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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 562/88

Transfar Application No: ---

DATE OF DECISION: 31-3-1994

P.P.Mhatre and 13 ors. Petitioner

Mr.V.K.Pradhan Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr.P.M.Pradhan Advocate for the Respondent(s)

CORAM :

-The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri M.R.Kolhatkar, Member(A)

1. To be referred to the Reporter or not ? M
2. Whether it needs to be circulated to other Benches of the Tribunal ? M

M


(M.S.DESHPANDE)
VC

(S)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.562/88

P.P. Mhatre and 13 ors. .. Applicants

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman

Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.V.K.Pradhan
Advocate for the
Applicants.
2. Mr.P.M.Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per M.S.Deshpande, V.C.)

Date: 31-3-1994

Two calims have been made in this application; one is equal pay for equal work in the Highly Skilled Grade II Category and promotion to the post of Refrigerator Mechanics from the year 1981 on the basis that the applicants were not informed of the direct recruitment which was done in the year 1981.

2. The 14 applicants were recruited as Driver Compressors between the years 1974 and 1978. Respondents resorted to direct recruitment in the year 1981 for the post of Refrigerator Mechanic without informing the applicants who would have been eligible for direct recruitment under the 1971 rules. It is urged certain persons who were senior to the applicants were appointed to the higher scale and the applicants ought to be paid the same

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wages as to those who were to the seniors.

3. Though the applicants stated that they made a representation, the last being made in the year 1988, **that** representation has not been annexed and what is being challenged is the recruitment made in the year 1981. It is true that there is no denial in the written statement filed by the respondents about the representations alleged to have been made in the year 1988 but on account of omission ^{to file} of copy of the representation it is difficult for us to ascertain what was the nature of the representation and what relief has been sought by making such representation.

4. The respondents have urged that the applicants were not qualified for being promoted to the Highly Skilled Gr.II. The learned counsel for the respondents relied on the 1971 Recruitment Rules which were known as Military Engineer Services (Industrial Class III and Class IV posts) Recruitment Rules, 1971. The posts of Refrigerator Mechanics were to be filled by promotion failing which by transfer and failing both by direct recruitment. The feeder cadre for promotion was from Motor Pump Attendant or Driver Compressor in terms of SRO 342 of 1971 and the prescribed eligibility was minimum three years service in the grade and passing of recruitment trade test for the post as prescribed by the Engineer-in-Chief. The respondents contention is that the applicants did not

have the eligibility for the post of Refrigerator Mechanic because they have not put in three years of service and they are not in the zone for being called to appear for the trade test because they did not have the requisite seniority. The position has been clarified in para 8 of the written statement where it has been stated that as per the recommendations of the Anomaly Committee and in terms of Government of India, Ministry of Defence letter dttd. 8th April, 1986 the promotion for the post of Refrigerator Mechanic category from skilled grade to highly skilled grade is to be made in respect of 20% of the vacancies, as on 15th October, 1984 and the said vacancies were to be filled in merely on the basis of the seniority without obligation to qualify in the trade test. The promotion to 20% of the vacancies in the highly skilled grade II was merely on the basis of the seniority in the skilled grade without obligation to qualify in the trade test only as a one time relaxation for initial implementation of the three grade structure. We find no answer to respondents contention that the applicants did not come within the zone of seniority which would have enabled them to a place in the 20% seniority. The applicants could have qualified later only by giving a trade test and this benefit was extended to all the seniors serving in the respective grades on seniority basis. According to the respondents names of the applicants were recommended and forwarded to the CWE(NW) Bombay for the trade test to the post of highly skilled grade II but were not considered as the applicants were comparatively juniors in the area of seniority. It is apparent from the

rule position that the applicants were not qualified for being considered for promotion without passing the trade test and they could not have been called for trade test in view of the relative junior position in the cadre.

5. The learned counsel for the applicants however urged that even if the applicants were regarded as not eligible for promotion as Refrigerator Mechanic, since the applicants performed the same work as did the others they should have been paid equal pay for equal work. In para 6(iv) of the application it was mentioned that as soon as the persons who are placed in Highly Skilled Grade II work is finished, the applicants take their place and do the same work, and inspite of the fact that the applicants are carrying out exactly similar work they are not given the wages which are paid to other employees placed in Highly skilled grade II. Learned counsel for the respondents however pointed out that the work of highly skilled grade II could be entrusted only to more experienced people because the latter have to operate costly and heavy duty plant equipments and tools and the jobs have to be carried out in the skilled manner very sensitively as they are required to operate sophisticated/delicate equipments.

6. We find that was a valid consideration for paying higher scale to workers by virtue of seniority and doing more sophisticated and delicate work. We find no element of arbitrariness in this. Seniority is ~~seen~~ recognised as a factor for payment of higher emoluments in any cadre. In the absence of

proper material we find that the it difficult to hold that the applicants performed same work as did the others who were paid higher wages and we find that the applicants ~~were~~ ^{were} did not entitled to claim higher wages as their seniors or those ~~were~~ ^{were} in the higher grades.

With
7. ~~regard~~ regard to the contention that the applicants were not considered for direct recruitment in the year 1981 and that the fact that it was not informed to them, apart from the question of their answering the eligibility clause, the most applicants could have got was seniority over the persons who were directly recruited in the year 1981. None of these persons have been made parties to the present case. We are not satisfied ^{about the reasons} for the delay in raising the challenge to direct appointments and we find that in the absence of the persons who were directly recruited the applicants will not be entitled to press their claim for being reckoned in the seniority from 1981.

8. In result we see no merit in the application which is dismissed. There is no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

M.S.Deshpande
(M.S.DESHPANDE)
Vice-Chairman