

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 390 of 2000

Thursday, this the 6th day of June, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. V.O. Thomas,
Refrigeration Mechanic HS-II,
Garrison Engineer, Electrical Mechanic,
Kochi-4
2. K. Divakaran,
Refrigeration Mechanic, SK
Garrison Engineer, Electrical Mechanic,
Kochi-4
3. A.P. Pillai,
Refrigeration Mechanic, SK
Garrison Engineer, Electrical Mechanic,
Kochi-4

....Applicants

[By Advocate Ms. K. Indu]

Versus

1. Union of India, represented by its
Secretary, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief,
Army Head Quarters, New Delhi-11
3. Chief Engineer, South Zone,
Military Engineering Service, Kochi-4
4. The Commander Works Engineer,
Garrison Engineering,
Kataribagh, Naval Base, Kochi-4

....Respondents

[By Advocate Mr. A. Sathianadhan, ACGSC]

The application having been heard on 6-6-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants, three in number, filed this Original
Application aggrieved by the alleged inaction on the part of
the respondents in granting seniority and promotion to them.
The 1st applicant was initially appointed as a Refrigeration



Mechanic on 1-11-1970 at Bombay, the 2nd applicant on 7-8-1975 at Vasco and the 3rd applicant in June, 1974 at Coimbatore and they were subsequently transferred and posted at Kochi on 3-4-1980, 4-7-1980 and 1-11-1985 respectively. According to the applicants' averments in the Original Application, considering their seniority the first two applicants were promoted as Refrigeration Mechanic HS-II with effect from 15-10-1984 and the 3rd applicant with effect from 27-10-1985. However, their promotions were cancelled and they were reverted during 1989. They approached this Tribunal by filing OA No.554/89. The said OA was disposed of by this Tribunal by A1 order dated 31-1-1991. Applicants alleged that even though A1 order was rendered on 31-1-1991, they were never promoted. The 1st applicant was later promoted as HS-II on 26-10-1995 and the 2nd and 3rd applicants were not promoted till the filing of this Original Application. According to them, the 1st applicant should have been promoted in 1991 and the 2nd and 3rd applicants in 1993. They submitted that CPR 73/73 was made applicable to industrial persons in MES only in the year 1985. In support of the same they enclosed A2 and A3 with the Original Application. The 2nd respondent by A3 letter dated 8-10-1986 made it clear that the said CPR would be effective from 16-12-1985 only. According to applicants, pursuant to A1 order no revised seniority list had been published by the respondents. It was also submitted that in subsequent judicial pronouncements it had been held that CPR 73/73 was not applicable to employees of the MES. According to them, relinquishment of the seniority as per A1 order would not stand in the way of the respondents taking a decision. Respondents filed an appeal before the Hon'ble Supreme Court in SLP No.8200/94. The Hon'ble Supreme Court passed A4 order dated 23-9-1996 and four weeks thereafter, dismissed the SLP in November, 1996. Inspite of that the respondents were not

giving promotions to the applicants as evident from the reply given to the 1st applicant's A5 representation dated 18-6-1999, by A8 reply dated 2-7-1999. As the 1st applicant was due to retire on June, 2000 on superannuation and the 2nd and 3rd applicants were not at all promoted and getting no reply regarding A6 and A7 representations of the 2nd and 3rd applicants, the applicants filed this Original Application seeking the following reliefs:-

- i) to direct the 2nd respondent to grant retrospective promotion to the applicants basing on their seniority in service;
- ii) to direct the respondents to consider Annexures A5, A6 and A7 representations and pass appropriate orders granting retrospective promotions to the applicants; and
- iii) to issue such other direction, order or declaration as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of this case."

2. Respondents filed reply statement resisting the claim of the applicants. It was submitted that the directions of this Tribunal in OA No.554/89 stating that the applicants should be considered for promotion to HS Grade-II on the basis of their revised seniority when their turn comes up without insisting upon passing the trade test, was being followed by them. The matter regarding the revised seniority had been accepted by the applicants and on that basis the 1st applicant had been promoted and the other applicants would also be considered as and when their turn comes. It was not due to the pendency of the SLP that the promotions were delayed. The 1st applicant had already been promoted as per availability of the vacancy and the other applicants would be considered for promotion as per availability of further vacancies and the said intimation had been given to the 2nd and 3rd applicants by R1 and R2, both dated 14-10-1999.



3. Heard the learned counsel for the parties.

4. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

5. On a careful consideration of the materials placed before us and considering the rival submissions, we are of the view that the applicants are not entitled for any of the reliefs sought for.

6. The first relief sought for by the applicants is for a direction to the 2nd respondent to grant retrospective promotion to the applicants basing on their seniority in service. We find from A1 order of this Tribunal in OA No.554/89 that the applicants had approached this Tribunal earlier when they were reverted from the post of HS Grade-II to HS Grade-III pursuant to the orders of this Tribunal in OA No.174/87. The said OA No.554/89 was disposed of by this Tribunal by A1 order and from A1 order we find that the applicants had accepted the revised seniority given to them in the grade of Refrigeration Mechanic from the date of joining the Kochi Unit. The only submission made by them was that they should not be allowed to appear for the trade test for HS Grade-II once again. This would be evident from the following paragraphs 4 and 5 of A1 order:-

- "We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the applicants fairly argued that the applicants have no grievance against the promotion of their seniors in the revised seniority list who were applicants in O.A. 174/87 in compliance with the order of this Tribunal dated 28.2.89 in that case. According to him the applicants would be satisfied if for future vacancies in H.S.II to which cadre they had been promoted with effect from 15.10.84/27.10.85 but had to be reverted in 1989 under orders of the Tribunal but were allowed to retain the



pay in H.S.II drawn by them, they are considered on the basis of the revised seniority, but they may not be required to pass the trade test. It is admitted fact that the applicants before us had been working as Refrigeration Mechanics from dates earlier than the dates when the applicants in O.A. 174/87 were so appointed. It is because of their transfer on request to Cochin seniority unit that they had to lose the benefit of their previous service for the purpose of seniority. They had been granted exemption from passing the trade-test for promotion to H.S.II in which grade they had been working satisfactorily till 1989 when they were reverted because of the loss in their seniority. They have been allowed to retain the higher pay that they have been drawing between 1984 and 1989. In equity, therefore, we feel that at this late stage when they have undergone reversion to the lower grade, it will be adding insult to injury if they are required to pass the trade-test for re-promotion to H.S.II which they have been enjoying for about five years. There will not be by their being exempted from passing the trade test, any adverse effect on the efficiency of the unit where they are working because their previous performance as Refrigeration Mechanics H.S. Grade-II till 1989 has been above reproach." [Para 4]

"In the facts and circumstances we dispose of this application with the only direction that the applicants should be considered for promotion to H.S Grade-II on the basis of their revised seniority when their turn comes without insisting upon their passing the trade-test as if the exemption granted to them earlier has not been withdrawn. There will be no order as to costs." [Para 5]

7. When above is the position and the applicants have conceded that they would be entitled for seniority only from the date when they have joined Kochi Unit, the first relief sought for by them for a direction to the 2nd respondent to grant retrospective promotion basing on their seniority in service, has no substance. Moreover, nothing has been brought to our notice that any Refrigeration Mechanic who has been appointed later than the dates of joining of the applicants in the Kochi Unit has been promoted as HS Grade-II.

8. The second relief sought for by the applicants is for a direction to the respondents to consider A5, A6 and A7 representations and to give an appropriate reply to them. We find that A6 and A7 filed by the 2nd and 3rd applicants have been replied by the respondents by R1 and R2 letters, both



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dated 14-10-1999, wherein they had been advised that they would be considered for promotion to HS Grade-II on the basis of their revised seniority when their turn comes without insisting upon passing the trade test as if the exemption granted to them had not been withdrawn. Therefore, the second relief sought for has become infructuous.

9. In the light of the above, finding no merit, we dismiss this Original Application with no order as to costs.

Thursday, this the 6th day of June, 2002

K.V. SACHIDANANDAN
JUDICIAL MEMBER

G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

A P P E N D I X

Applicants' Annexures:

1. A-1 : True copy of the Judgement in OA 554/89 dt.31.1.91 before the Central Administrative Tribunal, Ernakulam.
2. A-2 : True copy of the relevant portion of the CPRO 11/75.
3. A-3 : True copy of the letter No.79040/RPOS/RIC(I) dt.8.10.86 issued by the 2nd respondent.
4. A-4 : True copy of the Order in SLP No.8200/94 dt.23.9.96 of the Supreme Court of India.
5. A-5 : True copy of the representation dt.18.6.99 submitted by the 1st applicant to the 2nd respondent.
6. A-6 : True copy of the representation dt.27.5.99 submitted by the 2nd applicant to the 2nd respondent.
7. A-7 : True copy of the representation dt.27.5.99 submitted by the 3rd applicant to the 2nd respondent.
8. A-8 : True copy of the letter No.13554/4256/E1NB dt.2.7.99 issued by the 4th respondent.

Respondents' Annexures:

1. R-1 : Photostat copy of the letter No.13554/4346 E1NB dated 14.10.99 issued by the N.K.K.Nair, Administrative Officer for Commander Works Engineer, Kataribagh, Naval Base (PO), Kochi-4.
2. R-2 : Photostat copy of the letter dated 14.10.99 No.13554/4345/E1NB, issued by the N.K.K.Nair, Administrative Officer for Commander Works Engineers, Kataribagh, Naval Base, Cochin-4.

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