

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO.1754/97

DATE OF ORDER : 30.7.1999

Between :-

D.Kameswara Rao

... Applicant

And

1. The Flag Officer Commanding-in-Chief,  
Eastern Naval Command, Visakhapatnam.
2. The Admiral Superintendent,  
Naval dockyard, Visakhapatnam.
3. The Chief of Naval Staff,  
Naval Headquarters, New Delhi.
4. The Secretary, M/o Defence,  
New Delhi.
5. PBG Room CTA, Naval Dockyard,  
Visakhapatnam
6. YK Murthy, CTA, Naval Dockyard,  
Visakhapatnam.
7. CMM Room CTA, Naval Dockyard,  
Visakhapatnam.
8. KS Narayana, CTA, Naval Dockyard,  
Visakhapatnam.
9. M.R.K.Raju, CTA, Naval Dockyard,  
Visakhapatnam

... Respondents

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Counsel for the Applicant : Shri P.Bhaskar

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC  
*Shri S. Lakshmana Reddy*

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COR AM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

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

(Order per Hon'ble Shri B.S.Jai Parameswar,  
Member (J) ).

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(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J) ).

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Heard Sri P.Bhaskar, learned counsel for the applicant,  
Sri V.Rajeshwar Rao, learned Standing Counsel for the Respondents  
and Sri S.Lakshma Reddy, counsel for the Respondents 5 to 9.

2. This is an application under section 19 of the A.T.Act,  
1985. Application was filed on 17.12.1997. T

3. The applicant was appointed as Foreman(IX) in Command  
Naval Transport Workshop (CNTW for short), Naval Dock Yard,  
Visakhapatnam vide order No.PE/0122 dated 18.7.1975. His request  
for transfer with the object of getting better promotional pros-  
pects was turned down on the premise that CNTW fell under part-I  
Workshop. He submits that the CNTW (V) was upgraded from D to G  
type Workshop vide proceedings No.DY/2270/NXQ/S/D(N-I) dated  
5.4.1971 and that G type falls under part-I cadre Workshop. He  
submits that all the technical supervisors working under part-I  
cadre in the Eastern Naval Command region are brought into one  
combined roster under the control of Commandore Superintendent,  
Naval Dockyard, Visakhapatnam with effect from 9.6.1975.

4. His grievance is that this policy was not brought to  
his notice and he was totally kept in dark.

5. The applicant appeared for the qualifying examination  
held in March, 1990 and was promoted as Senior Foreman with  
effect from 30.4.1991. He submits that by wrongful decision  
of <sup>the</sup> respondents he was denied opportunity to appear for the

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qualifying examination and thereby several of his juniors became seniors to him.

6. The Respondent No.2 by order dated 19.8.1997 informed the applicant that none of his juniors had been promoted earlier to his promotion as Sr.Foreman effective from 30.4.1991 during the Departmental Promotion Committee held in 1991 and thus rejected his request.

7. The applicant submits that the Respondents 5 to 9 are juniors to him and they were promoted as Sr.Foreman on 27.4.1979, 27.4.1979, 19.2.1981, 6.5.1981 and 10.12.1984 respectively.

8. The applicant has filed this O.A. praying for a direction to the Respondent No.2 to promote the applicant as Sr.Foreman from the date his immediate junior was promoted with all consequential and incidental benefits by holding the action of the Respondent No.2 in not permitting the applicant for the departmental qualifying examination of Sr.Foreman as illegal, arbitrary, null and void.

9. The applicant has challenged the impugned order on the following grounds :-

(a) the action of the respondents in not permitting him to appear Departmental Qualifying Examination during the 1977-80 is illegal and arbitrary;

(b) the action of the respondents in not declaring and allowing the seniority from a retrospective date though the applicant is not at fault is arbitrary, discriminatory, null and void;



(c) the respondents passed the impugned order without application of mind;

(d) the action of the respondents in stating that none of the juniors to the applicant is promoted prior to 30.4.1991 is not based on facts and is not sustainable.

10. Applicant's wife Smt.D.Nagamani made representation dt.21.4.1997 (page-15 to the OA).

11. The Respondents 1 to 4 have filed a reply stating that the application is barred by time. Mere submission of representations does not enures to the benefit of the applicant. The grievances of the applicant is that he was not allowed to appear for the Departmental Qualifying Examination held during the years 1977 and 1980. That grievance should have been agitated at the appropriate time. That the Departmental Qualifying Examination for the Dockyard Employees and for the part-I cadre are conducted by the Admiral Superintendent, Naval Dock Yard, Visakhapatnam. That the Headquarters, Eastern Naval Command, Visakhapatnam that Headquarters ENC, is the cadre controlling authority for part-II cadre. That the applicant requested permission<sup>ss</sup> to appear for the qualifying examination vide his representation dated 5.1.1990. That as the applicant was recruited against the sanction of Command Transport Workshop which was under Part-II category and formed a separate sanction for Command Transport Workshop was under the control of Headquarters, Eastern Naval Command, Visakhapatnam, the matter was taken up for considering his request with the Headquarters, Eastern Naval Command. <sup>The</sup> Headquarters Eastern Naval Command Visakapatnam have clarified vide their letter

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No.CE/0737/SUP dt.9.4.1990 that since the command Transport Workshop has been upgraded from type G to Type-H Workshop, the technical Supervisory staff of Command Workshops and Motor Transport Pools carrying out repairs above the level of "E" type workshops has been brought under the Part-I cadre. As such the technical supervisory staff hitherto treated as part-II cadre are to be treated as Part-I cadre. Henceforth the technical supervisory staff borne are to be controlled by Admiral Superintendent, Naval Dockyard, Visakhapatnam for appointments, promotions, confirmations, and Departmental qualifying Examination etc., by letter No.CE/0737/SUP dated 9-4-1990. The applicant was permitted to appear for the Departmental Qualifying Examination held in 1990. That he was qualified in the examination and promotion was given with effect from 30.4.1991. The applicant accepted the promotion and reported for duty with effect from 9.5.1991. That the contention of the applicant that the Command Transport Workshop, Visakhapatnam was upgraded from "D" type to "G" type workshop vide Government of India, Ministry of Defence letter DY/2270/NHQ/1544/S/D(N-I) dated 5.4.71 and "G" type falls under Part-I cadre Workshop is also denied. It is not correct to state that certain correspondence or upgradation were not aware to the applicant. The applicant, being an employee of the <sup>NT</sup>C&W was expected to know rules as well as the circulars issued from time to time. There was no necessity for seeking permission to appear for <sup>the</sup>Departmental Qualifying examination even during the year 1990 or earlier thereto. That though the commodore Superintendent (now Admiral Superintendent) was <sup>the</sup>cadre controlling authority <sup>of</sup>the Technical

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Supervisory cadre working in part-I were brought under the of the Admiral Superintendent administrative control/earlier to 14.6.1996, that prior to 1990, vide Headquarters ENC letter No.CE/0737/SUP dated 9-4-1990 (Annexure A-III to the OA). The applicant never applied for appearing for Departmental Qualifying Examination. At no time the Department denied the applicant to appear for the Departmental Qualifying Examination earlier to 1990. The applicant cannot blame the Department. That pass in a departmental qualifying examination is a pre-requisite for departmental promotion committee to consider his case for promotion. That on 5.1.1990 the applicant himself sought permission to appear for the departmental qualifying examination and he was permitted. That it was for the individual to come up with relevant rules or orders to appear for the departmental qualifying examination. That since the applicant qualified himself in the examination held during 1990 whereas the private respondents 5 to 9 had appeared for the qualifying examination earlier to the applicant and qualified, hence they became senior Foreman earlier to the applicant. The version of the applicant that he was not permitted to appear for the examination by the respondents was not correct. The private respondents 5 to 9 are seniors to the applicant and that the OA may be dismissed.

12. The Respondents 5 to 9 have also filed reply stating that the application is mis-conceived. That the same is barred by limitation. That the applicant appeared against direct recruitment quota while working as Electric Mechanic

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in part-I cadre. That he was not having further promotional avenue to the post of Foreman (Electrical) cadre and the duties and responsibilities attached to the post of Foreman (Electrical) were governed by the part-II cadre are entirely different from the post of Foreman (Electrical) governed by the part-I cadre. Both part-I and Part-II cadres are different and distinct. The duties and responsibilities of the Foreman (Electrical) under the part-I cadre are very complex and onerous. Merely because of the C & TW upgrading, the applicant had not acquired any right of seniority in part-I cadre.

13. The applicant qualified in the departmental qualifying examination in the year 1990 and hence cannot claim seniority over others. Further they submit that between 1990 and thereafter nearly 40 candidates have been promoted to higher grades and all of them are not impleaded in the application. The OA is bad for non-joinder of necessary parties. Thus they pray for dismissal of the OA.

14. The main grievance of the applicant is that he was not permitted to appear for the departmental qualifying examination held during the years 1977-80. He submits that the official respondents suppressed certain policy decisions and he was kept in dark of the upgradation. We are not inclined to accept the contention of the applicant. When he became the employee of the C & TW, he is expected to know the rules and regulations. As a prudent man when the applicant entered the department he was required to know the promotional prospects/avenues also. He has kept quiet till 5.1.1990 when he gave a representation for

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appearing for the departmental qualifying examination held in that year. It is only at his instance the department permitted him to appear for the departmental qualifying examination. The official respondents state that there was no need to seek permission to appear for the departmental qualifying examination. The applicant has not placed any material to convince that the applicant had made sincere efforts to appear for the departmental qualifying examination held in the years 1977-80. Had he been denied to appear in the departmental qualifying examination held <sup>during</sup> ~~for~~ those years, then a grievance said to have been accrued to the applicant. The Respondents have categorically stated that they had not <sup>denied</sup> ~~detained~~ the applicant on any ground, the opportunity of appearing for the examination held in the years 1977-80. The Respondents 5 to 9 appeared for the qualifying examination earlier to the applicant and thus became seniors.

15. The official respondents in their impugned reply have categorically stated that none of the juniors who passed the Examination in the year 1980 has been promoted. When that is so, the applicant cannot have any grievance. His grievance that he was not permitted to appear in the departmental qualifying examinations 1977 to 1980 cannot be agitated now, for, he should have approached the competent judicial forum then itself. The applicant having slept over his rights cannot claim the benefit of seniority as rightly submitted by the respondents and in the meanwhile nearly 40 candidates have been promoted. This aspect has not been rebutted by the applicant by filing a rejoinder. The applicant has not even impleaded them in the

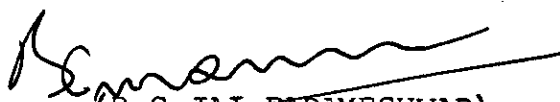
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application.

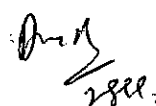
16. For the reasons stated above, we find absolutely no merit in the O.A. and the O.A. is liable to be dismissed.

17. Accordingly O.A. is dismissed. No order as to costs.

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

  
(R. RANGARAJAN)  
Member (A)

Dated: 30<sup>th</sup> July, 1999.

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1st AND 11th COURT.

COPY TO -

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

TYPED BY  
CLERKED BY

CHECKED BY  
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH, HYDERABAD.

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

THE HON'BLE MR. H. RAJENDRA PRASAD  
MEMBER ( ADMIN )

THE HON'BLE MR. R. RANGARAJAN  
MEMBER ( ADMIN )

THE HON'BLE MR. D.S. JAI PARAMESHWAR  
MEMBER ( JUDL )

ORDER: Date. 30/7/99

ORDER / JUDGMENT

MA./RA./CP.NO

IN

DA.NO.

1754/97

ADMITTED AND INTERIM DIRECTIONS  
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

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केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
घोषण / DESPATCH

26 AUG 1999

हैदराबाद न्यायपीठ  
HYDERABAD BENCH