

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order : 25.05.2001.

O.A.NO. 246/1995

Ashwani Kumar Mathur S/o Shri Raj Bahadur Mathur, aged about 45 years, R/o C/o Shri Vinod Kumar Mathur, Kumar Publicity Khirni Ghat, Bharatpur at present employed on the post of Painter and Decorator in Ammunition Depot, Bharatpur (Raj).

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Defence, Army Headquarters, PO DHQ, New Delhi.
2. Major General, Army Ordnance Corps Headquarters, Southern Commands, Pune - 1.
3. Commandant, Ammunition Depot, Bharatpur.
4. Harish Chandra, Painter, Ammunition Depot, Bharatpur.

.....Respondents.

.....

Mr. J.K.Kaushik, for the applicant.  
Mr. S.K.Jain, for the respondents 1 to 3.

.....

CORAM :

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN  
HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....


PER HON'BLE MR.JUSTICE B.S.RAIKOTE :

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant Ashwani Kumar Mathur, has prayed for a direction to the respondents to extend the benefit of up-gradation on the post of Highly Skilled Grade II w.e.f. 15.1.1984 as against the respondent No. 4, who was junior to

him and the impugned order Annex.A/1 dated 24.2.1995, may be quashed.

2. The applicant contended that in the grade of Painter Grade III, he was senior to the respondent No. 4. On the basis of the recommendation of the Anomalies Committee, the Government of India, Ministry of Defence, vide their letter dated 15.10.1984 issued orders for introduction of Highly Skilled Grade I and Highly Skilled Grade II, by way of upgrading certain posts in the skilled grade. The said Notification provided for upgradation of the skilled grade, at the rate of 20% Bench Mark, to the Highly Skilled Grade II (Scale Rs. 330-480) and 15% to the Highly Skilled Grade I (Scale Rs. 380-560), on the basis of the seniority. The applicant was senior to the respondent No. 4, therefore, he should have been promoted by way of upgradation on the post of Highly Skilled Grade II w.e.f. 15.1.1984, hence, the rejection of the case of the applicant vide Annex.A/1 dated 24.2.1995 passed by the official respondents stating that respondent No. 4 was promoted on the basis of roster point of Scheduled Castes/Scheduled Tribes in a reserved quota as against the claim of the applicant, is required to be quashed.

3. The applicant contended that vide Government of India Order dated 9.11.1984 as communicated vide Annex.A/2 dated 13.8.1985 provides upgradation of the posts from skilled grade to Highly Skilled Grade II and Highly Skilled Grade I at the rate of 20% and 15% respectively and the applicant being senior to the respondent No. 4, should have been promoted but the respondent No. 4 though being junior to the applicant, has been promoted illegally. But, the case of the official respondents as well as the private



respondent is that vide order Annex.A/2 dated 13.8.1985 promotion is provided from ~~Unskilled~~ Skilled to Highly Skilled Grade II and Highly Skilled Grade I but it is not a case of upgradation. They further contended that in the case of promotion there can be a reservation in favodur of the reserved category candidates and the respondent No. 4 belonging to the reserved category has been rightly promoted under 40% roster, as such, the applicant cannot make any grievance against the respondent No.4. On the other hand, the learned counsel appearing for the applicant contended that Annexs. A/2 and A/3 circulars provide upgradation but not promotion by relying upon the judgement of the Central Administrative Tribunal, Jabalpur Bench, reported in (1990) 12 ATC 475 - J.P.Shukla Vs. U.O.I. & Others and a Full Bench Judgement of Hon'ble High Court of Kerala, reported in 1973 (2) SLR 251 - N.G.Prabhu and Another Vs. Chief Justice and Another. He also contended that as per the law declared by Hon'ble the Supreme Court in Civil Appeal 3622/1995 ( Union of India Vs. V.K.Sirothia) connected with Civil Appeal No. 9149/1995 decided on 19.11.1989, there cannot be a reservation in promotion. Therefore, on this count also, the respondent No. 4, being junior to the applicant, could not have been promoted on the basis of the upgradation. Therefore, the necessary directions may be issued to the respondents.

4. By filing reply, the respondents have denied the case of the applicant. They have contended that two posts of Highly Skilled Grade II were filled-up on 3.10.1985 by promoting Shri Hari Raj Verma (a general category candidate) and Shri Harish Chandra, respondent No. 4 (a scheduled caste candidate), and Annex.A/3 does not apply. They have also contended that on the basis of Annexs. A/2 and A/3 Circulars, promotional posts were

created to the posts of Highly Skilled Grade II and Highly Skilled Grade I at the rate of 20% and 15% respectively from the cadre of ~~Highly~~ Skilled grade. Shri Hari Raj Verma, was promoted accordingly on his own merit being the senior candidate and Shri Harish Chandra, respondent No. 4 was promoted on the basis of 40% roster. Therefore, the said promotions made on 3.10.1985 were quite legal and do not call for any interference. They have also contended that the application challenging the promotion of the respondent NO. 4 Shri Harish Chandra, is barred by time. Accordingly, they stated that there were no merit in the application and the same is liable to be dismissed.

5. The promotion of Shri Hari Raj Verma, who was admittedly senior to the applicant on the post of Carpenter Skilled Grade the applicant rightly not challenged by making him a party in this case. The applicant's grievance mainly is against Shri Harish Chandra, private respondent No.4, contending that his promotion to the post of Highly Skilled Grade II on 3.10.1985 is illegal.

6. Heard the learned counsel for the parties.

7. On the basis of the pleadings and the arguments of both sides, we have to see whether the promotion/upgradation of respondent No.4 on 3.10.1985 to the post of Highly Skilled Grade II is illegal and whether the applicant is entitled to be given the benefit over and above the respondent No.4.

8. The fact that the respondent No. 4 was junior to the applicant in Carpenter Skilled Grade is not disputed. On the basis of this undisputed fact, the contention of the learned counsel for

AK

the applicant is that the applicant being senior to the respondent No.4, should have been promoted on the basis of the Circulars Annexs. A/2 and A/3. His further argument is that the promotion of respondent No. 4 on the basis of 40% roster point on the upgradation vide Annexs. A/2 and A/3 itself, is illegal. However, the respondents No. 1 to 3 supported the promotion of respondent No.4 in the year 1985 on the ground that on the basis of Annexs. A/2 and A/3 Circulars there has been promotion but not upgradation and therefore, the roster principle applied, and accordingly, the respondent No. 4 has been rightly promoted in the year 1985 to the post of Highly Skilled Grade II.

9. In this application, the applicant challenged the promotion of respondent No. 4 made on 3.10.1985 to the post of Highly Skilled Grade II along with Shri Hari Raj Verma. This application is filed in the year 1995 and as such, this application is barred by time under section 22 of the Administrative Tribunals Act. It is no doubt true that applicant <sup>earlier</sup> filed one O.A. No. 98/1992 and the same was disposed of on 13.9.1994 directing the respondents to consider the case of the applicant for promotion to the post of Highly Skilled Grade II ~~with all the consequential benefits~~. It is thereafter, Annex.A/1 dated 24.2.1995 is issued to the applicant rejecting his case. The fact remains that the grievance of the applicant relates to the year 1985 in which year two persons namely Shri Hari Raj Verma and Shri Harish Chandra, respondent No. 4, were promoted. Filing of an application in the year 1992 would not, prima facie, save the period of limitation, since the cause of action to the applicant arose in the year 1985 when those two persons were promoted.

10. Even taking up the case on merits, we have to see whether the Circulars Annex. A/2 and A/3 provide upgradation or promotion to the post of Highly Skilled Grade II and Highly Skilled Grade I from the post of Skilled Grade.

11. Since the impugned promotions were made in the year 1985 and as on the date of such promotions i.e. 3.10.1985, the order dated 29.7.85 communicated vide Annex.A/2 dated 13.8.1985, held the field. The said order Annex.A/2 dated 29.7.1985 refers to the Government of India Order dated 15.10.1984. The preamble portion of the Order dated 29.7.1985 clearly states that the Government of India vide order dated 15.10.1984 upgraded certain posts from Semi Skilled Grade (Scale Rs. 210-290) to the Skilled Grade (Scale Rs.260-400). It also states that the Government of India vide the aforesaid order has introduced Highly Skilled Grade II (Scale Rs. 330-480) and the Highly Skilled Grade I (Scale Rs. 330-560) in certain common category jobs as on 15.10.1984. Para 7 provides for introduction of Highly Skilled Grade I and Highly Skilled Grade II. Paras 12, 13 and 14 states that as per the clarification issued by the Ministry of Defence vide letter dated 19.4.1985, the posts now introduced as Highly Skilled Grade II and Highly Skilled Grade I, were promotional posts and necessary trade tests were required to be held from amongst the eligible persons who have put in minimum of three years service in the skilled grade. We think it appropriate to extract paras 12, 13 and 14 as under :-

"12. Filling up posts of HS Grade II and HS Grade I. According to clarification issued by Min. of Def. HS grade II and HS grade I are promotion posts vide their letter No. 1 (2)/80/D(ECC/IC)/Vol.III (PC) dated 19 Apr



85. Hence, action as indicated in succeeding paras will be taken by the depot authorities in filling up of the above posts.


13. Individuals who have a minimum of three years service in skilled grade will be subjected to a trade test, syllabus for which will be laid down by this HQ. However, since it is likely to take some time, depot authorities may for Trade Testing Boards as per this HQ letter No. 08961/06-20 dated 03 Apr 67 which will conduct trade test provisionally fixing the standards, only as an interim measure.

Highly skilled grade I posts are also to be filled up by promotion. For this purpose also a minimum of three years service is required in HS grade II and the individual is required to pass trade tests."

Para 18 further states as under :-

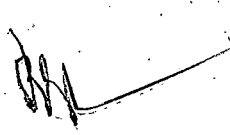
"18. Reservation for SC and ST. Reservation orders for SC and ST will be applicable in HS grade II and HS grade I posts as is applicable in promotion posts."

Thus, from Annex.A/2, it is clear that the posts created vide Government of India order dated 15.10.1984 were upgraded posts from the post of Skilled Grade by making them promotional post on the basis of trade test. However, vide para II-A (b) & (B), subsequent orders dated 8.4.1996 vide Annex.A/3, it is further made clear that in the Units where there are no recruitment rules,



promotion shall be made from the Skilled Grade to Highly Skilled Grade II at 20% purely on the basis of the seniority without any obligation to qualify the trade test. However, it is contended by the applicant that trade test was conducted on 18.9.1985 in which the applicant and the respondent No. 4 were declared passed on the basis of the result of the Board dated 10.9.1985. From this fact, it follows that as on the date 15.10.1984, the applicant and the respondent No. 4, both having passed the trade test, were eligible for being promoted to the post of Highly Skilled Grade II. We must make it clear that as on that date of promotion as on 3.10.1985, the further clarificatory letter vide Annex.A/3 dated 8.4.1986 was not yet issued. Even otherwise, the only consequence of Annex.A/3 dated 8.4.1986 was that passing of such trade test for promotion from Highly Skilled to Highly Skilled Grade II was dispensed with. As we have already stated above, both, the applicant and the respondent No. 4 had passed the trade test as such, the subsequent clarificatory letter dated 8.4.1986 would have little consequence on the merit of this case so far as passing or not passing the trade test is concerned.

12. Since it is admitted on the part of the official respondents that the applicant was senior to the private respondent No.4, we have to see whether the promotion of respondent No. 4 on the basis of the roster point, is legal or not. In this context, the contention of the applicant is that vide Circular dated 29.7.1985 only upgradation is provided but not promotion, therefore, the principle of reservation would not <sup>apply</sup> in view of the law declared by Hon'ble the Supreme Court. On the other hand, the contention of the official respondents is that the posts, Highly Skilled Grade II and Highly Skilled Grade I, introduced vide Annex.A/2, were promotional





posts, therefore, the principle of reservation will apply.

13. From the reading of the entire circular dated 29.7.1985 we find that such introduction of new posts was required only to avoid certain anomalies pointed out by the Anomaly Committee. Para 8 of the Circular dated 29.7.1985 provides that the introduction of Highly Skilled Grade II and Highly Skilled Grade I posts was on the basis of the Bench Mark percentage. It provides that skilled grade shall be at 65%, Highly Skilled Grade II at 20% and Highly Skilled Grade I at 15% respectively. Thus, newly created posts i.e. Highly Skilled Grade II and Highly Skilled Grade I, have got to be filled-up by promotion from the Skilled Grade by promotion on the basis of the minimum eligibility of three years. From this, it follows that certain posts from the Skilled Grade were upgraded as Highly Skilled Grade II and Highly Skilled Grade I for the purpose of promoting certain persons on the basis of their eligibility. Para 18 further provides that reservation for Scheduled Castes and Scheduled Tribes will be applicable to Highly Skilled Grade II and Highly Skilled Grade I as is applicable in promotion posts. From the reading of the entire Annex.A/2, we find that after upgrading certain posts as Highly Skilled Grade II and Highly Skilled Grade I, promotions were required to be made on the basis of eligibility and trade test. It is not the case of the respondents that all the persons holding the post of Skilled Grade, were promoted to Highly Skilled Grade II and Highly Skilled Grade I en-block but only two persons were promoted on the basis of their eligibility and they had passed the trade test. From the reading of the entire order vide Annex.A/2, it is clear that the promotions were required to be made after upgrading certain posts, as such Annex.A/2, does not provide for any upgradation of the posts alongwith the persons. As to the question,

19

whether a particular circular provides upgradation or promotion, the judgement of the Jabalpur Bench of the Central Administrative Tribunal reported in (1990) 12 ATC 475 , has clarified as under :-

"23..... . When there is a mass upgradation of posts along with incumbents then only a restructuring involves upgradation without an element of promotion. This does not appear to us to be the situation in this case."


14. From the above judgement, it is clear that in the case of mass upgradation of posts along with incumbents would be a case of restructuring involving upgradation without element of promotion. But, in the instant case it is not a mass upgradation and Annex.A/2 provided for promotion of certain persons on the basis of eligibility of three years experience and on passing of the trade test. Thus, Annex.A/2 provides or introduces two posts by way of upgradation for the purpose of promotion. The Hon'ble High Court of Kerala in its Full Bench Decision reported in 1973 (2) SLR 251, has stated that in case of upgradation "parties continue to hold the same post to get a higher scale of pay" but in the instant case after promoting a person from Skilled Grade to Highly Skilled Grade II and Highly Skilled Grade I, the person does not hold the same post of Skilled Grade but he is holding the post of Highly Skilled Grade II and Highly Skilled Grade I, which are different posts than the post from which he is promoted. Therefore, the promotion of the respondent No. 4 and one Shri Hari Raj Verma on 3.10.1985, was a promotion but not upgradation and if that is so, the principle of reservation applied to the facts of the case and the respondent No. 4 could be promoted on the 40 point roster as contended by the respondents. If that is so, we cannot find fault


dga

with such promotion made on 3.10.1985. Even assuming that these two persons were promoted on the basis of upgradation by applying rule of reservation, contrary to the law, even then the applicant would not be entitled to any relief in view of the law declared by Hon'ble the Supreme Court in Ajit Singh-II (Reported in AIR 1999 SC 3471 - Ajit Singh and Others Vs. State of Punjab and Others.) The Hon'ble Supreme Court has held in this case that any promotion made wrongly in excess of any quota prior to 10.2.1995 are protected and persons are not liable to be reverted. However, the Hon'ble Supreme Court also has further made clear that the seniority of the senior general candidate shall have to be restored on the basis of catch up principle. Therefore, the alleged promotion of the respondent No. 4 in the year 1985 assuming that it was contrary to the law, such promotion of the respondent No. 4 which was prior to 10.2.1995, was protected subject to the catching up principle enunciated by Hon'ble the Supreme Court. If that is so, it is for the applicant to seek his seniority at the higher level on the basis of catching up principle provided he catches up the respondent No. 4 at higher level on the basis of his normal promotions. But, as on today, the promotion of respondent No. 4 dated 3.10.1985 from Skilled Grade to Highly Skilled Grade II, does not call for any interference.

15. In view of the above discussions, we pass the order as under :-

The Original Application filed by the applicant has no merit and it is hereby dismissed. The parties are left to bear their own cost.

  
(Gopal Singh)  
Adm.Member

  
(Justice B.S. Raikote)  
Vice Chairman

.....