

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No.1309/97 + 1310/97

Dated, the 29th June, '99.

O.A. No.1309/97

BETWEEN :

1. P Kumaran
2. AG Krishnan
3. BMN Rao

4. Gulam Ahmed
5. Ch. Chakrapani
6. ML Ramanuja

..... Applicants

O.A. No.1310/97

1. YB Misra
2. RK Pal
3. Mohd. Karimuddin

4. BSN Reddy
5. Mohd. Saleem
6. Mohd. Sharfuddin

... Applicants

A N D

1. Union of India, Deptt. of Atomic Energy, represented by its Secretary, New Delhi.
2. The Administrative Officer, Nuclear Fuel Complex, Hyderabad - 500 762.
3. The Chief Executive, Nuclear Fuel Complex, Deptt. of Atomic Energy, Govt. of India, Moulali, Hyderabad 500 762.

... Respondents.

COUNSELS:

For the Applicants : MR. PNA Christian

For the Respondents : Mr. V.Rajeswra Rao

CORAM:

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

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

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. PNA Christian, learned counsel for the applicants and Mr. V. Rajeswara Rao, learned standing counsel for the respondents.
2. Since common questions of fact and law arise in these applications, these applications are clubbed, heard and are being disposed off by this common order.
3. There are 6 applicants in O.A.1309 of 1997. They are all working as Drivers (Light/Heavy) Vehicles under the respondent No.3's organisation.- a constituent of the Department of Atomic Energy. They submit that they were initially appointed as Industrial Temporary Workmen on work-charged basis. They have been declared as Industrial Permanent Workmen of the respondent No.3 organisation.
4. They submit that they were classified into Drivers Grade-I in the scale of pay of Rs.950-1500) and Grade-II in the scale of pay of Rs.1150-1500. They submit that the respondent No.3 organisation has other categories of employees who were initially appointed in the category of Tradesman. The Tradesman performing the duties are placed on a time bound scale promotions as Tradesman A, B & C. It is stated that being all the Tradesman are/given promotions on satisfactory performance of their duties without any change in the nature of work discharged by such persons though they were placed in the higher categories. Thus they submit that the persons working in Tradesman category work are given accelerated promotion even though the nature of duties remained the same.
5. They submit that the Fork Lift Operators and Crane Operators, who are required to drive the machinery around the manipulated loads are not formally trained personnel. They were

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8. Likewise, there are 6 applicants in O.A.1310/97 They are also working as Drivers in the respondent No.3 organisation.

9. In compliance with the directions given in O.A. 187/93, the respondents considered the representations of the Union dt. 10.8.90 and by the impugned order bearing No.6/15(6)/93-ISM(NFC)567 dt. 18.6.97 (Annexure-I to the OA) informed the applicants as under :

"Drivers employed in all the Central Govt. Departments including the Department of Atomic Energy and its Constituent Units like NFC are treated as "Auxiliary Staff" and their promotional norms are governed by the Rules/Orders issued by the Govt. of India. It is pointed out that promotional avenues for drivers already exist as contained in the Ministry of Public Grievances and Pens on (Dept. of Personnel & Training) OM No.22036/1/96/Estt-(D) dt. the November 30, 1993 which have been implemented in the Units of this Dept.also.

In view of the foregoing, it would not be possible to treat the Drivers in NFC as "Technical" category and consider them for promotion under the Merit Promotion Scheme in vogue in the Department for Scientific and Technical Staff."

10. Being aggrieved by the impugned letter dt. 18.6.97, the applicants have filed this O.A. for the following reliefs :

"to declare that the Order bearing No.6/15(6)/93-ISM(NFC)567 dt. 18.6.97 passed by the first Respondent rejecting the case of the applicants as illegal, unlawful, opposed to principles of natural justice and set aside the same and further declare that the applicants are Technical Workmen employed in NFC and direct the Respondents to Treat them as Technical Workmen and implement the promotion policy to them which shall be the same as that is applicable to Tradesmen category of all other workmen employed in NFC and grant them all arrears of pay from the date of their appointments and promotion."

11. The applicants challenged the impugned letter dt.18.6.97 on the following grounds :

a) That the respondent authorities have not applied

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initially recruited as Helpers and they picked up those skills during long periods of service in an informal manner while working under the applicants/drivers. They submit that no Licence or training qualifications are insisted upon from the Fork Lift Operators and Crane Operators. They submit that even such categories of persons got promotions to higher grades in the Tradesman Category.

6. However, the persons appointed as Drivers in the respondents organisation have promotional avenues i.e. Gr.I and Gr.II. They submit that persons working in the category of Driver Gr.II are stagnating without any promotional prospects. They relied upon the National Classification of Occupations (NCO)-68) with regard to 2nd contention to contend that they are technical personnel and also on the order dt. 24.10.89 passed in O.A.887/87 on the file of this Bench. They submit that the order passed in the said O.A. has been confirmed by the Hon'ble Supreme Court.

7. They submit that the respondent No.3 organisation had on an earlier occasions treated the Drivers in the Hierarchy of Tradesman and granted promotions.

8. Thus contending that they are discharging the duties of technical nature, earlier the applicants had approached this Tribunal in O.A.187/93. That O.A. was decided on 3.12.96 directing the Respondent No.3 as under :

"In view of what is stated above, we direct the appropriate respondent-authority to consider the issue in depth taking note of the contentions raised in this O.A. as well as the contentions raised in the representation of the NFC Union dated 10.8.90 enclosed as Annexure-VII to the O.A. and decide the issue in accordance with the rules expeditiously, preferably within six months from the date of receipt of a copy of this order and the applicants should be informed of the decision taken."

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h) limit of accumulation of such EL in the case of applicants is 180 days (now 240 days) whereas in the case of Staff Car Drivers it is 240 days (now 300 days); and that

i) the service conditions of the applicants is the same as that of the Tradesman working in the NFC who are placed on a time bound scale promotion and Tradesmen 'A', 'B' 'C' upto 'G'.

12. The respondents have filed the reply. The respondents submit that the applicants were appointed in the Industrial Establishment, keeping in view of the nature of duties and they have been classified as Auxiliary Staff. The Drivers cannot be treated as an employment activity inseparably inter-linked or connected with the manufacturing process of the NFC unit or its maintenance.

13. The DOPT in its OM No.22036/1/92/Estt(D) dt. 30.11.93 has laid down norms for promotions to the category of Drivers. The said OM has been implemented in the NFC.

14. The persons working under 'Tradesman' category are treated as 'Technical Personnel' and only such personnel are governed by the Merit Promotion Scheme.

15. The Auxiliary Staff cannot compare their nature of duties with the Technical Staff and they cannot aspire for promotion under the Merit Promotion Scheme, or on par with Tradesman category. The contention of the applicants that merely by their appointment as Industrial Temporary/Permanent workmen they must be treated as 'Technical Personnel' is not correct. Certain categories of employees like Clerical Staff, Stenographers, Watchmen, Security Staff and Despatching Riders, etc. are included under the Auxiliary Staff. The personnel who involve in operation and maintenance of various functions in the production process of the NFC are only 'Technical' personnel and not the Drivers like the applicants. The version of the applicants that the Canteen employees of the NFC are treated

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their mind to the various issues raised in the O.A.187/93.

b) That the O.M. dt.30.11.93 relied upon and referred to in the impugned letter dt. 18.6.87 has no application to the case of the applicants. The said O.M. deals with the promotion of Staff Car Drivers while the applicants are admittedly not the staff car drivers but are the industrial workmen.

c) That the nature and duties of the applicants are totally different from that of the Staff Car Drivers and that the Staff Car Drivers are only the employees whereas the applicants are industrial workmen

d) That the working hours of the Staff Car Drivers is 6 days in a week whereas the working hours of the applicants are 48 hours and in case L have to continue to work and the extra work rendered by them will be treated as overtime.

e) That the applicants have to be away from the home for a period of 10-15 days or sometimes more, taking the vehicles from or accompanying them in a jeep, driving the said jeeps.

f) That the service conditions including allotment of quarters by the respondent No.3 are quite different for the applicants when compared to the Staff Car Drivers. While the Staff Car Drivers required to pay a consolidated amount towards accommodation provided to them, the applicants have to pay 10% of their wages as rent including overtime allowance.

g) That the applicants are entitled to only 15 days of EL for each completed year of service (presently enhanced to 22 days) whereas the Staff Car Drivers are entitled to 30 days for each completed year of service. The

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20. The applicants are working as Drivers in the NFC. The respondents assert that the Drivers are governed by the OM dated 30.11.93 for their promotional aspects. They submit that the Drivers are regarded as auxiliary staff and cannot be treated as Tradesmen.

21. The NFC has other categories of workmen viz. Tradesman Category and this category is governed under the Merit Promotion Scheme. The main grievance of the applicants is that the Drivers Gr.II have no promotional prospects and that they may be treated as Technical personnel and the Merit Promotion Scheme be extended to them. This they submit having regard to the nature of duties they perform and also the observations made by the Tribunal in O.A. 887/93. They submit that they should be treated as Technical Personnel.

22. From the material placed on record, it appears that the NFC is not categorising its personnel properly as per rules and regulations. From the rejoinder it is disclosed that the NFC has treated one M.N. Tiwari (E.C. No.498), a Cook as a Tradesman 'A' vide O/O No.10 of 1992 dt. 2.7.92. When NFC thought it proper to treat a Cook as Tradesman 'A', why cannot the same benefit be extended to the Drivers who, in our humble opinion discharge technical duties compared to a Cook.

23. Further the respondents admit having permitted auxiliary Staff to come over to Tradesman Category. However, they state that such change was permitted in rare and exceptional circumstances. The respondents have not clearly explained what are those rare and exceptional circumstances. The respondents further submit that the applicants may also opt for change of category at an opportune moment. They have not explained the rule position for change of category from Auxiliary Staff to Tradesman Category. The grievance of the applicants is that persons working in some category have

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is incorrect
treated as Technical personnel/ but only as Auxiliary Staff. There is no policy for interchanging the Drivers and Technical Personnel as their nature of duties are different. Only in exceptional and rare cases such change has been permitted and the applicants may avail of the same at an opportune moment depending upon their eligibility.

16. From the reply it is seen that the Drivers and Tradesmen are interchanged either on medical grounds or on some other grounds.

17. The service conditions of auxiliary staff are different and distinguishable from the Technical personnel. Thus they pray for dismissal of the O.A.

18. The applicants herein are working as Drivers in the NFC. They are treated as auxiliary staff. They aspire for promotion under the Merit Promotion Scheme and therefore considering their nature of duties they pray that they should be treated as Technical personnel of the NFC. On the otherhand, the respondents have stated that the Tradesman category is regarded Technical personnel and that all other staff are regarded either as auxiliary staff or administrative staff. They submit that the auxiliary staff like Drivers cannot compare their duties with that of Tradesman category. The Tradesman category according to them involve in manufacturing process of the production of the NFC. It is only the Tradesman category who come under the Merit Promotion Scheme

19. The applicants in order/claim the benefit of the Merit Promotion Scheme and also for classification as Technical personnel relied upon certain service benefits enjoyed by the Drivers in other Departments of Govt. of India and the Drivers working in NFC in the Department of Atomic Energy. The respondents have stated that the Drivers are Governed by the OM dt. 30.11.93 for their promotional avenue.

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prospects and that they also be regarded as Technical personnel entirely to promotional prospects under ^{the} Merit Promotion Scheme.

24. In fact, this Tribunal gave clear directions in O.A. 187/93 directing the respondents to study the representation of the applicants in depth and take a final decision in the matter.

25. Having regard to the facts brought out in the O.A., in the reply and rejoinder, we feel that the respondents have not considered the representation in proper perspective. The NFC which has a National stature must act as a model employer.

25. Hence, the impugned letter dt. 18.6.97 is set aside.

26. The respondents shall consider the representations of the applicants in the light of the various averments made in the O.A. and in the rejoinder and take a final decision.

27. Time for compliance is 4 months from the date of receipt of a copy of this order.

28. The respondents shall inform the applicants of their decision in writing.

29. With the above directions both the O.As. are disposed off, leaving the parties to bear their own cost.

प्रमाणित प्रति
CERTIFIED TRUE COPY

कानूनी अधिकारी

CASE NO.: O.A. 1309 & 1310/97

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DATE OF ISSUE 22-6-99

प्रमाणित

21-7-99

Signature of Court Officer

अधिकारी / न्यायिक अधिकारी

Court Officer

केंद्रीय न्यायिक नियंत्रण

Central Administrative Tribunal

हैदराबाद न्यायपीठ

HYDERABAD BENCH