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(P.C. 1972) RULES

- CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.817/97 and O.A.64/98

Wednesday, this the 7th day of February, 2001

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

(I) O.A.No.817/97

1. B. Sreedharan Nair, S/o Bhaskara Pillai,
Offset Machine Assistant,
Government of India Press, Koratty.
2. C.K. Vivekanandan, S/o Krishnan,
Offset Machine Assistant,
Government of India Press, Koratty.

Applicants

By Advocate Mr Babu Karukapadath

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Urban Development,
New Delhi.
2. Director of Printing,
Ministry of Urban Development,
Government of India,
R-Wing, Nirman Bhavan,
New Delhi-11.
3. The Manager,
Government of India Press,
Koratty.

Respondents

By Advocate Ms. P. Vani, Addl.CGSC.

(ii) O.A.No.64/98

C.K. Vivekanandan, S/o Krishnan,
Offset Machine Assistant,
Government of India Press, Koratty.

Applicant

By Advocate Mr Babu Karukapadath.

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Urban Development,
New Delhi.

Contd..2

2. Director of Printing,
Ministry of Urban Development,
Government of India,
R-Wing, Nirman Bhavan,
New Delhi-11.
3. The Manager,
Government of India Press,
Koratty.
4. C.S. Viswambaran,
Offset Machine Assistant,
Government of India Press,
Koratty.
5. M.A. Thomas,
Offset Machine Assistant,
Government of India Press,
Koratty.
6. A.P. Vincent,
Offset Machine Assistant,
Government of India Press,
Koratty.
7. V.V. Mohandas,
Offset Machine Assistant,
Government of India Press,
Koratty.
8. A.J. Paulose,
Offset Machine Assistant,
Government of India Press,
Koratty.
9. K.G. Chandrasekharan,
Offset Machine Assistant,
Government of India Press,
Koratty.

Respondents

By Advocate Ms. P. Vani, Addl. CGSC for R 1 to 3.
By Advocate Mr M.R. Rajendran Nair for R 4 to 9.

The Application having been heard on 21.12.2000,
the Tribunal delivered the following on 07-02-2001.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

. Applicants in O.A.817/97 seeks to declare that they are fully qualified and eligible to be promoted as Offset Machine Man in Government of India Press, Koratty, to direct the respondents to conduct trade test for the 2nd applicant and to promote them as Offset Machine Man with retrospective effect

from 6.4.1996 and 3.10.1996 respectively, and to promote them by restoring the degraded post of Offset Machine Man to its original grade

2. Applicants say that the first applicant was appointed as Offset Machine Attendant in Photo Litho Wing of the Government Press Koratty on 7.4.1983. Second applicant joined duty as Offset Machine Attendant in the said Wing of the Press on 4.10.1983. Though they became qualified for promotion as Offset Machine Assistant in the year 1986 on completion of three years of their service, they were not promoted as Offset Machine Assistant. The first applicant was promoted as Offset Machine Assistant with effect from 30.8.1990 and the second applicant with effect from 28.6.1991. One P.S. Asokan was also appointed as Offset machine Attendant on 7.4.1983. He was also promoted as Offset Machine Assistant along with the applicants. As per the Recruitment Rules, the first applicant along with P.S. Asokan became fully qualified and eligible for promotion as Offset Machine Man on 6.4.1996 and the second applicant on 3.10.1996. Asokan was promoted as Offset Machine Man immediately after 6.4.1996. Applicants were not promoted as Offset Machine Man. There are eight vacancies of Offset Machine Man in Photo Litho Wing of the Press. Applicants submitted representations to the third respondent requesting to promote them as Offset Machine Man. Their request was turned down. A1 is the order of the third respondent issued to the second applicant turning down the request for promotion. There is no reason to refuse to promote the applicants. The first applicant was trade tested on 18.6.1996. No trade test was conducted for the second applicant.

3. Respondents resist the O.A. contending that for promotion to the post of Offset Machine Man as per the Recruitment Rules which came into effect from 14.9.1993, the vacancies are to be filled (1) 50% by promotion failing which by deputation, (2) 25% by direct recruitment failing which by promotion and (3) 25% by transfer failing which by direct recruitment failing which by promotion. Appointment by promotion in this case is to be made by 'selection' method by the Departmental Promotion Committee (DPC) as provided in the Recruitment Rules. Asokan being the seniormost Offset Machine Assistant was promoted as Offset Machine Man with effect from 21.6.1996 in his due turn against a regular vacancy after his selection and empanelment by the DPC. As regards eligibility for promotion as per the Recruitment Rules, Offset Machine Assistant with 7 years regular service in the grade, subject to qualifying in the trade test, failing which Offset Machine Assistant with 13 years combined service in that grade and in the grade of Offset Machine Attendant, subject to qualifying trade test failing both Offset Machine Attendant with 13 years regular service in the grade subject to qualifying in trade test can be considered by the D.P.C for empanelment against the vacancies in the grade, provided there exists the administrative need to fill up these vacancies. Merely because applicants are completed 13 years combined service in the said two grades even when not having been trade tested for the post of Offset Machine Man, the statement of the applicants that they became fully qualified for promotion on 6.4.96 and 3.10.1996 is incorrect. The first applicant is at Sl.No.1 and the second applicant is at Sl.no.15. They are to be considered in their turn and against the vacancies for the post of Offset Machine Man. It is not correct to say that eight vacancies are

available. As per order of this Tribunal, R4 order was issued. Ever since modernization the Press had assumed the single status of Photo Litho Press. No order like A1 was issued to the first applicant. The post of Offset Machine Man is the selection post. The zone of consideration for filling up one post is five. Since the first applicant had completed the requisite years of service on 19.6.96, he was subjected to trade test. Second applicant was not subjected to trade test along with P.S. Asokan as neither his seniority position was within the zone of consideration nor he completed the requisite years of service on 19.6.1996. Trade test is not conducted a routine affair. It is conducted only when there are vacancies against which promotion is required to be made in the immediate future. The first applicant was later promoted to the post of Offset Machine Man on ad hoc basis with effect from 29.8.1997 against a vacancy occurred due to deputation of one of the regular incumbents. The second applicant's trade test will be done at the appropriate time. Eight posts of Offset Machine Man have been filled up in the lower grade of Offset Machine Assistant at the time of adjustment of staff who had become redundant in the Machine Section due to modernization. All these appointments are still continuing and will have to be reversed in due course without disturbing the ratio between Machine Man and Machine Assistant as per staffing norms approved for the purpose. It is for the employer to decide whether or not some posts under his control are to be filled up considering various administrative constraints and exigencies.

4. Applicant in O.A.64/98 seeks to declare that he was entitled to be promoted and posted as Offset Machine Assistant in Photo Litho Wing of the Government of India Press, Koratty,

in preference to the respondents 4 to 9, to set aside A2 to the extent it posts the respondents 4 to 9 as Offset Machine Assistants in Photo Litho Wing with effect from the date prior to the date of his promotion and posting as Offset Machine Assistant, to declare that the posting of respondents 4 to 9 as Offset Machine Assistants in Photo Litho Wing with effect from the date prior to his promotion and posting as Offset Machine Assistant is illegal, to set aside A4 seniority list to the extent it places him below respondents 4 to 9 and to direct the respondents to place him above respondents 4 to 9 and also to conduct the trade test for him apart from directing respondents 1 to 3 to promote him as Offset Machine Man in preference to respondents 4 to 9.

5. Applicant says that he was initially appointed as Offset Machine Attendant in Photo Litho Wing of the Government of India Press, Koratty on 4.10.1983. There were only four Machine Assistants in the Photo Litho Wing in the year 1983 and thereafter. All of them completed the minimum period of three years of continuous service for promotion to the post of Machine Assistant. Though there were two vacancies of Machine Assistants in Photo Litho Wing in the year 1986, the trade test of those four persons including the applicant was not conducted by the department and no promotions were made. Two posts of Machine Assistant were lying vacant in the Photo Litho Wing. Meanwhile, A1 Recruitment Rules were brought into force by which the post of Machine Assistant was redesignated as Offset Machine Assistant. While so, two more vacancies of Offset Machine Assistant arose in Photo Litho Wing on 28.6.1991. Those posts were filled up illegally with persons from the Letter Press under modernization. Posting of those persons as

Machine Assistants was set aside by the Tribunal as per order in O.A. 925/93 filed by the applicant and others. Seven more vacancies of Machine Assistants also arose in Photo Litho Wing. Those vacancies were down graded as there were no eligible persons in the feeder category. Third respondent issued order dated 13.2.1996 regularly promoting the applicant as Offset Machine Assistant with effect from 28.6.1991. Respondents 4 to 9 were promoted as Offset Machine Assistants with effect from 31.8.1990. Certain persons in the Letter Press Wing challenged the promotion of the applicant and certain others by filing O.A.321/96. That O.A. was disposed of holding that 50% of the vacancy of Offset Machine Assistants arising in photo Litho Wing is to be filled from among the Offset Machine Attendants of the Photo Litho Wing as per Recruitment Rules. While so, respondents 4 to 9 were given promotion as Offset Machine Assistants with effect from 31.8.1990 as per A2. Applicant submitted a representation to rectify the mistake in A2. A common seniority list of the Machine Assistants was published by the 3rd respondent on 27.6.1997. As per the said seniority list, applicant is placed at Sl.No.15 while respondents 4 to 9 are placed at Sl.No. 9 to 14 which is illegal. Applicant completed the minimum number of years for promotion to the post of Offset Machine Man on 3.10.1996. Respondents 1 to 3 did not conduct trade test and promote him. So, he filed O.A. 817/97 before this Bench of the Tribunal. Respondents 1 to 3 have conducted the trade test for respondents 4 to 9 and are attempting to promote them to defeat the legitimate right of the applicant.

6. Official respondents resist the O.A. contending that A5 in O.A. 321/96 is A2 herein. A2 was passed in compliance with the directions of this Tribunal in O.A. Nos. 696/94, 1737/94, 983/91, 1664/94 and 991/91. It was found by this Tribunal that the 6th respondent in O.A. 321/96 was promoted correctly in the year 1990 and A5 was correctly passed. The 6th respondent therein is the applicant herein and he is challenging the very same order in this O.A. The applicant's position was below respondents 4 to 9 from the very beginning. Persons upto Sl.Nos.14 were promoted as Offset Machine Assistants on 31.8.90 and the applicant on 28.6.91. Applicant was appointed in the Press as Offset Machine Attendant with effect from 4.10.83 against a post in the Photo Litho Wing had the claims for promotion to the post of Offset Machine Assistant which was created in the then Photo Litho Wing in the year 1981. Two posts fell under promotion quota were filled up promoting Asokan and Sreedharan Nair on 30.8.90 and thereafter Balan and Chacko were promoted to the next higher post of Machine Man with effect from 27.6.91. As such two vacancies in the grade of Offset Machine Assistant occurred and out of these two posts, one post falling in promotion quota was filled by promotion by the applicant with effect from 28.6.91. This position was upheld by this Tribunal in O.A. 925/93. Applicant has no claim for promotion to the post of Offset Machine Assistant from a date prior to 28.6.91. The contention of the applicant that the post of Offset Machine Man was down graded since 25.11.92 is baseless.

7. Respondents 4 to 9 contend that they were promoted as Machine Assistant in the Letter Press since 1983. In the case of Letter Press under modernization 100% transfer from Machine

Assistant in Letter Press with 3 years service in the grade who have successfully undergone a course of training for a period of six months in offset technology and have qualified in trade test is permissible.

8. We shall first deal with O.A. 64/98.

9. According to applicant, official respondents should have placed him in the seniority list (A4) above respondents 4 to 9. He also says that respondents 1 to 3 published A4 seniority list without publishing a draft seniority list and without giving any opportunity to file objection to the seniority list. R11 dated 10.7.97 says that the seniority list as on 31.12.96 of all posts in the Press is published and copy is available with T.K. for reference and complaints, if any, should be lodged within one month from the date of publication after which no complaints will be considered. A4 is the seniority list as on 31.12.96. R11 also says that employees should be allowed to verify the same. There is no rejoinder filed to the version in the reply statement of the official respondents that seniority list showing the position as on 31.12.96 (A4) was published as per office circular dated 10.7.97 (R11) and directed to lodge any discrepancy to the Manager within one month of its publication. So, the stand of the applicant that official respondents did not give any opportunity to him to file objection to R4 is totally incorrect.

10. As per A4, the seniority position of the applicant is at Sl.No.15. This is a case where the seniority list was circulated and opportunity was given to file objections to those who are aggrieved and the applicant has not raised any objection to the seniority list.

11. Applicant has admitted that certain persons in the Letter Press Wing challenged the promotion of the applicant and others by filing O.A.321/96. That O.A. was disposed of thus:

"To some up, we hold that respondents 4,5 and 6 were rightly promoted after they became eligible for promotion against vacancies for which they were in the feeder category in the Recruitment Rules as amended in 1990 and that applicants have no claim to those vacancies which arose in the Photo Litho Wing and so, could not be filled by transfer from Letter Press. In that view, the impugned orders A5 have been correctly passed as far as the applicants and respondents 4,5 and 6 herein are concerned."

12. It is also stated in the said ruling that:

"We notice from A5 that they were promoted only on 30.8.90 and 28.6.91, after they had passed the trade test. We see no reason to interfere with their promotion."

13. A5 in the said O.A. is A2 herein. The applicant herein is the 6th respondent in O.A. 321/96.

14. From the judgment in O.A.321/96 it is seen that the learned counsel appearing for respondents 4,5 and 6 therein submitted that the Tribunal in O.A.925/93 had found them eligible for promotion in 1986 subject to qualifying in the trade test which they did in 1990 and their promotion against vacancies which arose in their wing and which were not vacancies created as a result of modernization to absorb surplus Letter Press personnel, were rightly filled by

promoting respondents 4,5 and 6 who were in the feeder category for such vacancies. So, it is quite evident that the applicant herein who is the 6th respondent in O.A. 321/96 fully supported A2 herein which ^{is} A5 in O.A.321/96. A5 order which was fully supported by applicant herein in O.A.321/96 and was held as one correctly passed as far as the applicant and respondents 4,5 and 6 therein now says that the very same order which is A2 herein should be set aside. Since the applicant herein was a party to O.A.321/96 and A2 order herein was held a correct and as one correctly passed in O.A. 321/96, the applicant now cannot turn round and say that the same is to be set aside. The whole case of the applicant is based on the ground that respondents 1 to 3 should have placed him in the seniority (A4) above respondents 4 to 9. Respondents 4 to 9 were given promotion as Offset Machine Assistants with effect from 31.8.90 as per A2. Applicant was promoted on 28.6.91. As the promotion of the applicant on 28.6.91 was found to be without any reason to interfere with by this Bench of the Tribunal in O.A.321/96, the applicant cannot challenge the same now.

15. Applicant having not filed any objection to A4 seniority list cannot now come forward and say that it should be set aside to the extent it places him above Respondents 4 to 9.

16. The last prayer is to direct respondents 1 to 3 to conduct a trade test of the applicant and further to direct respondents 1 to 3 to promote him as Offset Machine Man in preference to respondents 4 to 9 in Government of India Press, Koratty. The very same applicant along with another person has already filed O.A.817/97. In that O.A. the second relief is

to direct the respondents to conduct trade test for 2nd applicant and to promote the applicants as Offset Machine Man with retrospective effect. The second applicant in O.A.817/97 is the sole applicant in O.A. 64/98. He cannot seek the same relief in both the O.As. Respondents 1 to 3 in O.A. 64/98 are the respondents in O.A. 817/97.

17. In the said situation O.A. 64/98 is liable to be dismissed

18. applicants in O.A.817/97 say that the first applicant became qualified for promotion as Offset Machine Man with effect from 6.4.96 and the second applicant with effect from 3.10.96 and the refusal of respondents to promote them as Offset Machine Man from the said dates is illegal and arbitrary. As per the Recruitment Rules promotion to the post of Offset Machine Man is made by selection method. The zone of consideration, respondents say, is $2x + 4$ where x is the number of vacancies and as such the second applicant whose position in the seniority list is 15th will not come in the zone of consideration. In the light of the findings in O.A.64/98 the second applicant's position in the seniority list is at Sl.No.15. Applicants are not entitled to get promoted as Offset Machine Man as soon as they complete 13 years of combined service in the grades of Offset Machine Attendant and Offset Machine Assistant. The first applicant has been trade tested, but ^{not} the second applicant. It is not that when requisite number of years of service has been put in, one is entitled to get trade tested. It is only when vacancies are available and one is within the zone of consideration.

19. According to applicants there are eight vacancies of Offset Machine Man in the Government of India Press, Koratty and there is no reason for respondents to refuse to promote them as Offset Machine Man in those vacancies. Respondents say that eight posts in the grade which remained unfilled for want of eligible persons under redeployment scheme have been filled up in the lower grade of Offset Machine Assistant under G.F.R.77 by transferring the Machine Assistants of erstwhile Letter Press technology against 100% transfer method as provided in the Recruitment Rules. As per the Recruitment Rules only 50% of the vacancies are filled up by promotion. The remaining 50% of the vacancies are to be filled up by (i) 25% by direct recruitment failing which by promotion and (ii) 25% by transfer failing which by direct recruitment failing which by promotion. There is ban on direct recruitment and therefore, alternate method of promotion cannot be resorted before attempting direct recruitment. So, if those adjustment appointments are reversed for making regular appointments now, only four posts can be filled up by promotion. Respondents also say that all posts of Offset Machine Man falling in promotion quota out of eight posts filled in the lower grade under GFR-77 will be considered by the Departmental Promotion Committee for empanelment of eligible persons as per selection method.

20. Applicants also say that few vacancies of Offset Machine Man are filled up by the respondents degrading the posts by posting Offset Machine Assistants as there were no qualified hands to be appointed as Offset Machine Man at the time of occurrence of vacancies and as there are qualified

hands now to be appointed as Offset Machine Man, the respondents are duty bound to restore the grade of those posts in its original position and to fill up accordingly.

21. As already stated just because the applicants have completed the requisite number of years of service they are not entitled as of right to get promoted. According to respondents, eight posts of Offset Machine Man have been filled up in the lower grade Offset Machine assistant at the time of adjustment of staff who had become redundant in the Machine Section due to modernization and all these appointments are still continuing and will have to be reversed in due course without disturbing the ratio between Machine Man and Machine Assistant as per staffing norms approved for this purpose, the stand of the respondents appears to be correct.

22. Another ground raised by the applicants is that since trade test is deliberately delayed by the respondents, the second applicant is to be declared to have passed the trade test on the date he has completed 13 years of combined service. As already stated it is not a matter of conducting trade test on regular intervals. It is only as and when vacancies are available and that too only for those who are in the zone of consideration. What is the legal basis of the second applicant to get the declaration that he is to be taken as passed and trade tested on the day he has completed 13 years of service is not known. No legal basis is stated on this aspect.

23. It is for the administration to decide whether the posts are to be filled up considering the administrative exigencies. Applicants cannot dictate the respondents to fill up vacancies.

24. Learned counsel appearing for the applicants drew our attention to the ruling in Padmanabhan Nair Vs. Deputy Director, 1991 (1) KLT 337, wherein it has been held that:

"When qualifications are prescribed for a promotion post, eligibility for appointment to that post has to be reckoned with reference to the date on which the vacancy arose, that if there was a qualified hand, on that date, in the feeder category, he is entitled to be considered for appointment to the post in preference to his unqualified seniors, that the date on which the appointment is actually made is immaterial as the title to the appointment arises on the date of occurrence of the vacancy and is not defeated by the acquisition of qualifications by a senior thereafter."

25. Here it is a selection post. This ruling applies only to those who are qualified as on the date on which vacancies arose.

26. In R.B. Desai and another Vs. S.K. Khanolkar and others, (1999) 7 SCC 54, it has been held that:

"If on the date of consideration, the appellants did not have the eligibility then certainly it is the first respondent who ought to have been considered for the said promotion and if he was so promoted earlier than the appellants he would have acquired a higher ranking in the seniority list of ACFs."

Here is the case that the second applicant is not having the eligibility since he has not undergone the trade test.

27. A1 says that the second applicant will be considered for promotion at the appropriate time. There is no challenge against A1. When A1 is not under challenge, it is only to be

taken that the second applicant is accepting A1. When he had accepted A1, he will be considered only at the appropriate time.

28. Applicants have not succeeded in establishing that they are entitled to the reliefs sought for. Accordingly, both the Original Applications are dismissed. No costs.

Wednesday, this the 7th day of February, 2001

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.M.SIVADAS)
JUDICIAL MEMBER

P.

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

O.A.817/97

A1: Photostat copy of order No.23011/1/561/83/EI/6162 dated 3.2.97 issued by the 3rd respondent.

R4: True copy of order No.168(F.No.16011/43/95/EI) dated 13.2.96 issued by the Manager, Govt. of India Press, Koratty.

O.A.64/98

A1: True copy of the Recruitment Rules as amended with effect from 17.3.90 by the Department dated 17.3.90.

A2: True copy of the Order No.168(F.No.16011/43/95/EI) dated 13.2.96 issued by the 3rd respondent. (Also as A5 in O.A.321/96).

A3: True copy of the representation dated 24.4.96 submitted by the applicant to the 3rd respondent.

A4: True of the Seniority list of Offset Machine Assistant as on 31.12.96 published by the 3rd respondent.

A5: True copy of the order No.16011/GO/97/Estt.I dated 11.11.97 published by the 3rd respondent.

R11: True copy of order of Govt. of India Press, Koratty, Circular No.44 dated 10.7.97.