

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 554/89
T. No. 199

DATE OF DECISION 31.1.1 991

V.O.Thomas and 6 others Applicant (s)

M/s.M.R.Rajendran Nair,P.V.Asha Advocate for the Applicant (s)

Versus

The Engineer in Chief, Respondent (s)

Army Head Quarters,
D.H.Q.P.O,New Delhi and 3 others

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

CORAM:

The Hon'ble Mr. S.P.Mukerji,Vice Chairman

&

The Hon'ble Mr. A.V.Haridasan,Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

In this application dated 8.9.1989 filed under Section 19 of the Administrative Tribunals Act, the seven applicants who have been working as Refrigeration Mechanics,Highly Skilled Grade II under the Garrison Engineer,M.E.S, Naval Base, Cochin, have challenged the impugned order dated 1st June 1989(Annexure-III) to the extent it reverts the applicants from the Highly Skilled Grade II to Ordinary Grade with effect from 15th October 1984. The brief facts of the case are as follows.

2. The applicants except the 6th applicant were promoted to the cadre of Highly Skilled Grade II with effect from 15.10.84. The 6th applicant was promoted on 27.10.85. 20% of the posts of Refrigeration Mechanics were upgraded to H.S Grade II and it was agreed between the Unions and the Government that as a one time measure workmen will be promoted to H.S II against the 20% upgraded posts strictly on the basis of seniority with one time exemption from passing the trade test. The applicants were, accordingly, promoted

without passing the trade-test to H.S II on the basis of the aforesaid agreement with the Union. The promotion of the applicants before us were challenged by thirteen Refrigeration Mechanics in O.A 174/87 in which the applicants before us were respondents No.4,5,6, 8,9, 10 and 11 in that case. The promotions were challenged in that case on the ground that the applicants before us had been transferred to Cochin Base at their own request and therefore, their past service outside Cochin Base should not be counted in the seniority unit of Cochin and they would, thus, be junior to the thirteen applicants in O.A 174/87. By the order dated 28.2.89 in that case this Tribunal to which one of us was a party, passed the following operative order.

"In the facts and circumstances we allow the application and set aside Annexure-VI and Annexure-VII in so far as they make the principles of seniority given in CPRO 73/73 and 11/75 applicable only to cases of transfer with effect from 16.12.1985 and direct that CPRO 73/73 and 11/75 are to be made applicable to persons transferred after 1st July, 1973. We further direct that the seniority of Respondents 4 to 13 in the CWE area at Cochin should be re-determined on the basis ~~sof~~ of the date of their joining the Cochin area and promotions given to them as against the applicants be reviewed on the basis of their revised seniority in accordance with the rules and instructions governing such promotions. Since Respondents No.4 to 13 had discharged the duties of the higher posts, in case they are to be reverted no recovery of excess payment should be made. If the applicants are promoted on the basis of the review as directed above, they should be promoted notionally with retrospective effect from the date their immediate juniors were promoted and their pay in the higher grade fixed by counting the period of their notional promotions for increments, but without payment of arrears of past salary and allowances. The respondents are directed to complete action on the above lines within a period of three months from the date of communication of this order".

It was held by the Tribunal that the applicants before us would not be entitled to reckon their previous service outside the Cochin seniority unit for the purposes of seniority and directed the respondents to re-determine the seniority of the applicants in the Cochin unit on the basis of their date of joining at Cochin and review the promotions given to them against the 20% upgraded posts on the basis of revised seniority. A copy of the judgment is at Annexure-II. In implementation of this judgment the impugned order was passed reverting the applicants to the Ordinary Grade of Refrigeration Mechanics in order to accommodate their seniors in accordance with the revised seniority.

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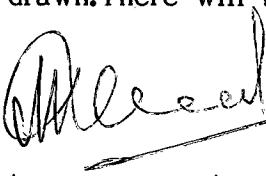
The applicants' contention is that their seniority was reviewed in a hasty manner without publishing the provisional seniority list and hence their order of reversion at Annexure-III based on the changed seniority is illegal. The applicants were fully qualified for H.S Grade II and since they were not transferred to Cochin unit on compassionate grounds their seniority should not have been downgraded. It is also contended that this Tribunal in the aforesaid order did not order reversion, but re-determination of seniority.

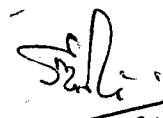
3. In the counter affidavit the respondents have stated that with effect from 15th October 1984 under the 3-grade structure in the existing trades, the Government in the Ministry of Defence authorised a strength of 22 posts of Refrigeration Mechanics in H.S II and accordingly by the order dated 30th August 1986, 20 Skilled Refrigeration Mechanics including the applicants were upgraded to H.S Grade II without passing the trade-test as per exemption allowed by the Government as a one time relaxation. In compliance with the order of this Tribunal dated 28th February, 1989 in O.A 174/87 this order was quashed and a fresh upgradation order of 20 individuals was issued on 1st June 1989 based on revised seniority. Since the applicants before us were rendered junior, they could not be included in the upgradation order. They have also indicated that filling up of further vacancies in H.S II could not be done as persons who had passed trade-test were not available.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the applicants fairly argued that the applicants have no grievance against the promotion of their seniors in the revised seniority list who were applicants in O.A 174/87 in compliance with the order of this Tribunal dated 28.2.89 in ~~that case~~ ^{that case} ~~O.A 174/87~~ According to him the applicants would be satisfied if for future vacancies in H.S II to which cadre they had been promoted with effect from 15.10.84/27.10.85 but had to be reverted in 1989 under orders of the Tribunal but were allowed to retain the pay in H.S II drawn by them, they are considered on the basis of the revised seniority, but they

may not be required to pass the trade-test. It is admitted fact that the applicants before us had been working as Refrigeration Mechanics from dates earlier than the dates when the applicants in O.A 174/87 were so appointed. It is because of their transfer on ~~the~~ ^{their} request to Cochin seniority unit that they had to lose the benefit of their previous service for the purpose of seniority. They had been granted exemption from passing the trade-test for promotion to H.S II in which grade they had been working satisfactorily till 1989 when they were reverted because of the loss in their seniority. They have been allowed to retain the higher ^{pay} that they have been drawing between 1984 and 1989. In equity, therefore, we feel that at this late stage ^{when} ~~they~~ ⁱⁿ have undergone reversion to the lower grade, it will be adding insult to injury if they are required to pass the trade-test for re-promotion to H.S II which they have been enjoying for about five years. There ^{by their being exempted from passing the trade-test,} will not be any adverse effect on the efficiency of the unit where ^{their previous} they are working because their performance as Refrigeration Mechanics H.S Grade II till 1989 has been above reproach.

5. In the facts and circumstances we dispose of this application with the only direction that the applicants should be considered for promotion to H.S Grade II on the basis of their revised seniority when their turn comes without insisting upon their passing the trade-test as if the exemption granted to them earlier has not been withdrawn. There will be no order as to costs.


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 (A.V. Haridasan)
 Judicial Member


 31.1.91
 (S.P. Mukerji)
 Vice Chairman