

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 83/2004**

WEDNESDAY THIS THE 25TH JANUARY 2006

**C O R A M**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

TG Anil Kumar S/o VP Gopalan Nair  
Artist Painter (SK)  
NSRY(K) – Construction department  
Naval Base, Kochi  
residing at Thekkepparambil,  
Velloor PO, Pampady, Kottayam

.. Applicant.

By Advocate Mr. P. V. Mohanan

Vs.

- 1      The Flag Officer  
Commanding in Chief  
Southern Naval Command  
Kochi-4
- 2      The Civilian Gazetted Officer  
Head Quarters  
Southern Naval Command  
Kochi-4
- 3      K.D. Sojan  
Brush Painter SK  
Painting Shop, Naval  
AirCraft Yard, Cochin.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1 & 2

**ORDER**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

In this Application the applicant is challenging Annexure A-5 letter issued by the respondents and seeking a direction to the respondents to permit him to appear in the trade test for being considered for promotion to the post of Brush Painter (HS Grade-II) in preference to the third respondent. Briefly the facts stated are: The applicant had successfully completed Apprenticeship trade of Painter and was appointed as Artist Painter Skilled on 31.5.1995. The next promotion post is Tradesman (Highly Skilled Grade-II). It is stated that vacancies of Highly Skilled

Grade-II have arisen and the incumbents who have passed the trade test will be eligible for promotion against these posts and trade test is to be held. The applicant is the seniormost among the Painters. If he is not permitted to appear for the trade test, prejudice will be caused to him in that his legitimate claim for promotion will be overlooked. Therefore the applicant had submitted representation at Annexure A-4 dated 4.8.2003 which has now been rejected by the impugned order stating that a category change cannot be considered and he cannot be permitted to appear for the test for the post of 'Brush Painter' Highly Skilled. According to the applicant the categories of Tradesman such as Artist Painter, Brush Painter and Spray Painter are all common cadres and the seniormost among them can be considered for promotion according to the availability of vacancies. In other functional grades such as Mechanic, Carpenter, Shipwright, Hull Department, Radio Electrical Section, trades are interchangeable and the incumbents are being promoted depending on their seniority and subject to passing of qualifying test. For promotion to the managerial/supervisory cadre, incumbents in the Highly Skilled Grade-I are permitted to appear for test and compete for promotion irrespective of their trade. The applicant has sought the following reliefs.:

- (i) To call for the records leading to Annexure A5 and set aside the same
- (ii) To direct the respondents to permit the applicant to appear for the trade test, namely Brush Painter for being considered for promotion to the trade man (Highly Skilled Grade-II), (Brush Painter) in preference to respondent No. 3 and Brush Painter who are juniors to the applicant taking note of commencement of service.
- (iii) To direct the respondents to promote the applicants to the grade Brush Painter, Tradesman, Highly Skilled (Grade-II) forthwith.
- (iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

2. In the reply statement the respondents have admitted that the applicant had been appointed after having qualified the Apprenticeship Training in the designated trade of 'Painter'. The fourth respondent had been appointed as Brush Painter w.e.f. 10.10.1995 whereas the applicant was appointed as Artist Painter w.e.f. 1.6.1995.



Each trade has its own separate entity for promotion to higher grade and having accepted the trade of Artist Painter the change to another trade as Brush Painter or Spray Painter at a later stage is not sustainable. The Ministry of Defence, Government of India letter NO.II(1)/2002/D(Civ-1) dated 20.5.2003 envisaged restructuring of the industrial cadre to give equal and independent promotional avenues to all trades and as per the existing trade structure ordered by the respondents Artist Painter, Brush Painter and Spray Painter are independent trades as per the restructured/trade placements ordered by the respondents strictly in accordance with the Government of India instructions in the above letter. The applicant was not considered for the Highly Skilled post as his seniors were already available in the grade of Artist Painter. The existing seniority list of Artist Painter contains several seniors to the applicant. A counsel statement has also been filed by the respondents showing separate seniority maintained for each of the trades.

3 No rejoinder has been filed by the applicant. Instead M.A. 938/05 was filed enclosing Annexure A-8 document which is the seniority list of Highly Skilled Grade-I and II as on 20.5.2003 of the Naval Dockyard, Mumbai in the trade category of 'Painters' to show that the posts of Artist Painter, Brush Painter and Spray Painter, etc. are posts of similar nature and declared as equated common category. By another MA. 730/02004 the applicant also produced the Recruitment Rules for skilled tradesman dated 1.6.2000 as amended from 9.12.2002. (Annexures A6 and A7).

4 When the matter came up for hearing, M.A. 1220/05 was filed producing statements Annexures R1 and R2. Annexure R2 is a copy of the Report of the Committee for rationalisation of trade structure in Naval Dockyards/NSRYS and Annexure R-1 is a copy of the letter forwarding this report through the Integrated Headquarters of MOD(Navy) for distribution among JCM members for submission of their views on the proposed restructure contained in the report. It was further submitted by the learned counsel for the respondents that in the light of this rationalisation that is being attempted and the draft proposal for merger of the Painter

trades being under active consideration of the Ministry, the OA may be dismissed as not maintainable. The learned counsel for the applicant submitted that he has no objection to the disposal of the OA in the light of the submission now made by the respondents that they are considering the integration of the trades, provided the applicant is not subjected to any disqualification on the ground that such integration will come into effect only retrospectively. On merits of the case it was argued that related documents produced in O.A. 9378/05 show integrated seniority is being maintained in the trade of Painters and also the judgments of the Hon'ble Supreme Court in EP Royappa Vs. State of Tamil Nadu and another (AIR 1974 SC 555) and S.I. Roooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others (AIR 2000 SC 594), were cited in favour.

5 We have perused the records now produced by the respondents as well as the judgments referred to. The contention of the applicant is that being an Artist Painter does not disentitle him to be considered for the post of Brush Painter or Spray Painter in the Highly Skilled Grade-II category since in promotions to the supervisory level all Painters xx can appear for the trade test and the promotions are effected based on common seniority list. The respondents contest the claim of the applicant on the ground that according to the restructuring of the trade structure effected in May, 2003 vide letter of the Ministry of Defence, the trades of Artist Painter, Brush Painter and Spray Painter are separate trades and these posts are not interchangeable and that Artist Painter (Skilled) is not a feeder category for promotion to the post of Brush Painter Highly Skilled Grade-II for which post, the trade test is to be held. Any such contention as made by the respondents has to be borne out by the Recruitment Rules. A perusal of the Recruitment Rules at Annexure A-7 produced by the applicant reveals that in the case of Recruitment by promotion the method of promotion would be as follows:

12. In the case of recruitment by promotion or absorption grades from which promotion /absorption to be made

Promotion: Tradesman Skilled with eight (08) years regular service in the grade and in the respective trade also and who have passed in a departmental qualifying test to become eligible for consideration for

promotion, qualifying marks of which shall be 50% aggregate, failing that Tradesman having fifteen (15) years combined service in the grades of skilled & semi Skilled Grade and who have passed in the Departmental qualifying Examination.

6 These are common Recruitment Rules for Tradesmen category under Highly Skilled Grade-II. This belies the contention of the respondents that there are separate promotion channels for sub categories under each trade. The wording of the Recruitment Rules clearly mentions only regular service in the grade and in the respective trade. In the absence of any Recruitment Rules the respondents should have been at least able to support their argument by producing the relevant seniority lists which are maintained as alleged by them for each category of trade. Instead, only a counsel's statement showing the names of persons appointed in the order of seniority under the three categories of artist, brush and spray Painters has been filed. Such a statement cannot be equated with a seniority list which has to be in certain form as prescribed by the statute. The applicant has produced copy of the seniority list as maintained for the trade of 'Painters' in the Naval Dockyard at Mumbai. It is a regular seniority list.. It does not show any classification under the trade of 'Painters' and it is a common seniority list for all the categories of Painters. Evidently this leads to the conclusion that different yardsticks are being observed for structuring the trade pattern at different Naval Dockyards in the country as also in seniority and method of promotion. This can be the reason why the Fifth CPC suggested that an exercise in rationalisation should be undertaken.

7 It is an admitted fact by the respondents that the applicant had passed the Apprenticeship Examination which was held for the trade of Painter and thereafter he was appointed on the basis of that qualification to the post of Artist Painter and they have also concurred that apprentices in the trade of Painter can be considered for appointment to any category of Painters- Artist, Brush or Spray. If this can be done at the appointment stage surely for further promotion also the same norms can be followed. If a conscious decision was taken by the respondents as a result of the

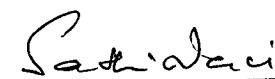
restructuring that the trade should be further classified into sub categories and promotions restructured accordingly, corresponding changes should have been made in the Recruitment Rules. Not having done so, and not having followed a uniform pattern through out the country in respect of the three Naval Dockyards, the respondents contention that the trade of Painter is not common category is not sustainable on facts. Therefore we are of the view that even on merits, the applicant has made out a case.

8 However, we find that the judgments referred to by the applicant which relate to the question of retention of lien on absorption consequent on deputation and the equivalency of posts in the IAS on the basis of nature, function and duties of the post, are not strictly relevant to the issue agitated in this O.A.

9 Since the respondents have now completed the exercise of rationalisation of trade structure as evidenced from the recommendations of the Committee that these posts of Artist Painter, Brush Painter and Spray Painter are to be merged and designated as Painter and submission has been made that the proposal for such merger is under active consideration of the Ministry, we record this submission and allow the OA with the direction to the respondents to finalise the proposal for merger expeditiously and thereafter consider the applicant for promotion in the category of Painter (Highly Skilled) in accordance with these recommendations of the Committee. This exercise shall be completed at the earliest in any case not later than four months from the date of receipt of a copy of this order. The OA is allowed as above. No costs.

25.1.2006

  
GEORGE PARACKEN  
JUDICIAL MEMBER

  
SATHI NAIR  
VICCE CHAIRMAN

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