

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1018/97 & 1019/97

30.5.2006  
Date of Decision :

K.B.Nakadi & Anr. Applicant.

Shri G.Vijaychandran Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.


Shri G.R.Sharma 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.NOs. 1018/97 & 1019/97

Dated this the 30th day of May 2000.

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

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

1. Krishna B. Nakadi,  
Fitter (SK),  
Base Maintenance Facility,  
INS Hansa, Dabolim, Goa.

2. Antonio Mascarenhas,  
Tractor Driver, M.T.Section,  
INS Hansa, Dabolim, Goa.

... Applicant

By Advocate Shri G.Vijaychandran

V/S.

1. Union of India through  
Secretary, Ministry of Defence,  
South Block, New Delhi.

2. Flag Officer Commanding  
Headquarters Goa Area,  
Vasco-da-Gama, Goa.

3. Shri Mohan Das P. Shet,  
Fitter Auto (HSK-II),  
INS Hansa, Dabolim, Goa.

4. Shri John C.A.Pires  
Fitter Auto (SK),  
INS Hansa, Dabolim, Goa.

5. Shri S.V.Phadte,  
Fitter Auto (SK),  
INS Hansa, Dabolim, Goa.

6. Shri N.V.Niasso,  
Fitter Auto (SK)  
INS Hansa, NAY (G),  
Dabolim, Goa.

7. Shri N.D.Gaonkar,  
Fitter Auto (SK),  
INS Hansa, NAY (G),  
Dabolim, Goa.

... Respondents

By Advocate Shri G.R.Sharma

..2/-

O R D E R

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

The two OAs. NOs. 1018/97 and 1019/97 are being disposed of by a common order as the facts are similar and same question of law is involved in them.

2. Brief facts of the case advanced by the applicants are as under :-

OA.NO.1018/97

The applicant was appointed as MT Fitter Grade II in officiating/temporary capacity w.e.f. 1.2.1979 as per the order dated 2.2.1979 under Respondent No. 2, Flag Officer Commanding, Vasco-da-Gama, Goa. As per order dated 18.9.1986, the applicant was appointed in quasi permanent capacity w.e.f. 1.2.1982 on the post of M.T.Fitter Grade II (Revised designation - Fitter Auto (SK)). The applicant was initially appointed as Fitter Auto (SK) and also confirmed quasi permanent as Fitter Auto (SK). He has been performing the job of Fitter Auto (SK) since 1979. The applicant has been recipient of several commendation letters for his work as Fitter Auto (SK) and he has also undergone a number of training courses at Fitter Auto (SK). But some how in official records, he is being shown as Fitter (SK). A trade test was held on 24.11.1993 for the post of Fitter Auto HSK-II. The applicant applied for the same. The applicant



appeared in the trade test and also passed the same. However, his result was not declared since he had officially worked as Fitter (SK). Even the commander officer in-charge of Base Maintenance Facility vide letter dated 23.6.1994 recommended the case of the applicant for promotion to the post of Fitter Auto HSK-II, but no action was taken. In February, 1996 trade test for Fitter Auto HSK-II was again notified and the applicant again applied for the same. Though his application was forwarded by the Base Station but the same was rejected by Respondent No. 2 as per the letter dated 26.2.1996 stating that the applicant does not fulfil the criteria of working for 3 years as Fitter Auto (SK). In spite of the applicant's working as Fitter Auto (SK) since 1979, he has been denied promotion as Fitter Auto HSK -II while his juniors have been promoted. Feeling aggrieved, the present OA. has been filed on 9.4.1997 making the alleged juniors who have been promoted as party respondents.

OA.NO.1019/97

The applicant was initially appointed as MT Fitter Grade II (Fitter Auto (SK)) in a temporary/officiating capacity through Employment Exchange from 18.3.1982 as per the order dated 18.3.1982 under Respondent No. 2, Flag Officer Commanding, Goa. The applicant has been working as Fitter Auto (SK) since appointment but w.e.f. 16.1.1985, his designation has been changed to that of Tractor Driver under the guise that there

was no vacancy of Fitter Auto (SK). The appointment of the applicant was made quasi permanent w.e.f. 16.1.1988 as per the order dated 23.2.1988 with the designation of Tractor Driver. In spite of designation being changed to Tractor Driver, the applicant continued to work as Fitter Auto (SK) since his appointment. The applicant has been issued several commendations for good work as Fitter Auto (SK). He has also undergone the training courses as Fitter Auto (SK). On 4.11.1993, trade test was notified for the post of Fitter Auto HSK-II and <sup>the</sup> applicant applied for the same. The applicant appeared in the trade test conducted on 24.11.1993 and passed in the same as informed to him by the Board President at the test centre. However, Respondent No. 2 declined to take cognizance of this trade test. Subsequently, trade test was again conducted from 27.3.1996 to 29.3.1996, but the applicant was not allowed to appear in the same. To the representation made by the applicant against the same, Respondent No. 2 replied as per letter dated 2.7.1996 stating that the applicant could not be considered for the post of Fitter Auto HSK-II as he is not in the feeder grade. In spite of working continuously as Fitter Auto (SK) since appointment, the claim of the applicant for promotion has been rejected and his juniors have been promoted. The applicant has therefore agitated the matter through this OA. filed on 9.4.1997 by making the alleged juniors as party-respondents.

3. In both the OAs. the following reliefs have been prayed for :-

- (a) to direct respondents to take cognizance of the fact of applicant having passed trade test for Fitter Auto HSK-II in November, 1993 and consider the applicant for promotion as Fitter Auto HSK-II before the Respondent Nos. 3 to 7.
- (b) to set aside the promotion of Respondent No. 3 as Fitter Auto HSK-II w.e.f. 6.5.1996.
- (c) to promote the applicant to the post of Fitter Auto HSK-II w.e.f. the date such a vacancy arose after 25.11.1993.

4. The respondents have opposed both the OAs. through the written statements which are almost the same in both the OAs. While admitting the appointment of applicants on 1.4.1979, 18.3.1982 in OA.NOs.1018/97 & 1019/97 respectively, the respondents have strongly contested the contention of the applicants that they were appointed on officiating/temporary capacity against a regular vacancy. The respondents assert that both the applicants had been appointed purely on casual basis and have produced necessary documents in support thereof. It is further submitted that to meet with the exigencies of service, short term temporary vacancies are being created against the

funds allotted specifically for the purpose. Such vacancies are filled on casual basis for a specific period and the employee ceases to be in employment when the sanction of the vacancy expires. However, such casual employees are entitled to be adjusted against the vacancies existing anywhere in India under the Surplus and Defficiency Scheme promulgated vide SAO 8/3/76. The sanctioned cadre of casual Fitter Auto (SK) was reduced and 13 casual staff including the applicants were declared surplus in 1985 and likely to be reverted/retrrenched. Since there were some vacancies available in other trades, the administration decided that the surplus be considered for absorption against these vacancies based on the options. The applicant gave his willingness for the post of Fitter (SK). After the trade test, he was found fit for this post and was accordingly regularly appointed as Fitter (SK) as per letter dated 15.1.1985. The respondents state further that once having been appointed as Fitter (SK), he has to seek further promotions if any in this cadre as per rules and he cannot be made eligible for the post of Fitter Auto HSK-II for which Fitter (SK) is not the feeder category. In view of these facts, the plea of the applicants that they had passed the trade test for the post of Fitter Auto HSK-II has no relevance. Further claim of being senior to the respondents No. 4 to 7 (same in both the OAs.) is also not teneable because the applicants do not belong to the cadre of Respondent Nos. 3 to 7.

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5. The applicants in both the OAs. have filed rejoinder replies reiterating the grounds taken in the OAs. while controverting the submission of the respondents.

6. We have heard the arguments of Shri G.Vijaychandran for the applicants in both the OAs. and Shri G.R.Sharma on behalf of the respondents.

7. After careful consideration of the rival contentions and the documents brought on the record, we come to the conclusion that in both the OAs. the case of the applicants lacks merit because of the reasons deliberated subsequently.

8. In both the OAs., the applicants have claimed that they were appointed on officiating/temporary basis relying on the appointment orders dated 2.2.1979 in OA.NO.1018/97 at Annexure-A-1 and dated 18.3.1982 in OA.No.1019/97 at Annexure-A-1. The respondents, on the other hand, have contested this and have stated that the applicants were appointed on casual basis and have brought documents on the record in support of the same. On reading the appointment orders, at the out set, one may be inclined to endorse the stand of the applicants. However, on going through the Annexures-'R-1' & 'R-2' of the written statements in both the OAs., there can be no doubt that the initial appointment of both the applicants was on casual basis. R-1 sent to the applicants before issue of appointment order

clearly mentions appointment on casual basis. R-2 is the actual appointment order for posting in the Department wherein it is clearly stated that appointment is on casual basis. The appointment orders relied upon by the applicants in both the OAs. are to be read and interpreted <sup>in conjunction</sup> with the orders at R-1 & R-2. In the light of these facts, we are unable to accept the contention of the applicants that their initial appointment was on officiating/temporary basis against regular vacancies.

9. In both the OAs. the applicants have contended that though they are continuously working as Fitter Auto (SK) since the appointment, the respondents have changed their designation to that of Fitter (SK) in OA.NO.1018/97 and Tractor Driver in OA.NO.1019/97. The respondents have explained the position with regard to change in designation with the relevant documents. The respondents have also submitted that due to reduction in the sanction of casual Fitter Auto (SK) posts, 13 employees became surplus in 1985. Administration decided to absorb these surplus casual employees against the regular vacancies in the other trades as per the policy instructions SAO 8/5/76 at Annexure-'R-4'. This submission is confirmed by the letter dated 23.11.1984 at 'R-3' which includes the names of the applicants in both the OAs. in the list of 13 surplus casual employees. As per this letter, a Board was also constituted to select the suitable candidates against the vacancies in the various trades. From Annexure-'R-5' in both the OAs., it is noted that applicant in

OA.NO.1018/97 appeared for the trade test for the post of Fitter (SK) while in OA.NO.1019/97 the applicant appeared for the post of Tractor Driver. Both the applicants passed in the trade tests. Based on qualifying in the trade tests the applicants have been appointed on temporary basis against the existing vacancies as per their option. Documents at Annexures-'R-3', 'R-4' & 'R-5' thus clearly establish that the applicant in OA.NO.1018/97 has been regularly absorbed as Fitter (SK) and the applicant in OA.1019/97 as Tractor Driver though being initially appointed as Fitter Auto (SK) on casual basis. Therefore, the applicants can claim any benefit of promotion to higher grade only in the trades they have been regularly absorbed as per the extant rules.

10. The applicant in OA.NO.1018/97 has made an additional plea. He has placed strong reliance on the order dated 18.6.1986 at Annexure-2 for claiming that he was appointed as Fitter Auto (SK) and has been working in this trade accordingly. On going through this order, it is noted that the same appoints the applicant as Fitter Auto (SK) in a quasi permanent capacity w.e.f. 1.2.1982. The respondents have not specifically remarked in respect of the issue of this letter in the written statement. However, in the face of the documents at 'R-3', 'R-4' & 'R-5' and our deliberation thereon earlier, the order dated 18.6.1986 cannot establish that the applicant has been regularised in the category of the Fitter Auto (SK). In fact, the applicant is aware that he

was absorbed as Fitter (SK) on regular basis. This is obvious from Annexure-11 (in 1996) wherein the applicant himself has indicated his designation as Fitter (SK).

11. The trump card of the applicants in both the OAs. is that since the initial appointment they have been working as Fitter Auto (SK) even though their designation were changed. Both the applicants have brought on the record a number of letters of commendation indicating appreciation of their good work as Fitter Auto (SK). They have also brought on the record a few documents to show that they have attended a number of training courses as Fitter Auto (SK). In the written statement, the respondents have not made any averment with reference to these documents. These documents indicate that perhaps the applicants though regularised in 1985 against the post of Fitter (SK) and Tractor Driver have been continued to work as Fitter Auto (SK). Even for a moment if the contention of the applicants is accepted, then the applicants cannot get the benefit of the same as a matter of right. The applicants can seek further promotion <sup>only</sup> in the trades they have been absorbed as per the extant rules. Since the regular appointment of the applicants is in the trades which are not the feeder trades for promotion as Fitter Auto HSK-II, then the applicants cannot claim consideration for promotion to the post of Fitter Auto HSK-II in preference to Respondents No. 4 to 7.

12. In the result of the above deliberations, we are unable to find any merit in both the OAs. and the same are dismissed accordingly. No order as to costs.

*D.S. Baweja*  
(D.S. BAWEJA)

MEMBER (A)

*R.G. Vaidyanatha*  
30/5/2000  
(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.