

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1022/90

Date of Order: 27.12.73

BETWEEN :

1. K.Nooka Raju
2. S.Lakshmana Rao

.. Applicants.

A N D

1. Chief Engineer, Southern
Command, MES, Pune.
2. Commander Works Engineer,
Station Road, Visakhapatnam.
3. Garrison Engineer, Naval Depot,
Visakhapatnam.

.. Respondents.

Counsel for the Applicants .. Mr. P.B.Vijay Kumar

Counsel for the Respondents .. Mr.N.V.Ramana, Addl.CS&C

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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OA.1022/90
and
OA.1024/90

(3)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri P.B. Vijaya Kumar, learned counsel for the applicants and Sri N.V. Ramana, learned counsel for the respondents in OA.1022/90 and Sri G.V. Subba Rao, learned counsel for the applicants and Sri N.V. Ramana, learned counsel for the respondents, in OA.1024/90.

2. As the same points arise for consideration in both the OAs, they can be conveniently disposed by a common order.

3. By Government of India, Ministry of Defence letter No.3810/DS(D&M)Civ-I/84 dated 15-10-84, 15% of the total posts in various disciplines referred to in Annexure-I were classified as Highly Skilled Grade I, while 20% and 60% of such total posts were classified as Skilled Grade II and Skilled grade respectively. Trade-Fitter and Refrigerator Mechanic is one of the common category referred to in Annexure I and the applicants in both these OAs belong to the said Trade. By letter dated 29-10-1984 all Engineering Chiefs Branch, Army Headquarters, New Delhi, all the concerned units were informed that the provisions of introduction of Highly Skilled Grade II and Grade I ~~was~~ common category jobs listed in Annexure-I. The matter is being examined and detailed instructions would be issued later on. By letter dated 4-7-1985, all Engineering Chiefs Branch of Army Headquarters, New Delhi, it was stated "common category Skilled jobs to be provided the High Skilled Grade II (330-480) and Highly skilled Grade I (380-560) depending on the Divisional

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requirement in the following manner as the Bench mark per centage :

- a) Highly Skilled Grade I 380-560 - 15%
- b) High Skilled Grade II 330-480 - 20%
- c) Skilled grade 260-400 - 65% //

(vide material paper filed alongwith the rejoinder for the applicants in OA.1024/90).

Appendix-A to the same discloses ~~as~~ at Serial No.10 that in regard to Refrigerator Mechanic 20% were classified as Highly skilled Grade II and 15% were classified as High Skilled Grade I. By order dated 24-9-1988, the applicants in both these OAs were promoted to Highly Skilled Grade II with effect from 15-10-1984, ~~As~~ the Ministry's letter dated 15-10-1984 states that the said order would come into effect from that date. By the Government of India, Ministry of Defence letter No.1(1)/80/D EC CmIc. Vol.III, dated 8-4-1986, the normal 2/3 years experience for the eligibility for promotion was reduced from 2-3 years to one year as a special one time concession. Para 2(a) of Annexure "A" to the said letter stipulates that if in any unit the recruitment rules were in existence on 15-10-1984 the worker shall be considered for promotion to the posts which are available in view of the upgradation/re-classification/classification of Grade II and Grade I posts as per the Ministry of Defence letter dated 15-10-84 after passing the Trade test or after clearance by BPC. It further lays down that pending finalisation of recruitment rules, the administrative instructions prescribing criterion to be followed in effecting promotion from Highly Skilled Grade II to Highly Skilled Grade I would be issued by 31-5-1986. But neither sides placed before us the ~~instructions~~ ^{new} ~~instructions~~ which was contemplated as referred to.

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4. Be that as it may, the applicants in both the QAs were sent for Trade Test in 1988 and they were Trade tested on 24-9-1988 and when they had come out successful they were promoted to Highly Skilled Grade I with effect from 15-10-1985 as per the proceedings dated 24-9-1988 (page 15 of the material paper in OA.1024/90). They were accordingly paid arrears also.

5. By letter dated 20-9-89, the Chief Engineer, Southern Command, Pune, (vide Annexure R-1 in OA.1024/90) enquired the Chief Engineers Visakhapatnam and Cochin, as to whether the vacancies in High Skilled Grade-I existed in 1985 and 1986 and if so why the employees in Refrigerator Mechanic were sent for Trade test conducted in 1988 and not earlier. It was further enquired therein that if the vacancies were not available in those years, why promotions to these applicants were given with effect from 15-10-1985 to the category of Highly Skilled Grade-I. The Chief Engineer, Southern Command, Pune was informed that no vacancies in HSK Gr.I in regard to these grade were available in 1985 and hence the impugned proceedings dated 30-1-1990 were issued by modifying the order dated 24-9-1988 in giving promotion to HSK Gr.I with effect from 24-9-1988, the date on which they passed trade test and accordingly their pay in HSK Gr.I was revised and the recovery was also ordered. While two employees who were promoted to HSK Gr.I in the Trade of Refrigeration Mechanic filed OA.1022/90, six employees who were similarly situated filed OA.1024/90 challenging the order dated 30-1-1990.

6. It is evident that the benefit as per the Ministry of Defence letter dated 15-10-1984 has to be given from that date. As these applicants were in service in category of skilled category for more than three years, they were given

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promotion to the category of Highly Skilled Grade II with effect from 15-10-1984 itself.

7. If in fact all the vacancies in category of HSK Gr.I in the Trade Refrigeration Mechanic to which these applicants were promoted had to become available due to classification/reclassification of HSK Gr.II as per Ministry of Defence letter dated 15-10-1984 read with Chief Engineers letter dated 4-7-1985, and as the experience in the lower category is reduced from 2/3 years to one year as one time measure for being eligible ^{for promotion} to such vacancies as per the Annexure-2 Ministry of Defence letter dated 8-4-1986, the applicants have to be given the benefits of the scale of HSK Gr.I from 15-10-1985 for by then they were in HSK Grade II for one year, when it is stated that these are non-functional promotions.

8. While it is asserted for the applicants that there was no category of HSK Gr.I in the Trade Refrigerator Mechanic as on 15-10-1984, the same is denied for the respondents as per Para-5 of the reply for the respondents in OA.1024/90. It is contended for the applicants that the Chargeman refrigerator mechanic is in the scale of Rs.425-700 while HSK Gr.I Refrigerator Mechanic is not in the scale of Rs. 380-560.

9. In the rejoinder that was filed for the applicants in OA.1024/90 it is stated that 10 posts in HSK Gr.I in the Trade Refrigerator Mechanic had to become available by the classification as on 15-10-1984 read with letter dated 4-7-1985. But it may be noted that the impugned proceedings were issued by the respondents only after the Engineer, Southern Command enquiring the Chief Engineer, Visakhapatnam as to whether the vacancies in the category of HSK Gr.I Refrigeration Mechanics were available in 1985.

10. Thus, it is not clear on the basis of record produced as to whether in fact vacancies in the category HSK Gr.I in the trade Refrigerator mechanic were available by 15-10-1985 in the Visakhapatnam unit. As already referred the instruction which ~~is~~ intended to be given ^{16, 16-11-86} ~~was~~ ~~pending~~ for finalisation of recruitment rules by ~~31-5-1986~~, was issued or not is not known. By way of interim order in OA. 1022/90 recovery as per impugned order is stayed, but no direction is given to the respondents to pay ~~on~~ the basis of pay fixed as per order dated 24-9-1988 and hence pending disposal of OA.1022/90 the applicants ~~were~~ ^{are} being paid at the revised pay which was fixed as per the impugned order and which is lower than the pay fixed as per proceedings dated 24-9-1988. But by way of interim order dated 11-2-91, in OA.1024/90, the respondents ~~are~~ ^{were} directed to pay the applicants therein the pay as fixed as per letter dated 24-9-1988 and thus they are getting more pay than the applicants in OA.1022/90 even though both of them are similarly situated. If the disposal of these OAs are further delayed, and which delay there will be if the concerned respondent who is at Visakhapatnam, is directed to produce the relevant record, and it will ~~on~~ prejudice the applicants in OA.1022/90 if ultimately they succeed. But if ultimately the applicants fail the it is case of the applicants in OA.1024/90 getting the benefits by way of interim order to which they will not be entitled to. Even the applicants are at Visakhapatnam, we feel that it is just and proper to pass the following order :

Within three months from the date of receipt of this order R-4(in OA.1024/90) ~~has~~ ^{has} to pass final order about the date from which the applicants have to be given promotion

Copy to:-

1. Secretary, Ministry of Defence, New Delhi.
2. Engineering-in-Chief, Army Head Quarters, New Delhi.
3. Chief Engineer, Southern Command, Pune.
4. Chief Engineer, Dry Dock & Vizag Zone, Visakhapatnam-8.
5. Garrison Engineer, Naval Dept. Visakhapatnam-7.
6. Garrison Engineer, Naval Base, Visakhapatnam-5.
7. Commander Works Engineer, Station road, Visakhapatnam-8.
8. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
9. One copy to Sri. P.B.Vijayakumar, advocate, CAT, Hyd.
10. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
11. One copy to Library, CAT, Hyd.
12. One spare copy.

Re: / -

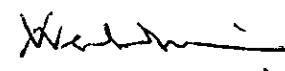
to be filed

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to the category of HSK Gr.I after determining as to when the vacancies in the said category had arisen. For determination of the same R-4 has to give notice to the applicants and has to allow them to look into their relevant record which has bearing in determination of the said vacancies. Pending the final order to be passed by R-4, the recovery as per the impugned orders dated 30-1-90 is stayed till then applicants have the salary from January, 1994 till the final order is going to be passed by R-4 even the applicants in OA.1024/90 have to be paid the salary from January 1994, in accordance with the pay fixed as per impugned proceedings dated 30-1-1990. If ultimately the applicants succeed, they have to be paid as per the pay fixed as per proceedings dated 24-9-1988 for the period for which they were paid at a lesser rate, within three months from the date of order of R-4. Of course if the order of R-4 is going to be adverse to the applicants herein, the recovery for the relevant period can be made and then the applicants are free to move this Tribunal by way of MA for challenging the same. If R-4 is not going to pass any final order within three months from the date of receipt of this order, the applicants herein are free to move this Tribunal by way of MA for necessary instructions.)

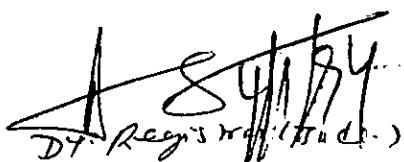
11. The OAs are ordered accordingly. No. costs.


(R. Rangarajan)
Member (Admn)


(V. Neeladri Rao)
Vice Chairman

Dated : December 27, 93
Dictated in the Open Court

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D.T. Registrar (T.A.D.)

cmtd --- 81

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4. Be that as it may, the applicants in both the OAs were sent for Trade Test in 1988 and they were Trade-tested on 24-~~9~~^{when}-1988 and ~~then~~ they had come out successful they were promoted to Highly Skilled Grade I with effect from 15-10-1985 as per the proceedings dated 24-~~9~~¹-1988 (page 15 of the material paper in OA.1024/90). They were accordingly paid arrears also.

5. By letter dated 20-9-89, the Chief Engineer, Southern Command (vide Annexure R-1 in OA.1024/90) enquired the Chief Engineers Visakhapatnam and Cochin, as to whether the vacancies in Highly Skilled Grade I existed in 1985 and 86, and if so why the employees in Refrigerator Mechanic were sent for Trade test conducted in 1988? It was further stated therein that the vacancies were not available why promotions to these applicants were given with effect from 15-10-1985 to the category of Highly Skilled Grade I, by the respective date. The Chief Engineer, Southern Command, Pune, was informed that no vacancy in HSK Gr.I in regard to these grade were available in 1985 and hence the impugned proceedings dated 30-1-1990 were issued by modifying the order dated 24-9-1988 in giving promotion to HSK Gr.I with effect from 24-9-1988, the date on which they passed their test and accordingly their pay in HSK Gr.I was revised and the recovery was also ordered. The employees who were promoted to HSK Gr.I in the Trade of Refrigeration Mechanic filed OA.1022/90, and six were similarly situated filed OA.1024/90 challenging the order dated 30-1-1990.

6. It is evident that the benefit as per the Ministry of Defence letter dated 15-10-1984 has to be given from that date. As these applicants were in service in category of Skilled category for more than three years, they were given

O.A. 1024/90 4th Bench

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER (A)

Dated: 27/12/1993

ORDER/JUDGMENT:

M.A./P.A./C.A. No.

O.A. No.

in
1024/904 Bench

T.A. No.

(W.P.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm

