

Central Administrative Tribunal, Mumbai Bench

O.A. 672 of 1996

Mumbai, this 10<sup>th</sup> the day of September, 2001

Hon'ble Shri S.L. Jain, Member(J)

Hon'ble Shri M.P. Singh, Member(A)

Shri M.K. Kanojia Fireman Grade-I Pass No.A/1304  
No.25ED Air Force Station,  
Deolali South - 422501  
Nasik District, Maharashtra. ...Applicant

By Advocate: Shri Suresh Kumar.

Versus

Union of India, through

1. Chief of Air Staff  
Air Force Headquarters (VB),  
New Delhi-110 011.
2. Joint Director of Personnel, Civilians,  
Air Headquarters (VB),  
New Delhi-110011.
3. The Chief Personnel Officer Staff,  
HQ Maintenance Command,  
Vayu Sena Nagar,  
Maharashtra.
4. Air Officer Commanding  
No.25 Equipment Depot  
Air Force Station,  
Deolali South-422 501  
Nasik District, Maharashtra.
5. Shri A.S. James  
Leading Hand Fire,  
No.25 Equipment Depot,  
Air Force Station,  
Deolali South-422501  
Nasik District, Maharashtra.
6. Shri L.B. Prasad  
Leading Hand Fire,  
No.25 Equipment Depot,  
Air Force Station,  
Deolali South-422501  
Nasik District, Maharashtra. ...Respondents

By Advocates: Shri R.K. Shetty for respondent Nos.1 to 4.  
Shri R.R. Shetty for respondent Nos. 5 & 6



## ORDER

Shri M.P. Singh

By filing this OA under section 19 of AT Act, 1985, the applicant has sought relief by praying for direction to the respondents to promote him on the basis of trade test conducted on 4.2.95 with consequential benefits such as seniority etc. from the date when the post has fallen vacant.

2. Brief facts of the case as stated by the applicant are that he is holding the post of Fireman (FM) Grade I and was due for promotion to the next higher grade of Leading Fireman (LFM). For promotion to the grade of LFM one has to pass the departmental trade test and the persons who pass the trade test are to be promoted on the basis of seniority. According to the applicant at the relevant time two vacancies were existing and two more were anticipated and therefore there were 4 vacancies available at the time when the trade test was conducted for promotion to the post of LFM. On 9.3.95, the result of the trade test conducted by the respondents on 4.2.95 was declared and the applicant was declared passed the trade test. It is stated by him that the life of panel is normally one year from the date it is published. Any vacancy that arises during the currency of the panel must be filled up from the persons empanelled. The applicant has submitted a number of representations to the respondents to promote him to the post of LFM on the basis of trade test passed by him but till now no reply has been received by him from the respondents. Aggrieved by this, he has filed this OA seeking the aforesaid reliefs.


3. Respondents have contested the case and have stated that promotion to the post of LFM had been made as per the R/Rules for the said post which were published vide SRO 27 dated

12.2.1990 (R-1). Respondents No.5 and 6 who were senior to the applicant and who had passed the trade test were thus promoted. The claim of the applicant that he had obtained more marks than the private respondents is of no consequence as the promotion is based on seniority subject to passing of the trade test. According to the respondents, two vacancies of LFM became available one in September, 1994 and another in February, 1995 due to retirement on superannuation of two LMFs. A trade test was therefore conducted in 2nd week of February, 1995 to fill up these vacancies in accordance with R/Rules. Out of 12 FM-I who had appeared in the trade test, four persons namely D.S.Francis, N.B.Bhawar, M.K.Kanojia and H.B.Bhole passed the trade test. A DPC was constituted to prepare a panel for promotion to the post of LFM as per their seniority. The DPC prepared a panel for two as there were only two vacancies to be filled on the basis of having passed the trade test and seniority. Applicant's turn therefore did not come and two persons i.e. D.S.Francis and N.B.Bhawar were promoted. One more vacancy arose in May, 1995 due to retirement. Accordingly to fill up this vacancy another trade test was conducted and a fresh panel was drawn keeping in view the number of existing and anticipated vacancies which were likely to occur during the period upto March, 1997. The DPC prepared a panel consisting of four persons. The name of applicant was listed at Sl.No.8 in order of eligible FM-I at the time the panel was drawn for consideration of promotion to the grade of LMF. According to the respondents, R-5 and R-6 who were senior to the applicant were promoted before him. The promotions were made in accordance with the seniority and no junior to the applicant has been promoted to the post of LFM. In view of the aforesaid submissions, the OA has no merit and deserves to be dismissed.

4. Heard the counsel for the parties and perused the records.

5. The admitted facts are that a panel for filling of two vacancies of LFM was drawn based on trade test conducted in February, 1995 and the applicant had qualified the trade test. However only two senior most persons were promoted against two vacancies from the panel that was drawn. One more vacancy became available on 30.4.95 due to superannuation for which a separate trade test was conducted. Respondents have initiated action to fill up two existing and two anticipated vacancies including the one which became available on 30.4.95. After making selection, they have promoted four persons who are senior to the applicant. Respondents have not produced the original DPC proceedings of 1995 before us. It is, therefore, not known as to whether the name of the applicant was kept in the reserve panel for promotion against the anticipated vacancy which would have become available during the currency of the panel. Respondents have, however, produced the proceedings of DPC held on 26.4.96 in which four persons were selected, two for existing and two for anticipated vacancies. accordingly, two persons (Sl.No.1 & 2) were recommended for promotion to the post of LFM and the name of Sl.No.3 and 4 were kept in reserve for unforeseen vacancies that might arise upto 30.4.97. It was also made clear in the DPC proceedings that the panel is valid for a period of one year i.e.till 30.4.97 and any vacancies occurring during the aforesaid period would be filled up by promoting the persons who are kept in the reserve panel.


6. We have gone through the R/Rules and we find that the post of LFM is a non-selection post. As per instructions issued by the Government of India non-selection posts are to be filled on the basis of seniority-cum-fitness. In the present case the respondents have filled up the vacancies as per seniority subject to passing of departmental trade test and no person

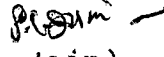


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junior to the applicant has been promoted to the post of LFM. We also find that the trade test is only a qualifying test. Therefore the action of the respondents in promoting the persons who are senior to the applicant and who have also passed the departmental trade test as prescribed in R/Rs is justified and we do not find any fault with the procedure followed by the respondents.

7. In view of the aforesaid reasons, the application is devoid of merit and deserves to be dismissed. We do so accordingly.

  
(M.P. Singh)  
Member(A)

  
(S.L. Jain)  
Member(J)

/gtv/