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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.388-OF-1994

DATE-OF-ORDER:-21st-April,-1997

BETWEEN:

K.L.MONDAL

.. APPLICANT

AND

1. Admiral Superintendent,
Naval Dockyard, Visakhapatnam-14,
2. The Deputy General Manager (P&R),
Naval Dockyard, Visakhapatnam-14,
3. Shri K.Bullabbai,
4. Shri KKN Nambiar,
5. Shri Marionus Toto,
6. Shri G.Pravakar Rao.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC
Mr.S.Ramakrishna Rao for R-3

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri G.V.Subba Rao for the applicant, Shri N.R.Devaraj for the official respondents and Shri S.Ramakrishna Rao for R-3.

2. Shri S.S.R.Rao, UCGO (Upgraded Civilian Gazetted Officer - Manager, Personnel) was present with the records of recruitment to Sr.Chargeman (P.P.C. and above).

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3. Though notices were served on ~~one~~ R-4 to R-6, they failed to appear ~~either~~ either in person or through their counsels.

4. The applicant in this OA was appointed as ^{an} Engine Fitter, Gr.I in Engineering Discipline in Naval Dockyard, Visakhapatnam on 23.6.77. He was promoted as Mechanic on 8.5.80. R-3 was Appointed in the Construction Discipline of the Naval Dockyard, Visakhapatnam. ~~*****~~ The applicant as well as R-3 and R-4 to R-6 were appointed directly as Sr.Chargeman (P.P.C) in the scale of pay of Rs.1400-2300 vide O.O.No.PPR/00133/T.S.S. dated 30.1.89. In the said order, the applicant was shown at Sl.No.5 whereas R-3 was shown at Sl.No.10, R-4 was shown at Sl.No.7, R-5 at Sl.No.8 and R-6 at Sl.No.9. The applicant submits that in the said order, he was shown senior to R-3 to R-6. He as well as R3 belong to Scheduled Caste community and ^{the} R-3 is junior to him in the reserved Scheduled Caste category also.

5. The promotion for Sr.Chargeman (P.P.C.) is to the post of Foreman (P.P.C). While promoting the Sr.Chargeman (P.P.C) to the post of Foreman (P.P.C.), reservation rules also apply. A post of Foreman (P.P.C) became vacant and that post was a ~~reserved~~ post reserved for SC community.

6. In the meantime, a provisional ^{seniority} list of Chargeman (PPC) in respect of personnel borne on the Eastern Naval Command Roster was issued vide No.PIR/1916/TSS dated 7.1.93 (Page 9 of the OA). In the provisional ^{seniority} list, R-3 ^{as} to R-6 were shown senior to the applicant. The applicant

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submitted representation dated 25.1.93 (Page 11 of the OA). It is stated that the above said representation has not been disposed of. In the meantime, a post of Foreman (PPC) arose and that post was reserved for Scheduled Caste candidate. R-3 being an SC was empanelled and posted against that post vide notice No.PE/10/93 dated 11.2.94 (Page 8 of the OA). The applicant submitted representation protesting against promotion of R-3 as Foreman (PPC) against the reserved point ^{through} his representation dated 17.2.94 (Page 12 of the OA). The applicant was informed by letter NO.PIR/1916/TSS dated 18.4.94 (Exhibit R-1 to the reply) that R-3 had become senior based on the merit obtained by him at the time of direct recruitment to the post of Sr.Chargeman (PPC) when compared to the applicant and hence the promotion of R-3 was in order.

6. This OA is filed to set aside the impugned promotion order dated 11.2.94 of R-3 and for a consequential direction to restore the seniority of the applicant above R-3 to R-6 as contained in the earlier empanelled list bearing No.CEO-B/32/89 dated 30.1.89 (Page 14 of the OA).

7. An interim order was given in M.A.No.38/95 in this OA to the effect that any promotion that is going to be given on the basis of the said panel dated 11.2.94 will be subject to the result in this OA.

8. A reply has been filed in this OA. It is stated in the reply that the posts of Sr.Chargeman (PPC) are filled only through direct recruitment from open market.

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This ^{statement} recruitment was made on the basis of the cadre sanction chart. The departmental candidates were also allowed to apply against the direct recruitment. The panel for the said post of Sr.Chargeman was published on 30.1.89. On the basis of the marks obtained in the selection tests, the seniority of the selected candidates was decided. As per the marks in the selection, ^{the} applicant stood in the 5th position, R-3 in the 3rd position, R-4 in the first position and R-5 & R-6 were in the 2nd and 4th positions respectively. Applicant and R-3 to R-6, having been posted as Sr.Chargeman (PPC) by the select list dated 30.1.89, were given the seniority position on the basis of the marks ~~in~~ obtained in the selection as above in the provisional seniority list and hence there is no irregularity in the seniority assigned to the applicant and the private respondents. When the post of Foreman (PPC) became vacant, which was to be filled by a S.C. community candidate, R-3 being senior to the applicant was promoted. Hence the promotion of R-3 by the impugned notice dated 11.2.94 is in order and cannot be challenged.

9. A reply has also been filed by R-3. This reply in our opinion is not very clear and hence there is no need for further elaboration on the basis of that reply. It can be said that this reply is more or less on the same lines as that of the official respondents.

10. From the above analysis, two issues arise in this OA. They are,

(i) The applicable avenue chart for the post of

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Sr.Foreman (PPC) and Foreman (PPC) from the initial grade of Sr.Chargeman (PPC); and

(ii) The correctness of the method of fixing the inter-se seniority of the directly recruited Sr.Chargeman (PPC) recruited under the memo No.CEO-B/32/89 dated 30.1.89 (Page 14 of the OA).

11. The respondents submit that the post of Foreman (PPC) is filled from lower grade post of Senior Chargeman (PPC) and the post of Sr. Foreman (PPC) is filled from the lower post of Foreman (PPC). Hence the feeder category for Sr. Foreman (PPC) is Foreman (PPC) and for the Foreman (PPC) is Sr. Chargeman (PPC). The above avenue chart is not disputed by the applicant as well as the private respondent (R-3). Hence no further discussion is necessary in regard to the first issue. The only point to be decided is the correctness of the method of fixing the inter-se seniority amongst the Sr.Chargeman (PPC) recruited directly to that category.

12. The respondents in their reply submit that the inter-se seniority amongst the directly recruited Chargeman (PPC) is on the basis of the marks obtained in the selection. The respondents also admit that the selection which culminated in the issue of the panel issued on 30.1.89, is not on the basis of a common selection wherein the candidates were asked to reply a common question paper. Question papers were set in different disciplines like engineering, electrical etc. and the inter-se seniority was fixed on the basis of the marks obtained though the

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question paper was different for the different disciplines.

13. The applicant in his rejoinder questions the validity of fixing the inter-se seniority on the basis of the marks obtained in a selection which is not common to all the candidates. The question asked will be different and the valuation will also be different. As there is no relative assessment of the merit in this selection, the inter-se seniority fixed on the basis of the marks obtained in the selection at the time of recruitment to Senior Chargeman (PPC) cannot be a valid one. The fixation of seniority as done by the respondents in this case is not only absurd but also arbitrary.

14. There is force in the contention of the applicant in regard to the fixation of inter-se seniority of the directly recruited Senior Chargeman (PPC). There is no reasonable nexus in the valuation of marks obtained by a candidate with the marks obtained by another in a different discipline. The fixation of relative seniority by marks obtained in the same examination may be appropriate and rational but not on the basis of the marks obtained in different ^{question} papers. Hence, it has to be held that the interse seniority as announced by the respondents in the provisional seniority list dated 26.9.90 is faulty and can also be termed as arbitrary. Promotions to the post of Foreman (PPC) made on the basis of that inter-se seniority list cannot also be held as tenable.

15. Shri S.S.R.Rao, UCGO who was present in the court submitted that in the examination held for the post of Sr.

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Chargeman (PPC) after the issue of the select list dated 30.1.89, the respondents have changed the procedure and selected the candidates to the post of Sr.Chargeman (PPC) by a common selection consisting of a common written test. This itself strengthens our view that inter-se seniority decided on the basis of different question papers is faulty. Realising this only, the respondents themselves have resorted to the selection by a common question paper.

16. In the foregoing facts and circumstances of the case, the promotion of R-3 to the post of Foreman (PPC) against the SC reserved point is to be viewed. As we had already said that the inter-se seniority list is faulty, the promotion of R-3 on the basis of that seniority list cannot be held to be correct. But R-3 cannot be held responsible for this faulty preparation of the seniority list and his promotion on that basis. For no fault of R-3, he cannot be penalised. No doubt, relief is also to be extended to the applicant.

17. To balance both the requirements, namely, to keep R3 continued as Foreman (PPC) and to promote the applicant as Foreman (PPC) an equitable solution has to be found. When we asked the learned counsel for the respondents to suggest an equitable solution, he submitted that any solution given by the Bench will be acceptable to them.

18. In view of the above, we are of the opinion that R-3 should be allowed to continue as Foreman (PPC) and the applicant should also be considered and promoted in accordance with law if found suitable as Foreman (PPC) in

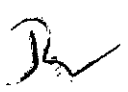
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the next vacancy that arises which is to be filled by a reserved candidate belonging to SC community. When the applicant is promoted as above, he may have to be given the deemed promotion to the post of Foreman (PPC) from the date when R-3 was promoted to the post of Foreman (PPC). If the applicant is promoted against an unreserved point in his turn before reaching a reserved point reserved for SC candidate, then also he should get the benefit of the deemed promotion as above.

19. The cadre strength of Sr.Foreman (PPC) is 15, Foreman (PPC) is 20 and Sr.Chargeman (PPC) is 25 in the Civilian Non-gazetted cadre. Similarly, the post of Sr. Foreman (PPC) is 7, Foreman (PPC) is 13 and Sr. Chargeman (PPC) is 40 in Planning Support Department as per the enclosures attached to the letter No.PES/7401/OA 388/94 dated 9.3.97 addressed to Shri Devaraj by the Commander, Manager (Discipline) for Admiral Superintendent. In view of the huge sanctioned strength of Foreman (PPC) both in the Civilian Non-gazetted cadre and in the Planning Support Department, we do not think that it will take very long time for the next SC vacancy to arise in the cadre of Foreman (PPC) to accommodate the applicant as envisaged above.

20. The promotion of the applicant to the post of Foreman (PPC) against a reserved point may not harm other OC candidates who are senior to him in their seniority position in the post of Sr.Chargeman (PPC) in view of the judgment of the Apex Court reported in 1995(1) ATJ 410 (R.K.Sabharwal and Ors. V. State of Punjab and others), (1995) 31 ATC 813 (Union of India and others v. Virpal Singh Chauhan etc.) and 1996 SCC (L&S) 540 (Ajit Singh Januja v. State of Punjab) respectively.



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21. The next question arises as to how to regulate the pay and allowances of the applicant as per the above deemed promotion. R-3 was promoted by notice dated 11.2.94 and this OA was filed immediately on 25.3.94. Hence it has to be held that the applicant has approached this Tribunal immediately after R-3 was promoted as Foreman (PPC) and hence he is eligible to get the full benefit of the pay and allowances of Foreman (PPC) from that deemed date. If the seniority is fixed correctly, it may be possible that the applicant could have been promoted as Foreman (PPC) from the date on which R-3 was promoted. In that case, the applicant would have got all the benefits. Hence giving him arrears from the deemed date of promotion as suggested above may not be irregular.

22. It is for the Department now to devise a suitable method for fixing the inter-se seniority amongst the directly recruited Senior Chargeman (PPC) recruited by select list dated 30.1.89 to avoid seniority litigation for future promotions. The method to be adopted has to be devised after giving due notice to the affected parties in accordance with the law.

23. In the result, the following directions are given:-

(i) The applicant should be considered for promotion as foreman (PPC) and promoted if found suitable in accordance with the rules in the next arising vacancy reserved for SC candidate. If promoted as indicated above,

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then he is deemed to have been promoted from the date R-3 was promoted as Foreman (PPC). Even if he is considered and promoted to the post of Foreman (PPC) in accordance with the rules in his turn even before arising of the next reserved vacancy earmarked for SC candidate, then also the applicant is entitled for deemed promotion as above.

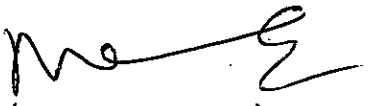
(ii) If he is promoted in pursuance of the direction (i) as above, he is entitled for fixation of pay and allowances from that deemed promotion date and also full arrears from that date.

(iii) The respondents should immediately take action to devise a suitable method for fixing the inter-se seniority of the Chargeman (PPC) recruited as per the list dated 30.1.89 after giving due notice to all the affected parties following the extant instructions.

24. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

21.4.97


(R. RANGARAJAN)
MEMBER (ADMN.)

sr.
DATED: - 21 - April, - 1997

vsn


D.R. (S)

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12/6/97

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. NG. RAJAN : M(A)

AND

THE HON'BLE SHRI S.S. JAI PARAMESHWAR:
M(J)

DATED:

21/4/97

ORDER/JUDGEMENT

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

in

O.A.No. 388/94

ADMITTED INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED *Accordingly*
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

YLKR

II COURT

