

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1312/94

2.5.2000
Date of Decision :

M.V.Ayachit & Ors. Applicant.

Shri H.Y.Deo Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.


Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A):

- (i) To be referred to the Reporter or not? ✓
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal?
- (iii) Library?


(D.S.BAWEJA)
MEMBER (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1312/94

Dated this the 2nd day of May 2000.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

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

1. M.V.Ayachit
2. R.D.Gidde
3. S.V.Sulakhe
4. B.G.Makashir
5. B.K.Satras
6. S.B.Karkhile
7. D.R.Patil
8. C.M.Bansode
9. A.H.Jagdale
10. R.S.Waghmare
11. R.B.Bhosale
12. K.V.Chavan

All working as V.M.A.F.V.(M.C.) in
512, Army Base Workshop, Khadki, Pune.

...Applicants

By Advocate Shri H.Y.Deo

V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
Raksha Bhavan,
South Block, DHQ P.O.
New Delhi.
2. Director General
Electrical & Mechanical Engineering
DHQ P.O., New Delhi.
3. The In-charge of E.M.E. Records,
Vidyut and Yantrik Engineer,
Abhilekh Karyalayam
E.M.E. Records Office,
Secunderabad.
4. The commandant
512, Army Base Works Shop,
Khadki, Pune.

... Respondents

By Advocate Shri R.K.Shetty

..2/-

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

This application has been filed jointly by 12 applicants who are working as Vehicle Mechanic/Armed Fighting Vehicles VM/AFV (Master Craftsman) in 512 Army Base Workshop at Khadki, Pune. The seniority list of the Master Craftsmen is maintained on all India basis and is feeder cadre for promotion to the post of Senior Chargeman. For promotion to the post of Senior Chargeman, trade test was held on 30, 31st December, 1992 and 1st January, 1993. All the applicants were declared eligible for the same and appeared in the trade test. All the applicants were successful in the trade test. However, they did not find their names in the list of the candidates promoted as per order dated 4.9.1993. The applicants made a joint representation dated 26.10.1993 against their non promotion. This was replied by letter dated 18.12.1993 stating that there was no vacancy for Master Craftsman for promotion to the post of Foreman. The applicants made another representation dated 24.2.1994 which was replied by letter dated 16.5.1994 advising the applicants that as per the revised Recruitment Rules, SRO NO. 44, Master Craftsmen are not eligible for promotion to the post of Senior Chargeman as the scales of both the posts are same. Further, as per order dated 8.1.1993, promotion of Master Craftsman to the post of Foreman has been restricted in the ratio of 1 : 10. This has put the Master Craftsmen though senior as MV/AFV in a disadvantageous position. Feeling aggrieved, the present application has been filed on 9.11.1994.

2. The applicants through an amendment application filed on 2.2.2000 have impugned order dated 8.1.1993 which lays down that promotion of the Master Craftsman to the post of Foreman will be restricted to 10% posts of Foreman's (Part-I & Part-II) cadre strength.

3. The applicants have sought the following reliefs :-

- (a) To quash the letter dated 16.5.1994.
- (b) To declare that promotion of the Master Craftsman to the post of Foreman in the ratio of 1 : 10 is illegal and the order dated 8.1.1993 be quashed.
- (c) To direct respondents to promote the applicants to the post of Senior Chargeman retrospectively from the dates on which the employees junior to the applicants in the cadre of VM/AFV have been promoted.
- (d) Alternatively to promote one Master Craftsman to the post of Foreman in the ratio of 1:1 between the two feeder cadres.

4. The respondents have opposed the OA. The respondents submit that the promotion to the posts of Senior Chargeman and Foreman is governed by the Recruitment Rules as per SRO 44 dated

14.2.1992 issued exercising power under Article 309 of the Constitution of India. As per these rules, the Master Craftsmen who are in the same scale as that of Senior Chargemen (i.e. Rs.1400-2300) are not entitled for promotion to this post. The Master Craftsman are entitled to be considered for promotion directly as Foreman in the grade of Rs.1600-2660. Further as per letter dated 8.1.1993, policy has been laid down as per which the Master Craftsmen are to be promoted as Foremen against 10% of the vacancies of Foremen occurring in a year. This policy is not unjust and discriminatory. It is also submitted that the test conducted from 30.12.1992 to 1.1.1993 was for the promotion to the post of Foreman and not Senior Chargeman as stated by the applicants. Though they passed the supervisory test but for want of vacancies could not be promoted as Foremen. With these submissions, the respondents submit that the applicants have no case and the OA. deserves to be dismissed.


5. The respondents have filed reply to the amendment application as referred to earlier.


6. The applicants have not filed any rejoinder reply.

7. We have heard the arguments of Shri H.Y.Deo and Shri R.R.Shetty for Shri R.K.Shetty, learned counsel for the applicant and respondents respectively.



8. During the arguments, the learned counsel for the applicants made a statement at Bar that the applicants do not press for the claim for promotion to the post of Senior Chageman. Accordingly, arguments were advanced with regard to quashing of the order dated 8.1.1993 as per which the quota for promotion of Master Craftsmen to the post of Foreman is restricted to only 10% of the cadre.

9. The respondents in reply to M.P. for amendment and as well as during hearing raised a technical objection that the order dated 8.1.1993 which was issued before filing of the OA. has been impugned after a period of more than 4 years even after filing of the written statement and therefore this claim is time barred. Considering the averments made in the OA. and the reliefs prayed for, we do not find any substance in the objection of the respondents. The applicants have challenged the policy of confining the promotion of master Craftsmen to the post of Foremen to 10% of the posts and have prayed for relief of quashing this policy. This policy is based on the letter dated 8.1.1993. Though the applicants initially in the OA. have not referred to this letter specifically but ^{through amendment} have challenged the policy laid down ^{impugning} by  this letter. Therefore impugning this letter subsequently does not make the OA. as time barred.

10. As per the Recruitment Rules issued as per SRO 44 on 14.2.1992, the post of Foreman is to be filled as indicated in Column ¹²  as under :-



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Column 12

Foreman

Part-I

(a) Promotion :

(i) Senior Chargmen(Part I

Cadre) with 4 years service

in the grade.

(ii) Master Craftsmen with 4 yrs

service in the grade subject

to passing of trade test.

From the Recruitment Rules, it is noted that both the Senior Chargemen and Master Craftsmen are feeder categories. No quota is laid down for either of the categories. This would imply that for promotion, inter se seniority between the Senior Chargemen and the Master Craftsmen will be guiding criteria for consideration. However, the respondents contend that quota for promotion to the post of Foreman has been laid down for the category of Master Craftsmen on account of the considerations as indicated in the letter dated 8.1.1993. Para (d) of this letter laying down the quota is reproduced below :-


"(d) Since 10% of the posts have only been sanctioned for promotion to Master Craftsmen, it will be restricted upto 10% of posts of Foremen of the total strength of authorisation in Part I & II Cadres of Foremen subject to fulfilling the terms and conditions as laid down in Recruitment Rules, i.e., completion of 4 years service as a Master Craftsmen as well as qualifying supervisory trade test."

..7/-

The respondents claim that in pursuance of these policy instructions, Master Craftsmen are entitled for promotion against only 10% of posts of cadre of Foremen. Respondents further add that it is within the power of Executive Authority to lay down the policy and the same is not subject to judicial review. On careful perusal of the letter dated 8.1.1993, we find it difficult to uphold the stand of the respondents. It is noted that this letter has been issued to clarify on some points concerning Recruitment Rules. The letter is issued with the approval of Addl. Director general, EME. While furnishing clarifications, the quota for the craftsmen for promotion to the post of Foreman has been laid down. This amounts to amendment to the Recruitment Rules. These clarifications are not issued exercising power under Article 309 of the Constitution of India. Once the statutory recruitment rules have been laid down, then the promotions have to be done in accordance with these rules only. The executive instructions may be laid down exercising executive power to fill up the gaps in the statutory rules but not to amend the rules.

11. Here we refer to some judgements of the Apex Court dealing with the aspect of issue of executive instructions covering the statutory Rules :-

- (a) J & K Public Service Commission vs. Dr. Narinder Mohan
(1994) 27 ATC 56.



In para 7, the Hon'ble Supreme Court has held as under :-

"----- It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in gaps but the instructions cannot and should not supplement the law but only to supplement the law.-----"

- (b) C.C.Padmanabhan & Ors. vs. The Director of Public Instructions & Ors., 1980 (2) SLR 599.

In para 4 of this judgement, it is held that mere Government instructions which are contrary to recruitment rules do not amount to amendment to recruitment rules and therefore they have no legal validity.

- (c) Union of India vs. Shri Somasundaram Viswanath (1988) 3 JT 724.

It is held as under :-

"It is well settled that the norms regarding recruitment and promotion of officers belonging to the civil services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of civil services under the Union of India and under Article 162 of the Constitution of India in the case of civil services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the

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Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature prevails."

(d) Paluru Ramkrishnaiah & Ors. Vs. Union of India & Anr.
1990 AIR SC 166.

It is held as under in para 11 while referring to the judgement at (c) above :-

It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule."


(e) K.K.M.Nair & Ors. vs. Union of India & Ors.
AIR 1994 SC 244.

The same view as taken in judgement at (d) above has been reiterated.

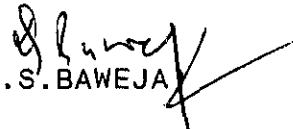
12. In the present case, the instructions issued as per letter dated 8.1.1993 amount to amendment of the recruitment ^{rules} as it lays down the quota for promotion to the post of Foreman by the Master Craftsman which is not laid down in the original rules. If the respondents wanted to lay down the quota for the

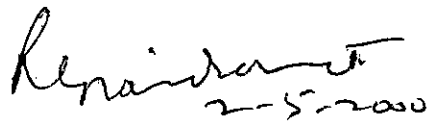
feeder categories, then the same could be done by way of amendment of the recruitment and not through the executive instructions as per the impugned order. In the light of the law laid down by the Hon'ble Supreme Court in the above cited judgement, the instructions laid down as per the order dated 8.1.1993 cannot be held to have legal validity and ^{therefore} ~~deserve~~ to be quashed.

13. Referring to the reliefs prayed for in para 8 of the OA., it is noted that relief 8 (c) for promotion to the post of Senior Chargeman does not survive in view of our recording in para 8 above. Reliefs 8 (a), (aa), (b) are covered by quashing the order dated 8.1.1993. The alternative relief 8 (c) concerns promotion to the post of Foreman in the ratio of 1 : 1 between the two feeder cadres. It is noted that the applicants have not sought this relief with reference to any particular selection. In respect of the trade test referred to by the applicants in paras 4.3 and 4.4 of the OA. in which they appeared and were successful also, the respondents in the written statement have disclosed that the same was not meant for promotion to the post of Senior Chargeman but was for the post of Foreman. In spite of this, applicants while amending the OA. to impugne ^{the} order dated 8.1.1993 have not sought for relief with reference to ~~the~~ selection referred in the paras 4.3 and 4.4. In the light of these observations, we are not granting ^{any} ~~the~~ relief with reference to a particular selection.



14. In the result of the above, we allow the OA. by setting aside para 2 (d) of the impugned order dated 8.1.1993. The Master Craftsmen will be entitled for promotion to the post of Foreman as per the recruitment rules and applicants shall be considered for promotion accordingly. This will, however, not preclude the respondents to amend the Recruitment Rules. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.