

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:488/93

DATE OF DECISION: 11th July 2000

Shri Ashok Chindu Phale Applicant,

Shri L.M.Nerlekar Advocate for
Applicant.

Versus

The Secretary, Ministry of Defence and Ors. Respondents.

Shri V.S. Masurkar Advocate for
Shri K.R. Yelwe for Ms. N.V. Masurkar. Respondents

CORAM

Hon'ble Shri D.S. Bawej, Member(A)

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

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to no other Benches of the Tribunal?

(3) Library. yes

S.L. Jain
(S.L. Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:488/93

the 11th day of JULY 2000.

CORAM: Hon'ble Shri D.S. Bawejah, Member (A)

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

Ashok Chindu Phale
Leading Hand Fire
N.B.C.D. School,
I.N.S. Shivaji Lonavala.

...Applicant.

By Advocate Shri L.M. Nerlekar.

V/s

1. Secretary
Ministry of Defence
Govt. of India,
New Delhi.
2. The Commanding Officer
I.N.S. Shivaji
Lonavala.
3. Officer - in - Charge (O.I.C)
N.B.C.D. School
I.N.S. Shivaji, Lonavala.
4. Flag Officer
Command-in-Chief
Western Naval Command
Bombay.
5. Controller of Defence
Accounts (Navy)
C.D.A. (N), Bombay.Respondents.

By Advocate Shri V.S. Masurkar.

6. Shri V.R. Bhalerao
7. Shri N.R. Tilekar
8. Shri M.N. Tikone
9. Shri S.R. Lonkar
10. Shri G.G. Parhad
11. Shri D.G. Bheske
12. Shri A.S. Sasane

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13. Shri S.N. Sathe.

Respondents No. 6 to 13 working as
Fireman Grade I, N.B.C.D. School,
I.N.S. Shivaji, Lonavla.

...Respondents.

By Advocate Shri K.R. Yelwe for Ms. N.V. Masurkar.

O R D E R

{Per Shri S.L.Jain,Member (J)}

This is an application under Section 19 of the
Administrative Tribunal Act 1985, seeking the following reliefs:

- 8.1 Uphold the DPC panel prepared by the DPC vide
APK/06 dated 5.6.92 convened by order 2664/3/PC-1
dated 9.3.92 and which met on 20.3.92 and
subsequent days.
- 8.2 Restore order of Promotion as set out in
Memorandum 2665/37 dated 29.8.92 published by INS
Shivaji Lonavla.
- 8.3 Restore CE Order 10/92 dated 15.9.92 promoting
this applicant to Leading Fire Hand w.e.f.
1.9.92.
- 8.4 Set aside the Review DPC proceedings vide
memorandum 2665/37 dt. 20.4.93.
- 8.5 Set aside CE order No. 05/93 dt. 7.5.93 ordering
this applicant reversion.
- 8.6 Set aside actions on Staff Minute Sheet 2665/37
dated 7.4.93.
- 8.7 Any other order deemed just by the Hon'ble
Tribunal in the interests of justice.
- 8.8 This application may be allowed leave to amend/
alter this application if so required.

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2. The applicant joined the Fire Brigade Service of I.N.S. Shivaji Lonavla on 3.4.1983 as Fireman Grade II. In the year 1992, The Station Commander I.N.S. Shivaji vide his order No.2664/3/PCI dated 9.3.1992 convened a Board of Officers constituting a Departmental Promotion Committee. The prospective promotees were asked to appear before DPC. The DPC assembled on 20.3.1992 and on subsequent days thereafter. The DPC formulated its own procedure and set out the following aspects:

- 4.2.1 To determine professional knowledge and skill comprising a written Test and an oral examination with 100 marks each and a total 200 marks. passing minimum marks 100.
- 4.2.2 To assess departmental recommendation as reflected in the Annual Confidential Report. Maximum marks 100. Minimum passing marks 50.
- 4.2.3 To ascertain physical endurance and efficiency. Maximum marks 100. Minimum for passing marks 50.
- 4.2.4 Medical fitness as determined by the medical officer.

3. The D.P.C. was to make a panel to fill the posts of 4 - Leading Fire hand, 2 - Fire Engine Driver and 15 - Firemen Grade I. The recruitment rules governing group C and D posts of the Fire fighting staff in the Indian Navy as found in SRO 76 dated 15.3.1982. The qualification relevant to the post of Leading Hand Firemen (Ordinary grade/Leading Firemen) as set out in the above SRO 76 which is as under:

1. Fireman Grade I with 3 years continuous service in the grade, failing that

2. Fireman Grade I with 4 years service in the grade of Fireman Grade I and Fireman Grade II and failing that,
3. Fireman Grade II with 5 years service in the grade subject to passing in a departmental test.
4. The applicant having completed 9 years service as Fireman Grade II was eligible for promotion to the post of Leading Hand Fire subject to passing in a Departmental test. As per notification from the management the applicant appeared before D.P.C. and under went the departmental test successfully, scored 291 marks out of 400, which was the highest score recorded by an individual. The D.P.C. therefore recommended the applicant as also qualified to Leading Fire Hand. Accordingly the applicant was promoted to the post of Leading Hand Fire vide Memorandum No. 2665/37 dated 29.8.1992 (Exhibit I). The promotion took effect from 1.9.1992 in the scale of Rs.950 - 1500. After serving a period of 6 months Memorandum No. 2665/37 dated 20.4.1993 by INS Shivaji, Lonavla notifying a review panel for promotion to the grade of Leading Hand Fire, Fireman Grade I and Fire Engine Driever Grade I. In the so called review panel the applicant appeared at serial No. 9 under Fireman Grade I.
5. The grievance of the applicant is that he was reverted from position of Leading Fire Hand to Fireman Grade I and also placed at serial No.9 in the list though he stood first by scoring 291. Those who scored less and were much below the applicant, some colleagues who had failed in trade tests were placed above him for no reason. Such persons are arrayed as respondent No.6 to 13. The Review D.P.C. has no legal status to

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totally undo the panel prepared by the regular DPC under the justice of the review. A comparative statement of candidates listed by the DPC/Promotion Order/Review DPC is attached as Exhibit 8). The constitution of Review D.P.C. is for specific purpose. If there is an error in intimating the number of vacancies to the DPC injustice is caused to candidates who are eliminated being in the zone of consideration but not considered by oversight. In order to bring such of the candidates who were not considered when the DPC met originally, within the zone of consideration and empanel for promotion, a review DPC is constituted. The Government of India Instructions O.M. No F 22011/5/86-Esst.D dated 10.3.1989. Para 2.4.2 of the guidelines clarifies the point that the scope of Review DPC is essentially limited and has overstepped its maindate to undo altogether the original panel prepared by the D.P.C. in March 1992. This action of the Review D.P.C. has caused great injustice to the applicant. Therefore the Review DPC Proceedings are illegal and perverse intended to cause harm to the applicant. The applicant has put in 8 months service as Leading Hand Fire. The reversion is a civil consequences resulting loss of pay and seniority. The action of constituting review DPC are not bonafide nor in accordance with rules and flow from a bias to favour two and harm the applicant. The condition of eligibility of Fireman Grade I is contradictory to the conditions prescribed in para 2 thereof. The applicant was persuaded to apply for the same which was illegally held as he was declared successful in the earlier trade test.

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6. The official respondents No. 1 to 5 have submitted the written statement and have stated that in accordance with Station Commander Order No. 2664/3/PC 1 dated 9.3.1992, Board of Officers were assembled at NBCD School on 20.3.1992 to consider the suitability of the serving candidates of Fire Brigade Staff for promotion to the next higher grade as per Annexure R1 and R2. Annexure R3 is the copy of the Review D.P.C. proceedings dated 20.3.1992. After taking into consideration all aspects of promotion rules/SRO the Board had submitted the results of the individual who have appeared for the Departmental Promotion Examination and after examining all the relevant documents, the DPC recommended the individuals shown in the attached list and accordingly a panel was prepared vide No.2665/37 dated 24.8.1992. Subsequently their promotion to the next higher grade were notified vide Memorandum No. 2665/37 dated 29.8.1992. One Shri S.D. Gadre, Fireman Grade I and respondent No.6, Fireman Grade I who failed in the trade test and therefore the DPC did not recommend their names for promotion. They represented separately for re-consideration in accordance with the instructions contained in Naval Headquarters Letter No. CP/0505/VIP dated 18.11.1992, the relevant information pertaining to the aforesaid notice being annexed as Annexure R-4 and R-5 were forwarded to the Headquarters vide letter No. 2665/37/F dated 7.12.1992 (Annexure R-6). The Headquarters Western Naval Command vide their letter CS(II)/3300/27 dated 23.12.1992 had pointed out that the DPC proceedings submitted to Headquarters were not in the prescribed format, hence a review DPC was formed for taking into consideration those who were qualified and if passed within the

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per view of consideration. A Review DPC was appointed vide Commandore's Ty. Memo No. 14/93 dated 18.2.1993 to review the DPC proceedings dated 20.3.1992. In accordance with the instructions contained in Part VI of O.M. No.22011/5/86 Estt(D) dated 10.4.1989, the review DPC assembled in INS Shivaji on 19.2.1993 and after taking into consideration all aspects of promotion rules/SRO, the Board had submitted the Review DPC proceedings vide letter No. 2665/37/F dated 9.3.1993 which has been duly approved by Flag Officer Commanding in Chief, Headquarters, Western Naval Command letter dated 18.3.1993. As per the recommendations of the review DPC list of panel for promotion to next higher grade has been published vide Memorandum No.2665/37 dated 20.4.1993 and also a fresh promotion orders have been notified vide Memo No. 2665/37/1 dated 20.4.1993 (Annexure R-7). After considering all aspects of earlier DPC proceedings and relevant documents the Review DPC made the changes. The applicant was working as Fireman Grade II and appeared for the Departmental Promotion Examination for the post of Fireman Grade I and qualified in the test but due to administrative error he was promoted to Leading Hand Fire instead of Fireman Grade I by the DPC with effect from 1.9.1992 vide memorandum No. 2665/37 dated 29.8.1992. The said error was brought to the notice by one Shri S.D. Gadre and Shri V.R. Bhilerao through their advocate's notice to Hon'ble Defence Minister, Naval Headquarters, HQs, WNC. The matter has been examined by Headquarters and WNC and a review DPC was directed to rectify the error and to consider the promotion of the applicant to Fireman Grade I as he is eligible for the same only.

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Accordingly the Review DPC after considering all the relevant documents, the applicant has been rightly placed in Fireman Grade I and Shri V.R. Bhalerao and Shri G.G. Parhad promoted to Grade I. No injustice is caused to the applicant and prayed for disposal of the OA.

7. Respondent No. 6, 10, 11 and 12 have filed reply opposing admission, reserved the right of filing additional reply, but did not file additional reply. The respondents joined the Fire Brigade Service of I.N.S. Shivaji, Lonavla as Fireman Grade II prior to the applicant namely on 26.7.1982, 26.7.1982, 2.12.1982, 14.2.1983 whereas applicant joined Firman Grade II on 8.4.1983, as such all these respondents are senior to the applicant. The applicant and these respondents were Fireman Grade II till the promotions were recommended by D.P.C. held in 1992. As per SRO 76/82 Firman grade II with three years regular service is eligible for promotion to Firman grade I, if he is physically fit, passes the trade test and qualifies in D.P.C. The respondent No. 1 to 5 conducted Trade Test in the year 1987, onwards thrice and lastly on 24.7.1992. After passing the Trade Test conducted immediately became eligible for promotion, there was no necessity and in fact it was wrong on the part of respondent No.1 to 5 to call the eligible employees again and again for Trade Test because of their failure to call DPC for the purpose of recommending promotion in the interim years which has resulted in mis-carriage of justice. In fact DPC should have been directed to prepare annual select list by dividing the vacancies into years of their occurrence namely the particular calander year. As per the procedure the result of Trade test conducted at earliest

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was to be placed before DPC for determining professional knowledge and skill, for which a written test of 100 marks and oral test of 100 marks was conducted. The C.Rs upto the year of elibgibility were to be placed before the DPC for assessment of departmental recommendation for which 100 marks were allotted. The DPC was to ascertain physical endurances of efficiency for which 100 marks were kept when it assembled and medical fitness as determined by medical officer. The result of trade test held in the year 1987 was not placed before the DPC, the eligible employees were again asked to appear in the trade test on 24.7.1992 of which results were placed before DPC despite they being declared successful has resulted in material irregularity in the procedure followed by DPC resulting into injustice to eligible candidate including respondent No. 6 and 10 whereby they were unqualified for promotion by the DPC held in 1992 and various juniors were promoted above them. Respondent No.6 and others made representation dated 7.9.1992 to respondents No. 1 to 5 pointing out about the material irregularity as well as a grave mistake done by the earlier DPC, in which the applicant passed departmental examination for the post of Fireman Grade I and recommended for promotion to Leading Fire Hand thereby illegally superceding the senior of the applicant who also passed the departmental test and who were senior to the applicant. Respondent No 6 to 13 have qualified to the post of Leading Fire Hand as all of them has worked as Fireman Grade II more than 5 years and passed departmental examination. SRO/76 does not state that a person securing highest marks amongst the qualified should be given two promotions and hence recommendations of DPC of two

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promotions at a time in case of applicant is illegal, unwarranted and unconstitutional. In view of this mistake a review DPC rightly called which was held on 18.2.1993 considered all the facts and circumstances after following all procedure and rules and working within the circumscribed sphere of its power has made the recommendation rectifying the procedural mistake made by earlier DPC and thereby recommending promotion to appropriate posts of eligible candidates by duly maintaining the seniority where by an unwarranted supersession of the officials is prevented and the entire approach of the Review DPC is justice oriented approach and having regard to the totality of the circumstances it can be seen that there is no reversion of the applicant by Review DPC as alleged by the applicant but the glaring mistake was rectified and the error was rightly corrected by order dated 20.4.1993. Hence prays for dismissal of the OA.

8. D.P.C. held in March 1992 was in respect of vacancies as under :

VACANCIES OF FIRE STATION PERSONAL

(Sanction vide Govt. of India Ministry of Defence letter No. CS/4025/II NHQ/1148/DDI/D(NII) dated 28 May 1982)

S.No.	Category	Sanctioned	Borne	Vacancies
1.	Fire Master	1	--	-1
2.	Fire Supervisor	3	3	-
3.	Leading Hand Fire	12	8	-4
4.	Fire Engine Driver	12	10	-2 4
5.	Fireman Gr. I	20	5	-15 2
6.	Fireman Gr.II	20	30	+10 5

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9. The recruitment Rules are on record and on perusal of the same we find that Leading Hand Fire post is to be filled up by promotion, failing which by transfer and failing both by direct recruitment. Fireman Grade II is entitled to promotion as Fireman Grade I, Fireman Grade I is entitled to Fire Engine Driver and Fire Engine Driver is entitled to promotion as Leading Hand Fire. It is true that Fireman Grade II who is having two years experience is entitled to promotion as Fireman Grade I, Fireman Grade I who is having two years experience is entitled to promotion as Fire Engine Driver Grade II and Fire Engine Driver Grade II who is having two years experience is entitled for promotion as Fire Engine Driver Grade I. Fire Engine Grade I who is having two years experience is entitled to promotion as Leading Hand Fire. On the basis of the said narration, it cannot be said that a person serving as Fireman Grade II having 8 years or more experience can be directly promoted to the post of Leading Hand Fire, particularly when the D.P.C. which was convened in March 1992 was not asked to consider the case of eligible candidate.

10. The D.P.C. which met in March 1992 has proceeded on the basis of obtaining the merit in the trade test. The post of Leading Hand Fire is not a selection post based on merit. In such circumstances the D.P.C. which met in March 1992 was not for promoting the applicant from the post of Fireman Grade II to the post of Leading Hand Fire.

11. The eligibility criteria applies in respect of next promotion but not in respect of jumping promotion, when it is not a selection post based on merit and Fireman Grade I with 3 years continuous service is available.

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12. The criteria to be adopted for promotion is fit and not fit. The D.P.C. which met in March 1992 adopted the criteria of fit/not fit. Keeping in view that the candidate who are fit belongs to SC/ST community for which a relaxed standard is applied for. Selection on the basis of merits, seniority cum merit and seniority cum fitness, fit /not fit carries the different criteria for promotion, are to be treated differently as per the principle laid down. In such circumstances if the applicant who was meritorious is placed at serial No.9, bound to suffer for the reason that he was not Fireman Grade I failing which only he can be considered. The criteria adopted and rightly adopted was fit and not fit. The D.P.C. met in March 1992 which adopted the procedure in contravention of Rule 4 of notification dated 15.3.1982 SRO 76, was in error. Hence Review D.P.C. only corrected the error.

13. The result is that the applicant is not able to make out any case on merit. Hence the OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

Jain
(S.L.JAIN)
Member(J)

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Baweja
(D.S.BAWEJA)
Member(A)