

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 190 of 2006

Today, this the 7th day of November, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

V. Sahredan,
S/o. P. Vasudevan,
Chargman -I (AR),
Naval Institute of Aeronautical Technology,
INS Garuda, Naval Base, Kochi - 04
Residing at M/43, Kasturba Nagar,
Kochu Kadavanthara P.O., Kochi – 20

... Applicant.

(By Advocate Mr. TCG Swamy)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Defence, New Delhi
2. The Chief of the Naval Staff,
Integrated Headquarters,
Ministry of Defence (Navy) (DCP),
New Delhi
3. The Flag Officer Command-in-Chief,
Headquarters of Southern Naval Command,
Naval base, Kochi – 4
4. The Chief Staff Officer (P&A)
Headquarters Southern Naval Command,
Naval base, Kochi – 4
5. Smt. K.R. Rajamma,
Assistant Foreman (AR),
Naval Aircraft Yard (Kochi),
Naval Base, Kochi.

... Respondents.

[By Advocate Mr. T P M Ibrahim Khan, SCGSC for (R1-4) &
Mr. K.K. Vijaya Kumar for (R5)]



The Original Application having been heard on 23.10.08, this Tribunal on 7.11.08, delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The claim of the applicant in this case is that overlooking his entitlement, the respondents have promoted the 5th respondent as Assistant Foreman.

2. Brief facts of the case are that the applicant was initially appointed as Mechanic 'C' (AR) on 13.04.78 and his first promotion as Mechanic 'B' (AR) was on 1.6.80 and thereafter as Mechanic 'A' (AR) with effect from 26.10.1982. It was thereafter that he was further promoted to the Technical Supervisory Cadre as Senior Chargeman (AR) on 12.1.87 and further as Foreman [Revised designation – Chargeman-I (AR)] with effect from 23.10.2000. The 5th respondent is a member from reserved category who was appointed under the SC reserved quota and later on promoted as Mechanic Grade 'B' and Grade-A, but posterior to the respective promotion of the applicant. She was again promoted in the Technical Supervisory cadre as Senior Chargeman against SC quota on 25.10.1991 and was further promoted under the very same quota to the post of Foreman [Revised designation – Chargeman-I (AR)] on 26.12.94. Thus, according to the applicant, except in the grade of Foreman, the 5th respondent had all along been junior to the applicant.



3. The three tier structure of Supervisory cadre namely, Senior Chargeman, Foreman and Senior Foreman has been restructured in the four tier structure as under :

- (a) Chargeman Gr. II (equivalent to Senior Chargeman);
- (b) Chargeman Gr. I (Equivalent to Foreman);
- (c) Assistant Foreman (carrying the pay scale of Rs. 6500-10500), which is above Chargeman Gr. I; and
- (d) Foreman (carrying the pay scale of Rs. Senior Forman)

4. The creation of the intermediate post of Assistant Foreman has resulted in rescheduling of the ratio of Supervisory Technical Cadre. The case of the applicant is that the applicant had qualified in the test conducted by the respondent during 2003 which the private respondent had not. The applicant was junior most in the selection list while his case was considered for promotion. Overlooking his eligibility, the respondents have chosen to select the respondent No. 5 vide Annexure A/5. Aggrieved by this, the applicant has preferred a representation, which was rejected vide Annexure A/9. The applicant has, thus, filed this O.A. praying for following reliefs :

- (a) Call for the records leading to the issue of Annexure A/5 and quash the same to the extent it promotes the 5th respondent;
- (b) Call for the records leading to the issue of Annexure A9 and quash the same;
- (c) Declare that the applicant is entitled to be considered for promotion to the post of Assistant Foreman (AR) in preference to the 5th respondent and direct the respondents accordingly;

(d) Direct the respondents to grant the applicant all consequential benefits of the declaration in para 8(c) above including the benefit of promotion with effect from the date of Annexure A5 and all consequential arrears of pay and allowances thereof.

5. Respondents have contested the O.A. According to them, promotion granted to the private respondent strictly going by the decision of the Apex Court in the case of **Union of India vs. Veerpal Singh Chouhan**, JT 1995 SC 231. As per the respondents, the applicant cannot have any claim over the way in which the applicant came to be promoted within the quota.

6. Private respondent has filed separate counter adopting the reply filed by the official respondents.

7. The applicant has filed rejoinder reiterating his stand as in the Original Application.

8. Arguments were heard and documents perused. The four tier structure of the Artisan Grade as per recommendations of the Vth Central Pay Commission was introduced vide Ministry of Defence letter dated 26.12.2001. According to the restructure, the total number of posts in the entire cadre have been rescheduled and in so far as Assistant Foreman post is concerned, the same was a new introduction. According to the respondents while filling up these posts, three seniors to the applicant (details given in Para 8 of the counter) were promoted. By virtue of issue

of Annexure R-1 order dated 21.01.2002, the applicant has no case at all. The said order came to be passed in the wake of the amendment to the Constitution and the decision is as under :-

- "(i) (a) SC/ST Government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and
 - (b) the above decision shall be effective from 17th June, 1995.
- (ii) The instructions contained in DOPT O.M. No. 0011/1/96-Estt.(D) dated 30.1.1997 as well as the clarifications contained in DOPT O.M. No. 20011/2/97-Estt.(D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.1997 itself.
- (iii) Seniority of Government servants determined in the light of O.M. dated 30.1.1997 shall be revised as if that O.M. was never issued.
- (iv) (a) On the basis of the revised seniority, consequential benefits like promotion, pay, pension, etc. should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of 'no work no pay').
 - (b) For the purpose senior SC/ST Government servant may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Government servants.
 - (c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post to which the Government servant is to be promoted at each level after following normal procedure of DPC (including consultation with UPSC).

9. The matter could be crystallized thus: By the decision of R.K. Sabbarwal & Ors vs State of Punjab & ors, 1995 (2) SCC 745 and Ajit Singh Januja and others Vs State of Punjab & Ors., 1996 (2) SCC 715, the Apex Court held, "it will be only rational, just and proper to hold that when



the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the Scheduled Caste Tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for Scheduled Caste/Tribe candidate in a still higher grade then such candidate belonging to Scheduled Caste/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade, then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered service on the basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution." This was upheld in the later case of M.G. Badappanavar & Anr vs State of Karnataka & Ors (2001) 2 SCC 666 wherein the Apex Court has held as under:-

12. *There is no specific rule here permitting seniority to be counted in respect of a roster promotion. In Ajit Singh-I a circular which gave seniority to the roster-point promotees was held to be violative of Articles 14 and 16. In Virpal which was later decided, this Court used the words "it is open to the State" and it gave an impression that the State could give seniority to roster-point promotees. But in Ajit Singh-II this aspect has since been clarified. It was held that seniority rules like Rules 2(c), 4 and 4-A permitting seniority to be counted from the date of initial promotion,*

govern normal promotions made according to rules — by seniority at basic level, by seniority-cum-fitness or by seniority-cum-merit or by selection — but not to promotions made by way of roster. The roster promotions were, it was held, meant only for the limited purpose of due representation of backward classes at various levels of service. If the rules are to be interpreted in a manner conferring seniority to the roster-point promotees, who have not gone through the normal channel where basic seniority or selection process is involved, then the rules, it was held will be ultra vires Article 14 and Article 16 of the Constitution of India. Article 16(4-A) cannot also help. Such seniority, if given, would amount to treating unequals equally, rather, more than equals.

10. In the case of M. Nagaraj, the Constitution Bench of the Apex Court has upheld the constitutional validity of the 85th Amendment relating to Art. 16(4A). Thus, seniority of the reserved candidates promoted earlier than general candidate has to be kept in tact. This has been affirmed by the Apex Court in the case of **Shiv Nath Prasad v. Saran Pal Jeet Singh Tulsi**, (2008) 3 SCC 80 where the Apex Court has held as under:-

"The Seventy-seventh Amendment in the Constitution was inserted by Article 16(4-A) with effect from 17-6-1995 enabling the State Government to make provision for reservation in State services in favour of Scheduled Castes and Scheduled Tribes in matter of promotion which was not there prior to this amendment, but it did not provide any benefit of seniority. Therefore again Article 16(4-A) was amended by the Constitution (Eighty-fifth Amendment) Act, 2001 with effect from 17-6-1995 providing "consequential seniority". Both amendments read as under:

"16. (4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

"16. (4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."



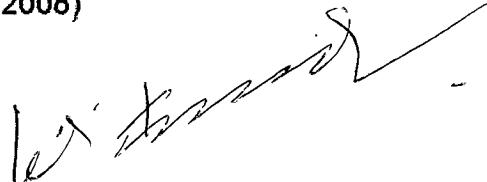
14. As a result of this subsequent amendment which came into force by the Constitution (Eighty-fifth Amendment) Act, 2001 with effect from 17-6-1995, the candidates who have been given promotion against reserved category could possibly claim a consequential seniority. (Emphasis supplied)

11. In view of the above, the applicant cannot claim seniority over the fifth respondent. As the 5th respondent has also qualified in the trade test prior to holding of the DPC, the applicant cannot question her promotion on the basis of not qualifying in the trade test earlier.

12. Hence, the OA fails and is dismissed. No costs.

(Dated, 7th November, 2008)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr/s

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Review Application No. 47 of 2008
in
Original Application No. 190 of 2006

Wednesday, this the 8th day of July, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

V. Sahredan,
S/o. P. Vasudevan,
Chargman -I (AR),
Naval Institute of Aeronautical Technology,
INS Garuda, Naval Base, Kochi - 04
Residing at M/43, Kasturba Nagar,
Kochu Kadavanthara P.O., Kochi – 20 Review Applicant.

(By Advocate Mr. TCG Swamy)

versus

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Defence, New Delhi
2. The Chief of the Naval Staff,
Integrated Headquarters,
Ministry of Defence (Navy) (DCP),
New Delhi
3. The Flag Officer Commanding-in-Chief,
Headquarters of Southern Naval Command,
Naval base, Kochi – 4
4. The Chief Staff Officer (P&A)
Headquarters Southern Naval Command,
Naval base, Kochi – 4

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5. Smt. K.R. Rajamma,
 Assistant Foreman (AR),
 Naval Aircraft Yard (Kochi),
 Naval Base, Kochi. ... Respondents.

[By Advocate Mr. T P M Ibrahim Khan, SCGSC for (R1-4)]

The Review Application having been heard on 05.06.09, this Tribunal on 8.7.09 delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This Review application has been filed, seeking review of order dated 7th November 2008 in OA 190 of 2006, whereby the OA stood dismissed. The main ground in this R.A. is that Ground No. VI of the OA and the judgment of the Hyderabad Bench have not been taken into consideration while passing the judgment under review. Had these been considered, the application would have been allowed. The said ground reads as under:-

"VI. Without prejudice to the above submissions, the Applicant begs to submit that in terms of the decision of the Hon'ble Supreme Court in RK Sabbarwal case, read with Annexure A7, the Respondents are bound to identify the posts in the higher cadre and also the incumbents in the lower cadre as General Category, SC and ST category. After such identification of the posts and incumbents is made only those who belong to the respective categories can be promoted to the higher posts earmarked for them. Against general category posts only persons belonging to and identified as general category can be promoted. There is no question of any inter-se seniority's between a general category employee and SC/ST category employee for being promoted to a general category vacancy. The vacancy against which the 5th respondent was promoted is a general category vacancy and in fact she has no right to be so promoted against that vacancy in so far as her promotion to

the post of Chargeman-I in scale of Rs 5500- 9000 was against a reserved vacancy in the SC category. Promotion of the 5th Respondent therefore, overlooking the applicant against the general category vacancy is arbitrary, discriminatory and unconstitutional."

2. Vide Annexure A-8 representation, the applicant had stated that he had been senior to the fifth respondent at the level of senior chargeman in 1987 against a general vacancy while Respondent No. 5 was promoted to the said post on 25th October, 1991 against a post reserved for scheduled caste. The next promotional post was Foreman followed by Senior Foreman. The Fifth respondent was promoted to the post of Foreman in 1994 while the applicant was promoted in 2000.
3. The contention of the applicant in the OA is that in the wake of judgment in R.K. Sabharwal, the general candidate who was promoted later than a reserved candidate would regain his seniority in the promoted post and it is on the basis of that position in the seniority list that the general candidate should be considered for further promotion. Thus, when the respondent was promoted to the post of erstwhile Foreman in 1994 ahead of the applicant who was senior to her in the feeder grade, on the promotion of the applicant, he regained his seniority. Hence, he should have been considered for promotion to the next higher grade, which is that of Asst. Foreman as by then, the erstwhile posts of Foreman and Senior Foreman were redesignated as Chargeman I and Foreman and an intermediate post of Asst. Foreman was introduced between the two posts.

4. Counsel for the applicant contended that the claim of the applicant is based on the decision of Hyderabad Bench also.

5. Heard on the Review Application and the entire case has been considered. Restoration of seniority of the applicant as in the grade of erstwhile Senior Chargeman (and present charge man I) in accordance with the orders passed in the wake of R.K. Sabbarwal's judgment would be possible only if the applicant's promotion to the grade of erstwhile Foreman occurred prior to 85th Amendment. Admittedly the applicant was promoted to the said post only in 2000. The earlier provisions as contained in order of the Ministry of Personal (DOPT) OM No. 200011/1/96-Estt (D) dated 30th January 1997 had been superseded by Ministry of Personnel Public grievances order dated 21 January 2002 and as such, there is no question of the applicant's being treated as senior to the fifth respondent in the grade of erstwhile foreman. The claim of the applicant would have been accepted had he been promoted to the grade of erstwhile Foreman prior to 1995. In the order under review, the fact that the applicant had been promoted to the grade of erstwhile Foreman only in 2000 had been recorded vide 2 and on the basis of the principles enunciated in the decisions of the Apex Court as contained in para 9 and 10, it has been correctly held that the applicant is not entitled to his claim.

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GJ

6. The Review application, is therefore, liable to be dismissed. We order accordingly.

(Dated, the 8th July, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(K B S RAJAN)
JUDICIAL MEMBER

CVR.