

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.916 of 1997

DATE OF JUDGMENT: 9th SEPTEMBER, 1999

BETWEEN:

1. DATLA SUBRAMANYA^AVRMA,
2. GANAPATHI RAJU APPALANARASIMHA RAJU,
3. ARASADA AMMAJI RAO,
4. KARRI VENKATA RAMANA,
5. MAHAMMAD HABEEB,
6. DADHI RAO ESWARA RAO,
7. DUVVI SAMBASIVA RAO,
8. BUSARA KANNA RAO,
9. ATCHI NARASINGA RAO,
10. ANNAMREDDI GANDHI RAO,
11. SEKHARMANTRI RAMAMOHAN RAO,
12. KOMMINENI SATYANARAYANA,
13. GADETI RAJA RAO,
14. PINNAMA VENKATA RAO,
15. DANDU APPALARAJU,
16. NADIMPALLI RAMARAJU,
17. ALLURI SURYANARAYANA,
18. BONTHU LAXMANA RAO,
19. THANDRANGI ATCHIBABU,
20. B.V.RAMANA,
21. GURUGUBELLI DHARMA RAO,
22. YEKKALA VENKATA NAGARAJU,
23. DARLA GUNNAYYACHARYULU,
24. KARI HARINADHA RAO,
25. VALLU SURYA PRAKASH RAO,
26. TIMIRI DHARMALINGA SAMBASIVAN,
27. BIRUDA SATYANARAYANA,
28. GANTA SATYANANDA RAO,
29. ROBBI SATYANARAYANA,
30. BADAMPUDI VERRIYYA,
31. THADITURI RAMAKRISHNA,
32. GOLAGANI MOHAN KRISHNA,
33. GOLAGANA VENKATA RAMANA,
34. DROBHALA KASI VISWANADHAM.

.. APPLICANTS

AND

1. The Admiral Superintendent,
Naval Dock Yard, Visakhapatnam-530014,
2. The Flag Officer Commanding-in-Chief,
Eastern Naval Comman, Naval Base,
Visakhapatnam-530014.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.P.B.VIJAYA KUMAR

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWARA RAO, Addl.CGSC

CORAM:

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

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





JUDGMENT

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

Heard Mr.P.B.Vijaya Kumar, learned counsel for the applicants and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

2. There are 34 applicants in this OA. They are all in the grade of Highly Skilled Gr.II (HSK Gr.II for short) at Naval Dockyard and they are in the trades of Welders, Internal Combustion Engine, Electrical Fitter, REF & AC Mechanics, ^{and} Gyro Fitters.

3. Immediately after the introduction of the 3rd Pay Commission's scales of pay, Govt. of India appointed an Expert Classification Committee to go into the pay structure of the Defence Services. Earlier to the introduction of the Expert Classification Committee, there were only 2 tiers. The Expert Classification Committee suggested 3 Tier structure ^{which was accepted} with effect from 16.10.81. All the applicants herein are in the grade of HSK Gr.II which is a feeder category to HSK Gr.I. The applicants submit that promotions from one grade to another grade in the industrial side are regulated in the last 10 years by means of fixed policy adopted i.e, cut off date for promotion to the higher grade. The applicants submit that in view of the cut off date, promotions to the higher grade are made in an assured fashion, though promotions to the employees in the industrial side are poor.

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impugned order No.PIR/1106/HSK.I/6, 14.5.96 (Annexure A-1 at page 10 to the OA). The representations were rejected on the ground that the promotions made to HSK.I in the DPC held in April/May, 1996 and in the subsequent DPC held in January, 1996 were due to the requirement to meet on-going operational commitments of the Yard. It is also stated in the impugned reply that "it has been ensured that no junior HSK.II has been promoted to HSK.I leaving seniors".

6. This OA is filed praying for a direction to the respondents to effect promotion to all those who come within the zone of cut off date i.e, 30.9.85 with effect from 10.5.96 to the grade of HSK.I in the scale of Rs.1320-2040 with all consequential and attendant benefits, setting aside the decisions taken leading to the proceedings No.PIR/1106/HSK.I/6 dated 14.5.96.

7. In the reply, it is stated that the vacancies are ~~xxxx~~ sanctioned in bulk i.e, total Tradesmen for Naval Dockyard, Visakhapatnam and the sub-allocation among various trades/grades is done by the Admiral Superintendent, Naval Dockyard, Visakhapatnam, depending on the functional requirement to meet the operational commitments. As per the existing recruitment/promotion rules, promotions upto Tradesmen HSK.I Level are given on non-selection basis. The Ministry of Defence by its letter dated 15.10.84 (Annexure R-1 to the reply) has prescribed the Bench Mark percentage of 15:20:65 for 22 common trades in order to regulate the promotions. However, for trades other than these 22 common trades, promotions in respect of Tradesmen are being regulated taking into consideration the

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ratio of 20:30:40 with a variation of 5 percent as per NSEC norms. It has been accepted that while working out the vacancies for conduct of DPC, a cut off date seniority procedure is being followed in Naval Dockyard, Visakhapatnam for identifying the vacancies in each trade/grade.

8. But with the implementation of the recommendations of the Expert Classification Committee, an anomalous situation had come into existence. Certain trades were upgraded or down graded with effect from 16.10.81 and in certain trades, the existing pay scale was retained. When the pay scale has been down graded, the individuals concerned were allowed to retain the pay scale held by them prior to 16.10.81. In view of the above, a situation had arisen that the upgraded Ex Gr.I was fitted in the higher scale of pay and those down graded were retained in the existing scale of pay. It has been stated in the reply that the pay scale of Electrical Fitters Gr.I who were in the scale of pay of Rs.260-400, was revised and they were designated as Electrical Fitters HSK.II in the revised pay scale of Rs.330-480. But in the case of Plater Gr.I, the existing scale of pay prior to ECC was Rs.260-400 and it was revised to Plater HSK.II, but the revised pay scale remained the same viz, Rs.260-400. Hence the respondents submit that there is a vacuum between the Skilled and HSK.I. The employees in the trades where there were no revision of pay scale to the higher grade and those who were retained in the same scale of pay, were identified as ECC sufferers. In the above situation, those in Ex Gr.I in the benefitted trades became HSK.II in October, 1981



whereas those in the Ex.Gr.I in the trades like Plater, Turner, Pipe Fitter etc., were promoted to the grade of HSK.II during 1984-85. In view of the above position, the DPC held during January 1996, had taken into account the following two criteria. They are-

(i) General seniority upto November 1983 i.e, promotion to HSK.II; and

(ii) For Ex.Gr.I (who were retained in the grade of SK with the recommendations of ECC) seniority of July 1982 has been taken into account, although they were promoted as HSK.II on 19.9.85.

9. In view of the above position, as per the recommendations of the DPC held in January 1996, the individuals with seniority of November 1983 and 19.9.85 as HSK.IIs were promoted.

10. It is further stated in the reply that subsequent to the DPC held in January, 1996, the competent authority reviewed the position of HSK.I vis-a-vis the number of Tradesmen borne in the specified trades in consultation with the Workers' Union to meet the requirement of on-going operational commitments of the Yard. It was felt necessary to increase the number of Tradesmen in HSK.I cadre in some specified trades only. Hence, a review DPC was held during April/May 1996 and the senior HSK.IIs were promoted taking into account the following criteria:-

(a) Date of Regularisation as

 (Ex Gr.II) Tradesmen SK .. 03 Apr 1979



(b) Cut off date seniority

between .. 06 Jul 84 to 19 Sep 85

It is also stated that no junior was promoted superceding the senior. Hence, a large number of Tradesmen HSK.II including the applicants herein were not promoted as they had not fulfilled the two conditions stipulated above and only those seniors who met the criteria were promoted. The seniority lists for the trades of the applicants at the time of the DPC held in May 1996 are shown at Annexure-V to the reply to state that no junior was promoted superceding the senior.

11. It is also added in the reply that the ratio as fixed by the Defence Ministry has been exceeded for promotion to HSK.I and that fact was brought to the Chief of the Naval Staff by the Naval Dockyard, Visakhapatnam letter No.PIR/1106/PROMOTIONS, dated 23.7.96 (Annexure-VI to the reply) who has directed vide letter dated 14.8.96 that the existing bench mark ratio of 15:20:65 for HSK.I, HSK.II and SK respectively be strictly adhered to till further instructions. In view of that, no further promotions to HSK.I can be effected.

12. The respondents also submit that the applicants herein even though having seniority on 6.7.84 as HSK.II, their services were not regularised with effect from 3.4.79 as this is one of the conditions for promotion besides the cut off date. The promotions ordered during the DPC held in April/May 1996 were purely based on the functional



requirement as per the operational commitments. As per the instructions of the Naval Headquarters, the ratio fixed for Skilled:HSK.II:HSK.I should be acceded to. Further, there is also a move to combine the grades of HSK.II and HSK.I as per the recommendations of the Vth Central Pay Commission which is yet to be decided.

13. In view of what is stated above, the respondents submit that there is no irregularity committed in holding the DPC in April/May, 1996 for certain trades for promotion to the grade of HSK.I fixing the cut off date of 30.9.85. Hence they submit that the OA is liable only to be dismissed.

14. A rejoinder has been filed in this OA. Taking into account the OA affidavit and the contentions made in the rejoinder, ^{the} following contentions ^{as} raised by the applicants emerge. They are discussed below. However, it is to be made clear that the contentions made in the OA affidavit are not very clear. It also appears that the respondents could have explained their view points a little bit more clearly than what has been stated. In any case, with the available material on record, we observe as follows for each of the points raised:-

(i) The first contention of the applicants is that for all trades, only one cut off date is fixed. The initial cut off date was fixed as 30.11.83 for which the DPC met in January 1996. However, another DPC met in April/May, 1996 fixing the cut off date as 30.9.85. In the second cut off date, the promotions were restricted only to

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some trades that too for certain individuals. Hence ignoring the cut of date for all the trades and promoting only few employees in few trades by fixing fresh cut off date, is arbitrary, illegal and discriminatory. It is also contended that the principle of cut off date has been stipulated so as to ensure that no junior in any trade is conferred ~~with~~ the promotion earlier to seniors in the other trades. There is no reason to disobey that condition in the selection held in April/May 1996. It is also stated that no Ex Gr.I Tradesmen, who ~~were~~^{were} given the same scale of pay after the introduction of ECC scheme, was considered by the DPC held in April/May 1996.

15. The respondents have clearly stated in the reply that the general seniority upto November 1983 has been kept in view. But for the ECC sufferers i.e, Ex Gr.I, seniority of July 1982 has been taken into account although they were promoted as HSK.II on 19.9.85. As a result of the DPC held in January 1996, the individuals with seniority of November 1983, 19.9.85 as HSK.II were promoted.

16. The second DPC in the month of April/May 19⁹6 was necessitated as in some trades, promotions to HSK.I were considered necessary, to meet the requirement of ongoing operational commitments of the Yard. It is also stated that the above decision to promote them to HSK.I, certain trades were taken in consultation with the Workers' Union. The Tradesmen SK (Ex Gr.II) whose regularisation date was 3.4.79 and the cut off date seniority between 6.7.84 to 19.9.85, were considered for promotion to HSK.I by the DPC held in April/May, 1996. Hence the respondents submit that

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there is no irregularity or discriminatory attitude on their part to promote certain HSK.II to HSK.I in some trades. It is also made clear in the reply that no junior has been promoted.

17. In the rejoinder, the applicants appear to contend that no functional requirement to meet the operational commitments of the Yard is noted in certain trades for promotion to HSK.I. Such a view is illogical, irrational and untenable. They insist that the cut off date of their seniority is very relevant. They also submit in the rejoinder that no Ex Gr.I (who were retained in the grade of SK with the recommendations of ECC) are in the review DPC held in April/May 1996. There were only Ex. Gr.II (SK) who were promoted to HSK II in September, 1985. Hence, the promotion of ECC sufferers by fixing the cut off date as 30.9.85 is only a camouflage to promote certain employees ignoring the seniority of HSK.II in the other trades. Further, the submissions of the respondents that the Ex. Gr.I's seniority of July 1982, has been taken into account although they were promoted as HSK.II on 19.9.85, is not a factual submission. Hence there is no need to conduct the second DPC for certain trades deviating from the principles of promotion of those who come upto the cut off date.

18. As stated earlier, the whole contentions are verbose. It is not possible exactly to lay hand ^{on} evidence to contend so. However, we find that in the Annexure V to the reply, there is one Ex.Gr.I Fitter at p.58. Hence it cannot be said that no Ex.Gr.I was promoted to the HSK.II

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even by the DPC held in April/May, 1996. Moreover, the respondents submit that the cut off date of 30.9.85 was required to meet certain on-going operational commitments of the Yard. Even promotion on that basis was done with the criteria of date of regularisation as Tradesmen SK on or before 3.4.79 and the cut off date of seniority between 6.7.84 to 19.9.85.

19. The question of promotion to the higher grade has been decided, no doubt, on the basis of the on-going operational needs. When certain types of jobs have to be done, required skill is necessary. For that, if the Department felt that HSK.I in the Fitter Grade higher than HSK.II is necessary to meet the operational requirement, it cannot be said that such a view is uncalled for. Further, all those who are not necessary to be promoted cannot demand promotion by maintaining certain cut off date. That demand is not a tenable and acceptable demand. Further, though it is a noble idea to keep parity in promotions, in some trades, promotions may be accelerated. But a consensus effort should be made by the respondents' organisation to ensure that disparity in promotion is not very wide. It is seen in the present case that the applicants were not promoted to HSK.II with the cut off date for which a DPC was held in January 1996 whereas in some trades due to on-going operational requirements, the cut off date was shown as 30.9.85. The gap between these two cut off dates cannot be treated as a wide disparity which resulted in the accelerated promotions to some trades. However, as stated earlier, the respondents must do a consensus effort to ensure that the gap in promotions in the various trades are not wide. But, it is stated that the ratio of percentage fixed in SK, HSK.II and HSK.I has

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already been exceeded. In that case, it may not be proper to add HSK.I to some of those trades like the trades of the applicants herein exceeding that limit. Hence the Department should strive to get some exemption for the Naval Headquarters to abridge the gap as far as possible, if found necessary.

20. It is also seen that the decision to fix the cut off date as 30.9.85 for promotion to HSK.I was taken in consultation with the recognised Union on the basis of the operational needs. Even though the Union suggested subsequently to promote all those with the seniority upto 19.9.85 to HSK.I, the same could not be resorted to due to the restriction in the bench mark percentage. Hence, the respondents have taken the view of the representatives of the employees before taking that decision which, in our opinion, is a proper practice. It has been made clear by the respondents that the juniors were not promoted superseding the seniors. In an organisation having large number of trades, normally seniority in the trade only is to be considered for deciding the case of supersession. Normally, a senior in that seniority unit is to be promoted first, if he is otherwise found fit. Supersession arises only if in the same seniority unit, a junior is promoted neglecting the rights of the seniors. Comparison of promotion of the juniors in the other seniority unit is not proper. Hence the contention of the applicants herein that juniors are promoted, is not tenable. They have not stated whether their juniors in the same seniority unit were promoted overlooking their cases. However, if any junior to the applicants herein in the same seniority unit has

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been promoted by the 2nd DPC held in April/May, 1996, the respondents should examine whether such promotion is in order and the reason for omitting the seniors. The above scrutiny may be undertaken by the respondents afresh even though they state that no junior has been promoted to ensure that no injustice is done to the applicants herein..

21. The applicants also contend that all those who have put in three years of service as HSK.II are to be considered for promotion to HSK.I. The statement that those who were regularised as on 3.4.79 were considered for promotion, as that criteria was fixed for consideration for promotion by the DPC held in April/May, 1996, is arbitrary and such consideration is not provided for in the Recruitment Rules, submits the applicants. For this they rely on the Recruitment Rules issued on 19.9.89.

22. In the Recruitment Rules it is stated that for promotion to Gr.I, Tradesmen Highly Skilled Gr.II with three years of service in the grade who have passed the Departmental qualifying test failing which Tradesmen SK with 4 years of service in the grade subject to qualifying the departmental test, may be considered. Normally, the minimum years of service prescribed is regular service and not adhoc service. The applicants have come up with this contention while filing the rejoinder. They have also produced the Recruitment Rules dated 19.9.89 at the time of hearing. Hence no specific observation or direction can be given for this contention. It is left open to the respondents to examine this issue and suitably advise the applicants in this connection.

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COPY TO :-

1. HDND
2. HRM M (A)
3. HOSIP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED 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. R. RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR. B.S. JAI PARAMESWAR
MEMBER (JUDL)

* * *

DATE OF ORDER: 9/9/99

MA/RA/EP.NO.

IN

GA. No. 916/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

OA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(6 copies)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दस्तावेज / DESPATCH

20 SEP 1999

हैदराबाद ब्याचपीठ
HYDERABAD BENCH