

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

78 of 199 2.

DATE OF DECISION 02-11-92

A.A. Manoharan

Applicant (s)

Mr.K.Balakrishnan

Advocate for the Applicant (s)

Versus

Union of India rep.by Secretary to
Govt., Ministry of Defence
New Delhi and others

Respondent (s)

Mr.George CP Tharakan, SCGSC

Mr.Ashok M Cherian (R6) (not present)

Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. A.V.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? Yes
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

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

In this application dated 9th January, 1992 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as Electrician (Skilled) in the Naval Base, Cochin has prayed that the impugned order dated 11.1.91 (Annexure-9) rejecting the applicant's representation on the ground inter-alia that the benefits flowing from the judgment of the Tribunal dated 18.10.90 in O.A.733/89 cannot be made applicable to other employees of similar nature, should be set aside and the respondents directed to promote him with effect from the date the 6th respondent was promoted as Electrician H.S.I.

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2. The brief facts of the case are as follows. The applicant joined M.E.S. as Wireman on 13.12.71 and after passing necessary trade test was promoted as Electrician on 25.1.79. For promotion to the next grade of Charge Electrician the applicant passed the trade test on 10.11.80. In 1986 the three grade structure was introduced with effect from 1984 whereby the post of Electrician was re-designated as Electrician (Skilled) and Charge Electrician was re-designated as Electrician H.S.Gr.I and ^{an} intermediate grade of Electrician Highly Skilled Gr.II was introduced. However, ^{there} _{under} was no change in the Recruitment Rules and the unamended Recruitment Rules promotion to the post of Charge Electrician ^{still} has ^{re-} to be made from the grade of Electrician which is now designated as Electrician (Skilled). The 6th respondent while working as Instrument Repairer, Kalimpong was transferred to Trivandrum and joined on 20.12.80 on his own request and according to the applicant his seniority in the grade of Instrument Repairer is to count from 1.2.80 for the purpose of promotion. The applicant's case is that the post of Instrument Repairer is one of the feeder posts for promotion to the post of Charge Electrician. The 6th respondent was promoted as Charge Electrician on 20.7.84 whereas his seniority to be reckoned in accordance with Annexure-2 order from 20.12.80, he should have been junior to the applicant who was promoted as Electrician on 25.1.79. Against the supersession of the applicant and few others ^{the} _{Union} made a representation on 2.1.89 which was turned down by the respondents at

Annexure-4 on the ground that the bottom seniority principle enunciated in the order dated 27.8.76 at Annexure-2 is to take effect from 16.12.85 in accordance with the order issued by the second respondent dated 8.10.86 at Annexure.5. ^{The date} 16.12.86 is the date on which the Division Bench of the Kerala High Court gave a judgment that the Annexure.2 order dated 27.8.76 is to be applicable to the MES also. The applicant's case, however is that the order dated 8.10.86 at Annexure-5 was quashed by this Tribunal in the judgment dated 28.2.89 in O.A.174/87 at Annexure.6. The applicant has also relied upon the judgment of this Tribunal in O.A.733/89 dated 18.10.90 (Annexure-7) based on the judgment at Annexure-6. In the judgment dated 18.10.90 at Annexure-7 this Tribunal directed the applicants therein to be promoted as Charge Electrician/ Electrician H.S.I with effect from 20.7.84 when respondent No.6 was promoted to that post.

3. In the counter affidavit the respondents 1 to 5 have stated that the O.A. is belated. The applicant was not vigilant in pursuing his remedies. They have further stated that Respondent No.6 was promoted as Instrument Repairer from 5.8.74. He ~~was~~ ^{has} passed the trade test and promoted as Charge Electrician in July, 1984 based on his service seniority as Instrument Repairer. They have, however, conceded that he reported at Cochin on 20.12.80 on transfer. They have also stated that the applicant was in Skilled category and not in ^{the} line of promotion as Sr.Electrician H.S.-I. He was promoted as Electrician H.S-II with

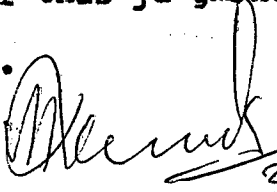
effect from 29.8.90. They have also stated that the applicant before us was not a party to O.A.733/89.

4. In the rejoinder the applicant has stated that in accordance with the judgment dated 2.8.89 in O.A. 106/87 the post of Electrician (Skilled) is the feeder category for Electrician H.S.-I or Charge Electrician and the applicants therein who are working as Electrician (Skilled) cannot be disqualified for being considered for promotion directly as Electrician H.S-I.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant claims the benefit of the judgment dated 18.10.90 at Annexure-7 for which he represented on 15.12.90. It was rejected by the impugned order dated 11.1.91. This application which is dated 9.1.92 is within time and it cannot be said that the O.A. is belated. Since the applicant is similarly situated as the applicants in O.A.733/89 read with the judgment dated 2.8.89 in O.A.K.106/87 at Annexure-10, we have no doubt in our mind that the applicant also should be given the same benefits as the applicants in O.A.733/89.

6. In the conspectus of facts and circumstances, we allow this application and direct that the applicant should be given notional promotion to the grade of Charge Electrician/Electrician H.S-II with effect from 20.7.84 if necessary by creating a supernumerary post, in case Respondent No.6 ^{to be} is maintained in that grade. We also declare that the applicant will be senior to Respondent No.6 in the grade of Charge Electrician by virtue of his notional promotion from 20.7.84 and

his seniority over Respondent No.6 in the feeder grade of Electrician/Instrument Repairer. The arrears of pay and allowances in the higher grade of Charge Electrician/Electrician H.S-I however, should be paid for the period commencing from 15.12.90 when the applicant filed his representation at Annexure-8. Action on the above lines should be completed within a period of three months from the date of communication of a copy of this judgment. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

02-11-92

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