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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 26.06.2001

ORIGINAL APPLICATION NUMBER 275/1998.

Narpat Singh son of Shri Badri Singhji, aged about 47 years, resident of Plot No. 2, Senapati Bhawan ke Pichhey, High Court Colony, Ratanada, Jodhpur at present employed on the post of Carpenter Skilled in the office of 6 F O D c/o 56 A P P.

APPLICANT ...

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of DEFENCE, Raksha Bhawan, New Delhi.

2. Director General of Ordnance Services, Army Headquarters, DHQ PO. New Delhi.

3. The Commandant, 6 Field Ordnance Depot, c/o 56 A P O.

4. Shri Kanya Lal, T NO. 2667, Carpenter Highly Skilled Gde. II. 6, Field Ordnance Depot, c/o 56 A P O.



RESPONDENTS ...

Mr. J. K. Kaushik, counsel for the applicant.

Mr. Kuldeep Mathur, counsel for the respondents.

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Hon'ble Mr. A. K. Misra, Judicial Member.

Hon'ble Mr. A. P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A. K. Misra)

The applicant had filed this OA with a prayer that the impugned order dated 14.10.1998 (Annexure A-1) ordering the promotion of the respondent no. 4 to the post of Carpenter Highly Skilled Grade-II

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may be declared illegal and the same may be quashed and respondent no. 1 to 3 be directed to consider the candidature of the applicant for promotion to the post of Carpenter Highly Skilled Gd. II against the post which fell vacant on 08.10.1998 as per Rules with all consequential benefits.

2. Notice of the OA was given to the respondents official respondent nos. 1 to 3 filed their reply, respondent no. 4 did not filed any reply.

3. It is stated by the respondents that there was a vacancy for the post of Carpenter Highly Skilled Gd. II (Unreserved), an Board was published vide order dated 09.09.1998. The meeting xxxx of the Board was convened on 14.09.1998 and the result of the trade test was published the same day. It is further stated by the respondents that 5 carpenters had passed the trade test for promotion for the post of Carpenter Highly Skilled Gd. II. Since there was one vacancy for the promotional post, one senior most individual placed at No. 1 in the Penal was promoted. The applicant did not participate in the trade test, therefore, the applicant has no right to be promoted. It is further stated by the respondents that another vacancy for the post of Carpenter Highly Skilled Gd. II fell vacant on 08.10.1998, therefore the second person in the select penal was promoted to the promotional post. It is stated by the respondents that if a person does not appear in the trade test, then he would be deemed to disqualify till he clears the trade test. The



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applicant had absented himself from the trade test, for whatever reason shall be deemed to have ~~been~~ failed. He can be considered for the promotional post in the next trade test if he clears the same as per the directions from the Army Headquarter. The promotional post is required to be filled in as and when such post falls vacant, therefore, persons are required to be kept in the panel for filling the promotional post. In view of this the preparation of panel of the successful candidate was in order. The OA of the applicant deserves to be dismissed.

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

5. It was argued by the learned counsel for the applicant, that the post of Carpenter Highly Skilled Grade II is a non selection post and is required to be filled in by promotion on the basis of seniority-cum-fitness. The trade test for the said post is required to be regulated as per the policy letter dated 03.04.1967 issued by the Army Headquarters. Since the respondents had declared only one post of the Carpenter Highly Skilled Gd.II, therefore, the applicant did not appear in the trade test but the respondents prepared a panel of successful candidates and are implementing the same for future vacancies, which is against the policy and the established norms. It was further argued by the learned counsel for the applicant that for one vacancy only one candidate should have been declared pass. All the eligible candidates

are not required to be trade tested, the action of the respondents in this regard is against the guidelines. The applicant deserves to be considered on promotion for the said post. On the other hand, it was argued by the learned counsel for the respondents that no doubt one post for Carpenter Highly Skilled Gd. II was notified, but it was also notified that Carpenter (Skilled) who had completed 3 years of service in the grade will be eligible to appear in the trade test, therefore, the applicant should have appeared/ the trade test. The reasons advanced by the applicant that was since, the only one post/declared, therefore, only one candidate was required to appear and he being the second in seniority was not expected to supersede the senior, therefore, he did not participate in the trade test, does not appeal to reasons. For the present situation, the applicant has to thank himself.

6. we have considered the rival arguments, in our opinion, in view of the specific condition in the order dated 09.09.1998 (Annexure A-4), that "Carpenters (Skilled) who have completed 3 years of service in the grade will be eligible to appear in the trade test", the applicant should have appeared/ the trade test. It was wrong on his part to assume that only one promotional post has been notified to be filled in, therefore, only one senior candidate was required to appear. ~~as per Rule~~ Nothing had stopped the applicant from appearing in the trade test. ~~as per Rule~~ Second trade test is required to be held after 6 months

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and the candidates who have not been able to clear the trade test in the first notified trade test, such candidates are required to appear in the second trade test, which may be held on completion of 6 months from the first trade test. The position of an absentee candidate is not better than a failed candidate. In this regard, condition as mentioned in extract copy (Annexure R-1) dated 18.03.1982 is very clear. It lays down that all those who fulfill the condition of length of service strictly in order of seniority should be called upon and subjected to trade test of the respective trade ---. Those who fail to appear for the trade test on the given date may be deemed to have not qualified in the trade test and may be omitted from the list of candidates eligible for promotion in pursuance of the provisions contained in the Recruitment Rules---. As per the condition laid down in the Army Head-quarter letter dated 19.09.1957, an extract copy of which has been placed on record as Annexure R-2 lays down that " a tradesman will be re-tested on expiry of 6 months from the date of failure. A failed tradesman will / to reappear in the whole test ---". In view of this, the applicant cannot claim to be considered for the promotional post before expiry of 6 months of the earlier test. In this case, a panel was prepared by the respondents, in view of the instructions contained in Annexure R-3, in which it was directed that seniority list be maintained and panel for promotion will be drawn yearly in advance duly vetted by the

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Unit DPC so that the promotions could be made from the date, the vacancies occur. The Panel should be drawn to cover the existing and anticipated vacancies plus 25% reserve.

7. The respondents had issued a notification Annexure A-4 declaring one post of Carpenter Highly Skilled Gd. II. They could not have anticipated any vacancy which may fall vacant due to promotion of some candidate in near future, but as per the guidelines issued by the Army Headquarters they were required to maintain a panel of successful candidate for filling the promotional post as and when the same falls vacant, and in view of this, the preparation of Panel Annexure A-5 by the respondents cannot/termed as bad in law. The respondent no. 4 was promoted on 14.10.1998 i.e. within one month from the date of declaration of panel, therefore, no fault can be found in the action of the respondents in this regard. Needless to repeat/by non appearance in the trade test the applicant had lost his right for consideration for the next 6 months. The promotion of Kanya Lal, respondent no. 4 was within 6 months of the trade test in question, therefore, the applicant cannot successfully challenge the promotion of respondent no. 4. His claim in this regard has to be rejected.

8. It was next argued by the learned counsel for the applicant that during the pendency of the

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present OA, one more candidate Bhanwar Lal who was figuring at no. 3 in the Panel Annexure A-5 has been promoted in January 1999 by the respondents as Carpenter Highly Skilled Gd. II without organizing the trade test, therefore, the promotion of Bhanwar Lal deserves to be quashed. We have considered this aspect. In our view, the arguments of the learned counsel for the applicant deserves to be rejected on the simple ground that made Bhanwar Lal has not been/a party in this OA and no adverse order can be passed by the Tribunal against Bhanwar Lal in this regard. It may further be repeated that the promotion of Bhanwar Lal was also within 6 months of the trade test in question. It is not necessary that for every vacancy a fresh trade test be organised as and when the ~~vacancy~~ ~~last~~ falls vacant. In view of this, when the Panel Annexure A-5 was prepared, the same is required to be operated for atleast 6 months irrespective of earlier notified vacancies, but it should be noted now, that the Panel prepared on 14.09.1998 has lived its life of 2 years. We are aware, whether any trade test was organised by the respondents after & expiry of 6 months of the trade test in question, but for the applicant who is ~~deemed~~ to have failed in the trade test in question because of his non appearance, a trade test was required to be held after 6 months and he should have been given a chance to prove his fitness for further promotion, therefore, ~~if~~ without organising such test, if the panel is further continue to be implemented, it would be wrong, therefore, to this extent the respondents could



be directed to organise the trade test for the post of Carpenter Highly Skilled Gd. II allowing the applicant to appear in such trade test and the Panel Annexure A-5 is not required to implemented any furhter.

9. Before we conclude it would be useful to observe that the existing and anticipated vacancies should be calculated with care before notifying the trade test. In this case anticipated vacancy was not calculated. Had the same been calculated probably two or more vacancies would have been notified and present controversy would not have arisen. However the Panel in question so prepared should not now be operated for promoting remaining candidates. The OA, therefore, deserves to be accepted in part.

10. The OA is therefore, partly accepted. Respondent Nos.1 to 3 are directed to organise a trade test for the post of Carpenter Highly Skilled Gd. II and consider the candidature of the applicant along-with other eligible candidates for filling up the post of Carpenter Highly Skilled Gs. II which may have fallen vacant after 6 months of the first trade test in question. The applicant's prayer regarding cancelling the promotion order dated 14.10.1998 (Annexure A-1) in respect of respondent No.4 and consequent consideration of applicant for the said post which fell vacant on 8.10.98 is hereby rejected.

11. Parties are left to bear their own costs.

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(A.P. NAGRATH)
Admn. Member

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(A.K. MISRA)
Judl. Member.

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Part II and III destroyed
in my presence on 2/4/82
under the supervision of
Section Officer () as per
order dated 17/12/82

Section Officer (Record)