

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.974/90

Date of Order 16.12.93

BETWEEN:

1. Y.Ranga Rao
2. N.U.Nicodemus .. Applicants.

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1. The Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
2. The Chief of the Naval Staff,
Naval Head Quarters, New Delhi.
3. Flag Officer Commanding-in-Chief,
H.Q., Eastern Naval Command,
Naval Base Post Office,
Visakhapatnam - 530 014.
4. The Admiral Supdt., Naval
Dockyard, Visakhapatnam.
5. K.T.P.B.Sharma,
Foreman (PPC) (Elect),
Manager (Plas) Dept.,
Building No.42, Naval Dockyard,
Visakhapatnam - 530 014.
6. Sn. Chandran, Foreman (PPC) (ENGG),
Manager (SUB) Dept., Building No.42,
Naval Dockyard, Visakhapatnam.
7. G.Lakshmi Narayana,
Foreman (PPC) (ENGG),
Manager (SUB) Dept.,
Building No.42, Naval Dockyard,
Visakhapatnam - 530 014.
8. S.Ramakrishna,
Foreman (PPC) ELECT),
Manager (P.C.) Dept.,
Building No.42, Naval
Dockyard, Visakhapatnam.
9. T.P.V.Ramganandham,
Foreman (PPC) (WEA),
Manager (KK) Dept.,
Building No.42 'A'
Naval Dockyard,
Visakhapatnam - 530 014.
10. K.Sadasiva Rao, Foreman (PPC) (CON),
Manager (KAM) Dept., Building No.42, 'A',
Naval Dockyard, Visakhapatnam.

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11. Padi Narasinga Rao,
Foreman (PPC) (WEA),
Manager (KAM) Dept.,
Building No.42 'A',
Naval Dockyard,
Visakhapatnam.
12. D.L.Raju,
Foreman, (PPC) (ENGG),
Manager (SUB) Dept.,
Building No.42,
Naval Dockyard,
Visakhapatnam - 530 014.
13. K.Ganesh Kumar,
Foreman (PPC) (Con),
Manager (SUB) Dept.,
Building No. 42,
Naval Dockyard,
Visakhapatnam - 530 014.

.. Respondents.

Counsel for the Applicants

.. Mr.P.B.Vijay Kumar

Counsel for the Respondents

.. Mr.N.V.Raghava Reddy

CORAM:

HON'BLE MR. JUSTICE. V.NEELADRI RAO - VICE-CHAIRMAN

HON'BLE SHRI K.RAGARAJAN : MEMBER (ADMN.)

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considered for promotion and if for any reason DPC could not be held in any year even though the vacancies arise during that year or years, then the actual number of regular vacancies that arose in each of the previous year/years immediately preceding and the actual number of regular vacancies proposed to be filled in the ~~x~~ current year separately have to be determined and ^{only} those officers only who would be within the field of choice with reference to the vacancies of each year, have to be considered and those who are empanelled in the select list for the ~~xxx~~ earlier year ~~x~~ have to be placed above those who were empanelled in the list of later year, as contemplated under para 4(b) of the O.M.No.22011/4/76-Estt.(D), dated 24.12.1980 and if the same is followed, the applicants would be seniors to the Respondents 8 to 14.

6. This OA is filed praying for a direction to the respondents 1 to 4 to review the seniority list as published on 12.11.1990 so as to be in conformity with the O.M.dated 24.12.1980 with all consequential benefits.

7. Para 4(b) of the OM dated 24.12.1980 is as under:-

"4. Preparation of year-wise panels by DPC where they have not met for a number of years:

(a) xxxx xxxx xxxx xxxx xxxx xxxx

(b) Where, however, for reasons beyond control, DPC could not be held in any year(s) even though the vacancies arise during that year (or years), the first DPC that meets thereafter should follow the following procedure:-

(1) Determine the actual number of regular vacancies that arose in each of the previous year/years immediately preceding and the actual

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JUDGMENT

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri P.B.Vijaya Kumar, learned counsel for the applicants and Shri V.Rajeswara Rao, for Shri N.V.Raghava Reddy, learned standing counsel for the respondents.

2. These two applicants and the Respondents 5 to 9 joined service as Senior Chargemen on 5.9.1980. Promotion from the post of Senior Chargeman is to the post of Foreman. Eligibility for promotion to the post of Foreman is, three years service in the category of Senior Chargeman and a pass in the departmental test. These 2 applicants and the Respondents 5 to 9 passed the departmental test conducted in November 1982 the results for which were announced in 1982 itself.

3. There were 14 vacancies in the category of Foremen ever in 1980 and the DPC met in 1984 and then only four vacancies were filled up and in those vacancies, the Respondents 5 to 7 and Shri Konda Babu were appointed. The applicants and the Respondents 8 to 9 were not promoted.

4. ^{Then the applicants and} The DPC again met in 1987 and the Respondents 8 to 14 were promoted to the category of Foremen. Gradings were given by the DPC on the basis of ACRs and on that basis rankings were given in the category of Foremen. As the Respondents 8 to 14 were given gradings higher than that of the applicants, former were shown as seniors to the applicants in the category of Foremen.

5. The contention for the applicants is that the DPC ^{has} had to meet every year and in case vacancies were there, those who were eligible for promotion ⁱⁿ that year alone ^{have} were to be

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existed in 1984 they were not filled up in 1984; and this OA is liable to be dismissed for laches as this OA is filed on 27.11.1990 when the promotions were made in 1987.

9. We will take up the second point first. The final seniority list was published on 12.11.1990 after rejecting the representations of the applicants. This OA was presented on 27.11.1990. As such, it cannot be stated that there was delay in challenging the seniority list. The applicants made representations against the draft seniority list. Thus, there is no force in the contention that there is inordinate delay in challenging the seniority.

10. Even in Para 1 of the OM dated 24.12.1980, it was made clear that when DPCs are not meeting annually even when there were vacancies, it resulted in the bunch of vacancies which in turn enlarged ^{the} field of choice and upset the relative seniority positions and hence it had become necessary to issue the OM dated 24.12.1980. Rule 4(b) in categorical term states that if DPC did not meet even when vacancies were there and qualified candidates were available, it is necessary for determining vacancies for each year and consider the eligible candidates in the year in which the vacancies (earlier vacancies plus current vacancies) existed and those who are empanelled in the earlier year have to be placed above those who are empanelled in the later year. There is no ambiguity in Para 4(b) of the OM dated 24.12.1980. Thus, there is force in the contention for the applicants. The question as to whether the sanction is given for filling up the post is not material for applying Rule 4(b) of the OM dated 24.12.1980. Whatever might be the year in which the sanction is given, the year of vacancies alone is the material for operation of Para 4(b) of the OM dated 24.12.1980. As such, the contention for the Respondents 1 to 4 is not tenable.

number of regular vacancies proposed to be filled-
in the current year separately.

(ii) Consider in respect of each of the years
those officers only who would be within the field
of choice with reference to the vacancies of
each year starting with the earlier year onwards.

(iii) Prepare a select list for each of the
years starting with the earliest year onwards.

(iv) Prepare a consolidated 'select list' ~~for~~
~~xxxxxxxxxxxxxxxx~~ by placing the select list of
the earlier year above the one for the next
and so on."

When admittedly 14 vacancies were there in the category of Foremen even by 1980, only four posts were filled up in 1984. Thus, there were vacancies in the category of Foremen by the date the applicants had become eligible for promotion. It is evident from Para 4(b) of the OM dated 24.12.1990, if for reasons beyond control, the DPC could not be held in any year or years even when there were vacancies and eligible candidates were available and if DPC meets ^{at} a later year, then the DPC has to consider the candidates eligible ^{for} each year in which the earlier and the current vacancies existed. It is the case of the applicants that the Respondents 10 to 14 passed qualifying examination in the test held in 1983 and hence the Respondents 10 to 14 should not have been considered along with the applicants and the Respondents 8 and 9 for the earliest year for which the vacancies existed after filling up the four vacancies on the basis of the selection in 1984.

8. It is contended for the respondents that as there was no sanction for filling up the remaining 16 vacancies which

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11. For the above reasons, the following directions are given:-

The seniority list which was published on 12.11.1990 has to be revised so as to be in conformity with Para 4(b) of the OM dated 24.12.1980. The applicants and the Respondents 8 and 9 have to be considered for the vacancies which existed after filling up the four posts on the basis of the selection in 1984 and the Respondents 10 to 14 have to be considered for the later year/years in accordance with the Para 4(b) of the OM dated 24.12.1980. If any of the juniors of the applicants and the Respondents 8 and 9 on the basis of the revised seniority list to be prepared in pursuance of this order are already promoted, the applicants and the respondents 8 and 9 also have to be promoted from the dates on which their is/ junior/juniors/are promoted to the post of Senior Foremen if they are eligible as per the rules and they are entitled to the monetary benefits from that date.

12. The OA is ordered accordingly. No costs.

SENT BY POST
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

(Impd - - - 7/-)