

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 4/2005

FRIDAY THIS THE 27th DAY OF OCTOBER, 2006

C O R A M

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

K.A.Mohanan
Fitter General Mechanic (HS)
A.G.E. E/M No. II, Naval Base
Kochi- 4

..Applicant

By Advocate Mr. T.D. Salim

Vs

- 1 Union of India represented by its Secretary
Ministry of Defence, New Delhi.
- 2 The; Chief Engineer, Naval Works
Naval Base Post, Kochi
- 3 Garrison Engineer,
E/M Kattari Bagh
Naval Base PO
Kochi-4
- 4 P.K. Thomas, FGM HS
O/O AGE E/ME No.II
Naval Base, Kochi-4

Respondents

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC for R 1-3
By Advocate Mr. P. K. Madhusoodhanan for R-4

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a Fitter General Mechanic (HS) under the third respondent and contends that he has been deprived of promotional benefits whereas the 4th respondent is being given undue

preference. The facts as stated by the applicant in brief are as follows.

2 The applicant was initially appointed as a Mazdoor on 1.9.1973, further promoted as R.R.Driver/DMP on 22.7.1988, thereafter he was posted as Fitter General Mechanic (FGM) on 6.7.1990. The 4th respondent was initially appointed as a DES on 15.12.1974, was promoted as DME w.e.f. 1.2.1983 and further promoted as RR Driver w.e.f. 7.2.1991. The posts of DME and RR Driver are both in the pay scale of Rs. 260-400. Hence at that time the applicant was senior to the 4th respondent in the grade of RR Driver since the applicant had been promoted to the said post w.e.f. 22.7.1988 whereas the 4th respondent had been placed in the same grade from 1.2.1983. Both of them have been promoted to the post of Fitter General Mechanic (FGM) HS-II on the same date 6.7.1994 and they are continuing in the same post. A seniority list has been published in January, 2004 which showed that the 4th respondent was promoted as FGM (HS-II) on 21.8.1995 and FGM HS-I on 11.5.1999 according to the applicant, and these two promotions have been given unauthorisedly without considering his correct seniority. The applicant had qualified the trade test for promotion to the post of FGM HS Grade-II in the year 1995 and FGM HS Grade-I in February, 2002. All categories of FGM (HSG-I) and (HSG-II) have now been clubbed together and a common category of FGM (HS) has been restructured and Annexure A-3 order has been issued. The applicant has also been given

placement as FGM (HS). After the publication of the seniority the applicant alleges there was serious anomaly by showing the 4th respondent two grades higher than the applicant and he preferred a representation dated 26.4.2004 (Annexure A-4) which was replied by the respondents at Annexure A-5 pointing out that it was a belated claim. The applicant then issued a Lawyer's notice to the Department which has now been replied to by the Annexure A-7 impugned order.

3 Reply statement has been filed by the official respondents 1 to 3 and the 4th respondent separately.

4 The official respondents have denied that the applicant is in any way senior to the 4th respondent and that the initial appointment of the 4th respondent itself was in a higher post. The post of DMP/RR Driver in the pay scale of Rs. 260-400 was created after merging DES and DME. The 4th respondent was in the pay scale of Rs. 260-400, DME on 7.11.1983 whereas the applicant has occupied the post of DMP/RR Driver in the scale of 260-400 after merger of cadres. Hence it was clear that the 4th respondent is senior to the applicant as on 7.11.1983. The seniority list based on which the applicant had made his representation was published by the notification dated 1.7.1995 and amended by notification dated 20.9.1995 and 13.2.1996. As per the above seniority lists, the 4th respondent is at Sl. No. 2 whereas the applicant is at Sl. 96. Therefore the applicant cannot claim seniority over the 4th respondent after the passage of

nine years of its notification. The application is time barred and unsustainable.

5 The 4th respondent in his reply has put forward more or less the same arguments namely that his seniority has been upheld throughout the years 1996, 1999, 2002 and 2004 and the applicant has not objected to his position. On merits also, it has been stated that he was in the higher scale of pay through-out as he entered service on 15.12.1974 in the scale of Rs. 210-290. The said scale was revised to Rs. 260-400 w.e.f. 16.10.1981 and on passing the trade test he was promoted as DME by order dated 1.2.1983 and the said post was re-classified as DMP w.e.f. 7.2.1991. On 6.7.1994 8 posts including the post of DMP were re-designated as FGM(Sk) w.e.f. 6.7.1994 and the applicant as well as the 4th respondent were thus re-designated as FRM (SK) w.e.f. the same date. The submission of the applicant that the 4th respondent was promoted as RR driver w.e.f. 7.2.1991 is highly misleading and incorrect as he was holding the scale of Rs. 260-400 as DME from 1.2.1983 and this aspect has been suppressed by the applicant. The applicant has also suppressed the fact that prior to Annexure R -1 dated 26.4.2004 seniority list, seniority lists were published in the years 1995, 1996, and 2002. It is also submitted that there are now 12 vacancies of Master Craftsman available for promotion from the post of FGM (HS) and having come to know that the 4th respondent is placed at rank NO. 3 in the area seniority list of qualified highly skilled personnel for

selection whereas the applicant is placed at Sl.No. 73, the applicant has filed this O.A. to deny consideration of the 4th respondent to the promotion post and there is no other merit in the O.A.

6 No rejoinder has been filed.

7 We have heard Shri T.D. Salim for the applicant, Mr. Rajeev appearing for SCGSC and have also gone through the pleadings on record.

8 The impugned order at Annexure A-7 is self explanatory. In Para 8 of the order a comparison has been made of the service particulars of the applicant and the 4th respondent. It would be appropriate to extract the same.:

<u>Appointment held</u>	<u>Shri P.K.Thomas (4th respondent)</u>	<u>Shri K.A Mohanan (applicant)</u>
Mazdoor (196-232)	--	01.09.1973
Mate (210-290)	-	19.12.1983
DES (210-400)	15.12.1974	-
DME (260-400)	01.02.1983 (seniority given) at Kochi w.e.f. 7.11.83)	-
DMP/RR Driver (260-400)	7.2.91	22.7.1988
DES/DME/RR Driver redesignated to FGM (SK)	July. 1994	July,1994

9 It is evident from the above that the applicant entered service in the lowest scale on 19.12.1983 as a Mazdoor whereas the 4th respondent entered in the scale of Rs. 210-400 w.e.f. 15.12.1974 when the applicant entered in a lower scale of Rs. 210-290 on 19.12.1993 only. The 4th respondent's scale was revised to Rs. 260-400 w.e.f. 15.12.1981 and he was promoted as DME by order dated 1.2.1983 whereas the applicant was promoted as DMP in the same scale on 22.7.1988. Thus the applicant came in to the scale of Rs. 260-400 only in 1988 when the 4th respondent was in the scale from 1981 onwards and was regularly promoted to that scale from 1983. Both the posts of DMP and DES were re-designated as FGM (SK) on 6.7.1994. This re-designation cannot make the 4th respondent junior to the applicant. The 4th respondent would be entitled to the benefit of the service in the same scale from an earlier date. The applicant came into that scale only by virtue of promotion on 22.7.1988. It is also seen from Annexure R-4 instructions issued at the time of implementing the re-designation Fitment exercise in respondent's office that the inter-se seniority will be reckoned from the date of placement in the scale of Rs 260-400 and the seniority will count on the basis of length of service in the next below grade. The relevant portion is extracted below:

"8 Inter-se-seniority

Consequent on re-designation of the above Trades, a doubt may arise as to how the Inter-se-seniority is to be fixed between these trades. It is clarified that inter-se-seniority will reckon from the date of their placement in the scale of Rs. 260-400 (pre-revised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of

length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the senior. The basis of fixing inter-se-seniority as aforesaid will equally apply to respective Mate (SS) Trades. A combined seniority as per their placement be maintained for the purpose of promotion."

These instructions have been in force since 1994. If the applicant had any genuine grievance he should have agitated the matter at the time of merger and re-designation. Immediately thereafter a seniority list had been published in the year 1999.

10 It is further evident that the applicant never contested the seniority when several seniority lists were published. It is only in 2004 when the seniority list was published that he has chosen to challenge the same. The respondents are right in contending that settled seniority position cannot be challenged after more than 9 years of its final settlement.

11 Though a contention^{has} been raised regarding further promotion to FCM (HS) that the 4th respondent has not passed the Trade test, no records have been produced nor was the point seriously contested. The 4th respondent has strongly denied this allegation and stated that promotion was given in accordance with rules after passing necessary trade test and selection by DPC.

12 Hence we are of the view that none of the grounds mentioned by the applicant is tenable or sustainable on the facts of the case.

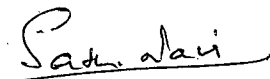
Moreover, the applicant has not come with clean hands, he has suppressed crucial information regarding the particulars of the 4th respondent.

13 The O.A is dismissed. No costs.

Dated 27.10.2006.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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