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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 11-07-2001

O.A. No. 49/1997

1. Birbal S/o Shri Ram Asara, aged 42 years Mason
HS II G.E. Air Force, Suratgarh.
2. Gurcharan Singh S/o Shri Surjan Singh aged 37
years Fitter Pipe HS II R/o Ward No. 9(New)
Suratgarh.
3. Hanif S/o Shri Faiz Mohd. aged 39 years, Painter,
HS II.
4. Om Prakash S/o Shri Bans Lal aged 35 years,
Mason HS II.
5. Gyan Singh S/o Shri Koreram aged 29 years,
Electrician HS I.
6. Bhimsen Balli S/o Shri Khushi Ram aged 43 years,
Welder HS II.
7. Ishwar Das S/o Shri Tulsi Ram aged 46 years,
HS Grd. II Carpenter.
8. Tara Chand S/o Shri Khyali Ram aged 47 years HS II
Fitter Pipe.
9. Raghunath S/o Shri Manguram aged 46 years, HS II
Fitter Pipe.
10. Suresh Kumar S/o Shri Shiv Lal aged 44 years
HS II, Electrician.

All C/o Garrison Engineer, Air Force, Suratgarh.

... APPLICANTS

VERSUS

1. Union of India through the Secretary, Ministry
of Defence, New Delhi.
2. Commander Works Engineer, Air Force, Bikaner Cantt.
3. Chief Engineer, Air Force, Jullunder Zone, Jullunder
4. Engineer in Chief, Army Headquarters, New Delhi.
5. Garrison Engineer, Air Force, Suratgarh.

... RESPONDENTS

Mr. Vijay Mehta, counsel for the Applicants.
Mr. Vinit Mathur, counsel for the Respondents.

(Signature)

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Hon'ble Mr. Justice B. S. Raikote, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. Gopal Singh)

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicants have prayed for setting aside the impugned order dated 20.12.1996(Annexure A-1), and for a direction to the respondents to extend ^{the} all ~~the~~ benefits including pay fixation, seniority, etc. to the applicants w.e.f. 15.10.1984.

2. Respondents had vide order dated 20.12.1996 (Annexure A-1), rejected the representations of the applicants seeking promotional benefits w.e.f. 15.10.1984. Applicants had approached this Tribunal earlier in O.A. No. 123/1995 and this application was disposed of on 09.09.1996 with a direction to the respondents to consider the representation of the applicants. The representation made by the applicants has been rejected by the respondents vide their letter dated 20.12.1996(Annexure A-1). Hence this application was preferred before this Tribunal. This Tribunal vide order dated 06.10.2000 dismissed the application on the ground that the same was barred by limitation. This order dated 06.10.2000 of the Tribunal was challenged before Hon'ble the Rajasthan High Court in D.B. Civil Writ Petition No. 4653/2000. Hon'ble the High Court vide their Order/Judgment dated 23.03.2001 held that the case



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is not barred by limitation and accordingly quashed the judgment and order dated 06.10.2000 of this Tribunal and remanded the case back to the Tribunal for deciding the same in accordance with Law. We, therefore, now proceed to consider the case as per the legal position.

3. In terms of Army HQ letter dated 14.4.1986, and Ministry of Defence letter dated 08.04.1986, three grade structure in 23 common categories was introduced in the MES which provides as under :-

"3. Promotion from skilled Grade to Highly Skilled Grd. II."

(a) In units in which the Recruitment Rules exist the same shall be enforced to cover a promotion cases.

(b) In units in which Recruitment Rules are not enforced, the promotion of workers shall be as follows :-

(i) 20% of the vacancies as on 15.10.84 shall be filled merely on the basis of seniority without obligation to qualify in the trade test.

(ii) Out of the 20% slab as (i) above all the workers who are due to retire within the period from 15.10.84 to 30.04.86 shall be included. If the number of such 'retirees' exceeds 20% only upto that extent the 20% stipulation for Highly skilled Grade II shall be excess.

(iii) Over and above the 20% vacancies referred in (i) above a further 15% posts be operated at Grd. II level till promotions are made to Grd. I on the basis of the trade test referred to in IA(b) above and skilled workers will be promoted to Grade II subject to their passing the Trade test within two chances by 30.6.86. Those who qualify shall get the benefit of promotion w.e.f. 15.10.84. If, however, the number of promotions to Highly Skilled Grade II exceeds 20% due to the number of retirees being large the addition of 15% shall be reduced pro-rata so that the total number of workers getting Highly Skilled Grade II on 16.10.84 shall not exceed 35%."

However, no test was conducted prior to 30.06.1986, thus the applicants were deprived of their promotion.

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to Highly Skilled Grade II w.e.f. 15.10.84, and were promoted as HS Grade II w.e.f. 13.11.86. Contention of the applicants is that they have been denied the benefit of promotion w.e.f. 15.10.84 for no fault of theirs. Had the respondents conducted the trade test before 30.6.86, the applicants would have got the promotion benefits w.e.f. 15.10.84.

4. In the counter, the respondents have stated that :-

" the orders for implementation of three grade structure were issued by Government of India and E-in-C's Branch vide their letter dated 8th April, 1986 and 14th April, 1986 respectively, hence trade test could not have been arranged by 30.6.86. The applicants have correctly been given promotions w.e.f. 13.11.86 after holding the trade test in different categories. Hence, promotion from retrospective date w.e.f. 15.10.84 does not apply as per Government orders on the subject."



It has, therefore, been submitted by the respondents that the application is devoid of any merit and deserves dismissal. It is also contended by the respondents that the application is barred by limitation.


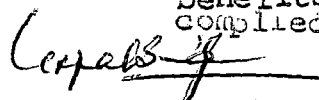
5. We have heard the learned counsel for the parties, and perused the records of the case carefully.


6. In fact, the respondents were required to conduct the trade test twice before 30.6.86 so as to extend the benefit of promotion under three grade structure in terms of Ministry of Defence letter dated 8.4.96. The respondents, however, conducted the test on 13.11.86 and all the applicants having been declared qualified in the test, were promoted to HS Grade II w.e.f. 13.11.86. Applicants, have however, prayed that this promotion should be made effective from 15.10.84 in terms of Ministry of

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Defence letter dated 8.4.86. The Ministry of Defence letter dated 08.04.1986 provided that the test be held before 30.6.86 and the concerned employees be promoted to HS Grade II w.e.f. 15.10.1984. It was incumbent upon the respondents department to have conducted the test before 30.06.1986, however this was not done, the test was conducted on 13.11.1986, and the applicants were given promotion as HS II w.e.f. 13.11.1986 only, for no fault of theirs. Had the department conducted the test prior to 30.06.86 applicants would have got their promotion w.e.f. 15.10.1984. The department conducted the test on 13.11.1986 and for this the applicants cannot be blamed.. In our opinion, all the applicants on having passed the qualifying test are entitled to promotion to the HS Grade II w.e.f. 15.10.1984, irrespective of the fact that the test was held subsequent to 30.06.1986. In the circumstances, we are firmly of the view that the applicants are entitled to promotion to HS Grade II w.e.f. 15.10.84. Accordingly, we pass the order as under :-

" The OA is allowed. Impugned order dated 20.10.1996 is quashed and set aside. The respondents are directed to give effect of promotion to HS Grade II to the applicants w.e.f. 15.10.1984 with all consequential benefits. No costs. This order shall be complied with within a period of 4 months.



(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

P. / C.