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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

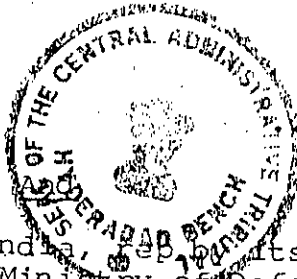
OA.424/92.

Between:-

J.K.Mishra

Date of order:24-1-1996.

Applicant



1. Union of India, Secy to its Secretary to Govt. of India, Ministry of Defence, Navy South Block, DHQ, P.O. New Delhi-11.
2. Chief of Naval Staff, Naval Headquarters, DHQ, PO, New Delhi-11.
2. Command-in-Chief, Eastern Naval Command, Naval Dockyard, Visakhapatnam-14.
4. Admiral Superintendent, Naval Dockyard, Visakhapatnam-14.
5. S.Basha.
6. Deputy General Manager(Personnel), Personnel Department, R & P Section, Naval Dockyard, Eastern Naval Command, Visakhapatnam-14.

... Respondents.

Counsel for the Applicant: Mr.V.Venkateswara Rao

Counsel for the Respondents: Mr.N.R.Devaraj, Sr.CGSC.

CORAM:

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

THE HON'BLE MR.RANGARAJAN: MEMBER(ADMN.)

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J U D G M E N T

1 As per Hon'ble Sri R. Rangarajan, Member (Administrative) 1

Heard Sri V. Venkateshwara Rao, learned counsel for the applicant and Sri N.R. Devaraj, learned Standing Counsel for the official respondents.

2. The applicant joined the Naval Dockyard, Visakhapatnam as a Control Fitter in Computer trade in the Weapon Department after undergoing Naval Dockyard Apprenticeship training. Thereafter, he was promoted to the higher grade of HSK II and I in Computer Trade. At the time of filing this application, he was working as HSK-I in the same trade in the same department.

3. The next promotion for the applicant is to the post of Senior Chargeman (Computer). It is stated for the applicant that the feeder category for promotion to the post of Senior Chargeman Computer in Control Fitter (Computer-HSK-I). However, the applicant came to know that the Fitters HSK-I in the Hydraulic Trade i.e. Control Fitter (Hydraulics) HSK-I were also being considered for the post of Senior Chargeman (Computer). The applicant submits that the trades of Control Fitter (Computer) and Control Fitter (Hydraulics) are two different trades and the recruitment qualification to the post of Fitters in both the trades are also different. The Control Fitter (Hydraulics) trade is a mechanical oriented one whereas Control Fitter (Computer) is required to know the electrical and electronic circuits. It is the further submission of the applicant that there is no promotional avenue chart for considering the control Fitter (Hydraulics) to the post of Senior Chargeman (Computer). The seniority list of both the trades was also issued separately, by the authorities and one such seniority list dt. 29.12.1990 is enclosed as Exhibit (Annexure A-1) to the O.A. In view of the above, he submitted a representation to the concerned authorities against the merger of Hydraulics Fitters and Computer Fitters HSK-I for the purpose of promotion to the Senior Chargeman (Computer).

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4. By proceedings dt. 2.12.1991 (Annexure-2) he was informed that the matter is under consideration. But instead of replying him on his representation, a select list for promotion to the grade of Senior Chargeman (Computer) was issued by the Naval Dockyard authorities on 23.1.1992 (Annexure-3) showing the selection of one Shri Basha who was working as Control Fitter HSK-I (Hydraulics) to the post of Senior Chargeman (Computer) along with the applicant's senior Sri Ravindran who was working as a Control Fitter (Computer) HSK-I. The applicant submitted a representation dt. 7.3.1992 (Annexure-4) against the empanelment by selection of Shri Basha (R-5 herein as R-5 does not belong to Computer Fitter category. R-5 was also promoted subsequently to the post of Senior Chargeman (Computer) by Office order dt. 14.3.1995 (Annexure-A.5). The applicant was informed by letter dated 31.7.1992 (R-7 Annexure) that R-5 was qualified for promotion to the post of Senior Chargeman (Computer) and that the tradesman in the Control Fitter (Hydraulics) who have given their willingness were re-designated and thereby opening the avenue for their promotion channel to the post of Senior-Chargeman (Computer.)

5. Aggrieved by the above, he has filed this O.A. for a declaration that the promotion of R-5 to the post of Sr. Chargeman in Computer by proceedings No. PIR/0212/TSS dt. 14.3.1992 (Annexure A-5) is illegal, arbitrary and unconstitutional and further prayed for setting aside the same by holding that the applicant is entitled to be promoted against the said post with effect from the date on which R-5 was promoted with all consequential benefits such as seniority, promotion, arrears of salary and allowances etc.

6. The contentions of the applicant are two fold.
(i) The trade of Control Fitter (Hydraulics) is a mechanical oriented trade and hence has no relevance for treating it as a feeder category to the post of Senior Chargeman (Computer). (ii) The avenue Chart showing the feeder category

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for the post of Senior Chargeman(Computer) indicates only the Control Fitter(Computer-HSK-I) as the feeder trade and without amending the same by the competent authority after ascertaining the views of the concerned to include the Control Fitter(Hydraulics-HSK-I), the promotion ordered promoting R-5 to the post of Senior Chargeman (Computer) is irregular, arbitrary and unconstitutional.

7. The official respondents submit that the trade Control Fitter (Hydraulics and Computer) form part of Weapon Discipline and they are shown separately upto the level of HSK-I and thereafter merged for promotion to the grade of Sr.Chargeman (Control/Computer). Hence, they deny the contention of the applicant that the trades Control Computer & Hydraulics have got different seniority lists and channels of promotion to supervisory cadre. It is further submitted for the respondents that though in the Weapon Discipline there are many tradesmen skilled at different levels upto the grade of Civilian Technical Asst. (Weapon) they merge at the level of Sr.Chargeman. As the Trade Hydraulics is part and parcel of Weapon discipline is considered for the post of Sr.Chargeman(Computer) along with the personnel in the other trades under the major head of Weapon discipline. The trade Control Fitter(Hydraulics) was formed in the year, 1978 as an interim measure to attend to all the Hydraulics jobs connected with Weapon systems of the Indian Naval Ships. As this trade(Hydraulics) has no structure above the level of HSK-I, they are permitted to appear in the Departmental qualifying examination for promotion to the grade of Sr.Chargeman (Control Computer). They have enclosed as Enclosure-4 " the Trade Structure for supervisory staff in I.N.Dockyards and BROS " to substantiate their statement.

8. R-5 had received the notice, but chose not to present himself in person or through his counsel at the time of hearing. He has not filed any reply also. Probably, he may be of the opinion that the official respondents will sustain his case.

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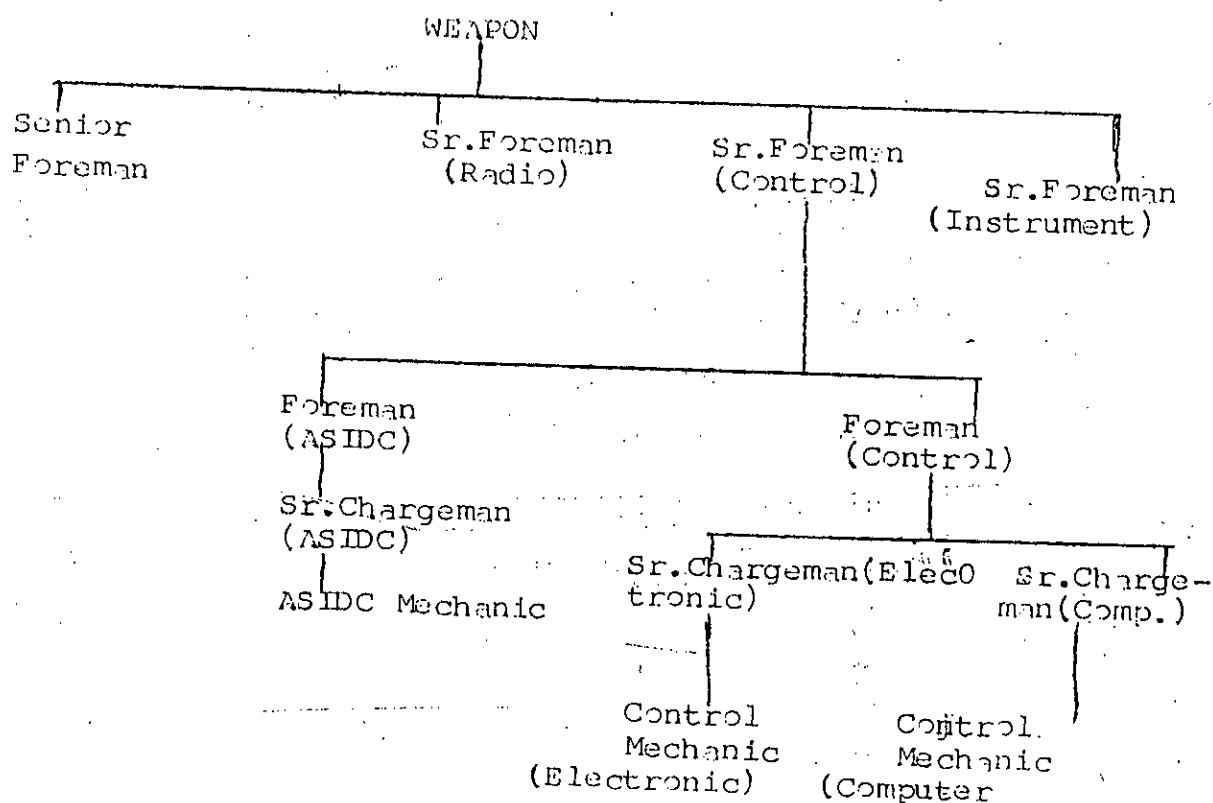
9. The main point to be considered in this O.A. is whether the Control Fitter (Hydraulics HSK-I) can be combined with the Control Fitter (Computer) in the integrated seniority list for the promotion to the post of Sr.Chargeman (Computer). The documents that can be relied upon to solve this issue are the recruitment rules formed under Article 309 of the Constitution and other executive instructions which are issued in consonance with the recruitment rules and the approved avenue chart indicating the feeder categories for promotion to the Supervisory cadre.

10. As the respondents in their counter affidavit at page-4 have stated that as there is no trade structure above the level of HSK-I in the trade of Hydraulics, the Control Fitter(Hydraulics) was permitted, to appear in the departmental qualifying examination for the post of Sr.Chargeman(Control/Computer), we called for the recruitment rules to see whether the Control Fitter Hydraulics was also included as one of the feeder trade for the post of Sr.Chargeman (Computer). The recruitment rules which were produced (returned after perusal) did not throw any light in regard to the feeder trade categories for promotion to the post of Sr.Chargeman (Computer). Hence, we could not come to any tangible conclusion after perusing these recruitment rules.

11. The next document for examining this issue, as stated above is the approved avenue chart for promotion to the Supervisory cadre., in the Weapon discipline of the Naval Dockyard workshop. The respondents themselves have enclosed Enclosure-4 to substantiate their case that the Hydraulics Trade is one of the feeder trades for promotion to the post of Senior Chargeman(Computer).

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12. This enclosure was perused. This enclosure is styled as "Trade Structures for Supervisory Staff in I.N. Dockyards and BROS." The above chart was issued under the authority and approval of "NHQ letter CP/PC-2 dated 19-12-1984". This approved chart indicates 4 major disciplines - VIZ. Construction, Engineering, Weapon and Maintenance. Weapon discipline is one of the four disciplines in that chart. The trade Structure of the Weapon Discipline upto the level of Senior Foreman (Control) is extracted below:-



A perusal of the above chart indicates that the feeder category for Sr. Chargeman (Computer) is shown as Control Mechanic (Computer). As contended by the respondents there is no feeder category of Control Mechanic (Hydraulics) shown in this chart for promotion to the post of Sr. Chargeman (Computer). Hence, by an order dt. 16.11.95, we asked the respondents to indicate whether the avenue chart has been modified by notification by the Naval HQ whereby Control Fitter (Hydraulics HSK-I) is also made eligible to the post of Sr. Chargeman (Computer). The learned Standing Counsel brought to our notice a letter bearing No. PES/8401/OA/424/92 dt. 2.1.1996 written by R-4 addressed to him. The relevant portion of this letter is extracted below:-

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" As regards the contents of the order, the Hydraulic Trade has been introduced during 1978 to meet the operational requirements of the Yard prevailed at that time. In order to afford promotional avenues to the Tradesmen in Hydraulics Trade, they have been allowed by the ASD(V) being the Appointing Authority to appear in the Departmental Qualifying Examination of Computer trade since they have been working with Computer trade personnel, as a pass in the Departmental Test is a pre-requisite for an individual to become eligible for consideration for promotion to next higher grade. Accordingly, Shri Basha had been qualified for Senior Chargeman (Computer) and was promoted to Sr.Chargeman (Computer) with effect from 17th Mar., 1992.

It may be pertinent to mention that there was no objection from the Computer Tradesmen for allowing the Hydraulics Tradesmen to appear in the test for Sr.Chargeman(Computer) when the examination was held, even when the eligibility list of personnel was published well in advance. However, the Trade structure being followed in Naval Dockyards and Naval Ship Repair Yards of Indian Navy at present is already under revision at Naval Headquarters, care will be taken to rectify the anomalies in the present trade structure."

(X) From the above averment, it is established that the Enclosure -4 approved avenue chart dt.19.12.1984 has not been amended or any notification has been issued to include Control Mechanic (Hydraulics - HSK-I) as feeder category for the post of Sr.Chargeman(Computer). Hence, it is to be concluded that on the date of promotion on 14.3.92 of R-5 to the post of Sr.Chargeman(Computer) and even till date, the only approved chart approved by Naval HQs. is the chart appended as Enclosure-4. This chart does not include Control Mech. (Hydraulics-HSK-I) as feeder category to the post of Sr.Chargeman. Only Control Mechanic (Computer) is the appropriate and relevant category for promotion to the post of Sr.Chargeman(Computer). Hence, promotion of R-5 to the post of Sr.Chargeman(Computer) is contrary to the avenue chart and hence the promotion is liable to be set aside.

13X The contents of the above referred letter are nothing but reiteration of their stand in the counter affidavit which has been indicated in para-7 supra. This letter clearly states that "the trade structure that is followed in Naval Dockyards and Naval ship repair yards of Indian Navy is under revision at Naval Headquarters and care will be taken to rectify the anomalies in the present trade structure."

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14. The Government has got full right to modify the recruitment rules and include some more feeder categories for promotion to the higher grades. Such modification cannot be challenged unless the modification is done arbitrarily.

15. At the time of making promotions, the approved recruitment rule and avenue chart only have to be followed and any deviation from such approved rules cannot be condoned. If such condonation is given by lower authorities or even by the competent authority without modification of the approved rules, it will lead to arbitrariness and favouritism.

16. It was held by Supreme Court that "decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rules it is unpredictable and such a decision is the ~~antithesis~~ antithesis of a decision taken in accordance with the rule of law".
[AIR 1967 S.C.1427 - S.G. Jaisinghani Vs. UOI and Ors.]

17. In view of what is stated above, the promotion made to the post of Sr. Chargeman (Computer) ignoring the approved avenue chart dt. 19.12.1984 is void. Mere contemplation to rectify the anomalies in the Trade Structures as stated in the letter dt. 2.1.1996 cannot be treated as equivalent to approved avenue chart. Until the approved avenue chart dt. 19.12.1984 is amended by the Competent authority in the Naval Hqrs. the post of Sr. Chargeman (Computer) has to be filled only by Control Mechanic (Computers) and the Control Mechanic (Hydraulics) cannot be taken as a feeder category for promotion to the post of Sr. Chargeman (Computer).

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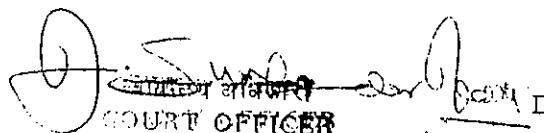
18. In view of what is stated above, the impugned promotion Proceedings No. PIR/0212/TES dt. 14.3.1992 issued by R-6(Annexure-A-5) is set aside. The applicant, if he fulfills other conditions has to be considered for promotion to the post of Sr.Chargeman(Computer) and if found suitable, he has to be promoted. In pursuance of the above direction, if the applicant is promoted to the post of Sr.Chargeman(Computer) he is deemed to have been promoted to that grade from the date R-5 was promoted (the promotion order of R-5 was issued on 14.3.1992) and the pay of the applicant has to be fixed in the higher grade from that date and he is entitled for consequential arrears of pay and allowances and seniority.

15. The O.A. is ordered accordingly. No costs.

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CERTIFIED TO BE TRUE COPY

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Dy. Registrar(Judl) CC.
COURT OFFICER
14/2/96
ADENABAD, BENCH

Sd/-

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Copy to:-

1. The Secretary to Govt. of India, Union of India, Ministry of Defence, Navy, South Block DHQ 40, New Delhi-11
2. The Chief of Naval Staff, Naval Headquarter, DHQPO, New Delhi-11.
3. The Command-in-Chief, Eastern Naval Command, Naval Dockyard, Visakhapatnam.
4. The Admiral Superintendent, Naval Dockyard, Visakhapatnam-14.
5. The Deputy General Manager(Personnel) Personnel Dept., R & P Section, Naval Dockyard, Eastern Naval Command, Visakhapatnam-14.
6. One copy to Library, CAT. Hyd. (3).
7. Copy to All Reporters as per standard list of CAT. Hyd.
8. One spare copy.
9. One copy to Mr. V. Venkateswar Rao, Advocate, CAT. Hyd.
10. One copy to Mr. N. R. Devanaj, Sr-OGSC. CAT. Hyd.

kku.

