

(8)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 604/89  
T.A. No.

198

DATE OF DECISION 16/4/89

A. K. Birhade

Petitioner

Mr. G.S. Gawali

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. V.S. Masurkar

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. Justice U.C. Srivastava, V/C

The Hon'ble Mr. M.Y. Priolkar, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

MGIPRRND-12 CAT/86-3-12-86-15,000

✓  
( U.C. Srivastava )  
V/C

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY  
\* \* \* \* \*

Original Application No.604/89

A.K. Birhade

... Applicant

V/s

Union of India & Ors.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava  
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. G.S.Gawali, Advocate  
for the applicant and  
Mr. V.S.Masurkar, Counsel  
for the respondents.

JUDGMENT:

Dated : 10/4/89

(Per. U.C.Srivastava, Vice-Chairman)

The applicant who alleged to have successfully passed the departmental qualifying examination for promotion of next higher grade of HSK-I, Electrical Trade held during the year of 1986 for promotion to the next higher grade published on 26th October 1987 by Personnel Manager for Admiral Superintendent, Naval Dockyard, Bombay in which his number is shown at serial No.15 and serial No.31 and he belongs to Scheduled Caste Hindu-Mahar Community has prayed that as he has qualified in the departmental examination held during the year 1986 for promotion to the next higher grade of Electrical Fitter Trade (HSK-I) dated 21st January 1987, dated 30th March 1987 and dated 26th October 1987 be made operative and absolute by promoting the applicant to the post of Electrical Fitter Trade HSK-I. He has made this prayer as as per his allegation he has qualified in the year 1986 but the

Commander Manager and others have committed illegality and the orders of the Ministry of Defence dated 18.11.87 regarding setting up of grievances cell for SC/ST in the Ministry of Defence. According to the applicant he should have been promoted in the grade of Rs.1320-30-1560-EB-40-2040 as his juniors have been promoted. Similarly, he should have been promoted to the post of HSK-I in the grade of Rs.1320-2040. The letters which have been sent to him by which he has not been promoted have been challenged by him to be violative of articles 14 & 16 of the Constitution of India. The order which has been sent to the applicant which is under challenge reads that he has been redesignated as Radio Mechanic HSK-II with effect from 23rd November 1983 in Public Interest and he has ~~been~~ passed the Departmental Examination for Electrical Fitter HSK-I on 26.10.87. The allegation of the applicant is that the respondents have promoted juniors to him to the post of HSK-I but he has not been promoted. His serial number is 15 in the list but all ~~his~~ juniors have been promoted to the post of HSK-I whereas his/<sup>right to</sup> promotion has been denied and his representation also bore no fruit. The General Secretary of Naval Employees Union also sent a letter on 3.3.1989 to the Flag Officer Commanding-in-Chief, Western Naval Command, Bombay to whom a reply was given to the effect that the applicant has to appear for the examination being conducted for the trade of Radio Mechanic for further promotion. According to the applicant many personnel in FMU have been redesignated on basis of public interest without appearing in the Trade-Test conducted by the Admiral Superintendent. One C.P.D'Souza was originally appointed as Engine Fitter and he has been redesignated

as Shipwright HSK-II on the basis of Public Interest although he did not appear in the test. The respondents have resisted the claim of the applicant. There case is that the applicant had appeared for the examination for Electrical Fitter Grade-I and did not appear for the higher grade in the Radio Mechanic grade and without any authority for the same which was irregular as he directly appeared for the said examination. According to the respondents as he was holding the post of Radio Mechanic HSK-II it was improper for him to submit an application and appear in the said examination and because he appeared in the said examination and placed under serial No.15 he will have no right to get appointment to the said post. He was given several opportunities to appear and qualify in Radio Mechanic HSK-I grade examination but did not appear for it despite the fact that opportunity was given no reason to him. There was absolutely for him to appear in the trade test for Electric Fitter as he was aware that the two trades of Electric Fitter and Radio Mechanic are entirely separate trades. The facts as stated above make it clear that although the applicant was working in another side but he appeared in the examination on the Electric Fitter side wherein he has qualified and got the higher position but as he did not belong to that side and he did appear in the examination on that side and he did not appear in the examination after ~~not~~ taking permission from the department, the same was not recognised and no appointment was given to him. Obviously the applicant who has appeared without any formal permission and merely because he has qualified in the same for which there was no authority he cannot claim as a matter of right to get an appointment

to that post. The relief which he has prayed cannot be granted. But taking into consideration the fact that someone has been taken without trade test and that at least the applicant has qualified in the same the respondents can even now consider the claim of the applicant for promotion to that side. In any way of the matter <sup>in the examination for</sup> he may be given one or more opportunity to appear the HSK Fitter-I in the Radio Mechanicside. With the above observations the application is disposed of finally. No order as to costs.

M.Y. Priolkar  
( M.Y. Priolkar )  
Member (A)

U.C. Srivastava  
( U.C. Srivastava )  
Vice-Chairman

v/-