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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.105/2009

Jodhpur, this the 18th September, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)

HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Nand Lal s/o Shri Mirchu Mal, aged about 60 years, resident of Rajasthan Housing Board Colony, Qtr. No.2/186, Suratgarh, District Sriganganagar, presently working on the post of Elect. HS in the office of GE Army, Suratgarh, District Sriganganagar.

.....Applicant

Mr.S.K.Malik, counsel for applicant

Vs.

1. Union of India through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, Air Force, Bikaner (Raj.)
3. Garrison Engineer (Army), Suratgarh (Rajasthan).
4. Nathu Ram s/o Shri Surja Ram, aged 53 years, MCM, Electrician in the office of Garrison Engineer (N), Bikaner r/o T-165, MES Colony, Bikaner.

...Respondents

Ms. K.Parveen, counsel for respondents No. 1 to 3

Mr. Vijay Mehta, counsel for respondent No. 4.

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The present application is made against inaction on the part of the official respondents whereby financial benefit w.e.f. 15.10.1984 for promotion as H.S.-II has not been given to the applicant, though

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notional seniority has been given and persons junior to the applicant have been given financial benefits w.e.f. 15.10.1984 as H.S.-II. Therefore, the applicant has prayed that by an appropriate writ, order or direction, the respondents may be directed to release all the financial benefits to the applicant as has been released to Shri Nathu Ram and Ramesh Chand for promotion to the post of Elect. HS-II w.e.f. 15.10.1984 along with arrears and interest @ 9% p.a. with all consequential benefits.

2. Brief facts of the case, as averred by the applicant, are that he was initially appointed on the post of Wireman after due selection in the pay scale of Rs. 260-400 on 6.5.1982. After qualifying the trade test he was promoted to the post of Elect. HS-II w.e.f. 30.11.1992 in the scale of Rs. 4000-6000. One Shri Nathu Ram initially appointed on the post of Chowkidar was appointed as Wireman on 10.11.1982 in the scale Rs. 260-400. The respondent department conducted trade test for promotion to the post of Elect. HS-II wherein applicant along with others i.e. Shri Nathu Ram and Ramesh Chand were declared pass and Shri Ramesh Chand was promoted on the post of Elect.HS-II vide letter dated 31.3.1992. The respondents fixed pay of the applicant as 1230 p.m. on 30.12.1992 and pay of Shri Nathu Ram was fixed as Rs.1200 as on 1.4.1992. Thereafter, the respondents vide PTO dated 30.10.2003 re-designated the post of Elect.HS-II as High Skilled Electrician w.e.f. 1.1.1996 wherein date of promotion of the applicant as Elect.HS-II has been shown as 30.10.1992 and that of Shri Ramesh Chand as 3.12.1992. Subsequently, the respondents vide PTO dated 19.3.2004 amended their earlier order and date of promotion of Shri

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Ramesh Chand, as Elect. HS-II has been changed to 15.10.1984 in the pay scale of Rs. 330-540 and though the applicant is senior to Shri Ramesh Chand, but his date of promotion as Elect.HS-II has not been changed. Shri Ramesh Chand has been given all the arrears of pay and allowances w.e.f. 15.10.1984 and likewise Shri Nathu Ram has also been given the financial benefits of H.S.-II w.e.f. 15.10.1984.

Further, the applicant filed representation before the respondent department on 5.3.2007 and the respondents vide letter dated 25.8.2007 reviewed promotion order to the post of Elect.HS-II and Elect.HS-I and the applicant has been given notional seniority of Elect. HS-II w.e.f. 15.10.1984, Shri Ramesh Chand was given notional seniority of Elect. H.S.-II w.e.f. 15.10.1984 and Shri Nathu Ram was given notional seniority w.e.f. 15.10.1984 and modified to 24.6.1987. The change of date of Shri Nathu Ram as H.S.-II was challenged before this Tribunal and the Tribunal quashed the order and promotion date of Shri Nathu Ram remained the same, even Shri Nathu Ram has further been promoted on the post of MCM w.e.f. 20.5.2003 in the scale of Rs. 4500-7000.

Aggrieved by the action of the respondents not granting monetary benefit w.e.f. 15.10.1984 on the post of Elect. HS-II as given to persons junior to him, the applicant has filed this OA praying for the aforesaid reliefs.

3. The official respondents No. 1 to 3 and private respondent No.4 by way of filing separate replies have denied the right of the applicant. By way of filing reply, respondent No. 1 to 3 have submitted that promotion to the post of Electrician HS granted to the

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applicant earlier was incorrect and illegal as it was done due to ambiguity in policies issued on the subject. Certain litigations have taken place in the promotion of Electrician category. During course of replying to the litigation, HQ CWE (AF) Bikaner, the competent authority has gone through the promotion and policies thoroughly. Accordingly, the case was taken up with higher authorities by HQ CWE (AF), Bikaner vide letter dated 12.5.2007 for review of promotion order to regularize irregularities. On receipt of direction from Army HQE-in-C's branch for review of promotion to regularize the incorrect position, a fresh convening order dated 22.6.2007 was issued to hold DPC to review/refix the seniority of Electric and Linemen etc. and review the subsequent promotion to Electric HS II and HS I issued by CWE-AF, Bikaner. The review DPC finalized and review promotion order was issued on 25.8.2007. The earlier date of HS-II and HS-I in respect of certain individual have been change due to non availability of vacancies/non eligibility for promotion and also due to amendment in the policy, hence the applicant was given revised seniority of Elect. HS-II w.e.f. 23.11.1992 (NS w.e.f. 15.10.1984) vide HQ-CWE-AF Bikaner letter dated 25.8.2007.

Respondent No.4 by way of reply has taken preliminary objection to the effect that the present OA is not maintainable as it suffers with the vice of res-judicata and the applicant is estopped from filing the present OA for the same reliefs for which he had previously filed OA. Further, the applicant is seeking relief after more than 25 years and, therefore, the OA is barred by limitation and that the applicant has not challenged seniority lists and seniority assigned

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to the applicant and till the seniority lists are in existence the seniority of Shri Ramesh Chand and the applicant cannot be changed. The applicant has claimed relief with reference to Shri Ramesh Chand and also filed documents pertaining to Shri Ramesh Chand but has not impleaded him as party-respondent. Respondent No.4 further submitted that the applicant has concealed that he was never promoted to the post of Electrician. According to the provisions contained in the Recruitment Rules 1971, Wireman can be promoted to the post of Electrician after passing trade test. The applicant never passed the trade test but became Electrician because of re-designation made in the year 1987. It is further stated that respondent No.4 passed the trade test on 11.6.1985 for promotion to the post of Electrician and accordingly promoted. In the seniority list dated 6.6.1985, name of respondent No.4 appears at Sl.No.15 while name of the applicant does not find place in this list since he was only a Wireman at that time and was not promoted to the post of Electrician. It is denied that that respondent No.4 is junior to the applicant. It is further submitted that only Shri Ramesh Chand can throw light about his date of appointment, promotion to the post of Electrician and then to HS-II and financial benefits but Shri Ramesh Chand has not been impleaded as party in the OA.

4. Heard the learned counsel for both the parties and perused the material available on record. Counsel for the applicant contended that when similarly situated persons i.e. Ramesh Chand and Nathu Ram have been paid all the arrears of pay and other benefits, there is no ground for not extending the same benefits to the applicant. The

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learned counsel further contended that from perusal of Ann.A/1 to A/12 documents, it is well proved that reviewed promotion to the post of Electric. HS-II and HS-I were ordered on the same terms and conditions as name of Shri Ramesh Chand and of the applicant have been mentioned at Sl.No. 8 and 9 respectively (refer Ann.A/12), therefore, denial of arrears of actual pay and allowances to the applicant is violative of Article 14 and 16 of the Constitution of India and the applicant is entitled to get all the monetary benefits.

5. Per contra, the counsel for respondent No.4 and counsel for respondent No. 1 to 3 contended that Shri Ramesh Chand and Shri Nathu Ram challenged legality of the order Ann.A/12 in which notional benefits were granted by filing OAs before the Central Administrative Tribunal and after being successful in the OAs, instead of notional benefits, they have been extended actual benefits in compliance of the order of the Tribunal and granting notional benefit to the applicant has never been challenged and even in the present OA, the applicant has not challenged legality of the order Ann.A/12 on the ground that granting notional benefit is illegal or irregular. Therefore, the applicant is not entitled to get any relief regarding payment of arrears of actual pay and allowances.

6. We have considered the rival contentions of both the parties. It is admitted fact that the applicant has never challenged legality of the order dated 17.9.2007 (Ann.A/12) before any Court or Tribunal and so far as Ann.A/12 is in existence, the applicant is not entitled to get the benefit of actual pay and allowances w.e.f. 15.10.1984

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because without declaring order Ann.A/12 regarding granting notional benefit to the applicant w.e.f. 15.10.1984 as illegal, this relief cannot be granted by this Tribunal. However, in the interest of justice, we deem it proper to dispose of this OA with certain directions to the respondents in the following manner:-

The applicant is directed to file a detailed representation to the official respondents No. 1 to 3 within 15 days from today and the official respondents are directed to decide the representation in the light of the judgments of this Tribunal or any authority passed in the case of Shri Nathu Ram and Ramesh Chand and pass a reasoned and speaking order regarding the financial benefits as has been released to the above named two persons on promotion to the post of Elect. HS-II within a period of three months from the date of receipt of a copy of this order. So far as interest part is concerned, we are not passing any order to this effect.

7. The OA stands disposed of accordingly with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C. JOSHI)
Judicial Member

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