

प्र.स. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

DATE OF ORDER : २७-१०-९९.

1. O.A.NO. 369/1997

1. Banshi Lal S/o Shri Heerji aged 42 years, Valvemen Office of Garrison Engineer(AF), Jaisalmer
2. Abdul Khan S/o Shri Kariman Khan aged 38 years, Valveman, Office of GE(Airforce), Jaisalmer.

.....APPLICANT.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Garrison Engineer (Air Force), Jaisalmer.
3. Engineer in Chief, Army Headquarters, New Delhi.

.....RESPONDENTS.

2. O.A.NO.387/1997

Bikram Singh S/o Shri Trilok Singh Rajput, aged 43 years, Valvemen, Office of Garrison Engineer (Air Force), Jaisalmer.

.....APPLICANT.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Garrison Engineer (Air Force), Jaisalmer.
3. Engineer in Chief, Army Headquarters, New Delhi.
4. Commandant Works Engineer, Air Force, MES, Jodhpur.

.....RESPONDENTS.

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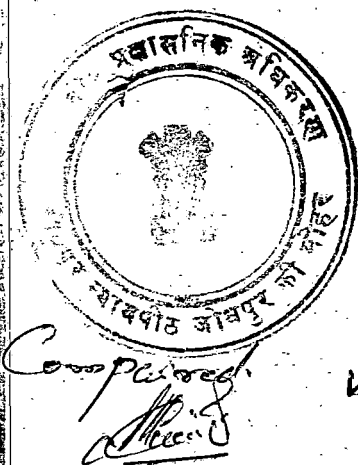
HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

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Mr.Vijay Menta, Counsel for the applicants.
Mr.S.K.Nanda, Counsel for the respondents.

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PER MR.A.K.MISRA :

In both these O.As point for consideration, the controversy and the prayer of the applicants are similar, therefore, they are disposed of by this common order.

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No.1

2. The applicant/was promoted on the post of Valveman on 1.1.85 and the applicant No. 2 was promoted on that post on 22.1.86. While both of them were working on the post of Valveman, they were called upon to appear for trade test held in the month of August 1990 for the category of Pump House Operator (for short "PHO"). Both of them were declared successful vide result dated 17.7.90. When the applicants were not granted promoted for a long period they made inquiries in the office of respondent no.2. The applicants were informed that due to change in policy, the applicants are not likely to be promoted. Thereafter, they made representations to the concerned authorities which were forwarded to the higher authorities. As per the revised policy, the candidates who had passed trade test for the post of PHO can be promoted to Fitter/Pipe Fitter (SK) only after passing the trade test for the said job. The applicant further contends that Mate/General Mates who have passed the trade test for skilled grade were not subjected to a further trade test for promotion to the skilled grade. But the applicants have been held ineligible for promotion to the skilled post on the basis of earlier examination which they have passed for being promoted to the post of PHO and thus, they have been discriminated and have illegally been categorised on



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different footings for promotion to the higher post in skilled grade. The applicants have been treated unequally with persons situated in similar circumstances. The applicants have challenged the action of the respondents as arbitrary and violative of natural justice.

3. On notice to the respondents, they have filed their reply in which it is stated by the respondents that the applicants were Valvemen and the post of PHO has been discontinued, therefore, on the basis of the examination for the promotional post of PHO, the applicants cannot be promoted and posted on the post of Pipe Fitter(SK) which is a different trade. As per the representation of the applicants, their case was sent to the higher authorities for clarification who have clarified the position and have said that exemption granted to Mate General is not applicable in the instant case as they have not passed the trade test of respective trade for promotion to the post of Pipe Fitter. The trade test of PHO (SK) is a different trade, as such the exemption is not applicable to them. It is further alleged by the respondents that the applicant No.1 has passed the trade test for Pipe Fitter (SK) vide result dated 16.10.97 but he could not be promoted to the higher post in view of the interim order passed in O.A.No. 387/1997 - Bikram Singh Vs. U.O.I. and Ors. The applicant No. 2 Abdul Khan has not passed the requisite trade test for the post of Pipe Fitter (SK) and hence, he is not entitled for promotion to the post. Both these candidates who had earlier passed the trade test for the post of PHO are not eligible for being promoted to the promotional post of skilled grade due to change of policy. Therefore, the O.A. deserves to be dismissed.



4. In rejoinder, the applicants have narrated the facts which were already mentioned in the O.A. and have reiterated that they are eligible to be promoted on the promotional post of Pipe Fitter (SK) on the basis of earlier trade test.

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5. In this case, the applicant has stated that he was promoted to the post of Valveman in the year 1985. Thereafter, in 1990, the applicant appeared in the trade test for the category of Pump House Operator (for short "PHO") and was declared successful vide result dated 17.7.90. It is the claim of the applicant that he was not granted promotion for long time and when he made inquiries he was informed that due to change in policy the applicant is not eligible to be promoted on the basis of trade test which he had undertaken. The applicant made representation to the concerned authorities which was forwarded for clarification to the higher authorities. The applicant was given to understand that those Valvemen who had earlier passed the trade test for the post of PHO during 1990 can be promoted to Fitter/Pipe Fitter (SK) only after passing the trade test for the same post. It is alleged by the applicant that Mate/General Mate who had earlier passed the trade test for skilled trade is not subjected to further trade test. Both, Mate and Valveman are semi skilled employees and are entitled to be promoted on the basis of the result of their earlier test. But the respondents have illegally discriminated amongst these two categories of employees and are wrongly calling upon the applicant to appear in the trade test afresh for the post of Pipe Fitter etc. Thus, the applicant is being treated unequally as compared to the

equals. The action of the respondents is discriminatory and violative of principles of natural justice.

6. On notice to the respondents they have filed their reply to which the applicant had filed a rejoinder repeating the facts already pleaded. The respondents have stated in their reply that after the applicant was declared successful in trade test for the post of PHO, there was a change in policy. The post of PHO was discontinued and, therefore, for the promotional post of Pipe Fitter etc. the applicant has to under-go a fresh trade test. On representation by the applicant and similarly situated candidates the answering respondents were informed by the higher authorities that because of change in policy and discontinuance of the promotional post of PHO(SK) the applicant is to under-go a fresh trade test for the skilled grade promotional post. The case of Mate General is different than that of the case of the applicant. As per the changed policy Banshi Lal who was senior to the applicant was called for the trade test afresh. The applicant has not been ignored while calling a candidate for the trade test but since he was junior he was not called for the trade test. As per the revised policy he is not eligible to be promoted as per his earlier trade test which/under a different syllabus. The O.A., therefore, does not bear any merit and deserves to be dismissed.

7. We have heard the learned counsels for the parties and gone through the record of both files.

8. It has not been brought on record that any person junior





than the applicants has been promoted to the promotional post of Pipe Fitter (SK) on the basis of result of the trade test for the post of PHO, therefore, the applicants cannot claim to be promoted on the promotional post of skilled grade on the basis of their result of earlier trade test for the post of PHO. As per the clarification of the Engineer-in-Chief and change in the policy the post of PHO and seven other posts have been discontinued and have been designated as Fitter General Mechanic as per Annex.R/2 dated 6.7.94. The case of Mate (General) has been placed on different rootings than that of Valveman as per the clarification. Therefore, in our opinion, the applicants cannot claim to be promoted on the promotional post of skilled grade on the basis of result of the trade test which they had successfully under-gone as per the old syllabus. It is for the respondents to decide as to what ^{should} be the eligibility qualifications for purposes of granting promotion to a candidate on the promotional post. If after the applicants had successfully appeared for the promotional post of PHO the policy has been changed then the applicants cannot claim to be promoted on the basis of successful result of the earlier trade test which they had under-gone. Laying down the qualifications for the promotional post is the prerogative of the employer. If they have laid-down passing of trade test as a condition precedent for a candidate to be promoted to the post of Pipe Fitter (SK) or any other skilled grade post then the same cannot be challenged on the basis of ~~discrimination~~. As a Valveman the duties of the applicants cannot be categorised akin to a Pipe Fitter. What the Valveman has to do is to operate Valves but as Pipe Fitter, he is to discharge different duties i.e. fitting of pipe-connections, dismentalling pipe connections and doing other

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jobs connected to pipe connections etc. Therefore, on the basis of earlier examination, the applicants cannot be held eligible for the promotional post of Pipe Fitter (SK). There is nothing on record to show that the duties of PHO and that of Pipe Fitter (SK) are more or less similar to each other. Therefore, in our opinion, the applicants are not entitled to claim promotion on a promotional post of different trade for which as per the new policy a fresh trade test has been prescribed. The applicants are free to compete with other candidates by appearing in the respective trade test as and when they are called upon to do so.



9. Taking the case of individuals, it appears that Banshi Lal has cleared the trade test for the promotional post of Pipe Fitter as per the new policy, as admitted by the respondents in their reply, therefore, the respondents can promote him accordingly. The applicant No. 2 Abdul Khan has remained unsuccessful in the said trade test and, therefore, he can only be promoted when he clears the trade test. At this stage he is not entitled to any relief. The applicant Bikram Singh, was not within the zone of consideration, therefore, was not called for the trade test and he can wait for his turn. These OAs can be disposed of accordingly.

10. In view of the above discussion, we come to the conclusion that all these applicants are not entitled to be promoted to the posts of Pipe Fitter (SK) as per their claim. The O.As, therefore, deserve to be dismissed and are hereby dismissed. The stay granted in the case of Bikram Singh stands vacated. The parties are left to bear their own costs.

प्रमाणित सहायक न्यायिक
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केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

SD
(N.P.NAWANI)
ADM.MEMBER

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(A.K.MI)
JUDL.ME