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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION No.730/93

DATE OF JUDGEMENT: 11-1-1993 1993

Between

- 1. V.Shankaraiah
- 2. S.Umakanth Rao .. Applicants

and

- 1. The Ordinance Factories Board,
10-A,Auckland Road, Calcutta rep.by
Director General of Ordinance
Factories/Chairman Ordinance Factories Board
- 2. The Ordinance Factory Project
Min. of Defence, Govt. of India
Eddumailaram, Medak Distt.
- 3. The Selection Board for Highly Skilled
Grade II rep. by Chairman,
Opp:Eddumailaram, Medak Dist.
- 4. A. Venkateswarlu
OFFPM/353-8, Millwright skilled Grade
OFF, Eddumailaram, Medak Distt.
- 5. G.Laxmanachary
OFFPM/355-8, Millwright (skilled grade)
OFF, Eddumailaram, Meadak Distt. .. Respondents

Counsel for the Applicant :: Mr P. Naveen Rao

Counsel for the Respondents :: Mr NV Ramana, Addl.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

[As per Hon'ble Shri T.Chandrasekhara Reddy, Member(J)]

This application is filed under Section 19
Central
of the Administrative Tribunals Act to direct the
respondents to treat the applicants as seniors to

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un-official respondents 4 & 5 in semi-skilled and skilled grades of Millwright trade with all consequential benefits by quashing the Factory Order Part II No.643 dated 2.4.92 and the consequential annexure to Lr No.07/034/LB dated 21.6.93 as illegal and pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, are as follows:

3. The applicants herein and un-official respondents 4 & 5 were interviewed for the post of Millwright (semi skilled) in July,1986 for appointment in the respondent's factory. The names of the applicants and the unofficial respondents 4 & 5 were sponsored by the District Employment Exchange. Including the applicants herein, and unofficial respondents 4 & 5, the employment exchange had sponsored 36 candidates for the said post. The applicants and the respondents 4 & 5 were selected in the said interview. A ~~panel~~ panel of selected candidates was drawn according to the merit for the post of Millwright (semi skilled) in the respondent's factory. According to the merit list (panel) the applicants herein were placed at Srl.Nos.4 & 5 and the respondents 4 & 5 were placed at Sl.No. 2 & 3. So, as per the original selection list, respondents 4 & 5 were senior to the applicants herein in merit for the post of Millwright (semi skilled).

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4. The applicants herein joined their duties have been some delay in respect of respondents 4 & 5 as their verification reports were received late^{ly} from the civil authorities. Consequently, there was delay on the part of the respondents 4 & 5 in joining their duties for the said post of Millwright (semi-skilled) and they joined their duties on 17.12.87 and 24.12.87 respectively. On completion of their probationary period in the post of Millwright (semi-skilled) the applicants were made permanent on 24.12.89 as per their placing in the selection merit list in terms of Deptt. of Personnel and Training OM No.18011/1/82/Estt(D) dated 28.3.88.

5. As per the instructions received from respondent no.1 vide their letter No.524/Genl./A/I dated 19.7.89, the semi-skilled workmen with two years of service will be eligible to appear in the Trade Test for skilled grade. So, in terms of the above instructions, semi-skilled workmen will be eligible for promotion to skilled grade on completion of two years of service and probation subject to their passing the prescribed trade test. As the applicants herein were eligible to appear in the trade test for skilled workmen, they were permitted by the first respondent to appear in the said trade test for skilled grade as per his letter dated 26.10.89. The applicants, though junior to the respondents^{4 & 5} by merit in the semi-skilled grade, came out successfully in the said trade tests for the skilled grade. As already pointed out, the post of skilled grade is a selection post from the post of ~~semi-skilled~~^{grade is} that will be filled by promotion, by selection from the post of Semi skilled grade.

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6. After promotion to the skilled grade, the applicants were again placed on probation for a period of two years and the applicants completed their probationary period successfully on 30.1.1992. As already pointed out, as there was delay in the joining of respondents 4 & 5 due to the ~~delayed~~ receipt of verification reports from the civil authorities, respondents 4 & 5 completed their probation on 16.12.89 and 23.12.89 respectively and were permitted to appear in the trade test to skilled grade on 30.4.1990 and were ultimately promoted by selection. The seniority of the respondents 4 & 5 was ante dated w.e.f. 31.1.90 in the post of skilled grade, the date from which, the applicants were promoted to skilled grade. The unofficial respondents 4 & 5 are given notice of consideration to Highly skilled grade II ^{by} ~~by~~ the second respondent as per the consequential annexure to letter No.07/034/LB, dated 21.6.93 which action of the respondents 1 to 3 is illegal. It is the grievance of the applicant that the applicants are shown as Juniors to R4 & R5 in the Skilled grade though the applicants are seniors to respondents 4 & 5 in the post of skilled grade as they had been selected, promoted and appointed earlier than respondents 4 & 5 in the skilled grade. So the present OA is filed for the reliefs as already indicated above.

7. Counter is filed by the respondents opposing the OA.

8. We have heard Mr Naveen Rao, Counsel for the applicant and Mr NV Ramana, Addl.CGSC, Standing Counsel for the respondents.

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9. The facts in this OA are not at all disputed by the respondents. But, it is the case of the respondents that due to the pendency of the verification reports from civil authorities, issue of appointment orders to respondents 4 & 5 were delayed and so, it is not the fault of the respondents 4 & 5 in not passing the trade test for skilled grade at an early date and so, the seniority as maintained in the lower grade by R4 & R5 has got to be restored in the promotional grade also, and so it is contended that the action of the respondents is justified in restoring the seniority of respondents 4 & 5 in the promotional grade (Skilled grade) as was in the lower grade (semi skilled grade).

10. We have gone through the consolidated orders on Seniority issued by Govt. of India, Deptt. of Personnel and Training, Office Memorandum No.22011/7/86-Estt.(I) dated 3.7.86. Order 2.2 reads as follows:

"2.2

Where promotions are made on the basis of selection by a DPC, the seniority of such promotions shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had suspended him.

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para 2.3 reads as follows :

" 2.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the

It is not in dispute that promotion from the post of semi-skilled grade to the post of skilled grade in the factory of the respondents is made by DPC, by selection on the basis of merit-cum-seniority. Admittedly, the applicants had appeared for the trade test for skilled grade on 30.1.1990 as they had completed two years of service and were fully qualified and were eligible to appear for the said trade test. But respondents 4 & 5, as they had not completed the required period of service due to their delayed joining in the post of semi-skilled, the respondents 4 & 5 were permitted to appear in the trade test that was held on 30.4.90 for skilled grade. As the applicants came out successfully in the trade test that was conducted for skilled grade in 30.1.1990, they were promoted and/to the skilled grade ^{appointed}

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w.e.f.30.1.1990. Respondents 4 & 5 also came out successfully in the trade test that was held on 30.4.90 for skilledgrade and ultimately, they too were promoted and appointed in the skilled grade. So, as the respondents 4 & 5 had been selected and appointed at a later point of time than the applicants, certainly respondents 4 & 5 - are juniors to the applicants 1 and 2 in the skilled grade. But, anyhow, if the respondents ^{1 to 3} were anxious that the seniority in the lower grade was liable to be protected, they should have postponed the said trade test that was conducted on 31.1.90 to 30.4.90 i.e. till the respondents 4 & 5 become eligible for the said trade test and ^{then} could have made a selection jointly by assigning the seniority in the skilled grade as per their performance in the said trade test. But, ofcourse, there was no guarantee, even such a course had been followed that R4 and R5 would have fared better than the applicants 1 & 2. But, nevertheless, such course as indicated above, had not been followed by the respondents ^{1 to 3} and for the reasons best known to the respondents ^{1 to 3} they have conducted the tests separately for the applicants and respondents 4 & 5. In view of this position, the action of the respondents cannot be said ^{to be not} legal and the applicants herein are bound to figure above respondents 4 & 5 in the seniority list for the post of skilled grade. We may also state that seniority is counted from the date one enters into service/trade. So, as the applicants have entered into promotional grade ^{by selection} earlier than respondents 4 & 5, law casts an obligation ^{on respondents 1 to 3} to treat the applicants herein as seniors to R4 & R5.

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11. It is needless to point out where promotions are effected by selection on merit, seniority has to be determined ^{in the previous grade from} on the date of promotion and not on the basis of seniority in the original cadre. For this proposition, we may refer to a decision reported in AIR 1969 SC 1325 SK Gosh and another Petitioners Vs Union of India and others, Respondents wherein it is observed as follows:

"The Home Ministry's Memorandum Dt 24-5-1948 initially embodying the principles for appointment to the post of Directors of Postal services laid down that such appointments were to be made by promotion by selection of the best officers in the senior time scale of the Indian Postal Services Class I, seniority being regarded only where other qualifications were practically equal. Even rule 2 contained App.6A to the posts and Telegraphs Manual above mentioned when it came into force made it clear that appointments to the grade of Director of Postal services is made by selection and not on the basis of promotion in accordance with seniority. Therefore once a Member of the Class I service in the time scale was selected for promotion to the grade of Director and given seniority over another officer selected later, the seniority so determined as a result of selection could not be made dependent on the seniority in the time scale.

The petitioners were shown as being senior to the respondents in the time scale of Class I service. They were selected for promotion to the grade of Director of Postal Services. The respondents were also later on appointed to such posts. The government sought to disturb the order of seniority in the grade of Directors ^{to the} prejudice of the petitioners on the ground that their seniority while in the time scale was wrongly determined.

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Under these circumstances, HELD that though the Government could justifiably revise their seniority in time scale of Class I service it could not do so revise their order of seniority in the grade of Directors and that such an action by the Government was arbitrary and liable to be struck down as violating Art.16 of the Constitution."

The above said Supreme Court decision is a complete answer to the contention of the respondents ~~contentions~~ that the seniority of the unofficial respondents 4 & 5 is liable to be maintained as ~~they were~~ in the lower (semi-skilled) grade/when ~~they are~~ promoted to the ~~promotional~~ ~~grade~~ ~~of~~ skilled grade, when the promotions are made by selection.

12. It is faintly contended by the respondents that due to the mistake committed in not conducting common trade test for the applicants and for R4 and R5 at one and the same time, that in-justice had been done to R4 and R5 as they had become juniors to the applicants in the skilled grade and to remove the possible injustice that the respondents had resorted to the action of restoring the seniority of the respondents 4 & 5 in the skilled grade as was in the lower grade. With eyes wide open, the respondents ^{1 to 3} have conducted two different examinations at different times for the applicants and the respondents 4 & 5 separately. As already pointed out, the trade test for the applicants had been conducted earlier than the trade test that was conducted for Respondents 4 & 5. After passing the said trade test and ~~being~~ being successful only the applicants got promotion to the skilled grade. As the applicants were promoted earlier than the

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unofficial respondents 4 & 5, the applicants got vested with a right with regard to the seniority which cannot be disturbed except in accordance with law. The action of the respondents restoring the seniority of R4 and R5 in the skilled grade as in the semi-skilled grade appears to be completely arbitrary and hence, the action of the respondents cannot be supported; and, it is not open for the respondents to seek shelter to justify their action that by mistake a common trade test to the applicants and R4 and R5 for filling the post in skilled grade was not conducted.

13. We may also point out that rule making authority is competent to frame rules laying down eligible conditions for promotion to higher posts. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Where promotion is made on the basis of seniority, senior persons have a preferential right for promotion against juniors. But where promotion is made on merit alone, senior officers have no right for promotion when juniors to them are selected for promotion on merit. The senior officer is not legally superseded, when merit is the criteria for selection amongst the members of service. No officer has a legal right to get selected for promotion except that he ~~has~~ has only got a right to be considered for promotion along with others. So, respondents 4 & 5 cannot make out a grievance in this case as they had no right to be considered along with the applicants on the date the applicants were promoted to the skilled grade.

In this connection, we may refer to a decision reported in-AIR-1987 SC-1889 State Bank of India and other Vs

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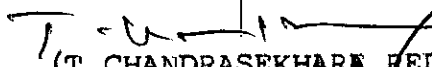
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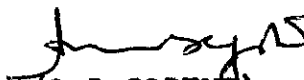
Mohd. Mynuddin wherein it is laid down as follows:

"Whenever promotion to a high^{er} post is to be made on the basis of merit, no officer can claim promotion to the higher post, as a matter of right, by virtue of seniority alone with effect from the date on which his juniors were promoted....."

So, there cannot be any doubt about the fact that the action of the respondents 1-3 treating the applicants herein as juniors to unofficial respondents 4 & 5 in the skilled grade Millwright trade is discriminatory and violative of the provisions of Article 16 of the Constitution of India.

14. In the result, we hereby direct the official respondents 1-3 to treat the applicants herein as seniors to the unofficial respondents 4 and 5 in the promotional posts of skilled grade millwright trade with all consequential benefits. The annexure No. Lr.No.07/034/LB, dt.21.6.93 giving notice to R4 & R5 for consideration to the post of Highly Skilled grade II is hereby set aside. OA is allowed accordingly. Parties shall bear their own costs.


(T.CHANDRASEKHARA REDDY)
Member (Judl.)


(A.B.GORTHI)
Member (Admn.)

Dated: 16-6-1993 1993


Deputy Registrar (J)

To mvl/ad

1. The Director General of Ordinance Factories/Chairman Ordinance Factories Board, 10-A, Auckland Road, Calcutta.
2. The Ordinance Factory Project, Min.of Defence, Govt.of India, Eddumailaram, Medak Dist.
3. The ~~Chairman of~~ Selection Board for Highly Skilled Grade II Eddumailaram, Medak Dist.
4. One copy to Mr.P.Naveen Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.v.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Deputy Registrar(J)CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT 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 (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 16-9-1993

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No. 730/93.

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.

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MINISTERIAL
DESPATCH
10/09/93
HYDERABAD BENCH