

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 336

1990

~~TA No~~

DATE OF DECISION 28-2-1991

T.K. JAYAN

Applicant (s)

Shri.M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus

Secretary, Ministry of Defence Respondent (s)  
New Delhi and two others

Shri N.N. Sugnapalan, SCGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement? <sup>Yes</sup>
2. To be referred to the Reporter or not? <sup>No</sup>
3. Whether their Lordships wish to see the fair copy of the Judgement? <sup>No</sup>
4. To be circulated to all Benches of the Tribunal? <sup>No</sup>

JUDGEMENT

N. Dharmadan, JM

The grievance of the applicant is against the promotion of the third respondent as Leading Hand Fire (Selection Grade) without considering the claim of the applicant, which inturn deprive him of the benefit of getting earlier promotion as Supervisor (Fire).

2. The applicant commenced his service as Fireman grade-II on 27-5-67. He was confirmed in that post on 14-9-72. The next promotion as Leading Hand Fire (Ordinary Grade) (LHF for short) was given to him on 3-8-79. According to the applicant he is entitled to be promoted as Supervisor (Fire) in preference to

to the third respondent, who commenced his service as Fireman Grade-II on 19-2-1968 and he was confirmed in the post on 14-9-72. His further promotion as LHF(OG) was only in 1984 but the third respondent was appointed as SHF(SG) with effect from 7-10-87. The applicant was <sup>not</sup> given the benefit of a posting as LHF(SG). Hence he lost the chance for further promotion as Supervisor(Fire) at an early date.

3. The applicant submitted that if the promotion to the selection grade was given to him because of his seniority to the third respondent, he would have got the normal promotion of Supervisor(Fire) much earlier in preference to the third respondent. The applicant also contended that after the Fourth Pay Commission's recommendation, the Ministry of Finance issued an office memorandum No.7(51)/E.III/86 dated 14-5-87 which inter alia stated that the selection grade should not be continued for the post in Group-'C' and 'D'. Hence, he contended that there exists no intermediary post viz. LHF(SG) in between the LHG(OG) and Supervisor(Fire). But the third respondent was given a posting as LHF(SG). Hence, he submitted representation. Since such representation evoked no response, he sent a lawyer's notice dated

16-2-90 and filed this Original Application under section 19 of the Administrative Tribunals Act 1985, for a declaration that he is entitled to be considered for promotion to the post of Supervisor(Fire) on the basis of his seniority in the cadre of LHF(OG) and for consequential benefits.

4. The respondents 1 and 2 filed a detailed reply statements producing therewith a copy of the Recruitment Rules dealing with the promotion from the post of LHF(OG) to LHF(SG) (Exhibit R-2(a)). According to the statutory recruitment rules the post of LHF(SG) is a promotion post from the feeder category LHF(OG). This post has not been abolished as per Annexure-I.

6. Service details in respect of the applicant and the third respondent as explained by the respondents 1 and 2 in their reply statement are as follows:

"(a) Shri TK Jayan - Applicant

- (1) Initially appointed as Fireman Grade-II in the pay scale of Rs.75-95 w.e.f. 24-5-67.
- (2) Promoted as Fireman Grade-I in the pay scale of Rs.80-110 w.e.f. 23-10-79.
- (3) Promoted as Leading Hand Fire(OG) in the pay scale of Rs.260-350 w.e.f. 4.8.79.

(b) Shri R. Karappan - 3rd respondent

- (1) Initially appointed as Fireman Grade-II in the pay scale of Rs.75-95 w.e.f. 9.2.68.



8. This S.R.O. 76/82 is admittedly in force even now which inter alia provides that an incumbent in LHF (OG), in order to qualify for promotion as LHF (SG) should have put in three years of service in the former grade plus the passing of the prescribed trade test. Admittedly, the applicant has not passed the trade test. On the other hand the third respondent passed the trade test in terms of the Exhibit R1 (b) Rule of 17-10-87. Accordingly, he was promoted and posted as LHF (SG).

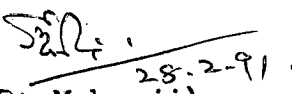
8. The respondents 1 and 2 admitted in the counter affidavit that the applicant was senior to the third respondent in his initial post viz. Fireman Gr. II and the seniority continued till his promotion to the post of LHF (OG). Since the applicant did not qualify for promotion to the post of LHF (SG) and at the same time unlike the applicant the third respondent was qualified to hold the post by passing the trade test on 7th October 1987, he became senior to the applicant with effect from 7-10-87. From the facts and circumstances of this case <sup>the applicant has no</sup> ~~any~~ right to get earlier promotion and appointment as LHF (SG) in preference to the third respondent. The applicant's claim for promotion to the post of LHF (SG) is fully depending upon the passing <sup>of</sup> the trade test prescribed under relevant <sup>are</sup> rules which <sup>are</sup> in force at the relevant time. Till the applicant is promoted to the post of LHF (SG) after

completing~~all~~ the requisite period of service and passing of the trade test as per the rules he will not become eligible for the post of Supervisor (Fire). Since the applicant has not yet acquired the requisite qualification for promotion to the post of LHF (SG), he cannot make a claim for being considered for the post of Supervisor (Fire). It has been clarified from the pleadings as well as from the documents that the promotion of the third respondent was made in accordance with rules in existence at the relevant time and we find no illegality or error, warranting our interference in this case. Hence, no question of any prejudice to the applicant arises at present on account of the earlier promotion of the <sup>third</sup> respondent. Under the above circumstances, the application deserves to be rejected.

9. In the light of the above facts and circumstances we are of the view that the applicant has not made out any case to set aside the selection and earlier promotion of the third respondent as Leading Hand Fire (Selection Grade) for being promoted to the post of the Supervisor (Fire). Accordingly, we see no merit in this case. Hence, it is dismissed.

Parties will bear their own costs.

  
(N. Dharmadan) 28.2.91  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

28th February '91