

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 89/2003

FRIDAY, THIS THE 17th DAY OF MARCH, 2006

C O R A M

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

John Mathew S/o PC John
Chargeman Grade-I(Engine Fitting)
Naval Ship Repair Yard
residing at Kannamalil House
house No. 29/112, Vattekunnam
Edapally North ,
Cochin-24

Applicant

By Advocate Mr. M.R. Hariraj

Vs.

- 1 Union of India represented by
Secretary to Government of India
Ministry of Defence
New Delhi.
- 2 The Flag Officer Commanding in Chief
Head Quarters, Southern Naval Commanding
Kochi.
- 3 Commodore Superintendent
Naval Ship Repair Yard,
Kochi-14
- 4 D. Georgekutty, Chargeman-I
(AC & Refrigeration), Naval Ship Repair Yard.
Kochi-4

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1-3
By Advocate Mr. K. Ramakumar for R-4

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant, a Chargeman Grade-I (Engine Fitting) in the Naval Ship Repair Yard, Cochin, filed this Application aggrieved by the proposed promotion of the 4th respondent who is a Chargeman (AC & Refrigeration) for promotion as Assistant Foreman, a newly created post. During the

pendency of the OA, the 4th respondent was promoted by order at Annexure A-9. Hence the applicant has amended the OA seeking to quash the promotion of the 4th respondent as Assistant Foreman. The contention of the applicant is that the four tier structure was introduced in all the trades in the respondents' department revising the three tier structure which was prevalent pursuant to the Fifth CPC. Accordingly, Senior Chargeman, Foreman, Senior Foreman in the erstwhile three tier structure were redesignated as Chargeman Grade-II, Chargeman Grade-I and Foreman respectively. An intermediary cadre to the erstwhile Foreman and Senior Foreman called Assistant Foreman was also created. The four tier structure was to be introduced in the ratio 35:25:25:15. The first respondent issued orders at Annexure A-1 bringing into effect the above structure. The available vacancies in the each category/trade were distributed by Annexure A2 orders. According to A2 order there are four vacancies of Assistant Foreman (Engine Fitting) and there are no post of Assistant Foreman (Refrigeration). No recruitment rules have been issued for the post of Assistant Foreman. Pending finalisation of the Recruitment Rules, the Naval Headquarters by Annexure A-3 order decided that Chargeman Grade-I with regular service of three years who had passed the departmental qualifying test can be appointed as Assistant Foreman. It is the contention of the applicant that departmental qualifying test for each trade/category is conducted separately and the nature of duties and responsibilities connected with each trade have no comparison. The applicant has passed the test for promotion as Senior Foreman (Engine Fitting). But the 4th respondent who belongs to Refrigeration wing being considered for promotion is illegal and arbitrary. The 4th respondent hailing from a different trade is being promoted in the post in Engine Fitter Trade.

2 According to the averments of the 4th respondent in the reply statement, the 4th respondent is senior to the applicant as erstwhile Foreman in Refrigeration and Engine Fitting having equal opportunities to be promoted as erstwhile Senior Foreman Engine Fitting. The only change that is being made now in the trade structure is the introduction of the post of Assistant Foreman and the 4th respondent is senior to the applicant based on the seniority of erstwhile Foreman(now Chargeman-I). Therefore he is eligible to be promoted. The applicant cannot challenge Annexure A-6 order as he was very well informed that the erstwhile three tier structure was replaced by 4 tier structure and it is based on the implementation of the Recommendations of the Vth CPC and it is essentially an administrative action. The supervisory cadre of Refrigeration trade terminates at the erstwhile Foreman Grade and thereafter becomes feeder category to the Engine Fitting trade for promotion to erstwhile Senior Foreman (Engine Fitting). While this being the position before restructuring now it terminates at Chargeman-I grade and becomes feeder cadre to that of Assistant Foreman (Engine Fitting) at that level. The departmental qualifying test is having common syllabus for both the trade of Engine Fitting as well as 'Refrigeration' trades as evident from syllabus appended to Navy order No. (Civil)7/78 (Annexure-D). Both the applicant and the 4th respondent passed the same test for promotion as erstwhile Senior Foreman (Engine Fitting) at different dates i.e. the 4th respondent during 1994 and applicant after 1996. It is also found that when the 4th respondent appeared and passed the test the applicant was in the lower grade of Chargeman Grade-II. The applicant will also be promoted based on his seniority and eligibility and he is also being considered by the DPC for promotion.

3 In the reply statement of the official respondents it has been averred that as there are different trades in the Naval Ship Repair Yard, Kochi like Engine Fitting, Refrigeration Fitting, etc. some of them are independent and some others are connected or linked with other trades for promotional avenues. The Trade Structure for Technical Supervisory staff in Engine Fitting and Refrigeration is as under:

| Senior Foreman Engine Fitting | |
|---|--|
| Foreman (Refrigeration) | Foreman (Engine Fitting) |
| Senior Chargeman (Refrigeration) | Senior Chargeman (Engine Fitting) |
| Tradesman in Group-A Engg. Mech (Refrigeration) | Tradesman Group-A Engineering Mechanic (Engineering Fitting) |

4 The 4 tier structure was introduced in the category of Engine Fitting and Refrigeration as under:

| Sl No. | Catego- ries | Existing sanctioned strength | | | | | Revised 4 Tier | | | | |
|-----------|------------------------------|---------------------------------|----|-----|-------|-----------|----------------|-------------|--------------|-------|--|
| | | SFM | FM | SCM | Total | FM 15% | AFM 25% | CM-I 25% | CM-II 35% | Total | |
| (a) | Engin Fitting | 2 | 4 | 9 | 15 | 2 | 4 | 4 | 5 | 15 | |
| (b) | Refrige ration Fitting | - | 1 | 1 | 2 | - | - | 1 | 1 | 2 | |

FM-Foreman,
AFM-1 Assistant Foreman,
CM-I Chargeman Grade-I,
CM-II – Chargemen Grade-II

5 According to the above, four Assistant Foreman posts were created in the category of Engine Fitting and no post of Foreman or Assistant Foreman in the category of Refrigeration was created. In the seniority list of Foreman Engine Fitting the applicant is No.2. Since there was no Recruitment Rules for the newly created post of Assistant Foreman, with the approval of the Union Public Service Commission pending finalisation of Recruitment Rules as a one time measure the method of recruitment has been approved. The method of recruitment as approved by the UPSC is detailed at Annexure R-4 by which the Chargemen approved by the UPSC is detailed at Annexure R-4 and in brief the Chargemen Grade-I with three years of regular service who have passed departmental test will be eligible for promotion. Since the applicant has completed 3 years of service and passed the departmental qualifying test, he is fit for promotion to the newly created post of Foreman Engine Fitting along with other eligible candidates in the feeder category. According to the trade structure for promotional aspects, Engine Fitting and Refrigeration have been clubbed and therefore the 4th respondent who is a Foreman now designated as Chargeman Grade-I in the Refrigeration unit being a feeder category, also becomes eligible for promotion. The matter regarding clubbing the strength of Engine Fitting and Refrigeration Fitting was again discussed in the meeting held on 4.2.2003 and 14.3.2003 with the officials of the Technical Supervisory Staff Association in order to introduce more number of higher grades and the 4 tier grade structure has been revised. Consequently one more vacancy of Assistant Foreman was created and as no eligible candidate was available for promotion to the post of Foreman it was decided to fill it up at the Assistant Foreman level. Since the applicant is also fully qualified for the post and is senior, his case was referred to the DPC for promotion. Therefore the respondents have submitted that their

action was in accordance with the Recruitment Rules and the Ministry of Home Affairs directions and that the same cannot be said to be discriminatory and that the OA may be dismissed as the applicant has no legal grievance.

6 The learned counsel for the applicant contested the averments of the respondents in the reply statement mainly on the ground that there are no rules prescribed either in the Engine Fitting or Refrigeration units and that administrative instructions cannot substitute the rules and also that the orders on trade structure referred to by the respondents are not part of the rules and argued that the restructuring did not change the position of the trade-wise promotions followed in the department. He also cited the Recruitment Rules of 1983 as Annexure A-7 in support of his argument.

7 The learned counsel for the respondents strongly refuted the above contentions and also produced the original copy of the trade test compendium published by the Southern Naval Command containing order NO. C15(7) of 1978 and also the Book of Syllabus and Rules for the trade test issued by the memorandum dated 1990.

8 We have heard the learned counsel for the parties and perused the records produced before us. The facts regarding replacement of three tier structure by a four tier structure in respect of the Naval Ship Repair Yard, Kochi staff have been admitted by both sides and hence there is no need to go through those facts again. The only relevant fact to be noted is that a new category of Assistant Foreman has been introduced as a result of the four tier structure. The four tier structure was introduced in the ratio

35:25:25:15, while distributing the available posts in each trade, some trades could not get additional posts and the Refrigeration trade is one of them. Therefore for opening up better promotional avenues, the two grades of Refrigeration and Engine Fitting have been combined with the result that the fourth respondent who belongs to the Refrigeration unit and passed the departmental test earlier has become eligible to be promoted in preference to the applicant who belongs to the Engine Fitting trade.

9 The case of the applicant is based on the argument that the system of promotions being effected in the department is now being altered as a result of the re-structuring. A comparison of the Recruitment Rules as it existed prior to restructuring and the proposed Recruitment Rules as also the pre-revised trade structure and the existing structure would reveal that the contentions of the applicant are not sustainable. According to the old recruitment rules for promotion of Technical Supervisory staff effective from 1983, promotion to the post of Senior Foreman, Foreman Grade-I, Senior Chargeman Grade-I were to be made from Foreman with three years regular service, Senior Chargeman with three years regular service, in the grade and who have passed the departmental qualifying post and there is no mention of trade categorisation. In the proposed Recruitment Rules for the four tier structure based on which the respondents have proposed promotion as per Annexure R-4 also do not contain any distinction between the trade and the feeder categories and the promotion posts for all trades are clubbed together as indicated by the number of posts shown in the column 2 of A-7 Recruitment Rules.

10 However, the respondents have admitted that promotions were being made year-wise based on the trade structure in the department according to which certain trades are clubbed together at some levels and some are kept as independent trades. Such a structure has been in force as Annexure R-1 from which it is seen that Engine Fitting and Refrigeration units have been clubbed together. These are prescribed in the Navy orders which have been in existence from the very inception and the same has not been incorporated in the Recruitment Rules. It is settled law that where statutory rules are not prevalent administrative instructions will hold the field. The applicant has contended that these orders are not available or known to him but the respondents have produced the originals and they have been verified. If the applicant himself is praying for the benefit of trade-wise promotions, he cannot deny knowledge of such promotions being granted. The clubbing of the Refrigeration and Engine Fitting category has been in vogue earlier and has not been challenged at any stage. Further the trade test compendium was amended as at Annexure R-4 (A) making Foreman (Refrigeration) also as one of the feeder categories to the post of Senior Foreman (Engine Fitting). A perusal of the syllabus of the examination of the Senior Foreman and Senior Chargeman (Annexure R-4(d)) and the copy of syllabus produced by the respondents indicates that the standard of knowledge required for the examination for all supervisory categories is the same. Since both the applicant and the 4th respondent have appeared in the same screening test, it cannot be argued that the 4th respondent is not eligible for promotion in accordance with the Recruitment Rules. Therefore, nothing in the Recruitment Rules or the practice of tradewise promotions being followed according to the Trade structure, prevents the respondent from considering the 4th respondent from the Refrigeration trade for promotion to the post of Senior Foreman

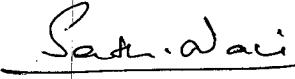
(Engine Fitting).

11 After the filing of the OA the respondents have also considered this issue of merger between these two trades at the supervisory level, in consultation with the All India Technical Supervisory Staff Association as seen from Annexur R-5 minutes from which it transpires that the proposal for merger of the Refrigeration and Engine Fitting had emanated from the Association itself to enable better promotional avenues for those trades. As a result of these discussions with the Association, a revised four tier structure has been brought into effect according to which one additional post of Foreman has been created and since no qualified ^{hand} was available the respondents have decided to fill it up at the level of Assistant Foreman and considered the applicant as well. It is also mentioned that the applicant has since been promoted.

12 In the result we are of the view that there is no basis for any grievance for the applicant and the action of the respondents in promoting the 4th respondent cannot be assailed in the light of the Recruitment Rules, since the applicant's grievance also has been met by duly promoting him. Nothing more survives in this O.A. and hence the OA is dismissed.

Dated 17.3.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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