

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 487/1998
DATED THE 4th DAY OF JAN, 2003

CORAM: HON'BLE SHRI JUSTICE D.N.CHOWDHARY, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Shri E.P.M.Nair,
working as Electrician Skilled,
Ticket No.EM 77/1093/MPF,
Ordnance Estate,
Ambernath - 421 501. Applicant

By Advocate Shri S.R.Atre

V/S.

1. The Union of India,
through the Secretary to the
Government of India,
Ministry of Defence,
Raksha Bhavan,
New Delhi-110 001.
2. The Director General,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.
4. Shri C.B.R.Dayal, EM/8/1051,
presently working as Electrician,
Highly Skilled Grade II,
Machine Tool Prototype Factory,
Ordnance Estate, Ambernath. Respondents

By Advocate Shri R.K.Shetty

(ORDER)

Per Smt. Shanta Shastray, Member(A)

The applicant by this OA has sought the following reliefs.

A. This Hon'ble Tribunal be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof quash and set aside the order dated 11/5/1994 (Annexure A-2) and direct the respondents to grant the applicant upgradation in

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the post of Electrician w.e.f. 16/10/1981 and the seniority in pursuance thereof and accordingly consider the applicant for promotion to the next higher post especially from the year 1986 onwards and/or as and when the vacancy arose in the Electrician's cadre.

B. This Hon'ble Tribunal be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof quash and set aside the order dated 5/9/1997 whereby the Respondent No.4 came to be promoted to the post of Electrician Highly Skilled Grade II and accordingly direct the respondents to consider the case of the applicant by granting the applicant his appropriate seniority in the Electrician's cadre w.e.f. 16/10/1981 and regulate his promotions to the higher post in the Electrician's cadre along with all the consequential reliefs including the arrears of pay as would flow from such upgradation and promotion.

C. Pass any such order order and/or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.

D. Costs of the application be provided for.

2. In short the applicant wants upgradation to the post of Electrician with effect from 16/10/1981 and seniority in pursuance thereof and further promotion to the next higher post from the year 1986 onwards.

3. The applicant was a trade apprentice of 16th batch and underwent apprenticeship training at Ordnance Factory, Ambernath from 10/3/1978 in the trade of wireman and passed the NCTVT trade test in 1978. He was appointed in the Machine Tool Prototype Factory as Fitter (Electric) C Grade with effect from 10/3/1978 in the pay scale of RRs.210-290.

4. Applications were invited vide factory order dated 21/11/1978 from eligible employees for competency test for the year 1978-79 in the trade/grade of Electrician A & B grade, Wireman A & B grade and Switchboard attendants A & B grade, etc. The applicant had applied for the competency test of Wireman and

he was allowed to take the test and was declared passed vide order dated 12/4/1979.

5. The applicant states that though he had applied to appear for the test for Electrician 'B' Grade, he was not allowed to appear for the test on the ground that he had not completed 1 and 1/2 years of experience whereas two others namely Shri A.L.Mandhre and Shri Philip John were allowed to take trade test for Electrician 'B' grade. Shri Philip John was junior to the applicant. The applicant submits that once again he submitted his application for the Electrician 'B' test during 1979-1980. However, again he was not allowed to appear for the test on the ground that the experience required is of 2 and 1/2 years. He was denied the same vide letter dated 9/7/1981.

6. After passing the wireman competency test, the applicant had applied for re-designation from Fitter (Electric) 'C' to wireman. His application could not be considered. He had also applied for re-designation as wireman on the basis of the competency test from 12/4/1979. He was appointed Fitter (Electric) 'C' and after passing the test of wireman his case was considered for re-designation from a prospective date and was intimated accordingly vide letter dated 9/7/1981.

7. The applicant submits that in the meantime a factory order was issued on 24/12/1981 upgrading the payscale of Wireman and Ors from Rs.210-290 to 260-400 with effect from 16/10/1981. Subsequently various other trades also came to be upgraded similarly. The applicant submits that though he made several

representations, he was not granted the benefit of such upgradation on the ground that Fitter (Electric) 'C' is not the same as Electrician. The Ministry of Defence vide letters dated 19/3/1991 and 7/3/1993 upgraded various trades carrying the payscale of Rs.210-290 to Rs.260-400 with effect from 24/10/1985. The amendment was carried out on 24/10/1985 incorporating some special trades of Fitter General 'C' Mechanical 'C' as per the recommendations of the Expert Classification Committee Report. This was by order dated 10/11/1987. This was ~~by order dated 10/11/1987~~. According to the applicant there was no trade like Fitter (Electrical) Grade 'C' in the concerned rules at the time of the Third Pay Commission's Report was in force but the applicant did not come to be upgraded.

8. He was later on granted such upgradation in the Fitter skilled grade with effect from 16/10/1981 vide order dated 3/7/1993. However this letter was cancelled later on on the ground that the trade of Fitter (Electrical) 'C' grade had not been recommended for upgradation by Expert Classification Committee or Anomalies Committee. Since the orders were issued inadvertently, the same were cancelled. An order was issued on 11/5/1994 considering the representation which came to be preferred by the applicant on 3/5/1994 stating that since the trade of Fitter (Electrical) and some other trades were not included for upgradation of payscale all the relevant orders dated 3/7/1993 and 27/7/1993, being administrative errors needed to be corrected and accordingly the orders were withdrawn. However, in the case of one Shri T.M.Jospeh the upgradation was not cancelled.

9. Thereafter, the applicant submits that in the case of one Shri ^{i.e. respondent no. 4} Dayal, though upgradation had been cancelled by Factory

order dated 13/5/1994 his designation was continued to be shown as Electrician Skilled. It was made clear by letter dated 10/10/1995 that Shri Dayal's re-promotion was pending with Ordnance Board. He was continued in the designation/post of Electrician Skilled and Shri Dayal came to be promoted to the post of Electrician Highly Skilled Grade II with effect from 9/4/1997. Being aggrieved by the promotions, upgradations of his juniors, the applicant has approached this Tribunal.

10. The applicant had filed MP for amendment which was allowed and the applicant deleted the prayer clauses 'A' and a part of prayer clause 'B' confining his prayer to only calling for records and proceedings of the case and after examining the legality and propriety to quash and set aside the order dated 9/4/1997 whereby respondent no.4 came to be promoted to the post of Electrician Highly Skilled grade II.

11. The respondents have taken a preliminary objection regarding the delay by the applicant in approaching this Tribunal. According to them the application is not within the limitation period. The applicant wants himself to be upgraded to the post of Electrician with effect from 16/10/1981 and seniority in[quersuance thereof and promotions to the next higher post from the year 1986 onwards by granting him appropriate seniority with with Shri A.L.Mandhre and Shri Phillip John and the respondent no.4. The respondents submit that it has been well settled by a series of decisions of the Hon'ble Supreme Court that settled matters of seniority should not be unsettled after a long lapse of time. The cause of action arose from 16/10/1981 and the applicant raised the demand with respondents on 28/3/1997 and has

filed this OA on 6/5/1998. Therefore the application deserves to be dismissed on the ground of limitation, laches and delay. Similarly, the applicant wants upgradation of his payscale with effect from 16/10/1981 from the unskilled category scale of Rs.210-290. His demand for pay revision after 17 years cannot be entertained now, also pay revision is the function of the Executive keeping in view all the recommendations of the Expert Bodies like the IIIrd, IVth and Vth Central Pay Commissions, Expert Classification Committee and Anomalies Committee. The respondents have meticulously complied with the directions of the said Bodies and there is no case for conceding the demand of the applicant for pay revision with effect from 16/10/1981 and consequent further promotions and payment of arrears.

12. Coming to the merits of the case, the respondents submit that when the notice was published for inviting applications for competency test for the year 1978-79, the applicant had applied to appear for Competency Test of Wireman. Shri A.L.Mandhre and Shri Philip John were appointed as Fitter (Electric) 'CC' grade on 8/3/1978 and 10/3/1978 respectively and their trade was of Electrician. They were trained in the trade of Electrician and had passed the NCTVT examination and were in posession of Wireman [[rtificate. They both had applied for the competency test of Electrician 'A' grade and the applicant had applied for Electrician 'B' grade in 1979-80. The applicant was not found eligible to appear for the competency test of Electrician 'B' grade. Thus, the applicant cannot compare himself with Shri Mandhre and Shri John.

13. Further, the respondents submit that the applicant had passed the competency test in the grade of Electrician 'B' during

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1981-82 but the trade of Fitter (Electric) 'C' grade had not been included for upgradation vide Ministry of Defence letter dated 15/10/1984. He had applied for re-designation from Fitter (Electric) to Wireman. Since there were only 7 vacancies in Wireman's grade and all posts were occupied, the case of the applicant could not be considered for re-designation. Therefore his case was considered for re-designation from prospective date as he could not have been considered without passing of the Trade test of Wireman. The respondents have also denied that the decision in the case of Shri Bhagwan Sahay or subsequent cases applies to the applicant.

14. The respondents submit that the payscales of various trades including upgradation from semi skilled to skilled category were awarded by the Expert Classification Committee based on the point scores obtained by various trades and grades. Fitter (Electric) 'C' were evaluated by Expert Classification Committee and were awarded semi skilled grade vide serial no.195 of Annexure I to the Ministry of Defence circular dated 16/10/1981. The payscale of industrial workers in respect of trades which were upgraded from Rs.210-290 to Rs.260-400 from semi skilled grade with effect from 15/10/1984 were antedated from 15/10/1984 to 16/10/1981 vide order dated 19/3/1993. The upgradation of applicant from semi skilled to skilled grade with effect from 16/10/1981 vide order dated 3/7/1993 and fixation of his pay vide order dated 27/7/1993 was an administrative error because Fitter (Electric) 'C' grade had not been recommended for upgradation and therefore the same had to be corrected and the mistaken orders were withdrawn. It is further submitted that no junior has superseded the applicant except the reserved category candidates.

15. In the case of Shri T.M.Joseph, he was appointed to Fitter (Electric) 'C' grade in the skilled grade with effect from 9/10/1984 because he was awarded with Silver Medal in the 33rd Regional Competition for Apprentices and as per the then existing orders in force apprentices who secure medals, Bronze, Silver or Gold should be encouraged by giving them proper appointment fixing in suitable grade and scale. He also passed the competency test for Electrician skilled grade and was re-designated as Electrician Skilled grade on his own request losing his seniority in the earlier trade/grade.

16. Coming to the promotion of Shri C.B.R.Dayal i.e. respondent no.4, the official respondents submit that Shri Dayal was appointed as Fitter (Electrical) 'C' grade with effect from 25/3/1983 in the payscale of Rs.210-290. He is an ex trade apprentice of the 21st Batch and received Apprenticeship Training under the Apprenticeship Act, 1961 at ATS, Ambernath in the Electrician Trade and passed the NCTVT Trade Test in April 1983 in the trade of Electrician. His upgradation in the skilled grade with effect from 15/10/1984 was cancelled. He passed the competency test for Electrician 'B' grade held during 1985. He was re-designated as Electrician B Skilled grade with effect from 11/4/1985 at his own request. His seniority was revoked from his date of re-designation i.e. 11/4/1985. He belongs to scheduled caste community and has been promoted to Electrician Highly Skilled grade with effect from 15/2/1995 notionally and financial benefits from 7/4/1997 against a reserved vacancy for scheduled caste as per the roster point. Thus, the applicant's case cannot be compared with that of

respondent no.4 who though junior belonging to scheduled caste community was promoted against a reserved vacancy. According to the respondents, the applicant has no case and the OA deserves to be dismissed.

17. The respondents have also remarked about Shri M.D'Souza who was initially appointed as Labour B on 23/1/1973. He had passed the wireman certificate examination on 21/5/77 from Maharashtra State and was promoted as Wireman with effect from 22/8/1978 whereas the applicant had passed the competency test in 1978-79 in the trade of Wireman 'B'. Therefore comparison with Shri D'Souza is not called for.

18. We have heard the learned counsel for the applicant as well as the respondents. As was pointed out at the outset, the applicant deleted most of his prayers, prayer clause A and a portion of prayer clause 'B'; i.e. the applicant has ^{now} sought to quash and set aside the order dated 9/4/1997 whereby respondent no.4 came to be promoted to the post of Electrician Highly Skilled grade-II and to regularise the applicant's promotion to the higher post in the Electrician cadre alongwith consequential reliefs alongwith arrears of pay.

19. In view of this we do not consider it necessary to go into the submissions made by the respondents with reference to the prayers including the submissions regarding the OA being hit by limitation, delay and laches. Considering that the applicant has challenged the promotion order of respondent no.4 dated 9/4/1997, it cannot be said that the application is hit by limitation or delay and laches. According to the applicant the grades/trades in the Fitter (Electric) job as per the trade specifications are

required to be maintained in A & B grade only and as such there does not appear to be any 'C' grade. So when other trades were granted appropriate upgradation, there is no reasonable differentia pointed out in refusing the upgradation to the trade in which the applicant was working only on the ground that he was not included in the recommendations for upgradation. Therefore the cancellation of his upgradation to the post of Fitter (Electric) skilled was illegal and to bad in law. In the case of respondent no.4, though the upgradation was cancelled vide order dated 13/5/1994 by an order dated 9/10/1997, his designation came to be shown as Electrician Skilled vide order dated 29/4/1994, he came to be shown as semi skilled after cancellation of the order. In his case it was recommended that since he had been working as Electrician Skilled with effect from 25/3/1983 retrospective upgradation of semi skilled post from which post he had been redesignated could be considered for promotion to the post of Highly Skilled Electrician.

20. The applicant has raised the point that Shri Dayal could not have been promoted to the post of Electrician Skilled Grade II and that too on the basis of carry forward vacancies. According to the applicant carrying forward of vacancies would have been bad in law and therefore the promotion of Shri Dayal is illegal.

21. The respondents have already explained as to how Shri Dayal came to be promoted and how his case was under consideration even after cancelling his upgradation earlier. The

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respondents have stated clearly that he was considered as there was a reserved vacancy as per roster point.

22. In our considered view, since the applicant's upgradation was cancelled, because his trade was not included in the trades recommended for upgradation he could not have been considered for being promoted to the skilled grade II on his own merit, he would not have been entitled for such promotion. The applicant had not challenged the report of the Expert Classification Committee or Anomalies Committee for non inclusion of his trade.

23. The applicant has shown no material to contradict that the vacancy against which Shri Dayal was promoted was not a reserved vacancy as per roster point. Similarly stating that vacancies cannot be carried forward as there was a ban on filling up of vacancies will not rule out the actual vacancy which existed for reserved category in 1997. We do not find anything wrong in the action of the respondents in considering respondent no.4 for promotion to highly skilled grade II. We also do not find that there is any merit in the applicant's case as his trade was not included for upgradation. Noting however that the applicant has remained without promotion for such a long period we hope that the respondents shall consider the case of the applicant for upgradation under the Assured Career Promotion Scheme introduced on 9/8/1999 by the DOP&T. Therefore the OA fails and this dismissed accordingly. We do not order any costs.

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(SMT. SHANTA SHAstry)
MEMBER(A)

(D. N. CHOWDHARY)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITION NO. 21/04
IN
ORIGINAL APPLICATION NO.487/98

THIS THE 7TH MAY, 2004

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

E.P.M. Nair. ... Petitioner

By Advocate Shri S.R. Atre

Vs.

Union of India & Others. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant has filed this review petition to review the judgment and order dated 04.02.2003 passed in OA 487/98.

2. Petitioner has made out the following grounds for review.

A. that there is an error apparent on the face of the record of this Tribunal to hold that since the petitioner's trade had not been included in the trades recommended for upgradation he could not have been considered for being promoted to the Skilled Grade II on his own merit (paragraph No.22 of the judgment) when it was clear that the petitioner and Shri Dayal, Respondent No.4, belonged to the same trade and whereas the Petitioner had been promoted on

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regular basis to skilled Grade on 21.4.1982, the same was not the case of Shri Dayal who had been reverted to the Semi-skilled post and as such could have been granted jumping promotion to High Skilled Grade by-passing the Skilled Grade.

B. That it is an error apparent on the face of record of this Hon'ble Tribunal to hold and declare that Respondent No.r had been rightly promoted with effect from 15.02.1995 when it was clear that Shri Dayal passed the competency test for Grade-II promotion only in 1997 and any such promotion with a retrospective date without pointing out appropriate roster point could not have been said to be legal.

C. That it is an error apparent on the face of record of this Tribunal to hold and declare that the petitioner was not eligible for being considered for being promoted to the Skilled Grade II on his own merit since the petitioner's upgradation had been cancelled because his trade was not included in the trades for upgradation since such a rejection practically amounts to rejection of prayer clause 'A' and the part of prayer clause 'B' which in fact had been deleted by the



petitioner and as such it is just and proper that this Hon'ble Tribunal reviews the judgment and orders passed by this Tribunal.

3. We have heard learned counsel for the petitioner as well as respondents and carefully considered the rival contentions raised by learned counsel for the parties.

4. The perusal of judgment indicates that Tribunal has considered all the points raised by the applicant in his Original Application. Learned counsel for the petitioner has contended that Respondent No.4 was not eligible at the time of his notional promotion and therefore, applicant should have been promoted in the vacancy existed at that point of time. We find that this point has not been considered by the Tribunal, but there is no averment made by the applicant in his Original Application. Therefore, the Tribunal could not have specifically considered that point. The point which has not been urged in the OA cannot be entertained in the review. However, the point that the promotion of Shri Dayal was considered by the Tribunal in para 20 of the order which reads as under:

"The applicant has raised the point that Shri Dayal could not have been promoted to the post of Electrician Skilled Grade II and that too on the basis of carry forward vacancies. According to the applicant carrying forward of vacancies would have been bad in law and therefore the promotion of Shri Dayal is illegal."



....4.

5. So far as the promotion of Respondent No.4 on a vacancy as per roster point is concerned, the Tribunal in para 23 of the order observed as under:

"The applicant has shown no material to contradict that the vacancy against which Shri Dayal was promoted was not a reserved vacancy as per roster point. similarly stating that vacancies cannot be carried forward as there was a ban on filing up of vacancies will not rule out the actual vacancy which existed for reserved category in 1997. We do not find anything wrong in the action of the respondents in considering respondent no.4 for promotion to highly skilled grade II. We also do not find that there is any merit in the applicant's case as his trade was not included for upgradation."

Thus, it appears no error apparent on the face of record as required under Rule Order 47 of CPC. The alleged error of law as stated by the petitioner in his review petition are not at all errors of law or facts, but a simple prayer to take different view than the view taken by the Tribunal in its order dated 04.02.2003.

6. The scope of review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgment was made, or on account of



some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in Ajit Kumar Rath Vs. State of Orissa & Ors 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

The Hon'ble Supreme Court in Subash Vs. State of Maharashtra 2002 SC 2537 has observed in para 3 as under:

..... there is no justification for the Tribunal to have reviewed the matter once over again, particularly, when the scope of review is very much limited under Section 22 (3)(f) of the Administrative Tribunals Act, 1985 as is vested in a Civil Court under the Code of Civil Procedure. The Tribunal could have interfered

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in the matter if the error pointed out, is plain and apparent. But the Tribunal proceeded to re-examine the matter as if it is an original application before it. This is not the scope of review."

7. The review petition is also not maintainable in law as the petitioner has not filed the affidavit in support of the review petition as required under Rule 17 (5) of the CAT (Procedure) Rules, 1987. The said rule is reproduced below:

"No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed".

In our view there is no error apparent on the face of the record and there is no discovery of the new facts within the meaning of Order 47 Rule 1 CPC. The grounds stated in review petition do not come within the purview of Order 47 Rule 1 CPC. Therefore, we find that there is no merit in the review petition. In the result the review petition is dismissed with no order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(ANAND KUMAR BHATT)
MEMBER (A)

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