

(40)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH:AT
HYDERABAD.

O.A.NO.1629 OF 1997.

BETWEEN:

M.Nookayya

.. Applicant.

and

Govt. of India,
Ministry of Defence,
rep.by its Secretary,
New Delhi and others,.

.. Respondents.

REPLY AFFIDAVIT FILED BY THE APPLICANT:

I, M.Nookayya son of late Venkanna, MES No.147469, aged 48 years, Mazdoor, resident of Visakhapatnam having temporarily come down to Hyderabad do hereby solemnly and sincerely affirm and state as follows:

1. I am the applicant herein and well acquainted with the facts of the case. The reply statement filed on behalf of the respondents has been read over and explained to me. I deny the various averments made therein excepting those which are specifically admitted herein.

2. It is submitted that I joined the METS on 7-5-1973 and posted to Task force. Task force is a different department. The employees have no choice of recruitment. On posting me to task force we were sent on dry dock project. On completion of the dry dock project we were adjusted in other divisions of the MES. Since vacancies were not available at Visakhapatnam I was transferred to Commander Works Engineer offices.

1st sheet, Corrs:

2

M N O O K a y y a

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2.

Thereafter I made application for transfer to GE(ND) Visakhapatnam. Accordingly I am working at Visakhapatnam since 1-2-1981.

3. The allegations in para 3 that I have been appointed in Task Force on contract basis is wholly misconceived and incorrect. I was appointed on permanent basis but posted to Dry Dock, Visakhapatnam.

4. It is submitted that the allegations in para 4 are not correctly stated since I was permanently transferred to CWC my basic pay was protected. This itself would show that there is no break of service and for all purposes I am deemed to be in continuous service in the MES. Accordingly I was also given joining time, T.A. and D.A. for joining in new place of posting consequent on the completion of Dry Dock project as per Ex.R-4.

5. In reply to allegations in para 5 it is submitted that one time promotion post is only a non-functional post. Even for a moment assuming that my pay is fixed at Rs.208/- still I am entitled for fixation of my pay on time promotion in situ from the date of direct recruitee junior to me and fixed at the minimum time scale became eligible for situ promotion. All my colleagues who joined along with me have been granted situ promotion. I have reached the maximum scale of pay in the present grade in May, 1989. But so far I have

2nd sheet, Corrs:

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M. N. O. K. Ray

3.

not been extended the situ promotion on par with my juniors namely Sri S.Durga Rao, Mazdoor, MES 124107.

6. It is submitted that the allegations in para 6 are also not correctly stated. The loss of seniority in case of transfer of industrial personnel on compassionate grounds within the MES units is only for those employees who have transferred subsequent to 16th December, 1985 as per R-2. Since I have been transferred to Visakhapatnam on 1-2-1981 the question of losing my seniority does not arise.

7. The allegations in para 8 are equally misconceived. As per the clarification issued by the Government of India in proceedings dated 13-9-1991 I am also eligible for situ promotion from the date on which I have reached the maximum in the scales of pay.

8. The allegations made in other paragraphs are equally incorrect. It is therefore prayed that this Hon'ble Tribunal may be pleased to allow the O.A. as prayed for.

3rd and last sheet,

Corrs:

M Nookayya

Deponent.

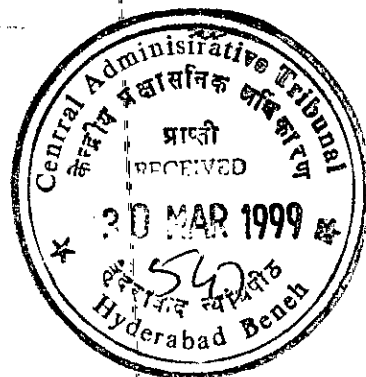
Solemnly affirmed and signed before me
this the 29th day of March, 1999.

Somathy
Advocate, Hyderabad.

Fair list case
on 31/3/99, 11th Court

BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL; AT HYDERABAD.

D.A.NO.1629 OF 1997.



REPLY STATEMENT FILED BY THE
APPLICANT.

Filed on 30/3/99

FILED BY:

M/s.G.Vidyasagar &

Smt.K.Udaya Sri, and

P.Sudheer Rao.

Counsel for the Applicant.

Handwritten notes and signatures at the bottom of the page, including a signature, the date '30/3/99', and the text 'may be filed on 30/3/99'.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

Under the Provisions of Rule 8 (4) of the C.A.T. (procedures Rules 1987 read with Sec. 21(3) of the Administrative Tribunal Act 1985).

M.ANO. 75/98
in

M.A.No969/97
in

O.A.S.R.No2581/97

Between:

1. The Secretary, Ministry of Defence,
Govt. of India, New Delhi.
2. The Secretary, Ministry of Revenue,
Govt. of India, New Delhi.
3. The Engineer-in-chief,
Army Headquarters, New Delhi.
4. The Chief Engineer,
Southern Command, Pune,
Maharashtra State.
5. The Chief Engineer,
Navy, Station Road, Vishakhapatnam.
6. The Commander Works Engineers, Station Road
Vishakhapatnam.

...Applicant/Respondents.

AND

M. Nookayya
S/o Late Venkanna.
Vishakhapatnam

...Respondent/Applicant.

For the reasons stated in the affidavit filed in Support of the M.A. in this Hon'ble Tribunal may be pleased to extend the time as special case upto 2nd Feb'98, for filing of counter affidavit in Miscellaneous Application No. 969/97 in O.A.S.R.No. 2581/97 and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper.

HYDERABAD.

DATE: 3-12-97


Counsel for Petitioner.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

1629
MA NO, 969/97 IN OA/SR NO, 2581/97

Between :

Shri M Neekayya
and V/S

- Petitioner

1. The Secretary, Ministry of Defence, Govt of India, New Delhi. - Respondents
2. The Secretary, Ministry of Revenue, Govt of India, New Delhi.
3. The Engineer-in-Chief, Army Headquarters, New Delhi.
4. The Chief Engineer, Southern Command, Pune, Maharashtra State
5. The Chief Engineer, Navy, Station Road, Visakhapatnam
6. The Commander Works Engineers, Station Road Visakhapatnam

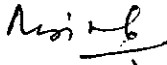
AFFIDAVIT FILED BY THE PETITIONERS/RESPONDENTS

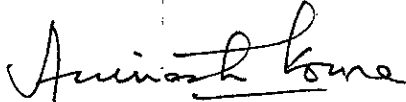
I, Avinash Chand Kaura, SE aged about 54 years occupation Commander Works Engineers, Station Road, Visakhapatnam, do hereby solemnly affirm and sincerely state on Oath as follows :-

1. I am employed in the Office of the 6th Respondent herein and such I am well acquainted with the facts of the case. I am authorised to give this affidavit on behalf of all the Respondents herein.
2. I submit that this Hon'ble Tribunal OA/SR No. 2581/97 was received on 18 Nov 97. In the OA the Hon'ble Tribunal has granted time upto 02 Dec 97 for filing of Counter Affidavit.
3. It is submitted that the filing of counter Affidavit in the Hon'ble Tribunal involves lot of procedural things. It is further submitted that the draft counter reply is required to be approved by the Respondent No.5 and legal opinion from Branch Sectt, Govt of Law,

ATTESTOR

DEPONENT


(R.N. SINHA)
E.E.
D.C.W.E. E/M
For Comdr, Wks. Engrs.


(A. C. KOURA)
S E
COMMANDER WORKS ENGINEER,

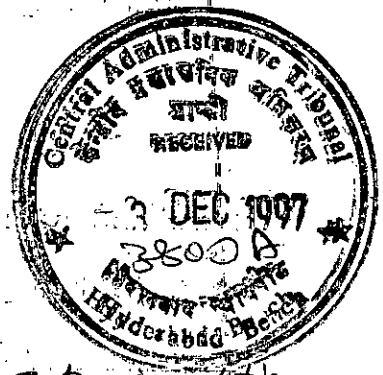
For Extension of time for
filing the Counter

Before C.A.T. Hyderabad
Bench: AT Hyderabad.

MA 197

In
MA 969/97
In

OASR: No. 2581/97



MA for Extension of time

Received by Judicial
on 3/11/97
Amble received from Judicial
on 28/1/98.

Filed on. 3.12.97

Filed by: KOTA BHASKARA RAO

Addl. C.A.S.C.

May be filed
28/1/98

Justice & Company Affairs, Bangalore is to be obtained. The said process takes considerable time and, therefore, the time granted by the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad for filing of counter affidavit is required to be further extended.

4. It is, therefore, prayed that the Hon'ble Central Administrative Tribunal, Hyderabad in the circumstances explained above may be pleased to extend the time as special case upto 02 Feb 98, for filing of counter affidavit in Miscellaneous Application No. 969/97 in Original Application/SR No. 2581/97 and pass such other order or orders as this Hon'ble Central Administrative Tribunal may deem fit and proper in the interest of Justice.

Sorn and signed before me.

on this the 20th day

_____ of November 1997

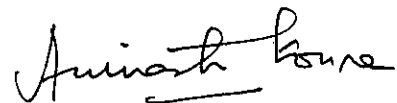
at Visakhapatnam.

ATTESTOR

DEPONENT



(R.N. SINHA)
E.E.
D.C.W.E. E/M
For Comdr, Wks. Engrs,



(A. C. KOURA)
S E
COMMANDER WORKS ENGINEER.

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL:
HYDERABAD:

M.A. 969 OF 1997.
IN
O.A. 2581 OF 1997.

Between:

M. Nookayya.

..Applicant.

and

1. Govt. Of India Ministry of Defence,
rep. by its Secretary, New Delhi.

2. Govt. of India Ministry of Revenue,
rep. by its Secretary, New Delhi.

3. Engineer-In-Chief Army Head Quarteres,
New Delhi.

4. Chief Engineer,
~~Southern~~ Southern Command, Pune,
Maharashtra State.

5. Chief Engineer Navy Station Road,
Visakhapatnam.

6. Commander Works Engineer.
Station Road, Visakhapatnam.

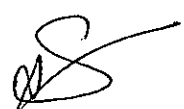
.. Respondents.

PETITION FILED UNDER PROVISION 21 (1) OF C A T ACT 1985

For the reasons stated in the accompanying affidavit
that the Hon'ble Tribunal may be pleased condone the delay of
(687) days in filing the present O.A. and pass such order or
other orders under the circumstances of the case and interest
of justice.

Hyderabad.

Dated: 12/9/1997.


Counsel for Applicant.

Recd
12/9
A. N. R. Dargy

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL:
HYDERABAD:

M.A. ⁹⁶⁹ OF 1997
IN
O.A. ~~258~~ ²⁵⁸ OF 1997

Between:

M. Nookayya.

..Applicant.

and

The Government of India
Ministry of Defence, and 5 others.

..Respondents.

A F F I D A V I T

I, M. Nookayya, S/o. Late Venkanna, aged 46 years
R/o. Visakhapatnam, temararly come over to Hyderabad do hereby
solmnly affirm and state oath as follows:

1. It is submitted that I am the petitioner herein
and Applicant in O.A. and as such I am well acquainted with
the facts of the case.
2. It is submitted that the above O.A. is filed challenging
the proceedings issued by the Chief Engineer (navy), Visakhapat-
nam, No. 14000/B/CA/316/EIR dated 8/11/1995 rejecating the calim
of the applicant for one time promotion (in situ) in accordance
with the OM dated 13/9/1991 as illegal and arbitrary and for
consequential direction of extending one time promotion (in situ)
with effect from 1/4/1991 in accordance with OM No. 10(1)/E-III/
88 dated 13/9/1991.
3. It is submitted that the applicant along with others
filed O.A.S.R.No. 1864/96 in M.A.no. 627/96 challenging the pro-
ceedings No. 14000/B/C/316/EIR. dated 8/11/1996 issued by the
Chief Engineer Navy, Visakhapaatnam before this Hon'ble Tribunal.
The Hon'ble Tribunal waspleased to direct the applicants to
file individual applications challenging the abaove said Pro-
ceedings. ^{no. 12496} Hence the present O.A. is filed.

Deponent.

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4. It is respectfully submitted the immediately after passing the orders, the applicant could not approach this Hon'ble Tribunal due to paucity of funds. Hence delay occurred. The delay in filing the present application is neither wilful nor wonton, but due to the reasons narrated above.

5. It is therefore prayed that the Hon'ble Tribunal may be pleased to condone the delay of (687) in filing the present O.A. and pass such order or other orders under the circumstances of the case and interest of justice.

M Nooka
Deponent.

Solemnly affirm and signed
before me at Hyderabad, on 7/9/1997.

Advocate/Hyderabad.

as such I am well acquainted with the facts of the

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

M.A. NO. 953 OF 1997

in

OA. NO. 2581 OF 1997

Between:

M. Nookayya
s/o Late Venkanna
MES NO.147469, aged 46 years
Mazdoor 'D' Category
r/o Visakhapatnam

... Applicant/
Applicant

a n d

1. Government of India
Ministry of Defence
rep. by its Secretary
New Delhi
2. Government of India
Ministry of Revenue
rep. by its Secretary
New Delhi
3. Engineer-in-Chief
Army Headquarters, New Delhi
4. Chief Engineer
South Command, Pune
Maharashtra State
5. Chief Engineer
Navy Station Road
Visakhapatnam
6. Commander, Works Engineer
Station Road, Visakhapatnam

.. Respondents/
Respondents

M.A. FILED UNDER SECTION 15(2) of Central Admn. Act 1985

It is submitted that the above O.A. is filed
by the applicant challenging the action of the
respondents in not granting situ promotion in
accordance with O.M. No.10(1)/E.III/88 dated 13.9.1991.

Regd
25/9
R.N.R. Dey

and rejecting the claim vide proceedings No.14000/8/CA/316/EIR dated 8.11.1995 issued by the Chief Engineer (Navy), Visakhapatnam.

2. It is submitted that the Scrutiny Officer of this Hon'ble Tribunal has returned the file raising some objections regarding delay in approaching this Hon'ble Tribunal.

3. It is submitted that we have collected the file and same could not be re-presented within the time due to misplacement of the bundle at our office. Now the bundle has been traced by that time some delay occurred in re-presenting the bundle. The delay in re-presenting the bundle is neither wilful nor wanton but due to the reasons explained above. Unless the delay is condoned in re-presenting the file, the applicant would not get any relief.

It is therefore prayed that the Hon'ble ~~court~~ Tribunal may be pleased to condone the delay of ~~24~~ ²⁴ days in re-submitting the bundle and pass such other order or orders as the Hon'ble Tribunal deems fit and proper.

Verification

I, P.Sudheer Rao, s/o P.Muralidhar Rao, aged about 29 years, r/o Hyderabad, Occ: Advocate, counsel for the applicant herein, do hereby verify ^{state} and that the contents in the above M.A. are true and correct to the best of my knowledge and belief. Verified on this the 24th September, 1997 at Hyderabad.

P. Sudheer Rao

[Signature]
Jr. COUNSEL FOR APPLICANT

COUNSEL FOR APPLICANT

To: Registrar, Central Admn. Tribunal, Hyderabad.

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for the following reasons:-

(i) The applicant was fixed at a higher stage than the minimum scale of Group-'D', when he joined Visakhapatnam in a different Unit. Hence, he cannot be promoted unless a Junior to him is drawing more pay than him. For this they relied on the point of Doubt no.7, clarified in the letter No.G.I.,M.F.,O.M.F.No.10(1)/E.III/88, dated:25-5-1992(Annexure.V, page.16, No.179). They also submit that the applicant was transferred from one seniority unit to another seniority unit and his pay was higher than the minimum. Hence, the applicant is not entitled for the same.

(ii) The respondents also relied on the Memorandum No.79040/RPOS/EIC(1), dated:8-10-1986,(enclosed as Annexure.R-2 to the Reply), to come to the conclusion that the applicant when he came to different seniority unit, his seniority will be altered from the date of his joining, and on that basis the applicant is not entitled for the relief asked for in this OA.

7. We have heard both sides.

8. The main condition prescribed for granting in-situ promotion is three-fold.

- (i) employees who are directly recruited to a Group'C' or to Group'D' post;
- (ii) employees whose pay on appointment to such a post, is fixed at the minimum of the scale;and
- (iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post.

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9. There is no doubt that the applicant is a Group'D' Official. His pay on appointment to a Group'D' was fixed at the minimum scale of pay when he joined the Project. But he draw pay at a higher stage when he came to Visakhapatnam. Whether that fixation of pay when he joined Visakhapatnam will stand in the way of the applicant to get In-situ promotion is a point for consideration. The third condition is also fulfilled in this case.

10. The main contention as stated above is that the applicant was fixed at a higher scale when he joined at Visakhapatnam and hence, he is not entitled for the In-situ promotion. But he can be granted in-situ promotion only if he fulfills the clarification given under point of doubt no.7 of the letter dated:25-5-1992. The clarification for point of doubt no.7 reads as below:-

"Clarification.- Yes, such persons are eligible for in-situ promotion in terms of para.2(e) of the OM, dated:13-9-91, viz., from the date a directly recruited person junior to him in the new Organisation whose pay was fixed at the minimum of the scale becomes eligible for promotion."

11. The applicant was fixed at a higher stage in the MES Organisation when he came to Visakhapatnam after relieving him from the earlier Project. The very fact that they have given him a higher fixation means that, the Organisation had recognised his previous service and on that basis he had been fixed at a higher stage. Having recognised his service in the earlier Project, It cannot be said that the applicant got the fixation in a higher stage without any consideration. If so, it has to be

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held that the applicant was not fixed at a higher stage when he joined the service as Group-'D'. He was fixed in the minimum scale of a Group-'D' when he joined the Project. Hence, the respondents cannot reject his case on the ground that his pay was fixed at a higher stage when he joined as Group-'D'.

12. The ^{next} point for consideration is whether he came to a different Organisation. MES is a one Organisation. Coming from one unit to another in the same Organisation cannot be treated as having transferred to other Organisation. If the applicant comes from MES Organisation to other Organisations like Railways and P & T, then it can be considered as having been transferred ^{to a} ~~from~~ different Organisation. In this case the applicant was transferred from the Project Unit of the MES Organisation to another Unit at Visakhapatnam of MES Organisation. Hence, it has to be held that the applicant was transferred within the same Organisation not outside the ~~same~~ Organisation. The clarification for the point of doubt no.7 clearly states that when a person or employee is transferred from one Organisation to other Organisation, in-situ promotion is permissible only if a directly recruited person junior to him in the new Organisation whose pay was fixed at the minimum of the scale becomes eligible for promotion. As we have already observed that the applicant was transferred within the same Organisation, the clarification given as above should not stand in the way of the applicant for refusing to give him the in-situ promotion.

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13. The learned Counsel for the Respondents tried to read that the transfer from one Organisation means, one seniority unit to another seniority unit. When the purport of the clarification is very clear, there is no need to interpret that clarification in a way the respondents feel ~~is~~ advantageous to them. The clarification clearly states that in-situ promotion is impermissible only if an employee is transferred from one Organisation to another Organisation but not from one Seniority Unit to another Seniority Unit. Hence, this contention of the respondents also has to be rejected.

14. In view of the above, we are of the opinion that the impugned Order No.14000/8/CA/316/EIR, dated:8-11-1995, is issued without application of mind. Hence, that impugned Order has to be set aside, and a further direction has to be given to consider the case of the applicant for in-situ promotion in accordance with the rules laid down in the Memorandum No.10(i)/E.III/88, dated:13-9-1991, which has been extracted in Para.8 supra. We make it clear that the applicant is not entitled for any consequential benefits as there was a reasonable doubt in the minds of the respondents which has been cleared by this Judgment and because of that we do not give any consequential benefit except directing the respondents to grant him in-situ promotion in accordance with the rule within a period of three months from the date of receipt of a copy of this Order *if he is otherwise eligible. in fact*

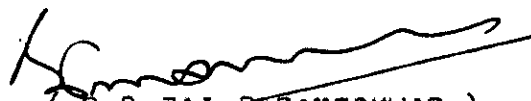
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15. In the result, the following direction is given:-

The impugned Order No.14000/8/CA/316/EIR,
dated:8-11-1995 (Annexure.X, page.24 to the
OA) is hereby set aside. The case of the
applicant should be considered for promotion
as per the in-situ promotion Scheme within
three months from the date of receipt of a
copy of this Order in accordance with law.
He is entitled for fixation in the scale ^{of pay} he
is due to in-situ promotion from the date
of actual promotion to the higher grade.

Let table


16. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)
31.3.99


(R. RANGARAJAN)
MEMBER (ADMN)

DATED: this the 31st day of March, 1999

Dictated to steno in the Open Court


7.4.99

OSN

Copy to:

1. HDHNZ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

13/4/99
IST AND IIND COURT

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. H. RAJENDRA PRASAD:
MEMBER (A)

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

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

DATED: 31.3.99

ORDER/ JUDGEMENT

MA./RA./CP. No.

IN

O.A. NO. 1629/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

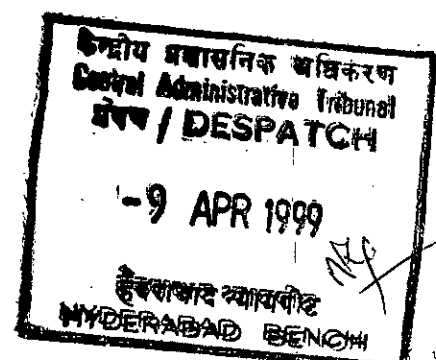
~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/ REJECTED~~

~~NO ORDER AS TO COSTS~~

SRR



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for the following reasons:-

(i) The applicant was fixed at a higher stage than the minimum scale of Group-'D', when he joined Visakhapatnam in a different Unit. Hence, he cannot be promoted unless a Junior to him is drawing more pay than him. For this they relied on the point of Doubt no.7, clarified in the letter No.G.I.,M.F.,O.M.F.No.10(1)/E.III/88, dated:25-5-1992(Annexure.V, page.16, No.179). They also submit that the applicant was transferred from one seniority unit to another seniority unit and his pay was higher than the minimum. Hence, the applicant is not entitled for the same.

(ii) The respondents also relied on the Memorandum No.79040/RPOS/EIC(1), dated:8-10-1986,(enclosed as Annexure.R-2 to the Reply), to come to the conclusion that the applicant when he came to different seniority unit, his seniority will be altered from the date of his joining, and on that basis the applicant is not entitled for the relief asked for in this OA.

7. We have heard both sides.

8. The main condition prescribed for granting in-situ promotion is three-fold.

- (i) employees who are directly recruited to a Group'C' or to Group'D' post;
- (ii) employees whose pay on appointment to such a post, is fixed at the minimum of the scale;and
- (iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post.

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9. There is no doubt that the applicant is a Group'D' Official. His pay on appointment to a Group'D' was fixed at the minimum scale of pay when he joined the Project. But he draw pay at a higher stage when he came to Visakhapatnam. Whether that fixation of pay when he joined Visakhapatnam will stand in the way of the applicant to get In-situ promotion is a point for consideration. The third condition is also fulfilled in this case.

10. The main contention as stated above is that the applicant was fixed at a higher scale when he joined at Visakhapatnam and hence, he is not entitled for the In-situ promotion. But he can be granted in-situ promotion only if he fulfills the clarification given under point of doubt no.7 of the letter dated:25-5-1992. The clarification for point of doubt no.7 reads as below:-

"Clarification.- Yes~~x~~, such persons are eligible for in-situ promotion in terms of para.2(e) of the OM, dated:13-9-91, viz., from the date a directly recruited person junior to him in the new Organisation whose pay was fixed at the minimum of the scale becomes eligible for promotion."

11. The applicant was fixed at a higher stage in the MES Organisation when he came to Visakhapatnam after relieving him from the earlier Project. The very fact that they have given him a higher fixation means that, the Organisation had recognised his previous service and on that basis he had been fixed at a higher stage. Having recognised his service in the earlier Project, It cannot be said that the applicant got the fixation in a higher stage without any consideration. If so, it has to be

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(49)

held that the applicant was not fixed at a higher stage when he joined the service as Group-'D'. He was fixed in the minimum scale of a Group-'D' when he joined the Project. Hence, the respondents cannot reject his case on the ground that his pay was fixed at a higher stage when he joined as Group-'D'.

12. The ^{next} point for consideration is whether he came to a different Organisation. MES is a one Organisation. Coming from one unit to another in the same Organisation cannot be treated as having transferred to other Organisation. If the applicant comes from MES Organisation to other Organisations like Railways and P & T, then it can be considered as having been transferred ^{to a} ~~from~~ different Organisation. In this case the applicant was transferred from the Project Unit of the MES Organisation to another Unit at Visakhapatnam of MES Organisation. Hence, it has to be held that the applicant was transferred within the same Organisation not outside the ~~same~~ Organisation. The clarification for the point of doubt no.7 clearly states that when a person or employee is transferred from one Organisation to other Organisation, in-situ promotion is permissible only if a directly recruited person junior to him in the new Organisation whose pay was fixed at the minimum of the scale becomes eligible for promotion. As we have already observed that the applicant was transferred within the same Organisation, the clarification given as above should not stand in the way of the applicant for refusing to give him the in-situ promotion.

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.....7

13. The learned Counsel for the Respondents tried to read that the transfer from one Organisation means, one seniority unit to another seniority unit. When the purport of the clarification is very clear, there is no need to interpret that clarification in a way the respondents feel ~~is~~ advantageous to them. The clarification clearly states that in-situ promotion is impermissible only if an employee is transferred from one Organisation to another Organisation but not from one Seniority Unit to another Seniority Unit. Hence, this contention of the respondents also has to be rejected.

14. In view of the above, we are of the opinion that the impugned Order No.14000/8/CA/316/EIR, dated:8-11-1995, is issued without application of mind. Hence, that impugned Order has to be set aside, and a further direction has to be given to consider the case of the applicant for in-situ promotion in accordance with the rules laid down in the Memorandum No.10(i)/E.III/88, dated:13-9-1991, which has been extracted in Para.8 supra. We make it clear that the applicant is not entitled for any consequential benefits as there was a reasonable doubt in the minds of the respondents which has been cleared by this Judgment and because of that we do not give any consequential benefit except directing the respondents to grant him in-situ promotion in accordance with the rule within a period of three months from the date of receipt of a copy of this Order *if he is otherwise eligible. in case*

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(51)


15. In the result, the following direction is given:-

The impugned Order No.14000/8/CA/316/EIR,
dated:8-11-1995 (Annexure.X, page.24 to the
OA) is hereby set aside. The case of the
applicant should be considered for promotion
as per the in-situ promotion Scheme within
three months from the date of receipt of a
copy of this Order in accordance with law.
He is entitled for fixation in the scale ^{of pay} he
is due to in-situ promotion from the date
of actual promotion to the higher grade.

Let table


16. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)
31.3.99


(R. RANGARAJAN)
MEMBER (ADMN)

DATED: this the 31st day of March, 1999

Dictated to steno in the Open Court


7.4.99

DSN

Copy to:

1. HDHNZ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

13/4/99
IST AND IIND COURT

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. H. RAJENDRA PRASAD:
MEMBER (A)

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

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

DATED: 31.3.99

ORDER/ JUDGEMENT

MA./RA./CP. No.

IN

O.A. NO. 1629/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/ REJECTED~~

~~NO ORDER AS TO COSTS~~

SRR

