

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 108/89

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DATE OF DECISION: 25/2/94

Shri Pandharinath Fakira Kumbhar Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus

Union of India and others. Respondent

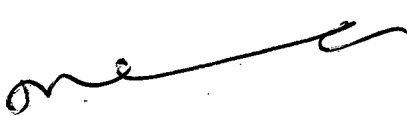
Shri R.K. Shetty Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri R.Rangarajan, 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*


(R.Rangarajan)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(2)

Original Application No. 108/89

Shri Pandharinath Fakira Kumbhar

... Applicant.

V/s.

Union of India through
Secretary,
Ministry of Defence Production,
South Block - Delhi Headquarters
New Delhi

The Chairman,
Ordnance Factory Board
Calcutta.

The General Manager,
Ordnance Factory
Bhusawal

Shri A.L. Wagh
Fitter Auto Electrician
High Skilled Grade II,
Motor Transport Section
Ordnance Factory,
Bhusawal.

Shri R.G. Jonwal
Fitter Auto Electrician
High Skilled
Electric Maintenance Section
Ordnance Factory,
Bhusawal.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

Hon'ble Shri R. Rangarajan, Member (A)

Appearance:

Shri D.V. Gangal, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 25/3/94

¶ Per Shri R. Rangarajan, Member (A) ¶

Applicant, who had passed both SSC and ITI certificate in Auto Mechanic, joined as Labour 'B' in the Ordnance Factory at Bhusawal on 14.2.72. He was further promoted as 'Battery Attendant' (Semi-skilled) on 25.9.75 which was redesignated as Fitter (Auto) Electrician on 17.7.79, promoted as Electrician (Auto) 'B' grade (Skilled) on 8.1.82 and Electrician (Auto) H.S. II on 7.8.79.

2. Respondent No.4 who was Fitter(Auto) Electrician 'B' grade (Skilled) from 10.4.79 was redesignated as Electrician (Auto) skilled from 14.3.88 and was promoted as Electrician (Auto) H.S.II with effect from 13.8.88 allegedly over looking the claim of the applicant for that post as he is senior to respondent No.4. Similarly respondent No.5 who was redesignated as Electrician 'B' grade (skilled) was also promoted to the post of Electrician (Auto) H.S.II with effect from 13.8.88 allegedly over looking the applicant. The applicant states that respondent No.4 and 5 are not in the direct line of promotion to the post of Electrician H.S.II and that he should be first promoted to the post of Electrician H.S. II before considering the respondent No. 4 and 5. He had represented to respondent No.3 by his representation dated 19.3.88 (Annexure -D). He was informed by Annexure E letter dated 23.8.88 that Respondent No.4 is enblock senior to him who was recently permitted to appear for the trade test of Electrician (Auto) H.S.II and promoted on passing the trade test. By the same letter some documents requested by the applicant to prove his case was also denied. Applicant also issued a lawyer's notice dated 10.11.88 to respondents No.1, 2 and 3 stating that the redesignation of the respondents as Electrician (Auto) skilled is irregular and that he is senior to respondent No.4 in the skilled grade of Electrician (Auto) and hence he should be promoted to the post of Electrician (Auto) H.S.II in preference to respondent No.4 from 13.8.88. This Lawyer notice was replied by respondents by letter dated 12.12.88 stating that the respondent No.4 was redesignated as Electrician (Auto) skilled on administrative ground and was placed

enblock senior to applicant in the above said skilled category and hence respondent No.4 was promoted as skilled H.S.II as Electrician (Auto) as per rules. Applicant having been aggrieved by the refusal of the authorities to promote him to the post of Electrician (Auto) H.S.II from 13.8.88 in preference to respondent No. 4 and 5 had filed this application under section 19 of the Administrative Tribunals Act 1985 inter alia praying for quashing the promotion orders of respondent No. 4 and 5 to the post of Auto Electrician H.S. II with effect from 13.8.88 as illegal, malafide and arbitrary and for a further declaration that he is entitled for consideration for promotion to the post of Auto Electrician H.S.II with effect from 13.8.88 with all consequential benefits.

3. The respondents state that respondent No.4 was redesignated as Auto Electrician (skilled) in the administrative interest as he was well acquainted with electrical maintenance job and that the redesignation was done with the approval of the competent authority as can be seen from Exhibit No.3. He was redesignated in the administrative ground in the public interest and hence there is no irregularity in the redesignation. Respondent No.4 having been holding the skilled post from 10.4.79 as Fitter (Auto) Electrical B grade has become senior on redesignation from 13.4.88 to applicant who is holding the post of Electrician (Auto) B grade being the feeder category for promotion to H.S.II as Electrician (Auto) respondent No.4 being senior to applicant had been promoted with effect from 13.8.88 to that post following the rules and hence there is no irregularity in promoting respondent No.4.

From 8.1.82.
Electrician (Auto)
B Grade.

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4. We have heard Shri Gangal for the applicant and Shri R.K. Shetty for the respondents.

5. Two main points arise in this O.A. They are (1) whether the category of Fitter (Auto) skilled and Electrician (Auto) skilled are one and in the same seniority unit (2) If both the categories are different units whether redesignation of respondent No.4 as Electrician (Auto) skilled with effect from 14.3.88 in the administrative ground in the public interest is in order or not.

6. Applicant's counsel submitted that the order dated 13.8.88 (Annexure -C) which is the impugned order clearly indicates that respondent No.4 and 5 came from other trades and this fact was conveniently omitted in the above order. We also see from the order that it is a composite order giving promotion in various categories of staff and there is distinct difference in the designation of respondent No.4 and 5 before they are brought as skilled Electrician and promoted to H.S.II Auto Electrician to come to the conclusion that Auto Fitter trade is different from Auto Electrician trade. No combined seniority list which will indicate that both the trades belong to the same seniority was also enclosed along with reply. To a query whether such combined seniority list is available, the learned counsel for the respondent gave an evasive reply stating that both the trade units are sister trade units and inter-chargeability is permitted. We do not see this reasoning satisfactory to prove point No.1 aforesaid. Hence we have no other option except to hold that Fitter (Auto) skilled and Electrician (Auto) skilled are two different seniority units and one can join the other unit only following the rules for absorption in that unit.

7. The above conclusion leads us to the next point whether absorbtion of respondent No.4 as skilled Electrician(Auto) which is a different unit from Auto Fitter(skilled) in the administrative ground in the public interest is in order or not. The learned counsel for the respondent submitted that the respondent No.4 ^{he} is well trained in electrical maintenance job and hence ~~was~~ redesignated as Auto Electrician (Skilled) in the administrative exigencies. As his absorbtion was on administrative exigencies he was given the seniority as skilled Auto Electrician from 10.4.79 when he was promoted as Auto Fitter skilled grade. He further submitted it was done as per rules and approved by the competent authority as can be seen from Exhibit No3. The learned counsel for the applicant relied on the judgement of the Karnataka High Court dated 16.3.92 in 1982(2) SLJ 399 - Vijaydevarj V/s. G.V.Rao and others and the instruction issued by DGOF vide letters dated 11/13 -7-79, 1/3 -11-72 and 7.5.79 to prove his contention.

8. Absorbtion in other units in the administrative units arise normally in exigencies of service. Such exigencies may arise for example when some units are closed and the surplus employees have to be accommodated in other units or there are no suitable trained hands available in the other unit and hence trained personnel from other units are inducted to discharge duties in the other unit. In this case the reason given for the redesignation of respondent No.4 as Auto Electrician skilled is due to the fact that he is well acquainted in Electrical maintenance job and that his induction in the trade of Auto Electrician is necessary in the public interest. Such arbitrary induction on the basis of personal knowledge of any individual or at the whims and facies of the factory managers cannot be accepted in an organisation which is governed by certain

rule of law. The acid test to come to those conclusion that in the Auto Electrician (Skilled) unit there are no eligible employee to be promoted to Auto Electrician (H.S.) grade II is to subject all the eligible employees to an authorised trade test and if none qualifies in the trade test there will be justification to induct qualified employees in this trade from other units. Even in such a situation we will think it fit and proper to induct qualified employees from other units on deputation basis for a specified length of time during which period the employees in that unit will be trained to qualify for performing the duties and responsibilities of that post. In this case respondent No.4 was redesignated as Auto Electrician (skilled) and promoted to H.S. grade II from 13.8.88 without ensuring that none of the employees in the Auto Electrician unit are fit to hold the charge of Auto Electrician (H.S.) grade II. The applicant who was Auto Electrician (skilled) was never trade tested to see whether he is suitable for promotion to H.S. Grade II before inducting respondent No.4 as Auto Electrician (skilled) and promoting him as H.S. Grade II with effect from 13.8.88. As a matter of fact applicant passed the trade test for Auto Electrician Grade II in the first attempt itself as can be seen from records and was promoted as Auto Electrician H.S. Grade II with effect from 7.8.89. Hence the approval accorded by the Competent authority to induct respondent No.4 as Electrician (Auto) skilled in terms of Exhibit No.3 is not in accordance with rules and has been done arbitrarily.

9. The judgement of Karnataka High Court quoted by the respondents as mentioned above does not relate to a case wherein an employee was brought on administrative ground without following rules and given

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seniority from an earlier date. Hence this decision is not supportive to the respondent's case. DGOF letter dated 11/13 - 7-79 is very specific that an individual promoted in his interest to a different trade he would not have the benefit of his seniority in his earlier trade/grade. Though it states that in the administrative interest if an individual is redesignated he would get benefit of his seniority in the earlier trade, this does not mean that it is unnecessary to establish the grounds for administrative interest. As stated earlier the acid tests to prove the anxiety of the respondents to induct an individual to another unit in exigencies of service on the basis of non availability of trained man power in that unit has to be brought on record and on that ground induction from other unit may be justifiable. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. If a decision is taken without any principle or without a rule such a decision is the antithesis of a decision taken in accordance with rule of law. The other letters quoted by the respondents do not also come to their rescue to prove their action of inducting respondent No.4 as Auto Electrician(skilled) as they state that direct line promotion is only envisaged under normal circumstances. Hence we come to the conclusion that the induction of respondent No.4 as Auto Electrician (skilled) giving him seniority in that grade from an earlier date is not sustainable.

10. Respondent No.4 is working as Auto Electrician H.S. grade II from 13.8.88 i.e. for a period of about six years. It will be unfair to revert him from that grade or giving him seniority in that grade later than that date, as he was promoted to that grade only after

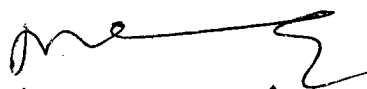
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he passed the necessary tests. It will also be unfair to the applicant if he is not promoted as per his turn when he qualified for promotion as Auto Electrician H.S. Grade II. Hence we suggested that the applicant may be deemed to have been promoted as Auto Electrician Grade II from 13.3.38 when respondent No.4 was promoted to that grade placing him above respondent No.4 in that grade and giving him all the consequential benefits. Counsel for the applicant had readily accepted the above suggestion though the counsel for the respondents had some reservation to agree to that suggestion. We find that there is no escape except to give a direction as per our above suggestion.

11. As we are contemplating to give a direction for promotion to the applicant from 13.3.38 and placing him in seniority above respondent No.4, there is no need to scrutinise the case of respondent No.5 as he is similarly placed as respondent No.4 and what is stated for respondent No.4 will be applicable to respondent No.5 also.

12. In the result the following directions are given:
" Applicant shall be deemed to have been promoted as Auto Electrician H.S. Grade II with effect from 13.3.38 and shall be placed senior to respondent No.4 and 5. His pay shall be fixed and his increment shall be drawn taking his date of promotion to Highly skilled Grade II from 13.3.38. Arrears has to be drawn on that basis."

13. The above direction will be complied within a period of three months from the date of issue of this order. No costs.


(R. Rangarajan)
Member(A)


(M.S. Deshpande)
Vice Chairman