

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.163/2012

Jodhpur, this the 03rd day of June, 2016

Reserved on 27.05.2016

CORAM

**Hon'ble Sh. U. Sarathchandran, Judicial Member
Hon'ble Ms. Praveen Mahajan, Administrative Member**

Brij Lal S/o Shri Balu Ram, aged about 50 years, R/o village 1 KSR Post Office Ramsara Jakhran, District Sriganganagar (Raj.). Presently working on the post of Elect.(SK) in the office of GE (Army) Suratgarh, District Sriganganagar.

.....Applicant
Mr.S.K. Malik, counsel for applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (AF) Bikaner Rajasthan.
3. Garrison Engineer (Army) Suratgarh, District Sriganganagar, Rajasthan.
4. Shri Mani Ram MES No.367209 Elect.HS II C/o GE (Army) Suratgarh, District Sriganganagar, Rajasthan.

.....respondents

Mr. B.L. Bishnoi, counsel for respondents No.1 to 3.
None present for respondent No.4.

ORDER

Per Sh. U. Sarathchandran

Applicant is aggrieved by denial of promotion to him although he had passed the trade test which was a requirement for promotional post. He was initially appointed as Mazdoor in 1982. T.O. No. 1-.....

test in which he had appeared in 2002 was for promotion to the post of Elect. HS II. In the result of the trade test published on 23.12.2002 respondent No.4 and some others were declared failed. Though the applicant became eligible for promotion, he was not granted promotion by the official respondents. Instead they promoted respondent No.4 and other failed candidates vide Annexure-A/4 order w.e.f. 20.05.2003 against which applicant made representation to the official respondents. The official respondents cancelled the promotion of respondent No.4 vide Annexure-A/5. Thereafter they conducted trade test for Elect. HS II in 2008 wherein respondent No.4 and other earlier failed candidates were declared pass as per Annexure-A/6. Subsequently the official respondents promoted the failed candidates to the post of HS II w.e.f. 20.05.2003 vide Annexure-A/7 order. Applicant again sent representation pointing out that the failed candidates who took the trade test along with him have, now after passing trade test in 2008, granted promotion w.e.f. 20.05.2003 and that his case for promotion has been ignored though he had passed the trade test in 2002 itself. The official respondents sent Annexure-A/8 reply stating that Dayala Ram and Jagdish Prasad have been promoted against reservation quota and that as respondent No.4 was erroneously promoted he was reverted. Again the applicant submitted Annexure-A/9 representation which was forwarded to the authorities vide Annexure-A/10. Thereafter vide Annexure-A/1 impugned order the respondent No.4 had been restored/ reinstated to the promotion post of Elect. HS II w.e.f. 20.05.2003. Being aggrieved by the promotion w.e.f. 20.05.2003 granted to respondent No.4 and other failed candidates of 2002 who passed the trade test

individuals were considered for promotion from Elect. (SK) to (HS) as per seniority roll and reservation roster. According to the official respondents, thereafter the said policy was amended vide Government of India letter dated 27.03.2006 clarifying that the individual who got promotion by way of passing trade test between 01.01.1996 to 19.05.2003 would be *en bloc* senior to those who got promotion as a result of restructuring of cadre in relaxation of the condition of passing trade test. Respondent No.4 and Shri Vikram Singh who were reverted have again been restored as per court order. Aggrieved by Annexure-A/1 order and A/2 communication the applicant has approached this Tribunal seeking relief as under:

- “(i) By an appropriate writ order or direction impugned order dated 08.05.2010 at Annexure-A/1 and impugned order dated 25.07.2011 at Annexure-A/2 qua respondent No.4 be declared illegal and be quashed and set aside.
- (ii) By an order or direction respondents be directed to consider the case of applicant for promotion to the post of Elect. HS II and give him promotion on the said post w.e.f. 20.05.2003 in the pay scale of Rs.4000-6000 with all consequential benefits along with arrears of pay and allowances etc. along with interest @ 18% per annum.
- (iii) Exemplary cost be impugned on the respondents for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.”

2. This OA has been resisted by the official respondents contending that the promotions have been implemented in terms of the Government policy and as per the Government orders issued from time to time. It was clarified in the Government of India letter dated 27.03.2006 that individuals who got promotion by way of passing trade test of HS I category between 01.01.1996 to 19.05.2003 would be *en bloc* senior to those who got promotion as a result of restructuring of cadre in relaxation condition of passing trade test. Accordingly six persons including respondent No.4 were reverted on

promoted as per reservation roster of SC/ST quota. They pray for rejecting prayer of the applicant.

3. We have heard Shri S.K. Malik, learned counsel for the applicant and Shri B.L.Bishnoi learned counsel for respondents No.1 to 3. It is seen from the record that no appearance has been made by respondent No.4 for contesting this OA. The postal endorsement shows that he refused to receive the notice sent to him.

4. At the outset of his arguments learned for the applicant Shri S.K. Malik submitted that the issue involved in this case is covered by a Full Bench decision of this Tribunal in OA No.02/2008 vide order dated 27.03.2012. He further submitted that the legal issue involved in this case was adjudicated by the Ernakulam Bench of this Tribunal in OA No.882/2003 *C.K.Kuriakose v. Union of India & Ors.* But in view of the orders passed by this Tribunal in OA No. 246/2007 (*Vikram Singh v. Union of India & Ors*) decided on 21.11.2008, O.A. No.314/2007 (*Mani Ram & Ors. v. Union of India & Ors.*), decided on 03.12.2008, and O.A. No.312/2007 (*Kashmiri Lal v. Union of India & Ors*), decided on 27.07.2009 there appeared to be a conflict in the position and hence the matter was referred to the Full Bench.

5. Shri Malik further submitted that this bench had passed order in *Samander Singh v. Union of India & Ors.* in O.A. No.275/2009 on 30.03.2011 which was in consonance with the decision of the Ernakulam Bench. The learned counsel pointed out that Hon'ble Rajasthan High Court in DB Civil Writ Petition No.8877/2011 affirmed the decision of this bench in *Samander*

made by the Rajasthan High Court in the aforesaid DB Civil Writ Petition were taken to account by Full Bench of this Tribunal.

6. We have carefully perused the decision dated 27.03.2012 of the Full Bench in OA No.02/2008 (*Gopal Singh & Ors. v. Union of India & Ors*). The Full Bench has given a pen picture of the controversy which unravels the real facts situation involved in the case on hand about which both the parties in the present OA have been quite inarticulate. The Full Bench observed :

"2. The genesis of the controversy was that through its letter No.11(1)/2002-D(Civil-I) dated 20th May, 2003, the Ministry of Defence, Government of India, had ordered a restructuring of the cadre of Artisans staff in Defence Civilian Establishments, in different formations, in modification of the recommendations of the Fifth Central Pay Commission. The Ministry had first accepted the recommendations of the Fifth Central Pay Commission, made in paragraphs 54.16 to 54.18 and para 54.29 of its report. Thereafter, the matter regarding restructuring of all the civilian cadres of Artisans staff in its different formations was considered by the Government of India for quite some time. After such consideration, through the order dated 20th May, 2003, ante dated modification giving effect to the modification w.e.f. 01.01.1996 was ordered in the relevant pay scales, and highly skilled artisans, which earlier were placed in two categories HS-I and HS-II, were ordered to be merged into a single cadre of a Highly Skilled (HS) with the higher pay scale of Rs.4000-6000. Para 3 (c) & (d) of the said order stated as follows:-

“3 (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.01.01.1996 and upto the date of the issue of these orders.

(d) The placement of the individuals in the posts resulting from the restructuring and rate revision, shall be made w.e.f. 01.01.1996, in relaxation of the conditions, if any, i.e. trade test etc., as one time measures.“

3. Prior to that order, during the more than seven years' time period from 01.01.1996 to 20.05.2003, many Artisans, who were earlier in HS-II grade, had passed the prescribed trade test, and had got substantive promotion to HS-I cadre, after passing the trade test. Those among the HS-II cadre Artisans, who had not passed the prescribed trade test, had remained below them. However, the para 3 (d) of this Government instruction regarding restructuring of cadre in modification of the recommendations of the Fifth Pay Commission, effective from 20th May, 2003, was incorporated in the sense as if the merger of H.S.-I and H.S.-II Cadres had effectively taken place as per the respective seniority lists available as on 01.01.1996, with the persons who were in HS-I grade cadre as on that date being maintained

4. This gave rise to the effective annulment or cancellation of the advantage of substantive promotion from H.S.-II grade to H.S.-I grade availed of by those among the HS-II cadre people as on 01.01.1996, who had passed the trade test, and had moved into HS-I in the period of more than seven years which had elapsed in between, by way of a promotion, in their substantive capacity. This modality of placement in the single HS category retrospectively came to be examined by the CAT, Ernakulam Bench in O.A. No.882/2003 C.K.Kuriakose Vs. Union of India & Ors,....."

7. The Ernakulam Bench in *CK. Kuriakose (supra)* held:

"8. In the light of the forgoing discussion, we hold that while the whole of Annexure-A3 may not be bad in law, its application by the respondents, particularly para 3 (d) in the absence of adequate guidelines from the Ministry could lead to disparate readings producing highly dissimilar and discordant effects. We are also of the view that it would be wrong to deprive an employee of the benefit of seniority enjoyed by virtue of regular promotion, by an act of retrospective revision of cadre-structure entailing forfeiture of promotional seniority already availed. Accordingly, we set aside Para 3 (d) of MOD letter No.11(1)2002/D(Civil) dated 20.05.2003 extracted in Annexure A3 and direct the respondents to issue necessary procedural guidelines for uniform compliance by Defence Establishments within a period of three months from the date of issue of these orders and consider the applicant's representation denovo in that light for appropriate speaking orders to be issued within a month of circulation of the guidelines. No order as to costs."

(underlining supplied)

8. The decision of the Ernakulam Bench had indeed forced the Ministry of Defence to make some alterations in the policy vide letter dated 27.03.2006. The relevant part of that letter reads:

"(d)The placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made w.e.f. 01.01.1996, 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 01.01.1996 to 19.05.2003 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."

9. It is worth noticing that in the DB Civil Writ Petition filed by the official respondents against the decision of this Bench in *Samander Singh (supra)* the Rajasthan High Court also has made some significant remarks which indeed had a persuasive effect on the Full Bench of this Tribunal. The

"It is not in dispute that respondent No.1 has successfully passed the trade test 2002. If that is so, then he is entitled to be considered for the promotion and this right of the respondent No.1 cannot be taken away due to making of any new policy, which resulted in introducing some changes in the cadre. If the sole objective for conducting the test was to enable the candidate to become eligible for consideration to promotion, then it has to be brought to its logical end within the framework of the scheme, which governs the cases of promotion of the employees so far as such eligible candidates are concerned....."

10. We note from the *ratio* of the above judicial decisions that the applicant herein who had successfully passed the trade test in 2002 has been wrongly deprived of the benefit of promotion and that he has lost his foot hold on the upward mobility, in the wake of the new policy of cadre structuring and giving retrospective of promotions to the restructured cadre even to those who have not passed any trade test, granting relaxation of passing trade test. This situation has certainly resulted in arbitrariness and unjust deprivation of promotion of the applicant who had passed the trade test and had become eligible long back in 2002. Therefore we are of the view that the case of the applicant squarely falls within the afore quoted situation perceived by the High Court in the aforesaid DB Civil Writ petition in *Samander Singh's* case and also within the *ratio* of the decision of the Full Bench of this Tribunal. Therefore the contention of the official respondents that they have been implementing the directives of the Ministry of Defence and other administrative instructions has no justification for the denial of the applicant's case for promotion for which he has become eligible in 2002 by reason of passing the trade test. Therefore we are of the view that applicant is entitled to enjoy the 'logical end' of the result of the trade test has passed in 2002.

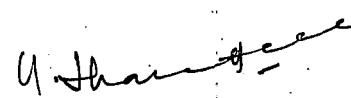
11. Shri Bishnoi, learned counsel for the official respondents strived hard to

granted as per the order of this Tribunal. We feel that the said argument of Shri Bishnoi cannot be accepted in view of the finding of the Full Bench that the decision in O.A. No.314/2007 (*Mani Ram & Ors. v. Union of India & Ors.*) does not lay down good law (paragraph 16 of the Full Bench decision).

12. In the light of the above discussion we hold that Annexures-A/1 and A/2 *qua* respondent No.4 have to be declared illegal and are to be quashed and set aside to the extent of depriving the promotion and seniority to the applicant. We do so. The official respondents are directed to consider the case of the applicant for promotion to the post of Elect. HS II w.e.f. 20.05.2003 as per the ~~then~~ prevailing pay scale with all consequential benefits. However we are not passing any order relating to arrears beyond the period of 3 years from now. Nevertheless this order will be applicable to his increments which would have a cascading effect on the average emoluments to be considered for his pensionary benefits.

The OA is disposed with the aforesaid directions. Parties shall suffer their own costs.


 [Praveen Mahajan]
 Administrative Member


 [U. Sarathchandran]
 Judicial Member