

(5/1)

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Original Application No. 116 of 2007.

23rd May, 2008.

CORAM :

Hon'ble Mr. B.V. Rao, Member [J]

Hon'ble Mr. R.R. Bhandari, Member [A]

....

1- 367364 Chand Mohd. S/o Shri A. Bali aged 53 years presently working as Fitter General Mechanic (FGM) under Garrison Engineer (North) Bikaner and resident of Main Road, Post Binasar, District Bikaner.

2- 361413 Sant Lal Thakral S/o Shri Ram Kishan aged 59 years, presently working as Fitter General Mechanic (FGM) under Garrison Engineer (South) Bikaner and resident of MES Colony, Bikaner.

.....Applicants.

By Mr. N.K. Khandelwal, Advocate, for applicants.

Versus

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

2- Commander Works Engineer (Air Force), Bikaner.

3- Headquarter Chief Engineer, Military Engineering, Chandi Mandir, Punjab.

4- 369581 Chhagan Lal presently working as Fitter General Mechanic (FGM) C/o Garrison Engineer (Air Force-NAL), Bikaner.

5- 370957 Leeladhar, presently working as Fitter General Mechanic (FGM), C/o Garrison Engineer (Air Force) Suratgarh.

.....Respondents.

By Smt. K. Parveen, Advocate, for Respondents No. 1 to 3.

By Mr. S.K. Malik, Advocate, for Respondents No. 4 and 5.



SP2

ORDER

[PER R.R.BHANDARI, MEMBER (A)]

Shri Chand Mohammed and Shri Sant Lal Thakral, filed OA No. 116/2007 and have prayed for the following reliefs :

- "(i) Permission to file a joint application may be granted.**
- (ii) By an appropriate writ, order or direction, order dated 21.5.2007 (Annex.A/1) may kindly be declared illegal and be quashed and set aside.**
- (iii) By an appropriate writ, order or direction, the respondents be restrained to grant any undue advantage of seniority to the employees who had passed the trade-test of H.S. I after the date of merger (i.e. 1.1.1996).**
- (iv) By an appropriate writ, order or direction the applicants be assigned their due seniority of H.S.II as on 1.1.1996 and they may be placed (considered) for the post of Master Craftsman prior to their contemporaries who are junior as HS II on 1.1.1996.**
- (v) By an appropriate writ, order or direction, the respondents be directed to issue two sets of seniority list i.e. as on 1.1.1996 and on 20.5.2003.**
- (vi) By an appropriate writ, order or direction, the respondents be directed to restore / confirm the seniority list (Annex.A/5) which was issued on 17.5.2004 in true sense of implementation of the restructuring order.**
- (vii) Any other appropriate order or direction which this Hon'ble Tribunal consider just and proper may kindly be passed in favour of the applicants.**
- (viii) Cost of the Original Application may be awarded to the applicants."**

2- Prayer 1 i.e. permission to file joint application has already been granted.

3- Brief matrix of the facts as brought out in the OA, Counter and Rejoinder along with other documents submitted during the course of pleadings are as follows :

4- Ministry of Defence, vide Annex.A/2 dated 20.5.2003 issued a policy directive for re-structuring of cadre of Artisan Staff in Defence

RS

THS

Establishment in modification of the Recommendations of the V Pay Commission. Para 3 (a) (b) (c) (d) & (e) and Para 4 (i) are reproduced below :

"3(a) Wherever the grade structure in the Industrial as well as in the Non-Industrial trades is already existing in the ratio of 65:20:15, in the erstwhile Skilled : HS-II : HS-I, the merger of HS-II and HS-I shall be treated to have come into effect from 1.1.96 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35 (20+15).

(b) The post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

(c) The selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% of 35% of the total) and the placement in this grade shall be w.e.f. 1.1.96 and upto the date of the issue of these orders.

(d) The placement of the individuals in the posts resulting from the restructuring and ratio revision, shall be made w.e.f. 1.1.96, in relaxation of the conditions, if any, i.e. trade test etc., as one time measure.

(e) The above provision may also be made applicable, as a special case, in relaxation of the existing rules / instructions to the employees who have either retired or died after 1.1.96.

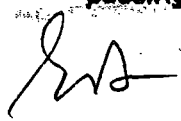
4(i) From the date of issue of these orders, all the trades classified as Skilled (including left out trades) in the Industrial as well as in the non-Industrial Estts. shall now be modified in the following inter-grade ratio :-

- | | | |
|---------------------------------------|--|-----|
| 1. Skilled | (Rs. 3050-4500) : | 45% |
| 2. Highly Skilled | (Rs. 4000-6000) : | 55% |
| 3. Master Craftsman (Rs. 4500-7000) : | 25% of the Highly Skilled Grade posts will be placed in the Grade of the Master Craftsman. They will, however not be a part of the hierarchy." | |

5. Para 3 (d) of this Circular was revised vide Ministry of Defence vide Corrigendum dated 27th March, 2006 (Annex.R/2) Para 2 of this order is reproduced below :-

"Hon'ble Central Administrative Tribunal, Ernakulam in its judgement dated 17.5.2005 delivered in OA No. 882/2003 set aside para 3 (d) of Ministry of Defence letter of even number dated 20.5.2003. In pursuance of Hon'ble Central Administrative Tribunal, Ernakulam directives, para 3 (d) of MOD letter of even number dated 20.5.2003 may be substituted as under :-

"The placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made w.e.f. 1.1.1996, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure. However, the individuals who got promotion by way of passing trade test etc. between 1.1.1996 to 19.5.2003 would be en-



bloc senior to those who got promotion as result of restructuring of cadre in relaxation of conditions of passing trade test etc. Cases of recovery / re-fixation of pay as a result of restructuring of cadre may be settled in the light of said clarifications."

6- To implement the orders of Annex. A/2 (dated 20th May, 2003) the Western Command issued a letter on 29.1.2004 kept at Annex.A/9.

7- Command Works Engineer (AF), Bikaner, issued category-wise seniority list of Highly Skilled I -II vide Annex. A/5 dated 2nd April, 2004, which was cancelled and fresh seniority list issued vide Annex. A/6 dated 17th May, 2004.

8- This matter was also agitated in the High Court for Rajasthan at Jodhpur in D.B.C.Writ Petition No. 1992/2005 by Radhey Shyam Chhipa and five Others challenging the order of C.A.T., Jodhpur Bench dated 14.2.2005 passed in OA No. 134/2004. Hon'ble High Court allowed the Writ Petition and the order of the Tribunal under challenge was set aside and the respondents were directed to give effect to the Seniority List published on 2.4.2004 (Annex.A/5).

9- Similar matter was also agitated in C.A.T. Emakulam Bench in OA No. 882/2003. This resulted in issue of the Corrigendum by the Ministry of Defence in their order dated 27.3.2006 (Annex.R/2). Relevant portion of the Corrigendum was reproduced in para 5 above.

10- The learned advocate for the applicants averred that the applicants were senior to the private respondents as evident from the seniority list brought out in Annex. A/6. Shri Chand Mohd's name



appears at Sl. No. 7 while that of Shri Chhagan Lal is at Sl. No. 10. Similarly Shri Sant Lal Thakral's name is at Sl. No. 30, while Shri Lela Dhar's name is at Sl. No. 104.

11- Shri Chhagan Lal and Shri Leela Dhar passed the selection for H.S.-I on 31.1.2000 as evident from Annex. A/6. During arguments, it came out that Shri Chand Mohammed and Shri Sant Lal Thakral, could not succeed in the selection for H.S.-I though they were called for that selection. This is also evident from relevant entries in the Annex. A/6 giving various dates for all these candidates

12- If we go by Annex.A/2 Para 3 (d), there appears to be some force in the O.A. This Para has since been modified vide Ministry of Defence's Corrigendum dated 27.3.2006 (Annex.R/2). We have to take cognizance of the position as it exists now. For better appreciation, para 2 of this order is again reproduced.

"The placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made w.e.f. 1.1.1996, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure. However, the individuals who got promotion by way of passing trade test etc. between 1.1.1996 to 19.5.2003 would be en-bloc senior to those who got promotion as result of restructuring of cadre in relaxation of conditions of passing trade test etc. Cases of recovery / re-fixation of pay as a result of restructuring of cadre may be settled in the light of said clarifications."

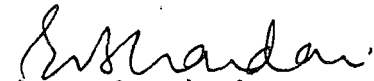
13- A thorough reading of this para makes it clear that the individuals who got promotion by way of passing trade test between 1.1.1996 to 19.5.2003 would be en-block senior to those who got promotion as a result of re-structuring of cadre in relaxation of conditions of passing trade test. S/Shri Chand Mohammed and Sant Lal Thakral, could not pass the trade test for HS-I between 1.1.1996 to 19.5.2003 while the private respondents and many others did so during this period and thus granted higher seniority as per Annex. R/2.

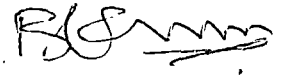
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14- We thus find no error in the impugned order dated 21.5.2007.

The OA is thus having no force and is dismissed with no order as to costs.

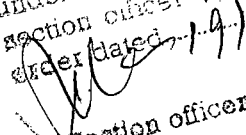

(R.R. Bhandari)
Member (A)


(B.V. Rao)
Member(J)

Rec copy for R-4 L-5

S. K. Mallick
27/5/08

MC
28/5/08
~~28/5/08~~

Kausar Arneer
4/7/08

Part II and III destroyed
in my presence on 15/11/11
under the supervision of
section officer (1) as per
order dated 14/8/2014

Section officer (Records)