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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH.  
AT HYDERABAD

O.A.NO.866/94

Dated: 11-7-1997

Between:

M.Mutyalu

..... Applicant

and

The Admiral superintendent, Naval  
dock yard, Vishakapatnam ..... Respondent.

Counsel for the applicant: D. Dhilleshwara Rao

Counsel for the Respondent: Mr. N.R.Devraj

CORAM:

THE HONOURABLE SRI JAI PARAMESHWAR: MEMBER (JUDL)

JUDGEMENT

)(Per Honourable Sri B.S.JAI PARAMESHWAR:Member (Judl).

Heard Sri Dhilleswar Rao, learned counsel for the applica -  
nt and sri N.R.Devraj, learned Sr.Standing counsel for the  
respondents

This is an application under sec.19 (1) of the Administra-  
tive Tribunal's act. The application was filed on 24.6.94.

The applicant herein has filed ~~max~~ this OA for the follow-  
ing releiefs:-

a). To quash the letter RC NO.PIR /1106 RAP,dated 5.6.  
1994.

b). For a direction to the respondents to grant him not-  
ional promotion as Machinist (Skilled) on par with his juniors

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and to promote him to highly skilled Gr.II from the date of such promotion ~~is~~ given to his juniors.

C). To fix his pay with consequential arrears etc.,

Facts relating to this O.A. may, in brief, be stated thus:-

The applicant was appointed as a casual labourer with effect from 12.8.1977 under the respondent. After passing necessary examination the applicant was given promotion to semi-skilled worker (TMS) and as such he worked as Tturner with effect from 15.10.83 in the scale of pay of Rs.210-290. His token number is 1830. In para 6 (a) of the OA he has ~~descri-~~bed 9 persons and claims that those persons were junior to him that those persons were promoted as skilled workers in the scale of Rs.260-400 with effect from 15.10.1984, that he made a representation during october 1988, May 1989 and july,1993 against his case for promotion that he received a reply on 21.10.88 informing him that upgradation of TMS to skilled level was not permissible that against the said reply he submitted another representation during May,1989 that it evoked no response that then he filed OA.NO.7/90 on the file of this bench that on 10.2.94 this bench disposed of the OA with a ~~directi-~~on to the respondents to decide his representation within 2 months that the respondents accordingly considered his representation and replied on 5.6.94 and that being aggrieved with the said reply he has filed this OA.

The main contention in the OA is that prior to 15.10.1984

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there was no trade of RMS (Machine) and (Machinist) that the said differentiation in the said trades was not based on any authority that he should have been given the cadre of Machinist along with his juniors that he had appeared for the examination over 3 consecutive tests and was qualified then his juniors that he should have been given the skilled scale of Rs. 260-400 (Machinist scale) with effect from 10.5.10.84 when his junior was given the said scale that the order dt:21.10.88 spoke that separate DPC was conducted for him that there was no nexus established and no objective achieved by the said treatment that the respondent treated him as a separate class with his juniors which action is arbitrary, capricious and against the principles of natural justice.

A counter has been filed in this OA mainly contending that the persons described in para-6(a) of the OA are except the persons at Sl.No.(ii),(ii)(iv) were seniors to the applicant that the said persons while holding the post of unskilled labourers appeared for the departmental trade test for promotion to next grade in the grade TMM (Machinist) and accordingly they were promoted to the said post effective from 15.3.1983 with that except the persons at Sl.No.2 & 4 were in the pay scale of Rs 210 - 290 that the TMM has different trades under it and that the TMM (Machine) and TMM (Machinist) were 2 different trades that a separate seniority list of the officials in these two trades were maintained that in accordance with the recommendations of the anomalies Committee the scale of pay of TMM (Machinist) and other 9 trades were upgraded

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from Rs210 - 290 to Rs260 - 400 with effect from 15-10-84  
in terms of Ministry of Defence letter No.3912/DS (O&M)  
Civil-I/84 Dt.15.10.84 that a copy of letter is at annexure  
R-II that accordingly 9 persons who were holding the post  
of TMM (Machinist) were upgraded to machinist scale of  
Rs260-400 that since the grade of TMM (Machinics) was not  
covered in the letter Dt.15.10.84 no change has taken place  
either in the scale of pay or in its status that the applicant  
submitted representation for upgradation of his post in  
terms of the letter Dt.15.10.84 that his representation  
was disposed of vide letter No.FIR/1100 Dt.21.10.88 that  
a copy of the same is annexed at R-III that the applicant  
has submitted another representation Dt.21.10.88 on the same  
subject which was disposed of vide letter of even No. Dt.3.11.88  
that a copy of the letter is at Annexure R-4 that again the  
applicant made a representation Dt.16.12.1980 that position  
was again clarified to the applicant in letter No.PIR/1106/Rep(1)  
dated 30th January 1989 that the applicant filed OA 7/94  
suppressing these facts that in accordance with the directions  
of this Bench his representation was disposed of by the impugned  
order that the reply 21.10.88 contains the brief position  
that there is no change of status or upgradation of the post  
TMM (Machines) that the applicant has had chosen for promotion  
to TMM (Machines) that the time of departmental qualifying  
examination in which he was qualified that the persons named  
in para 6 (a) were appeared for the departmental examination  
for the trade of TMM (Machinists) and accordingly they were  
promoted in the said grade with effect from 15.3.83 that both

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the applicant and 9 others were holding the same pay in the grade unskilled labourers ~~pm~~ on promotion to the grade of TMM they were bifurcated to 2 different disciplines TMN (Machines) and TMN (Machinists) that the applicant cannot compare himself with those of the persons named in para 6 (a) that in accordance with the recommendations of the Anomalies committee, the TMM (Machinists) the upgraded and was undesignation for machinists (skilled) that a chart showing the ladder of promotion for these two trades is annexed at R-8 that a number of unskilled labourers of the same seniority were promoted to the grade TMM (machinists) with effect from 15.3.83 were retained in the same capacity and the scale except the TMM (Machinists) and TMM painters which disciplines were upgraded to the skilled grade vide letter dt: 15.10.84 that 16 disciplines were included in the letter dt: 25-10-96 for upgradation that prior to upgradation there were 24 trade disciplines at TMM level in the Naval dockyard. That therefore, the applicant was not treated as separate class as alleged in the OA that further the applicant was promoted to the grade of skilled in the normal course along with others in the feeder grade of TMM (Machinists) and that, therefore, there are no merits in the OA and the OA be dismissed with ~~xxx~~ costs.

The applicant herein claims promotion to the scale Grade on par with ~~x~~ his juniors. In para-6(a) he has described 9 persons, who according to him were juniors to him in his service. The respondents have stated that ~~x~~ except the persons described at Sl.NO.ii,iii & iv all are senior to the applicant and that they were holding the post of unskilled labourers and they were successful in the departmental examination. It is an admitted fact that persons named at Sl.NO.ii,iii & iv are juniors to the applicant and were promoted earlier to the applicant to the skilled grade.

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The main contention of the respondents in denying the claim of the applicant is that there are 2 trades in TMM (Machinists) and (Machines) respectively, that the applicant belonged to the (Machines) trade that the persons named in the applicant belonged to grade (Machines) trade that during 15.10.84 the earlier committee recommended for upgradation in the scale of TMM (machinist), that the said ~~persons~~ recommendation did not include the TMM (Machines) and that, therefore the claim of the applicant cannot be conceded to. It is to be noted that they are relying upon the recommendations of the Anomalies committee. The orders were passed therein and the charter of promotion to the next higher grade in the trade.

Among against this, the learned counsel for the applicant contended that there were no different trades like TMM (Machines) and (Machinist) in the grade earlier that the applicant is an illiterate that all those persons, including the persons described in column 6 (a), were regarded as TMM unskilled labourers, that in fact the applicant himself had qualified in the departmental examination to the skilled grade that he was promoted to the grade of scale of Rs.210-290, that both TMM (Machinist) and (Machines) were in the same scale of pay i.e., Rs.210-290, that it is only in the OA the respondents have spoken about distinction between TMM (Machines) and 'Machnists' trades that at no time they brought to the notice of the employees the recommendations of the Anomalies committee or maintenance of separate seniority lists in different trades that the annexures to the counter furnished by the respondents are not acceptable that at no time the applicant has served with the seniority list to ascertain his position or trade that had the respondents brought to his knowledge about the distinction between the trades he would have earlier opted for TMM Machinists trade which now according to the upgradation to the scale of pay Rs.210-490 that therefore taking into total list the applicant may be promoted.

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to the scale of pay Rs.210-400 from the date his junior was promoted.

There is nothing on record to show that the applicant when passed the departmental examination during march, 1983 was fitted in the (Machines) trade. This is seen in the document therefore the respondent dispute the claim of the applicant. Had the respondents placed the original lost of promotion then the tribunal would have been in a position to accept the contention of the respondents.

The annexure II & III are the seniority lists which are alleged to have been maintained separately by the respondents. It is not known on what date these seniority lists were prepared. It is not known whether the employees were furnished with an opportunity to have their say to the seniority lists. It is not known whether the persons included in the 'Machine' trade had voluntarily opted or appointed to that trade on 15.3.83. When both trades TMM (machines) ~~we find unimaginable~~ and machinists were in the same scale of pay Rs.210-290, we find unimaginable to maintain a different seniority list in the office of the respondents. If really the respondents had maintained the separate list to a particular trade then they would have produced the seniority list relating to other trades. Therefore, we humbly feel that annexures II & III can not be rejected as the seniority list maintained with the knowledge of the employees.

Annexure-III is the letter dt: 15.10.84. The respondents contend that based on the decision taken by the ~~respondents~~ Government on the unanimous recommendations of the anomalies committee sanction for upgradation of certain semi-skilled posts were accepted ~~and~~ upgraded. It is stated that item NO.6 in the column "job title relates to machinists skilled). It is the case of the respondents that machinists (skilled) consisted of only TMM (Machinists) alone that onsequent of the upgradation of the scale by this letter dt: 15.10.84 the designation of TMM (Machinists) was also changed as Machinist (skilled).

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There is nothing that in the machinsist (skilled) only TMM (Machnissts) were included. There is nothing to suggest that the Anomly committee recommended only for the upgradation of the scale of pay of TMM (?Machinist) trade to the scale of pay of Rs. 260-400 . In the absence of these important and vital documents in cannot be imagined that applicant knowing fully well was in TMM (Machines) in the scale of pay of Rs.210-290 and so deliberately deny upgradation consequent upon the recommendations of the Anomolies committee.

In fact as per the seniority list the number of posts of TMM (Machin ist) consists is 13 and TMM (Machnies) is 7. When that is so it is most inequitable that these 7 posts were left out by the Anomolies committee in recommending upgradation of pay to Rs.260-400 when upgradation took place we humbly feel then seniority rule should have been applied and options should have been invited from the employees. A person in the grade of (Machine) knowing fully well that these persons working in TMM (Machnists) ~~knowing~~ likely to be upgraded would not have kept quiet to remain in lower scale, sacrificing his seniority quiet to remain in lower scale, sacrificing his seniority and better emolumnets.

The respondents have not produced the recommendations of the Anomalies committee to know the reasons for excluding TMM(Machines) trade from upgradation. When both the grades were in the same grade of pay the Anomalies committee shoud have considered viability of ~~p~~ upgrading the TMM (Machines) also or should have considered the method of filing into upgradation ed scale. We feel the respondents have denied the benifit of upgradation of the post of TMM (Machines) trade and that there was no justification for them to do so. Hence, considering all these factors, we feel that the applicant has a legitimate l claim to be considered for upgradation to the scale of Trade Rs.260-400 from the date when his junior was upgrade.



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Hence for the reasons stated above the OA is liable to succeed. Accordingly, we pass the following order:-

- a) The OA is allowed.
  - b). The respondents are directed to consider the claim of the applicant for notional promotion to the grade of scale of pay Rs.260-400 with effect from 15.10.84 consequent upon upgradation of the post to the scale of Rs.260-400.
  - c). The applicant is entitled to next promotion thereupon, c consequent upon his notional promotion as Machinist (skilled) with effect from 15.10.1984. The respondents shall then fix the pay of the applicant accordingly, from 15.10.84 and pay the arrears to the applicant.
- for the compliance 4 months from the date date of receipt of the copy of the order.

(Office seal)