

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 563 of 1991
T. A. No.

DATE OF DECISION 9-4-1992

PK Ashokan

Applicant (s)

Mr M Rajagopalan

Advocate for the Applicant (s)

Versus

Commander Works Engineer Respondent (s)
(MES), P.O. Naval Base, Cochin & another

Mr P Sankarankutty Nair, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. AV HARIDASAN, 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 AV Haridasan, Judicial Member)

The applicant, an Electrician working under the Garrison Engineer has filed this application praying that the respondents may be directed to effect his promotions w.e.f. 29.8.1990 along with others, in accordance with the seniority list published by them at Annexure-A1, to declare that he having appeared and passed the HS Grade-II test on his own right, he is entitled to be promoted in accordance with the original seniority unaffected by the delay in announcing the result and for a further direction not to post out the applicant on the ground that there is no vacancy, as all the

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vacancies have already been filled by Annexure-A5 order.

It is further prayed that it should be declared that the applicant is not the juniormost HS-II Electrician though he was promoted only later.

2. The dispute in this case has now narrowed down to a very limited extent since after the filing the OA, the applicant has been promoted as Electrician GR-II and posted in Cochin itself. A copy of the order dated 14.6.1991 issued by the Garrison Engineer promoting and posting the applicant at Cochin has been produced for our perusal by the learned counsel for the applicant. What now remains to be considered is whether the applicant is entitled to have any date of promotion anterior to the date assigned to him in the order produced by him. The applicant and several other persons seniors as well as juniors participated in a qualifying trade test for appointment to the post of HS Gr.II. According to the method of promotion to the post from among those who qualify in the trade test, the seniority should be the criterion, normally, the applicant should have been promoted along with others who participated in the selection test. But his promotion was delayed because the applicant's result in the examination was not placed before the DPC. The reason why the result was not placed before the DPC was that in an earlier application, OA-704/89, the applicant had filed an M.P. seeking permission to appear in the test without prejudice to his right for promotion even without appearing for a

test and in that M.P. this Bench had issued an order directing the respondents that the applicant should also be allowed to participate in the trade test and that his result should not be announced without taking further orders from the Tribunal.

The Department took this clause in the order to see that the applicant was not considered by the DPC while all others who had passed in the test along with the applicant were considered and promoted. The result of the applicant in the examination was not brought to the notice of the DPC at all. But later, after this application has been filed, OA-704/89 was disposed of with a direction to the respondents to consider the claim of the applicant on the basis of the examination on his own right and the respondents convened a DPC and promoted the applicant to the Grade HS-II. But that was done about three months later than the promotion of the other persons who appeared in the test along with him. This has caused considerable prejudice to the applicant in the matter of seniority. Since the applicant was entitled to be promoted on the basis of his seniority on his qualifying in the examination, he would have been placed above the person junior to him in the lower cadre as reflected in Annexure-A1 seniority list. But on account of his late promotion, the applicant would now be junior to such persons. The only contention of the respondents is that since the results of the applicant was not announced in obedience to the direction contained in the order of the Tribunal in OA-704/89, his case could not be placed before the

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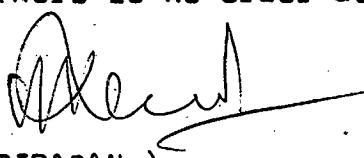
OPC which considered the case of the other persons for promotion and that as the applicant has been considered and promoted subsequently after disposal of the OA-704/89, the applicant cannot have any legitimate grievance.

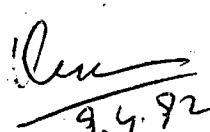
3. We notice that there is a grievance for the applicant in regard to the question of seniority. Since the applicant has participated and qualified in the qualifying examination along with other persons, he is entitled to be promoted on the same date w.e.f. the date on which the other persons were promoted and also to be placed above his juniors in the seniority list at Annexure-A1.

4. In the result, the application is disposed of with the following directions:

The respondents are directed to give the applicant the date 29.8.1990 as the date of his promotion to the cadre of Electrician HS-II and to assign him appropriate place in the seniority list of Electrician HS-II above his juniors in Annexure-A1 seniority list. Action on the above lines should be completed within a period of three months from the date of communication of this order.

5. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


9.4.92
(NV KRISHNAN)
ADMVE. MEMBER

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