12.92. Therefore, he made a representation to the authorities to consider his case. Such representation was



rejected by the respondents. Thereafter, he made a further representation, that was also rejected vide proceedings dated 25th May, 1994 (Annexure A/13). On his further representation, the impugned order dated 7.2.96 vide Annexure A/1 has been passed, stating that if the applicant was not willing to accept the promotion vide Annexure A/6, the applicant can make a statement to that effect and in case of dis- obedience of that order, the matter would be viewed seriously and appropriate action would be taken for making unnecessary representations. It is in these circumstances, challenging the order Annexure A/1 dated 07.02.96, the applicant has approached this Tribunal for the reliefs as we have already stated above.

2. The respondents by filing counter have denied the case of the applicant. The respondents have stated that as per the Government order dated 11.5.83, the benefit of the said letter was given to the persons eligible on 16.10.81. The further promotion to H.S. Grade II to H.S. Grade I was required to be given on the basis of bench mark, i.e. 20% and 15% respectively, subject to passing of the required trade test. However, on the basis of the recommendation of the Anomalies Committee, one time relaxation of filling up 20% vacancies of Skilled to Highly Skilled Grade II was given, and accordingly, the applicant was promoted from the post of SBA to Highly Skilled Grade II with effect from 15.10.84. Further promotion from Highly Skilled Grade II to Highly Skilled Grade I was required to be made only after passing the trade test for the category and the applicant passed the trade test vide proceedings dated 24.06.92 vide Annexure A/6 and accordingly, he was promoted vide order dated 22.12.95 vide Annexure A/16 with effect from 05.12.92. Therefore, the applicant is not entitled to be promoted to H.S. Grade I with effect from 1981 or 1985, as contended by him. The respondents have further stated that the letter dated 4.7.85 (Annexure A/3) does not relate to the category of the applicant, i.e. SBA, in the feeder category, to the Electrician Skilled. Therefore, the applicant cannot rely upon this letter for claiming his promotion.

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from the year 1985. He has not made out any case how he is entitled to be promoted from the year 1981 or from the year 1985, except stating that he was entitled to be promoted from that date. They have also stated that there was no Government order or any letter enabling the applicant for claiming promotion to the Highly Skilled Grade I from the post of SBA. After his passing the required test for H.S. Grade I, he was given one time-bound promotion under 20% quota, even though he had not passed the required trade test for H.S. Grade II. They have stated that without passing the trade test for H.S. Grade II, they have taken test for H.S. Grade I, for which objections were raised by the concerned department vide Annexure R/1 dated 24.03.92, stating that promotions of the applicant and other similar situated persons were irregular. Hence, the promotion given to the applicant was cancelled by the department, as directed vide order dated 01.07.94. (Annexure R/2) in respect of Shri Mohinder Singh and 6 others. They have also stated that applicant's earlier representation was rejected, but still he made further representation, contending the same. But they were also dismissed subsequently with a warning to the applicant that he should not unnecessarily submit such representation, making false allegations against the concerned officer. Accordingly, they stated that there are no merits in this application. They have stated that a letter dated 11.05.83 (Annexure A/2) relied upon by the applicant does not apply to the applicant's case at all, and the applicant's case all along that he should be promoted to H.S. Grade I without passing the trade test was an unacceptable ground. Even though, the applicant was promoted with effect from 5.12.92, but the applicant was not accepting the same, contending that he should be promoted with effect from either in the year 1981 or 1985. But he was not entitled for promotion with these ante-dates claimed by him. Therefore, there are no merits in this application.

3. By filing rejoinder, the applicant denied the allegations made by the respondents. He contended that the letter dated 11.5.83

providing 10% promotion quota, was right upto H.S. Grade I with effect from 16.10.81 and the department was in error in not according the benefit of the said letter dated 11.5.83 (Annexure A/2) to the applicant. The applicant by filing Annexure A/21 dated 15.5.86 alongwith the rejoinder, contended that he was entitled to be promoted to H.S. Grade I atleast with effect from 15.10.84. He also stated that the designation of Charge Electrician and Charge mechanic, were modified to Senior Electrician and Senior Mechanic etc., and on the basis of Annexure A/2, the applicant was entitled to be promoted to H.S. Grade I, right from the year 1981. Therefore, the department was in error in passing the impugned order at Annexure A/1 and not giving retrospective promotion to the applicant with effect from 16.10.81. Therefore, there are merits in this application.

4. On the basis of the pleadings and arguments advanced by both the parties, we have to consider and decide whether the applicant was entitled to be promoted to H.S. Grade I with effect from 16.10.81 or with effect from the year 1985, as contended by him, instead of his actual promotion with effect from 5.12.92 vide order dated 22.12.95 (Annexure A/16).

5. In support of his case, the applicant has strongly relied upon Annexure A/2 dated 11.5.83 for the purpose of his promotion to the post of H.S. Grade I. In the year 1983, admittedly, the applicant was SBA, a ~~XXXXXX~~ grade. The next promotional post was H.S. Grade II and further promotion to H.S. Grade I. The applicant in paragraph No. 5 of the application admitted that in fact, he was promoted to Electrician H.S. II with effect from 15.10.84 vide Annexure A/5. This order, the applicant did not challenge in any competent Court or authority. If he was really aggrieved by that order, he should have challenged the same at that time. The order Annexure A/8 dated 4.11.93 stated that the applicant was promoted under the 20% quota with one time relaxation to the H.S. Grade II. However, that letter further stated that if any

such upgraded SBAs/Wiremen have been allowed to appear the trade test for Senior Electric H.S. Grade I and passed the same, such promotions would be irregular, and such individuals would be necessarily required to pass the trade test of Electrician H.S. II, before considering them for promotion to Senior Electrician H.S. Grade I post. In substance, the department's case is that the applicant was promoted to H.S. Grade II under the prescribed quota of 20% from the post of SBA and he was not entitled to be promoted as H.S. Grade I, without passing the trade test, that too with effect from retrospective dates in the year 1981 or 1985. On these lines, his earlier representation was rejected. The relevant portion of the impugned order, by which the department has made its position clear, reads as under:--

"(a) The thorough study of the Govt letter as mentioned by the individual reveals that there is no mention of 10% SBA should be upgraded HS-II to HS Grade I with retrospective effect i.e. 16 Oct 81.

(b) The percentage of 10% quota of SBA has already been utilised and benefits extended to the applicant by placing him semi-skilled to skilled category, i.e., in the pay scale of Rs. 210-290 to 260-400 wef 16 Oct 81.

(c) Since promotion to the individual as Senior Elect HS Gde-I has been given vide our letter No. 11135/DPC/1099/ELNB dated 22 Dec 95, consequent upon his qualifying trade test of HS Gde I as one time exemption granted to him in the light of E-in-C's Branch AHQ letter No. 90270/89/SC/EIC(3) dated 25 Aug 95 against our existing vacancy available GE 860 EWS only."

6. From the impugned order, the stand of the respondents is that the applicant was promoted with effect from 16.10.81 from semi-skilled to skilled category within 10% quota meant for SBA. Thus, the applicant has got the benefit of his promotion from the post of SBA to the Semi-skilled category with effect from 16.10.81. They have also stated that none of the letters relied upon by the applicant mention that 10% SBA should be upgraded from H.S. Grade II to H.S. Grade I with retrospective dates as on 16.10.81. They have further stated that further promotion from H.S. Grade II to ~~HS~~ Senior Electrician H.S. I, has been given to the applicant again on the basis of one time exemption on applicant's passing the necessary trade test.

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7. But the contention of the applicant is that he should be promoted to H.S. Grade I without insisting on any trade test. In support of his contention, he relied upon the letter dated 11.05.83 (Annexure A/2). According to this letter, the fitment of the Industrial workers in MES is provided in five scales of pay on the basis of the Third Pay Commission and the Committee on common category jobs. Those five categories with the pay scales, are given below:-

<u>Category</u>	<u>Scale</u>
1. Unskilled	: Rs. 196-232
2. Semi-skilled	: Rs. 210-290
3. Skilled	: Rs. 260-400
4. Highly Skilled Gde II	: Rs. 330-480
5. Highly Skilled Gde I	: Rs. 380-560

Paragraph (ii) of Annexure A/2 provides the per centage of posts for such fitments, as under:-

"(ii) Upgradation of posts from the Skilled grade/Highly Skilled Grade II to Highly Skilled Grade II/I respectively in case of jobs enumerated in Annexure II, in accordance with following formula :-

<u>Strength of Workers</u>	<u>No. of posts to be in Highly Skilled Grade II/I</u>
6-15	1
16-25	2
26-35	3
36-45	4
46-55	5

8. In Annexure A II attached to the letter dated 11.5.83 (Annexure A/2), there is a mention of Switch Board Attendant and Wireman, etc. The applicant, admittedly, at that time was SBA with the pay scale at Rs. 210-290 (Semi-skilled). In paragraph (1) of the application, he has given the date of appointment as SBA on 4.1.77 with the pay scale at Rs. 210-290. From this, it follows that he was entitled to be promoted from Semi-skilled to Skilled with the pay scale at Rs 260-400. In the reply, the respondents have stated that all the

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persons, who were entitled for the fitments, were given within the quota prescribed vide Annexure A/2, on the basis of the strength of workers available as on that day. The applicant has also got such benefit. Thereafter, on the basis of letter dated 4.7.85 vide Annexure A/3, the applicant has been promoted from the post of Skilled grade to H.S. Grade II within 20% quota, vide Annexure A/4 dated 30.12.87. This promotion was given with effect from 15.10.84 and the applicant's name is at serial No. 3. They have stated that such promotion was only one time basis within the per centage fixed and the applicant has been promoted as H.S. Grade II. There is substance in this argument. From the 2 letters vide Annexure A/2 and Annexure A/3, we find that all the persons who were in the skilled grade were not required to be promoted to H.S. Grade II or H.S. Grade I. The bench mark per centage was fixed for the purpose of promotion, depending the total strength of the group indicated. With that per centage, the applicant was entitled to be promoted only to the post of H.S. Grade II, but not to the post of H.S. Grade I. Annexure A/3 does not provide for any double promotion from Highly Skilled Grade II High Skilled Grade I. From the Skilled grade with the pay scale at Rs. 260-400, a person was entitled to be promoted to H.S. Grade II with the pay scale at Rs. 330-480 within the 20% quota, and the applicant has been promoted within that quota to the H.S. Grade II. This was only one time promotion as a functional requirement and it was not a regular promotion en bloc all the persons. Since the applicant's case fell within the prescribed per centage of quota, he was promoted as H.S. Grade II. If that is so, the relief granted vide Annexure A/3, stands exhausted. For further promotion to H.S. Grade I, he must take chance according to the seniority. Therefore, the Part II Order at Annexure A/5, clearly stated that the applicant was Electrician HS-II with effect from 15.10.84. All these, orders
the applicant has accepted. If the applicant was not satisfied with the positions during the those orders, he should have challenged the same before the appropriate forum/this Tribunal, for appropriate

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relief. That the applicant has not done.

9. However, the applicant was insisting that he should be promoted to H.S. Grade I without passing the trade test in terms of Annexure A/3, but the department was saying that for further promotion, passing the necessary trade test was required. Accordingly, the applicant took necessary test as per the Notification issued in the year 1991, and accordingly, he was declared successful vide proceedings dated 26.06.92 vide Annexure A/6. On the basis of Annexure A/6, he has been promoted vide order dated 22.12.95, with effect from 5.12.92 on which date, his juniors were promoted. Though there was objection for this promotion on the ground that the applicant did not pass the trade test for H.S. Grade II, but ultimately, the department has promoted him with effect from 5.12.92, the date on which his juniors were promoted. This position has been reiterated in the impugned order. Thus, The applicant has not made out a case that he should be deemed to have been promoted from the year 1981 or from the year 1985. Though he stated that, in the year 1981 his juniors were promoted on the basis of Annexure A/2, but no material was placed before us to give any finding on that behalf. Even if we take that the promotion/in the year 1984 to the H.S. Grade II was erroneous, the applicant could have challenged the same in the year 1984 itself. Having accepted his promotion to H.S. Grade II vide order Annexure A/4 dated 30.12.87 with effect from 15.10.84, it does not lie in the mouth of the applicant to contend that he should have been promoted to H.S. Grade I either with effect from 16.10.81 or with effect from 15.10.84. At any rate, the applicant has accepted his promotion on the basis of Annexure A/4 dated 30.12.87, and any plea contrary to this position would be barred by limitation, and on this ground alone, the applicant will not get any relief, as claimed. This application is admittedly filed by the applicant on 19.02.1996. As held by Hon'ble the Supreme Court, making representations again and again would not save the limitation. Therefore, both on the ground of limitation and even on the ground of

merits of the case, the applicant is not entitled to any relief at the hands of the Tribunal. Accordingly, we pass the order as under:-

Application is dismissed. But in the circumstances, without costs."

Gopal Singh

(GOPAL SINGH)
Adm. Member

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(JUSTICE B.S. RAIKOTE)
Vice Chairman

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Part II and III destroyed
in my presence on 29.11.07
under the supervision of
Section Officer as per
order dated 10.11.07

Section Officer (Record)

Rec
D
S. K. Ravalpur
11/12/2007

Received copy of judgment on behalf
of Sh. BS Rethore, Advocate
for ^{Sub} (P) Jadhav
C.W. 12 Dec 2007