

(51)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 534/96

Date of Order : 22.1.99

BETWEEN :

1. Naval Armament Depot Engineering  
Supervisors Association Regt.No.28/89  
Rep. by Sri P.Pallam Raju, General  
Secretary, Naval Armament Depot,  
Visakhapatnam.

2. B.Satyanandam

.. Applicants.

AND

1. Secretary, Ministry of Defence,  
DHQ P.O., New Delhi.

2. Chief of the Naval Staff,  
Naval Head Quarters, DHQ P.O.,  
New Delhi.

3. Director General Armament Supply  
R.K.Puram, West Block-V,  
New Delhi.

4. General Manager,  
Naval Armament Depot,  
Visakhapatnam.

5. Sri P.Krishnan,  
Deputy Armament Supply Officer,  
Naval Armament Depot,  
Visakhapatnam.

6. Sri C.M.Menon,

7. V.Chandrasekharan

8. Sri M.Annasjee Rao

9. P.Gopinathan

10. Sri P.S.N.Sharma

11. Sri A.K.Benerjee

12. Sri P.M.Menon

13. Sri P.Rajan

14. Sri K.M.R.Menon

15. Sri S.Sugunan

16. Sri S.K.Munjewar

17. Sri V.R.Shivaji

18. Sri J.R.Tatle

19. Sri D.Thata Rao

.. Respondents.

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Counsel for the Applicants

.. Mr. P. Bhaskar

Counsel for the Respondents

.. Mr. B. N. Sharma





CORAM :

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

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

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O R D E R

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.P.Bhaskar, learned counsel for the applicants and  
Mr.B.N.Sharma, learned standing counsel for the respondents.

2. There are two applicants in this OA. The first applicant is ~~in~~ Naval Armament Depot Engineering Supervisors Association represented by one Sri P.Pallam Raju, General Secretary, Naval Armament Depot, Visakhapatnam and the second applicant is a member of that association. The applicants submit that they are Senior Foreman (Factory) in the scale of pay of Rs.2375-3500 and their scale is higher than the scale of pay of Assistant Armament Supply Officer who are in the scale of pay of Rs.2000-3500. The junior scale Gr-I post in the department above Assistant Armament Supply Officer is designated as DASO Gr-II. For that, earlier the channel of promotion was from Assistant Armament Supply Officer and the Senior Foreman (Factory) in the scale of pay of Rs.2000-3500 and Senior Foreman in the scale of pay of Rs.2375-3000 and office Superintendent in the scale of Rs.1600-2660. The Senior Foreman (Factory) submit that they are the technical officials

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and hence they are only entitled to become DASO Gr-II and that non-technical officials cannot be promoted. With that consideration they filed OA.574/87 on the file of the Bombay Bench pointing out the anomaly for giving preference to Senior Foreman (Factory) in the scale of pay of Rs.2375-3500 for promotion to DASO Gr-II over and above the other non-technical officials. That OA was disposed of by the Bombay Bench by order dated 31.8.90. Though it was stated in para-8 of that judgement that there is anomaly in promotion to the post of DASO Gr-II and expressed some views. The OA was disposed of with a direction to streamline the procedure for promotion rectifying the anomaly as pointed out in the judgement as expeditiously as possible. The department thereafter approached the UPSC for amendment to the recruitment rules for the post of DASO Gr-II. UPSC by its letter No.3/4(13)/91-RR (UNIT 3), dated 21.3.95 (A-3) had given certain suggestions. The suggestions are as follows:-

(a) All the Armament Supply Officers who were promoted from the cadre of Senior Foreman (Factory) in the scale of pay of Rs.2375-3500 should enblock to be promoted as DASO Gr-II as per the rules.

(b) The rest of the posts should be filled up in the ratio of 1:1 between the Senior Foreman (Factory) and Asst. Armament Officer.

The UPSC further suggested to issue necessary recruitment rules on that basis.

3. The department issued promotion order called "Temporary Depot Order No.05/96" dated 17.1.96 promoting 16 Assistant Armament Supply Officers to the post of DASO Gr-II and 3 Senior Foreman (Factory) to the post of DASO Gr-II. That order is enclosed as Annexure-5 to the OA.

4. This OA is filed to quash the temporary depot order No.5/96 dated 17.1.96 issued by R-4 holding the same as illegal arbitrary and violative of Articles 14 and 16 of the Constitution of India and to promote the members of the Association who are eligible Senior Foreman (Factory).

5. The grounds for the above relief as stated in para-7 of the affidavit states that the respondents should not have issued the promotion orders and waited till the new recruitment rules are published in the light of the C.A.T. Bombay Bench judgement and UPSC recommendations. The passing of the impugned promotion order even before the <sup>issuance of the</sup> new recruitment rule as stated ~~issue of the~~ before the ~~new recruitment rules~~ leads to contempt of court's order and it is to be set aside on that basis. The respondents had not given the promotion order in the ratio of 1:1 as recommended by the UPSC. Hence on all these grounds the OA is liable to be allowed.

6. The respondents have filed the reply. The main contention of the respondents is that the ground on which the OA was filed is not tenable. Hence the OA is misconceived and on that score itself the OA is <sup>to be</sup> dismissed. The respondents further submit

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that the promotion order was issued on 17.1.96 after issue of the recruitment rule on the basis of the Bombay Bench judgement and the UPSC recommendations by the Gazette notification dated 27.10.95. Thus the recruitment rule has been published and after that only the promotion order was issued. The applicants have not challenged the recruitment rules issued by notification dated 27.10.95. Without challenging that the question of setting aside the impugned order issued by Temporary Depot Order No.5/96 dated 17.1.96 does not arise. It is further stated by the respondents that 33 1/3% of the vacancies in DASO Gr-II has to be fill<sup>up</sup> by selection basis from Assistant Armament Supply Officer and Senior Foreman (Factory) with 3 years regular service in the respective grades in the ratio of 1:1. Thus the recommendations of the UPSC has been fully complied with. <sup>But</sup> The regular Armament Supply Officers promotees of <sup>has</sup> has to be protected. If they are not protected that will lead to a litigation and the non-protection of ~~rule~~ will be a violation of the principles of natural justice. <sup>Hence</sup> Note-1 has been added in the recruitment rules. This Note-1 reads as below:-

"All the vacancies existing as on the date of publication of these rule shall be filled by promotion from amongst the officers holding the post Assistant Supply Officer on regular basis on the date of notification of these rules with 3 years regular service in the grade. Thereafter, the vacancies including the unfilled vacancies, if any shall be filled in accordance with the manner as specified in sub rule (i)."

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7. As one time measure the regular Assistant Armament Supply Officer who are in service as on the date of issue of the recruitment rules dated 27.10.95 ~~are~~ to be promoted and the rest of the post should be filled in the ratio of 1:1. After that the future vacancies arising after 27.10.95 the ratio of 1:1 will be strictly followed. The applicant <sup>8</sup> ~~not~~ <sup>cannot</sup> having <sup>not</sup> challenged the recruitment rule dated 27.10.95 ask for any relief and hence this OA is to be treated as misconceived OA and has to be dismissed.

8. We see force in the contentions of the respondents. When a recruitment rule is framed certain conditions protecting the interest of the regular employees who are already in that service cannot be termed as arbitrary. If the interest of the regular employees are not protected that order may be termed as arbitrary and irregular and may lead to violation of the natural justice. Hence the Note-1 added to the recruitment rule dated 27.10.95 is in accordance with the prevailing conditions of service. Hence the posts of Assistant Armament supply Officer arising after 27.10.95 is only to be filled as per the recruitment rule in the ratio of 1:1. No where in the affidavit it has been pointed out <sup>that</sup> the above position has been violated by the respondents organisation.

9. Further there is a constitutional guarantee for the SC/ST. If full quota is not possible to be filled ~~one~~ from ~~one~~ stream of employees the department can fill up the vacancy

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from the other stream but compensating the excess promotion if any in one stream in the next selection. Probably that may be the intention in issuing the Temporary Depot Order showing some promotion of Sc/SE employees. As no material is available to consider that view we do not propose to further expand that view.

10. The learned counsel for the applicant submitted that there is no reservation in the scale of pay of Rs.2,000-4000 in the Junior scale Class-I. The lowest grade in the junior scale Group-A has to be filled in accordance with the rules providing for reservation for SC/ST candidates. There is no doubt in that connection. Hence this contention is also rejected.

11. The learned counsel for the applicant requests for permission to challenge the recruitment rules dated 27.10.95. It is not necessary for the Bench to give any permission for challenging the notification dated 27.10.95. It is upto <sup>them</sup> him to challenge the same under proper grounds if he is so advised. He may do so in accordance with the rules.

12. In the result the OA is dismissed. No costs.

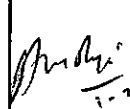
  
( B.S. JAI PARAMESHWAR )  
Member (Judl.)

  
( R.RANGARAJAN )  
Member (Admn.)

22-1-99

Dated : 22nd January, 1999

(Dictated in Open Court)

  
1-2-99

Copy to:

1. HDHND
2. HHRP M(A)
3. HSSOP M(J)
4. D.R. (A) ✓
5. SPARE ✓

15/2/99  
1st and 2nd Court.

Typed By  
Compared by

Checked by  
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD.

~~THE HON'BLE MR. JUSTICE D.H. NASIR:~~  
~~VICE - CHAIRMAN~~

~~THE HON'BLE H. RAJENDRA PRASAD :~~  
~~MEMBER (A)~~

THE HON'BLE R. RANGARAJAN ✓  
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHWAR: ✓  
MEMBER (J)

DATED: 22-1-89

ORDER/JUDGMENT

~~M.A./R.A/C.P.NO.~~

IN

O.A.NO : 534/96

~~ADMITTED AND INTERIM DIRECTIONS  
ISSUED.~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~ ✓

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS~~

(9 copies)

