

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 529
T. A. No.

1991

DATE OF DECISION 28.7.92

Smt. T. V. Kunjamma Applicant (s)

Mr. M. Girijavallabhan Advocate for the Applicant (s)

Versus

The Flag Officer Commanding-in-Chief
Headquarters, Southern Naval Command, Respondent (s)
Cochin-4 and others

Mr. K. Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is challenging Annexure-D notification for conducting departmental test for promotion as Assistant Store Keeper, issued by the General Manager, Naval Armament Depot, Alwaye. She also prays for a declaration that those who are qualified in the departmental qualifying examination earlier like the applicant are eligible to get promotion earlier than those who have qualified in the test later.

2. The applicant entered service as unskilled labourer on 9.12.69 in the scale of Rs. 196-332 as a dependant of her father who died while in service. She passed the qualifying test for the post of Asst. Store Labourer (semi-skilled) Hence, she was promoted as Armament Store Keeper (semi-skilled) in the scale of Rs. 210-290 w.e.f. 22.6.85 as per Annexure-A order. By a presidential order, the pay scale of this post

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was revised. Hence, Annexure-B letter was issued to the applicant by which she was given special pay with retrospective effect. On 7.10.1986, the applicant again appeared for departmental qualifying examination for further promotion to the next higher post of Asst. Store Keeper in the NAD Supply organisation. She was successful in the examination. Her name was included in Annexure--C, result of the examination at Sl. No. 30 indicating that she was qualified ^{was not given} but promotion/ ^h ⁿ presumably because she had not completed the requisite period of service in the lower grade. In the mean-time Annexure-D notification was issued proposing another departmental examination before promoting all the qualified candidates who ~~xxx~~ passed in the earlier examination. According to the applicant, this is not permissible under Rules. If this examination is allowed to be conducted, the applicant would be deprived of earlier promotion and seniority. It will adversely affect her service. Hence, she has filed this application under section 19 of the Administrative Tribunals' Act.

3. Respondents filed the reply statement denying all the allegations and averments in the application. They have also produced the recruitment rules for the post of Asst. Store Keeper as amended upto 18th November, 1985. They contended that the applicant has no right to challenge Annexure-D notification and submitted that the application is liable to be rejected.

4. Having heard the arguments of learned counsel on both sides, we are satisfied that the question arising in this case is confined to the interpretation of paragraph 9 & 10 of the Annexure R-1 Recruitment Rules produced by the respondents.

Para 9 & 10 of the Rules is extracted below:

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| "9. Method of recruitment- whether by promotion or by transfer on deputation and percentage of vacancies to be filled by various methods. | i) 25% by promotion
ii) 75% by transfer failing which by direct recruitment |
| 10. In case of recruitment by promotion/transfer/transfer on deputation grades from which promotion /transfer/transfer on deputation to be made. | <u>Promotion:</u> Labourer semi-skilled who have got experience in stores work with 5 years continuous service in the grade after appointment thereto on regular basis who are in |

possession of academic Middle School Standard Certificate, subject to qualifying in a departmental examination.

Transfer:

Persons serving in similar, equivalent or higher grades in the lower formations of the Defence Services and having qualifications specified in column 6. "

These rules do not make provision for earlier promotion of those who have qualified in the earlier examination disregarding the seniority of the employees in the feeder category. So long as there is no rule providing for earlier promotion of departmentally qualified candidates without reference to seniority, the applicant cannot sustain her contentions. On the facts of this case, it would not be proper to direct the respondents to give promotion to the applicant giving preference based on her pass in the departmental examination ignoring the seniority of persons who passed the qualifying examination at a later time than the applicant. The normal rule when there is no special provision providing for the earlier promotion to qualified candidates depending upon the year of passing of the qualifying examination is to fix the seniority in the feeder category and make promotions according to their seniority irrespective of the year of passing of the qualifying examination. The respondents are bound to follow the rules unless there is some special rule or provision directing them to take a contrary view.

5. As per the Recruitment Rules for the post of Asst. Store Keeper, the post is filled 25% by promotion and 75% by transfer failing which by direct recruitment. Semi-skilled labourers who have got experience in the stores work with five years continuous service in the grade after appointment thereto on regular basis who are in possession of academic middle school standard certificate subject to qualifying in a

departmental examination xx according to the rules, are eligible for consideration for promotion. The departmental test is not competitive. It is only qualifying. All persons in the feeder category who have completed the period of probation in the grade are entitled to appear for the test. A test for promotion according to the rules were conducted in 1984, 86 and 87. Persons passed in that examinations are waiting for posting due to want of vacancy. The applicant appeared for the test only after completing one year and six months in the present grade. Hence, she cannot be given a promotion in supersession of the officers who qualified earlier. A senior officer who failed in the earlier examination is entitled to appear in the subsequent tests and in case he passes, he is entitled to be considered for promotion by the DPC. In order to enable such officers to appear for the examination that Annexure-D notification was issued fixing departmental qualifying examination. There is no illegality in conducting such examination under the rules.

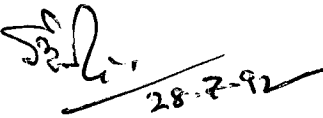
6. The decision cited by the learned counsel for the applicant, Parmod Kumar and others V. Union of India and others, SLJ 1986(1)(CAT) 153 has no application to the facts of this case. The rules referred to in this decision is distinguishable from the rules Annexure R-1 relied on by the respondents in the instant case. Hence, according to us, this decision does not support the contentions raised by the applicant in this case.

7. On a careful consideration of the points raised by the applicant and pressed before us, we are satisfied that the applicant has no genuine grievance to be redressed and there is no valid reason to quash Annexure-D notification challenged in this case.

8. In the result, we see no merit in this application. It is only to be dismissed. Accordingly, we dismiss the same but without any order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

28.7.92


(S. P. MUKERJI)
VICE CHAIRMAN

28.7.92

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