

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

135

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DATE OF DECISION 29.7.92

K.I. Philip & P.J. Antony Applicant (s)

Mr. P. Santhalingam Advocate for the Applicant (s)

Versus

Union of India represented by
Secretary, Ministry of Defence, Respondent (s)
New Delhi and others

Mr. George Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Ans*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Ans*
4. To be circulated to all Benches of the Tribunal ? *Ans*

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

Applicants are employees in the M.E.S. They are aggrieved by the seniority given to them under the category of Electrician Highly Skilled Grade-II.

2. According to the applicants they were appointed as Wiremen in the pay scale of Rs. 210-290. Later by Annexure-I proceedings, categories of Wireman and Electrician HSG-II were integrated and brought into the uniform scale of 250-400 but 10% of the posts of Switch Board Attender and Wiremen were given a higher pay scale of Rs. 350-480 as per Govt. of India, Ministry of Finance letter No.I(2)/80/D/ECC/IC dated 11.5.83. Annexure-I deals with category of 10% also. The relevant portion is extracted below:

" (a) Existing SBAs and Wireman: Existing SBAs and Wireman will be redesignated as Electrician (SK). 10% of existing Nos. of SBAs and

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Wireman drawing higher pay scale will continue to do so. Further 10% promotions in SBA and Wireman will not be made."

3. According to the applicants, they have passed the trade test for inclusion in the category of Electrician in 1979. Since they were seniors in the cadre of Wireman, considering their seniority and pass in the trade test in 1979, they were given higher scale earmarked for 10% as shown in Annexure-I w.e.f. 15.10.84. After their inclusion in the 10% category, the applicants submitted representation for including their names also in the seniority list treating them as promotees to higher H.S. I. Then the Garrison Engineer issued Annexure-III stating that the post of Electrician HS II was not a promotion post. Applicants again submitted Annexure-IV and V representations. After considering the representations, further order Annexure-VI was issued in November, 1990. Relevant portion of the order is extracted below:

"....(b) The individuals were passed Trade Test for Electrician during 1979 and not for the Electrician HS II. Elect (SK) cannot be considered as feeder post for Elect.HS I.

(c) The individuals could not be considered for Elect. HS II during 1985 because no Govt. order was available for upgradation of the then existing SBAs and Wireman beyond 10% authorised strength. As per E-in-C's letter No. 91020/EIC(3) dated 22.12.88, 10% of existing SBAs and Wireman drawing higher pay scale was promoted as HS II and no further 10% promotion in SBA and Wireman was authorised.

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(e) In terms of E-in-C's letter No. 91020/EIC(3) dt. 22.12.88 all the existing elect HS II will rank senior to all SBA's and Wireman drawing higher scale of Rs. 330-480 and inter Seniority between Wireman and SBA higher scale will be higher/senior scale. Accordingly, the seniority in respect of Shri K I Philip and PJ Antony will reckon their seniority as Elect. HSII w.e.f. 15.10.84 i.e. the date they were placed in position as Wireman HS II."

4. Though Annexure-VI was passed including applicants in 10% category mentioned in Annexure-I having higher scale, their names were not included in the seniority list issued by the Department. Hence, they filed further representations. Those

representations were rejected by Annexure-XV and XVI. In this application filed under section 19 of the Administrative Tribunals' Act, 1985, ~~xxx~~ applicants are challenging Annexure-VIII seniority list and the orders at Annexure-XV and XVI disposing of their representations.

5. The main relief of the applicants is based on Annexure -VI order passed in November, 1990. In that order, it was clearly stated that the applicants are entitled to get their seniority as Electrician H.S.II w.e.f. 15.10.84.

6. Respondents have filed a reply in which they have admitted that the applicants were promoted to Wireman H.S. Grade-II w.e.f. 15.10.84, but they have contended that their seniority has been fixed based on their service as Wireman HSG-II and passing the trade test which the applicants have passed only on 29.8.90. Based on the pass in the trade test for promotion to Electrician HSG-II, their seniority can be reckoned w.e.f. 29.8.90 only. In that view, applicants' name could not be included in the seniority list issued earlier and they cannot claim seniority over the sixth respondent.

7. We have heard arguments of learned counsel for both parties. Learned counsel for applicants brought to our notice that they have stated very clearly in para 3 of the Application that they have passed the trade test for getting promotion as Electrician as early as in 1979 and their seniority as Wireman should have been fixed ^{accordingly} in the list of officials after integration of Wiremen and Electrician. But the Department has ~~xxxx~~ passed Annexure-VI seniority list fixing applicants' seniority in the grade of Electrician HSG-II w.e.f. 15.10.84. This is illegal.

8. A consequential order Annexure-VI has been passed by the Garrison Engineer considering the applicants' pass in the trade test as also their seniority. ~~xxxxxxxx~~ This ^{neither} order had been superseded nor cancelled. ^{It is even in force.} Hence, the

applicants are entitled to seniority based on the order Annexure-VI.

9. Even though respondents have submitted that applicants have passed trade test only on 29.8.90, they have not denied the statement of the applicants that they have passed trade test for Electrician Category in 1979. Learned counsel for applicants explained the position and submitted that the subsequent trade test envisaged and mentioned in the reply statement is a trade test xxxxx conducted for considering applicants for getting next higher promotion as Electrician HSG-I. So long as respondents have not denied applicants' case that they had passed trade test for getting promotion to the Electrician category in 1979, we are persuaded to accept the explanation given by the applicants in this case.

10. Since applicants are satisfied that they have passed trade test, they are senior enough to be included in the list of Electrician HSG-II w.e.f. 15.10.84 as shown in Annexure-VI order, we declare that applicants are entitled to get seniority in that category from 15.10.84.

11. In this view of the matter, we quash Annexures-XV and XVI and direct respondents to revise the seniority list Annexure-VIII to the extent of giving proper place to the applicants in the same above xxxxxxxx the sixth respondent.

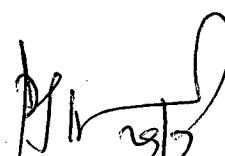
12. The application is allowed to the extent indicated above.

13. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

29.7.92

kmm


(P.S. Habeeb Mohamed)
Administrative Member