

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 127/89 199  
~~XXXXXX~~

DATE OF DECISION 28.6.1990

K.A.Ravindran Applicant (s)

Mr.M.Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)  
Secretary, M/o Defence, N.Delhi & 3 others

Ms.KB Subhagamani, ACGSC Advocate for the Respondent (s)  
(for R.1-3)

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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, K.A.Ravindran, Aircraft Spray Painter (SK) under the second respondent prays that, he may be declared to be senior to the 4th respondent in the cadre of Aircraft Spray Painter(SK), and that the promotion of the 4th respondent w.e.f. 4.1.1989 as HS.II without considering may be declared his case illegal, and for a direction to the respondents to appoint him in the post of Aircraft Spray Painter (HS.II) quashing the appointment of the 4th respondent w.e.f. 4.1.89. The brief accounts of the facts mentioned in the application can be stated thus:

2. The applicant having been qualified <sup>in</sup> the trade test for promotion to Aircraft Spray Painter(SK) prior to 17.2.79

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was appointed as Aircraft Spray Painter(SK) on 17.2.79 on officiating basis. He officiated in that capacity in different spells with breaks and that last spell of continuous officiation was from 17.3.1981 to 20.8.1982.

The 4th respondent who entered into the service as a Sand Blaster, while the applicant was officiating as Aircraft Spray Painter(SK) was qualified in the trade test for the post only in the year 1982, and the test was conducted under the supervision of the applicant. But the applicant and the 4th respondent were appointed on a regular basis as Aircraft Spray Painter(SK) on 21.8.1982, inspite of the fact that the applicant had officiated continuously in the post of Aircraft Spray Painter(SK) for a considerable length of time, and that he had qualified himself in the trade test much earlier. The applicant came to know that his name was placed below the 4th respondent in the seniority list. He therefore submitted a representation to the second respondent on 10.2.1988. The second respondent vide letter No.CS 2527/5/43 dated 3.3.1988, at Annexure-A1 informed the applicant that his placement in the seniority list was in terms of the panel drawn up for the purpose of promotion, and that the placement was therefore correct, and that his officiation in that post would not count for seniority, <sup>it</sup> though/ would count for increment because his officiating promotion was occasioned as the 4th respondent had not at that time passed the prescribed

qualifying test. The applicant submitted an appeal against the Annexure-A1 order to the Chief of Naval Staff (Annexure-A2). Subsequently, the applicant and the 4th respondent qualified in the further trade test for Aircraft Spray Painter(HS.II) on the same date. The applicant thereafter passed the trade test for HS.I also while the 4th respondent did not qualify in that test. While so, the second respondent has vide order dated 4.1.89 promoted the 4th respondent as Aircraft Spray Painter(HS.II) overlooking the superior claim of the applicant for the post. Being aggrieved <sup>that</sup> by ~~promotion~~ the applicant has filed this application under Section 19 of the Administrative Tribunals Act.

3. The 4th respondent though served with ~~xxx~~ notice did not appear. The respondents 1 to 3 in their reply statement have contended that the applicant and two other persons qualified in the trade test conducted for the purpose of filling up of two temporary posts of Aircraft Spray Painter, created in order to meet the increased work load of Aircraft Spray Painter in Naval Aircraft Yard, Cochin, were appointed w.e.f. 17.2.1979 purely on officiating basis, that the officiating appointment of the applicant was continued till 20.8.1982 with intermittent reversion to the substantive post, that regular posts of Aircraft Spray Painter(SK) were created only in April, '82, that a further qualifying test was held in 1982 to select suitable candidates to fill up 3 permanent posts of Aircraft

Spray Painters, that as per panel prepared in that test (Annexure-R2(c)), the applicant was placed at Serial No.3, while the 4th respondent placed at Sl.No.2, that this was because the 4th respondent being a semi-skilled worker had to be considered first and the applicant could be considered only to the 3rd vacancy as no other semi-skilled person was available, as the applicant was only a labourer, that this was done according to the Recruitment Rules, and that as officiation in temporary post doesnot count for seniority, the placement of the applicant below the 4th respondent in the seniority list is proper and valid, that the promotion of the 4th respondent is also in order since he is senior to the applicant in the seniority list of Aircraft Spray Painter(SK), and that, therefore, there is absolutely no merit in the application.

4. The applicant has filed a rejoinder in which he has contended that recruitment which existed as on 20.8.1982 did not stipulate that one should hold the post of tradesman or semi skilled worker for consideration in the skilled post, that the Annexure-R2(b) being dated 5.1.87 is inapplicable and that this rule has been made applicable by the authorities only to give undue advantage to the 4th respondent.

5. The respondents 1 to 3 have filed an additional reply statement in which it is contended that the Recruitment Rules prior to issue of SRO 27 dated 5.1.87(Annexure-R2(b)

also contained similar stipulation as in R.2b and they have produced a copy of the prior Recruitment Rule (Annexure-R2(f)). The respondents have contended that ~~the officiation~~<sup>being</sup> on provisional basis though would count for increments, will not count for seniority in terms of Annexure-R2(b), and that, therefore, the applicant's claim is without any basis.

6. We have carefully gone through the pleadings and the documents produced on either side and have also heard the arguments of the counsel.

7. Though it is contended by the respondents 1 to 3 that the applicant was trade tested along with the 4th respondent in 1982, the applicant has denied this and has averred that he passed the qualifying test in 1979, and that he did not appear for the same test in 1982 along with the 4th respondent. The learned counsel for the 4th respondent during the course of argument on 25.5.90 sought an adjournment to enable her to verify whether the applicant had undergone the qualifying test in 1982 or not. We therefore adjourned the case to 14.6.90. When the matter came up for further argument the learned Additional Central Government Standing Counsel conceded that the applicant has passed the qualifying test in 1979, and that, therefore, he was not required to undergo the same test in 1982, and that he was placed

in the panel for selection in the year 1982 after the 4th respondent and others were trade tested. So the admitted position is that the applicant has passed the qualifying test in the year 1979 and the 4th respondent has passed the test only in the year 1982. The contention of the respondents that the test which the applicant passed in the year 1979, was held <sup>only</sup> for the purpose of filling up the post on an adhoc basis and that a regular test for the regular post was <sup>held</sup> for the applicant also in 1982 is found to be not true to the fact. Annexure-R2(a) is a copy of the result of the trade test held in 10th July, 1979. The applicant whose name is item No.2 in the list is shown as qualified and in paragraph 2 of this result it is seen recorded as follows:

"It is requested that the above results be brought to the notice of the individuals concerned and suitable entries made in their service documents."

This shows that the applicant has qualified in the departmental promotion test to the post of Spray Painter in 1979. It is also an admitted case that the applicant was officiating in the post of Aircraft Spray Painter(SK) from 17.2.79 till 20.8.1982 with intermittent breaks and that the last spell of officiation was continuous from 17.3.81 to 20.8.82. The applicant and the 4th respondent were both appointed on regular basis as Aircraft Spray Painter(SK) w.e.f. 21.8.1982. The case of the respondents is that in 1979 the posts were created only on a temporary

basis and that it was only in the ~~year~~ April, 1982 that the permanent posts were sanctioned. So it is evident that even after the permanent posts were sanctioned in April, 1982, till <sup>20th</sup> ~~August~~, 1982 the applicant has officiated in that permanent post. The respondents justify the placement of the 4th respondent above the applicant in the panel prepared by the Departmental Promotion Committee on 12th August, 1982, Annexure-R2(c) on the ground that according to the Recruitment Rules, Annexure R2(b) for promotion to the post of Aircraft Spray Painter(SK), first semi-skilled labourers with 3 years service in the grade who has passed the departmental qualifying test had to be considered, and that unskilled labourers with 4 years service in the grade and a pass in the qualifying test could be considered only in the absence of qualified semi-skilled labourers. The case of the respondents is that the 4th respondent was a semi-skilled labourer, so he was considered first and the applicant being a person holding an unskilled post in the substantive capacity could be considered only later. This Recruitment Rule, Annexure-R2(b) is dated 5th Jan.'87. The applicant and the 4th respondent were promoted on 21.8.'82. So obviously the provisions of these Recruitment Rules cannot apply to the appointment of the applicant and the 4th respondent. When this was pointed out in the rejoinder filed by the applicant the respondents have

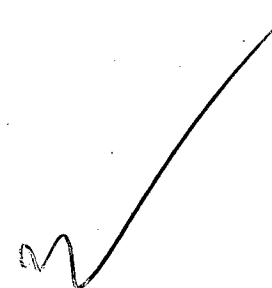
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contended that prior to the issue of Annexure-R2(b) Recruitment Rules the Aircraft Spray Painter(SK) post was designated as Aircraft Spray Painter, Grade-II, that the Recruitment Rules for this post was promulgated on 6th December, '80, that as per this rule, copy of which is at Annexure-R2(f), the post of Aircraft Spray Painter was to be filled from Mechanic-C/Tradesman Group-C with one year service in the grade, failing that labourer(SK) in the pay scale Rs.210-290 (present semi-skilled labourer with 3 years service in the grade, failing which unskilled labourer with 4 years service in the grade subject to the passing of departmental test). Therefore, even according to the Recruitment Rules which stood prior to Annexure-R2(b), according to the respondents the unskilled labourers can be considered only if there was no semi-skilled labourers available, and that, <sup>according to</sup> therefore, even ~~the~~ old Recruitment Rules, the placement of the applicant below the 4th respondent is justified. Annexure-R2(f) is a copy of the Recruitment Rules. SRO 361 dated 6.12.80(Sl 4) as amended vide SRO.....dated.....(Sl.....). Since the date of the amendment is seen left blank in Annexure-R2(f), it is not possible to conclude from R2(f) that on 21st August, '82 the Recruitment Rules were as in Annexure-R2(f), <sup>understand</sup> because we are not in a position to ~~whether~~ whether the Col.10 relating to the grades from which the promotion/transfer to be made has been amended subsequent to that date and whether the stipulation against this column in '82 was



as is seen in Annexure-R2(f). Therefore, the respondents have not been successful in establishing that as per the Recruitment Rules in force in August, '82 unskilled labourer could be considered only in the absence of the qualified semi-skilled labourer. Even if there was such a stipulation in force while the permanent post was created admittedly in April, 1982 and as the applicant has been officiating in the temporary post from 1979 itself, the applicant should have been appointed to that post on a regular basis first, because the applicant was qualified to hold the post and was already officiating <sup>in</sup> that post. The period of his officiation even according to the respondents would count for the purpose of increment. The applicant was appointed on adhoc basis to the post of Aircraft Spray Painter(SK) in '79 only after being qualified in the departmental promotion test in which all the eligible persons were admitted. That was the reason why he was not required to undergo the promotion test in the year '82. The question of the 4th respondent being considered for promotion to the post of Aircraft Spray Painter(SK), arose ~~was~~ only after he got himself qualified in the test in the year '82. The regularisation of the applicant in the post of Aircraft Spray Painter, Grade-II which he was holding continuously should not have been put off till the 4th respondent got himself qualified later. Further to prepare

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the panel in <sup>August</sup> '82 and inclusion of a person who passed the qualifying examination in '79 below the 4th respondent who got qualified in the year 1982 is also wrong and unscientific. The Supreme Court has in a catena of decisions held that adhoc appointment followed by regularisation in service would count for seniority. In Delhi Water Supply and Sewage Disposal Committee Vs. R.K. Kashyap and others, <sup>(AIR 1989 SC 278)</sup> the Supreme Court has after discussing the case law on the point observed as follows:

"So much as regards to general principle governing seniority in service jurisprudence. There is, however, one other important and fundamental principle which should not be forgotten in any case. The principle of counting service in favour of one should not be violative of equality of opportunity enshrined in Arts. 14 and 16 of the Constitution. If adhoc appointment or temporary appointment is made without considering the claims of seniors in the cadre the service rendered in such appointment should not be counted for seniority in the cadre. The length of service in adhoc appointment or stop-gap arrangement made in the exigencies of service without considering the claims of all the eligible and suitable persons in the cadre ought not be reckoned for the purpose of determining the seniority in the promotional cadre. To give the benefit of such service to a favoured few would be contrary to the equality of opportunity enshrined in Arts. 14 and 16 of the Constitution. But if the claims of all eligible candidates were considered at the time of adhoc appointments and such appointments continued uninterruptedly till the regularisation of services by the Departmental Promotion Committee or the Public Service

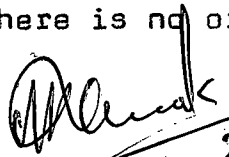
Commission there is no reason to exclude such service for determining the seniority Of course, if any statutory rule or executive order provides to the contrary, the rule or order will have supremacy. In the absence of any rule or order the length of service should be the basis to determine the seniority." (Emphasis Supplied)

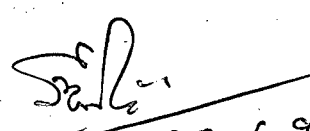
Here in this case it is an admitted case of the respondents that all the persons eligible have been considered while the applicant was appointed as Aircraft Spray Painter on adhoc basis because all those who were eligible were allowed to participate in the trade test and the applicant and the others who came out successful alone were appointed on adhoc basis. The adhoc appointment made on 17.2.'79 continued only for 42 days and the applicant was further appointed on adhoc basis in the same manner with intermittent breaks, but the last spell of officiation from 17.3.81 continued upto 20.8.'82 for 522 days. There is no reason why this period of adhoc officiation should be excluded in the case of the applicant for the purpose of seniority. In view of the dictum laid down in AIR 1989 SC 278, the applicant is entitled to have his ~~adhoc~~ period of continuous officiation as adhoc appointee in the post of Aircraft Spray Painter(SK) to be counted for seniority also. Even otherwise since the regular vacancies were available from April, '82 onwards and as the applicant who was fully qualified was officiating<sup>in</sup> that post, the action of the Departmental Promotion Committee in placing the applicant below the 4th respondent who acquired the

qualification only in '82 is against the norms of equity, fairplay and service jurisprudence. The 4th respondent happened to be promoted on 4.1.'89 to the post of Aircraft Spray Painter(HS.II) solely on the ground that he was considered to be senior on the basis of the wrong placement in the seniority list. In view of what is stated supra, the applicant should be placed above the 4th, respondent and therefore on 4.1.89 when the post of Aircraft Spray Painter (HS.II) arose, the applicant should have been considered first for promotion.

8. In the conspectus of facts and circumstances discussed, we allow the application and declare that the applicant is senior to the 4th respondent in the cadre of Aircraft Spray Painter(SK) and quash the appointment of the 4th respondent as Aircraft Spray Painter <sup>(HS II)</sup> on 4.1.89, since it is illegal, inasmuch as the legitimate right of the applicant has been overlooked and direct the respondents to consider the applicant for promotion as Aircraft Spray Painter <sup>(HS II)</sup> w.e.f. 4.1.89 in the vacancy and to promote him if he is otherwise suitable. Action in the above lines should be completed within a period of one month from the date of communication of this order.

There is no order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

  
(S.P.MUKERJI)  
VICE CHAIRMAN

28.6.1990