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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO.279/2004

Date of Order: 18-5-2010

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Krishan Lal Swami S/o Shri Nanu Ram, aged 47 years, Store Keeper Grade I, in the office of Garrison Engineer (Army), Suratgarh, District Shri Ganganagar, R/o 4-E-Chhoti P O 2 ML, District Shri Ganganagar.

....Applicant

For Applicant: Mr. Vijay Mehta, Advocate.

VERSUS

1. Union of India, through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Western Command, Chandi Mandir.
Commander Works Engineer, Shri Ganganagar.
Ram Jas Suthar, Barrack Supervisor, in the office of the Garrison Engineer, Lalgarh Jattan District Shri Ganganagar.

....Respondents.

For Respondents No. 1 to 3 : Mr. M. Godara, Proxy counsel for Mr. Vinit Mathur, Advocate.

For Respondent No.4: None is present.

**ORDER
(Per Mr. V.K. Kapoor, Administrative Member)**

Sri Krishan Lal Swami has filed the present OA against the order of official respondents dt 30 March, 2002 & 03 Sept, 2004 (Ann.A-1 & A-2). The applicant has prayed for the reliefs that are as follows:-

"The applicant prays that the impugned orders Ann.A-1 and Ann.A-2 may kindly be quashed and the respondents be directed to consider the case of the applicant for promotion to the post of BS-II and to give promotion on the post of BS-II from the date of promotion of the respondent No.4 with all consequential benefits. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

2. The brief facts of the case are that the applicant was appointed as Store Keeper Gr.II in FOD on 30.10.1980, inducted in MES as Store Keeper Gr.II on 01.5.1989. He passed MES procedure exam of

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SK I in the year 1995, promoted to the post of SK I vide order dt 20.02.2002. The respdt 4 was appointed in 11 FOD in Nov, 1980 as SSK is sought transfer to MES, he was transferred to SK II upto 20.6.2000. The respondent 4 did not pass exam for SK I, he has opted for MES seniority. The post of SK I is to be filled up in 100 % promotion from SK II (Ann.A-3). As per seniority list dt 05.5.2001, the respdt 4 has not passed said exam, he was not eligible to the post of SK I (Ann.A-4). As per order dt 31.7.1969, the employees from the post of SK I are appointed/promoted to the post of BS-II if they have passed departmental examination for SK (Ann.A-5).

With all these provisions, the respdt 4 was promoted to BS II post vide order dt 30.3.2002 (Ann.A/1). The applicant in representation dt

12.4.2002 has prayed/stated that as respdt 4 was not eligible to hold the post of SK I, the order Ann.A-1 should be revoked (Ann.A-6).

The respondent 2 vide his signal dt 24.4.2002 put order Ann.A-1 in abeyance (Ann.A-8). The respondent 2 vide his orders posted the

respondent 4 at Lalgarh Jattan (Ann.A-9 & A-10). Vide letter dt 13 April, 2004 it is mentioned that since respondent 4 was accepted as

SK I, it was felt that passing of SK I examination was not necessary,

& could be dispensed with (Ann.A-2). There is no provision in recruit

-ment rules empowering the respondents to give relaxation in the

rules, the respondent 4 is not eligible to hold the post of SK I. There

is no powers vested in respondents to grant/treat the post of SK-I

analogous to SSK as both are quite different. The respondent 4 had

not passed the said exam; impugned orders are passed in violation of

the Recruitment Rules and are without jurisdiction. The applicant is

deprived from promotion to the post of BS II and future promotions

because of promotion of the respondent 4 to said post. The applicant

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has requested to quash the orders Ann.A-1 & A-2, official respondents be directed to consider the applicant case for promotion to the post of BS II from date of promotion to the post of respondent 2 with consequential benefits.

3(a). The official respondents 1 to 3 in reply have narrated the facts of the case that the applicant worked as Store Keeper Gr.I in the office of Garrison Engineer (Army) Suratgarh. The respdt 4 was

initially appointed in 11 FOD during Nov, 1990 posted on compassionate grounds to MES, he has worked in MES from 15 June 1998 on the post of Store Keeper Gr.I, earlier he was worked in FOD on the post of SSK in pay scale of Rs.4000-6000 since June, 1997. The post of

SSK in FOD is analogous to SK gr.I in MES. The respdt 4 was placed at the appropriate place in the seniority list of SK gr.I. Later, he was promoted to the post of Barrack Supervisor gr.II on 30 March, 2002.

Thus passing of promotion examination for Store Keeper Gr.I is not necessary in the case of respondent 4 was accepted in the MES as SK gr.I from 5 June 1998 and placed in the seniority list of SK gr.I. The applicant is promoted as SK gr.I on 28 Feb, 2002 after passing the said SK gr.I examination. The seniority list dt 05.5.2001 is clarified by the higher authorities letter dt. 03.9.2004. Since respondent 4 was already holding the SK gr.I, he was shown in the seniority list, on turn he was promoted to the post of BS gr.II rightly, no case is made out in applicant's favour. His case will be considered on the post of BS-II, thus the OA filed by the applicant be dismissed with costs.

3(b). The applicant in rejoinder had denied that the post of SSK is analogous to the post of SK-I. The official respondents have failed to put on record documentary evidence in support of this contention. It

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is denied that respdt 4 was accepted in MES on 05.6.1998 (Ann.A-2), is nothing but an opinion expressed by an officer. There is no rule or provision empowering the respdts to dispense with requirement of passing the said exam. No powers of relaxation are provided, as early as in 1969 passing of exam is mandatory, failure to pass the exam could result even in termination (Ann.A-11). The submissions made by official respdts are misconceived & untenable.

4(a). Learned counsel for applicant while narrating the facts at length argued that deptt exam was necessary for SK I, it was 100% promotion post. The respdt 4 has not passed deptt exam thus he does not stand for promotion to the post of BS gr.II. This qualification/passing

of departmental examination cannot be dispensed with by the respondents at their whim. Thus, case of applicant should be considered & the promotions made by the official respondents in regard respdt 4 (Ann.A-1 & A-2) should be set aside being illegal.

4(b). Learned counsel for official respdts in arguments have stated that applicant was absorbed in the lower post, respdt 4 posted as SSK, thus not required to pass any trade test. He was promoted in 1998, absorbed in MES from FOD as SK I. The applicant has already passed deptt exam, absorption on the post is not under challenge, proper procedure is clearly followed. Applicant's right is not violated; respdt 4 is promoted rightly on the post of BS gr.II.

5. The applicant was appointed on Store Keeper gr.II in 11 FOD on 30 Oct, 1980 was inducted in MES as store keeper grade II, presently posted at Suratgarh. The applicant passed MES procedure examination of SK I in 1995; promoted to the post of SK I vide order

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dt 20 Feb, 2002. The respdt 4 was appointed in 11 FOD in Nov, 1980; while he was SSK, he sought transfer to MES on compassionate grounds; he was moved to SK II where he joined on 20 June, 1998. The respdt 4 is not said to have passed exam for SK I. The post of SK I is to be filled by 100% promotion from SK II. From SK I, there are channels of promotion to the post of BSII. The orders of 09 Aug, 1969 are quite specific. It is pertinent to mention that as respdt 4 has not passed this examination, he is not eligible to hold the post of SK I and then to BS II as per Ann.A-4 & Ann.A-5. The respdt 4 was promoted to the post of BS II vide order dt 30 March, 2002 (Ann.A-1). As stated above, for promotion the post of SK I, passing of exam is mandatory. Under these conditions, applicant gave representation to the higher authorities that promotion of respdt 4 to BS II post be revoked (Ann.A-6 & Ann.A-7). Accordingly, the promotion as regards respdt 4 was kept in abeyance vide order dt 24 April, 2002 (Ann.A-8), later this order was changed on 02/5 Aug, 2004 by amending the order Ann.A-1 whereby respdt 4 was posted (Ann.A-9, Ann.A-10). This is clarified by respdt 2 that passing of SK-I exam is not necessary and that the individual can be dispensed with (Ann.A-2).

6. It is clearly mentioned that the respondent 4 was working in MES from 15 June, 1998 on the post of store keeper gr.I (SK-I) since he was holding senior store keeper (SSK) post in his previous unit (11 FOD) in the pay scale of Rs.4000-6000 since 16 July, 1997. It is averred by official respdts that the post of SSK in FOD is analogous to SK I in MES. Even, this is taken for granted, then for promotion to the post of SK I, the junior eligible staff has to pass the departmental examination. The instructions reveal that the post of store keeper gr.

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I is to be filled 100 % by promotion, thus for junior incumbent, it is obligatory to pass the deptt exam which cannot be dispensed with at will. The office of Directorate General (Pers), MES has given clarification vide order 03 Sept, 2004 that passing of SK I exam is not necessary and this could be dispensed with. This is to specify that passing of a deptt exam cannot be dispensed with and that too for an individual. This is also clarified in the seniority list of 05 May, 2001 (Ann.A-4) that respondent 4 has not passed the deptt exam, as this was not felt necessary. The passing of exam is a by virtue of statute, this can't be treated a subjective matter. The orders passed by the official respondents cannot be treated subjectively or at one's own whim, thus these orders cannot be treated as lawful.



Now we are to see that the terms & conditions of 11 FOD & MES are similar or not? The services of respondent 4 were taken from 11 FOD; he was working there as senior store keeper in the gr. of Rs.4000-6000 which is almost equivalent to that of SK I in MES. Thus, the services of respdt 4 were transferred from FOD to MES and respdt 4 was treated as on the post of SK I in MES. But here in MES, promotion to the post of SK I is by way of passing the deptt exam. The applicant has passed the deptt exam and then got promoted on the post of SK I, whereas respdt 4 has not cleared this deptt exam. Furthermore, the obligatory/binding provision of passing deptt exam cannot be dispensed with in order to accommodate respondent 4; this action would be termed as arbitrary and malafide in legal parlance. As the post of SSK (in 11 FOD) and that of SK I (in MES) are analogous, this does not give powers to official respondents to dispense with passing of the deptt exam. The seniority list of 05 May,

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2001 also testifies to the fact that respondent 4 has not passed deptt exam. Thus his posting on SSK or SK I (in MES) can't be termed as legally valid; & further promotion to barrack supervisor gr.II (BS-II) would not be termed as justified. Thus the version of the official respondents cannot be termed as correct that on applicant's turn for promotion to the post of BS-II, the case of respdt 4 was rightly considered & promoted. The binding provisions i.e. passing of deptt exam cannot be dispensed with on official respondents' whims. The subjective feeling of respdts cannot be accepted that passing of SK I exam was not necessary. Thus posting of respdt 4 on SSK, then promotion to BS II posts cannot be agreed to in legal terminology.

Thus, only two alternative are left; either to revert respdt 4 to the original position of SSK or give promotion to the applicant on the post of Barrack Supervisor gr.II on 30 March, 2002 and posting as GE Lalgarh Jattan to GE (AF) Suratgarh vide order dt 05 Aug, 2004. As per discussion held above, the promotion case of the respdt 4 has also to be examined as he has not passed the required departmental examination. No such orders/instructions are produced to prove or corroborate that passing of the departmental examinations in the case of respondent 4 are dispensed with. The applicant has said to have passed the departmental examination vide order dt 09.6.1998. The respondent 4 also joined MES on 20 June, 1998 as SSK. Thus, if June, 1998 be taken as cut off date, the official respondents should analytically examine the case of their promotions to the post of Barrack Supervisor II. If passing of examination is mandatory on the post of SSK/SKI, then validity of posting of respondent 4 is also a matter under scanner. In case, some relief is to be given to the

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respondent 4, he be directed to pass the departmental examination first, then posting/promotion on the post of BS II could be undertaken in his case, otherwise not.

9. In the light of observations made above, the present OA succeeds. The orders of official respondents dt 30 March, 2002 (Ann.A-1) & 03 Sept, 2004 (Ann.A-2) are hereby quashed and set aside. The official respondents are directed to examine the merits and promotional avenues of applicant as per directions given above and instructions of the official respondents' department as regards promotion. The present OA is allowed with no order as to costs.

V.K.Kapoor
(V.K.Kapoor)
Administrative Member

KB Suresh
(Dr. K.B.Suresh)
Judicial Member