

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 3RD DAY OF FEBRUARY, 1987

Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman

Present :

Hon'ble Mr. P. Srinivasan, Member (A)

APPLICATION NOS. 1398 AND 1399 OF 1986.

R.U. Ulahannan,
Machinist - Miller,
Gas Turbine Research Establishment,
Ministry of Defence,
Bangalore-75.

K.B. Ussan,
Machinist,
Gas Turbine Research Establishment,
Ministry of Defence,
Bangalore-75.

..... Applicants in
A.No.1398&1399/86

(Shri M. Balachandran, Advocate)

V.,

1. Union of India by its Secretary,
Ministry of Defence,
Govt. of India, New Delhi.
2. Director,
Gas Turbine Research Establishment,
Ministry of Defence, P.B. No.7575,
Bangalore-75.
3. R. Devarajan Nair,
Temporary Tradesman 'A',
Gas Turbine Research Establishment,
Ministry of Defence,
Bangalore - 75.
4. G. Danaraj -do-
5. R.T. Vasudevan -do-
6. G. Kalia Murthy -do-
7. S. Sulaiman -do-
8. C. Achutha Rao -do-
9. M. Chinnayan -do-
10. V. Kalia Perumal -do-
11. M. Ulaganathan -do-

.... Respondents in
A. No.1398&1399/86

(Shri M. Vasudeva Rao, Advocate)

P. Srinivasan

These applications coming on for hearing this day Shri P. Srinivasan, Hon'ble Member (A), made the following.

O R D E R

This composite application by two applicants originated as writ petitions before the High Court of Karnataka and were transferred to this Tribunal under Section 29 of the Administrative Tribunals Act of 1985 ('the Act').

2. The two applicants before us are working as Tradesmen 'C' in the grade of Rs.260-400 in the Gas Turbine Research Establishment, Bangalore (GTRE). They hold a certificate from the Industrial Training Institute ('ITI') in the trade of Machinist. By two orders dated 27.6.1983 and 25.7.1983, the respondents invited applications for direct recruitment to the posts of 'Tradesmen-A' in the same organisation. According to the second order, the vacancies to be filled up were classified into 10 posts of Machinists, two posts of Welders, three posts of fitters and two posts of tool and dye makers. By the second order the first order dated 27.6.1983 was cancelled. The applicants applied for the posts along with other persons working in the same establishment. The employment exchange also sponsored some names. In all, 67 candidates applied for these posts. They were all trade tested and interviewed, as a result of which appointments of 19 persons were ordered by an order dated 26.11.1983 (Annexure-E). According to

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the respondents 25 persons were selected for the posts of tradesmen-A in this selection. Neither of the applicants before us was selected. The 9 Respondents to these applications were selected, among others. In these applications the applicants pray that the appointment order at Annexure-E in so far as it relates to the appointment of respondents 3 to 11 to the grade of Tradesman 'A' that is Rs.380-560, be quashed and respondents 1 and 2 be directed to consider the cases of the applicants for appointment to that grade from the dates on which respondents 3 to 11 had been so appointed with all consequential benefits.

3. Shri M. Balachandran, learned counsel for the applicants contended that the entire process of selection was illegal and should be struck down on that ground. The first order notifying the vacancies (Annexure-A) was issued on 27.6.83 for filling up, by direct recruitment, 9 posts of tradesman 'A'. However, respondents 1 and 2 had cancelled this order by a second order dated 25.7.83. According to Sri Balachandran the respondents could not have cancelled the earlier order and this had been done only to enable the respondents and persons like them who were otherwise ineligible for appointment, to make applications for the posts. Further, the second order dated 25.7.1983 (Annexure-B) announced vacancies of Machinists, Welders, Fitters and Tool and Dye Makers in the category of Tradesman-A and not of Turners. All the nine respondents to this application were engaged in the trade of Turners and

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should not have been considered for recruitment to the vacancies notified by respondents 1 and 2 violating all rules of recruitment. Respondents 1 and 2 not only accepted applications from turners but selected them to the vacant posts in preference to the applicants who were engaged in the Machinist trade and were eligible for appointment. Further 67 persons who had certificates in different trades, that is, of machinists, turners etc., had all been subjected to a training test. The applicants and other machinists like them were given, no doubt at their own option, the machinists test and others were subjected to tests in different trades according to their choice. Comparing the results of these tests of persons belonging to different trades was unfair and inequitable and on this basis to have disqualified the applicants and selected the respondents was against the rules of recruitment. The procedure adopted by respondents 1 and 2 in holding tests in different trades at the same time and grading persons from these trades according to the marks obtained by them in different tests was not authorised under the Rules and also violated the principle of equality. The applicants as machinists were engaged in a much more skilled trade compared to the respondents who were turners. Yet after having worked ^{for} 7 years in a higher skill the applicants were not being given the higher grade of Rs.380-560 while the respondents who were engaged in the lower skill

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of turners and were juniors to the applicants had been posted to that grade thus offending the principle of equal pay for equal work. In this connection Sri Balachandran relied on the decision of the Supreme Court in SURINDER SINGH AND ANOTHER V., THE ENGINEER IN CHIEF, CPWD AND OTHERS (AIR 1986 SC 76). Though normally selection of persons for appointment by experts could not be questioned by Courts he pleaded that in this case, the Tribunal should go into the procedure of selection and investigate whether it was fair and resulted in equal treatment to equals. Quoting the decision of the principal Bench of this Tribunal in P. BANERJEE V., UNION OF INDIA AND OTHERS (AIR 1986 CAT (P.B.)16) he prayed that we should adopt the inquisitorial procedure to mete out justice in this case. He also cited the case in P.K. RAMACHANDRA IYER AND OTHERS V., UNION OF INDIA AND OTHERS (1984 SC (L & S) 214) where the Supreme Court had interfered in the selection and promotion of scientific personnel which had been made by technical experts.

4. Sri M. Vasudeva Rao, learned counsel for the respondents strongly refuted the arguments of Sri Balachandran. He contended that the posts of Tradesman were not classified in terms of different trades. Every post of Tradesman was to be filled up according to the job requirements of the posts by persons holding certificates in one trade or the other. Though the order notifying the vacancies of Tradesman-A for direct recruitment, described 10 posts as those of machinists it did not mean that only persons with requisite certificates in Machinists trade could be

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appointed to these posts. The expression 'Machinist' is a generic expression whose job requirements include the skills of machinists, turners and so on ¹⁷ depending on the particular post. It is not as if ~~that~~ only persons holding a certificate in the machinist trade from ITI could be appointed to these posts. Actually posts of Tradesman-A classified as 'machinists' for which applications were invited by the order of ^{lathes} 25.7.1983 involved carrying out jobs on ~~xxxxx~~ and, therefore, the respondents could with equal propriety select persons with certificates in the turners trade also. It was merely a broad description to classify the notified posts as those of machinists and this should not be confused with the trade of machinists. Sri. Vasudeva Rao also produced the results of the selection to show that both the applicants had failed in the tests, having obtained less than 35 per cent of marks. So far as comparability of marks awarded in different tests is concerned, he denied that they could not be compared. There were experts to assess the performance. Further the candidates were given the option to choose the test that they would undergo depending upon their own earlier experience. The applicants had chosen to be tested as machinists and they were given that test, but they had failed to qualify. There was no preference shown to turners as a class as alleged by the applicants because among the persons selected there were 10 who held certificates in the machinists trade and the candidate who secured

the highest mark in the test was one who held a certificate in that trade. The Rules cannot prescribe the exact content of each test; these had been devised by experts in the field, who also conducted the test and the interview. No mala fides could be attributed to the persons who held the tests or interviewed the candidates. Thus, having failed to obtain qualifying marks in a test which was held for all the competing candidates, the applicants can have no grievance against their non-selection or the selection of the respondents.

5. We have considered the rival contentions carefully. Sri Balachandran's contention that the posts that were notified for direct recruitment fell within the trade of machinists has some plausibility because the notification itself classifies 10 posts as those of machinists. The rules of recruitment also specify that a person competing for recruitment should have a certificate from the ITI in the required trade. Having said so much we must also mention that along with the applicants more than 25 other machinists were called for the test, were trade tested and interviewed. 10 machinists were actually selected for appointment. It will be recalled that only 10 posts of machinists in the grade of Tradesman-A were notified. By recruiting 10 machinists this requirement seems to have been fulfilled. On the other hand, both the applicants secured less than 35 per cent of marks, which was the

minimum to be obtained for consideration. We do not agree that the tests went against the rules of recruitment. As explained by Sri Vasudeva Rao, appointments from one post to another in the category of industrial workers has necessarily to be preceded by a trade test. The Rules cannot set the examination paper or the particular questions to be asked or the particular test to be held. It is for the experts conducting the tests to devise a particular question paper or a particular operation to be performed by those who are required to take the test. It is, therefore, not right to say that the tests were not held according to rules of recruitment. We also do not agree that the marks obtained in the test in a particular trade cannot be compared with the marks obtained in another trade. If operations to be performed in one trade ^{are} ~~is~~ more difficult than that in another, surely the examiners would take this into account in assessing the relative merits of the candidates. We may here illustrate that in competitive examinations held for the recruitment of All India Services, persons are allowed to take papers in different subjects, some of them known to be high scoring subjects via-a-vis others. However, when the marks are tabulated some method is worked out to compensate this difference. Even if tests are held in the same trade, it is possible that one person may have to carry out a more difficult operation than another and on this ground it cannot be said that a comparison of marks awarded in the two tests cannot

be compared. We do not agree with the contention of Sri Balachandran that tests in different trades cannot be made to determine the comparative merits of persons who take those tests. Apart from the question of comparison of marks and the person getting the highest marks being selected, there is a minimum percentage which a candidate should obtain what is known as the pass mark to be selected for a post and unless a candidate reaches this minimum standard he cannot lay any claim for appointment. By this minimum standard, both the applicants failed and we have no reason to doubt the genuineness of the results.

6. As we have stated earlier, Sri Balachandran contended that even if the applicants had not been selected for the notified posts, they should be given the higher grade on the principle of equal pay for equal work. We cannot agree with this contention. There is a hierarchy of posts in Government and the work of each post in the hierarchy has to be evaluated by the authorities concerned. It was explained on behalf of the respondents that the post of tradesman-A is clearly a post of higher responsibility from which promotion is to be made to the grade of Chargeman-II which is the highest post in the non-gazetted cadre of industrial workers. A Tradesman-A is given more important work by the officers in charge of sections than a Tradesman-B or C. Since the post of Tradesman-A carries higher responsibility, persons working in that post have to be given a higher grade of pay. The grade

of Tradesman 'C' in which the applicants ^M~~are~~^{were} working carries lower responsibility and therefore the pay scale has to be lower.

7. Before parting with these applications, we must clarify that the facts of the case in Ramachandra Iyer's case (1984 SC (L&S) 214) are quite different from the facts of the present case. In that case persons who were already working as Professors were being denied the higher scale of pay sanctioned for the posts of Professors. The Supreme Court held that that was not right. Another point which came up for decision in that case was that the essential minimum qualifications were not fulfilled by one of the candidates who was selected in preference to the petitioner before the Court. There were other facts noticed by the Court which together led to the inevitable conclusion that the whole selection process was mala fide. This decision has no application to the present case. The decision in Surinder Singh's case (AIR 1986 SC 76) has also no application to the present litigation. That case dealt with persons working on daily wages who claimed the equal remuneration as regular incumbents working in the same post. The present case is also not one in which we need to make further investigation, as was suggested in the decision of the Principal Bench of this Tribunal in Banerjee's case (AIR 1986 CAT (PB) 16) referred to by Sri Balachandran.