

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 17.10.2003

OA No.37/1999

Sarunder Singh s/o Shri Ramji Lal, aged about 47 years,
r/o Bharatpur, now-a-days working as High Skilled Grade-II
employee, Ammunition Depot, Bharatpur.

.. Applicant

Versus

1. Union of India through the Secretary to the Govt.
of India, Department of Defence, Govt. of India,
New Delhi.
2. Local Audit Officer (Army), Alwar.
3. Assistant Local Audit Officer (Army), Bharatpur.
4. The Commandant, Ammunition Depot, Bharatpur.

.. Respondents

Mr. S.K.Jain, counsel for the applicant.

Ms. Shalini Sheoran, proxy counsel to Mr. Bhanwar Bagri,
counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant was initially appointed as Book Binder by the respondents in the scale of Rs. 210-290, which is admittedly a semi-skilled post. The post of Book Binder was upgraded from semi-skilled to skilled grade vide para 1(i) of Govt. of India, Ministry of Defence letter No. 3817/DS(O&M)/Civ-I/84 dated 15th October, 1984 in the pay-scale of Rs. 260-400. Similarly, the categories listed in Annexure-I of the said letter were to be upgraded as Highly Skilled Grade-II (HSG-II) and HSG-I.

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However, prior to issuance to this letter, the post of Book Binder was not in the skilled grade. On upgradation of the post of Book Binder from semi-skilled grade Rs. 210-290 w.e.f. 15.10.84 the revised grade of Rs. 260-400 was granted to this category. Pursuant to the judgement of the Hon'ble Apex Court in the case of Bhagwan Sahai Carpenter and ors. vs. Union of India, AIR 1989 SC 1215, the benefit of higher pay was allowed to all categories of non-skilled employees w.e.f. 16.10.81. Further case of the applicant is that he passed the trade test in the year 1994 and consequent upon passing of the trade test, he was promoted to HSG-II in terms of para 3 of Govt. of India, M/o Defence letter dated 19th April, 1985 (Ann.A2). The grievance of the applicant in this OA is that he having been promoted to the post of HSG-II w.e.f. 9th December, 1994 vide order dated 4.1.95 (Ann.A1), he has been ordered to be reverted without any prior notice. It is further contended that the order of reversion and order of reduction in the salary has not been supplied to the applicant. On this basis, this tribunal issued notices to the respondents on 18.1.99 on the interim relief prayer of the applicant. Thereafter the matter was listed for hearing from time to time. On these averments, the applicant filed the present OA thereby praying for the following reliefs:-

- "(i) That the impugned order of reversion of the applicant from High Skilled Grade II to the skilled post and the reduction of the pay thereby be quashed and set aside and the respondents be directed to treat the applicant as High Skilled Grade-II employee since 1984 on having completed three years or 1 year's service with effect from

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15.10.1981.

- (ii) That the respondents be also directed to make payments of the arrears treating the applicant to be promoted on the post of High Skilled Grade-II post with effect from 15.10.1982 or atleast 15.10.84 and fixing his pay accordingly.
- (iii) That the respondents be directed to treat the applicant to be in the High Skilled Grade-II as if he was never reverted to the lower post of Skilled category.
- (iv) Any other relief which this Hon'ble Tribunal deems fit may also be granted."

2. The respondents have filed reply. In the reply, it has been stated that the Book Binder cannot be upgraded as HSG-II and HSG-I as the post of Book Binder was upgraded from semi-skilled to skilled w.e.f 15.10.84 whereas 12 categories listed in Ann.I of the said letter were skilled categories on the date of issue of the aforesaid letter. It is further stated that as per provisions of Appendix to CPPO 56/85 and Govt. of India, M/o Defence letter dated 19.4.1985 benefit of upgradation to the posts of HSG-II and HSG-I is admissible only to the posts which are mentioned in Ann.I of Govt. of India, M/o Defence letter dated 15.10.84 and not to other categories not mentioned in Ann.I i.e. Book Binder and other categories as listed in para 1 of the said letter. In view of the position explained above, the post of Book Binder cannot be upgraded as HSG-II and HSG-I and as such promotion of the applicant w.e.f. 9.12.94 is irregular. Over payment on this account was ordered to be made vide letter dated 24th Jan.97 passed by LOA (A), Alwar and

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communicated to the Commander, Ammunition Depot, Bharatpur.

3. The applicant has filed rejoinder thereby reiterating the submissions made by him in the application. It is further stated that under clause (a) and clause (b)(ii) of the letter dated 15.10.84, the promotion has to be given after completion of 3 years service on the lower post after passing the trade test, as such no distinction could be drawn between the posts enumerated in Ann.I and the post of Book Binder, as the same would amount to violation of the Articles 14 and 16 of the Constitution of India. The applicant has also relied on the clarification issued vide letter dated 19th April, 1985 (Ann.C) whereby in para 3 it has been stated that skilled tradesmen with three years service shall be promoted to HSG-II subject to passing of the trade test to be laid down for this grade and to higher grade after putting in minimum of 3 years service in HSG-II subject to passing of the trade test to be laid down for the purpose pending framing of the formal recruitment rules. The applicant has further reiterated that the applicant has already been granted skilled grade of Rs. 260-400. He is entitled to further promotion to upgraded scale in the grade of Rs. 330-480 and HSG-I in the grade of Rs. 380-560. The above benefits has to be extended to all the categories.

4. The matter was listed for hearing before this Tribunal on number of occasions. This Tribunal besides making other observations vide order dated 3.3.2003, directed the respondents to clarify through an affidavit

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whether the applicant has appeared in the trade test or not as according to the additional affidavit filed by the applicant at page 6, he has stated that the applicant has passed the trade test which held on 9.12.94. In spite of the said order, though the respondents have filed MA alongwith affidavit but the same was vague and not in accordance with the directions of the Tribunal. Vide order dated 4.4.03 further opportunity was granted to the respondents to file affidavit to produce documents that the applicant has not passed the trade test within three weeks, failing which it will be presumed that the applicant has passed the trade test. On 5.5.03, the learned counsel for the respondents submitted that they are unable to produce any document in this regard. On that date, this Tribunal observed that the case be listed for final disposal on 29.5.03 on the presumption that the applicant has passed the trade test. Thereafter the matter was listed on a number of occasions and finally on 13.10.03 when both the parties were heard.

5. The grievance of the applicant in this case is two fold. The first grievance is that he was wrongly reverted from the post of HSG-II and second grievance is that he should be promoted to the post of HSG-II w.e.f. 1984 when he completed 3 years service or w.e.f. 15.10.82 when he has completed one year's service in the skilled category.

5.1 So far as the first contention of the applicant is concerned, we see considerable force in the submissions made by the learned counsel for the applicant. It is admitted case between the parties that initially the applicant was working as Book Binder in the grade of Rs.

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210-290 which post was semi-skilled. It is also not disputed that vide Govt. of India, M/o Defence letter dated 15.10.84 the category of Book Binder amongst other categories, which were semi-skilled, was upgraded to skilled category and were given pay scale of Rs. 260-400 w.e.f. 15.10.84 which date was subsequently modified to that of 16.10.81 pursuant to the judgment of the Apex Court. Thus, the fact remains that the category of Book Binder which was earlier semi-skilled was treated as skilled grade w.e.f. 16.10.81. It is also not disputed that by the same letter dated 15.10.84, two higher grades in skilled categories were also granted on fulfilling certain conditions. This fact was further clarified vide appendix to CPRO 56/85 and Govt. of India, M/o Defence letter dated 19th April, 85 which letter clarifies the earlier letter dated 15.10.84. At this stage it will be useful to quote para 3 of the said letter which provides as under:-

"3. Introduction of two
Higher grades for
skilled workers on
bench Mark & age
(65:20:15)

Skilled Tradesmen with three
years service shall be promoted
to Highly skilled Grades II
subject to passing of trade
test to be laid down for this
grade and to Highly Skilled
Grade I after putting in a
minimum of three years' service
in Highly Skilled Grade II
subject to passing of Trade
Test for Highly Skilled Grade I
to be laid down for the purpose
pending framing of formal

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Recruitment Rules."

Thus from the portion as quoted above, it is clear that the skilled tradesmen with 3 years of service shall be promoted to HSG-II subject to passing of trade test to be laid down for this grade. It cannot be disputed that the post of Book Binder was upgraded from semi-skilled to skilled category w.e.f. 16.10.81 and this category was given higher scale of Rs. 260-400 from that date. It cannot also be disputed that the applicant passed the trade test as can be seen from the letter of the Accounts Officer in which he has stated that the applicant passed the trade test on 9.12.94 as per letter dated 6.8.96, which has been reproduced by the applicant in his additional affidavit. The respondents have not placed any material to the contrary. Thus, the applicant was eligible for promotion to HSG-II as he has completed more than 3 years of service in skilled category and as also passed the trade test and that is why he was promoted vide letter dated 4.1.95 w.e.f. 9.12.94 (Ann.A1). The contention of the learned counsel for the respondents is that it is only 12 categories listed in Ann.I of the letter dated 15.10.84 which were required to be upgraded as HSG-II and HSG-I and it does not cover the Book Binder for promotion to HSG-II and HSG-I, is wholly misconceived and cannot be accepted. It may be true that at the relevant time in the year 1984 when the letter dated 15.10.84 was issued Book Binder was semi-skilled category which was upgraded to skilled category vide the aforesaid letter and as such the applicant could not have been further promoted/upgraded to the post of HSG-II and HSG-I. But once the Book Binder has been declared skilled category, subsequently they were

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eligible to be considered for promotion to the post of HSG-II and HSG-I not only by virtue of upgradation as granted vide letter dated 15.10.84 but in view of the provisions contained in para 3 of the clarificatory letter dated 19.4.85 which has been reproduced above, viz. after completion of 3 years of service in the skilled grade and subject to passing of the trade test. Further, as can be seen from para 3 of the letter dated 19.4.85 as quoted above, there is nothing in the said Para that promotion to HSG-II and HSG-I should be made from the skilled categories listed in Ann.I of the letter dated 15.10.84.

5.2 That apart, the respondents have also notified Ordnance Factories Group C and Group D Industrial Posts Recruitment Rules, 1994 vide SRO 185 dated 1st November, 1994 which has been placed on record. It has been mentioned in these rules that they shall apply to the posts specified in column 1 of the schedule annexed to these rules. At Sl.No.3 of Annexure-A against column No.1 name of the post of Book Binder find mention. For the post of HSG-II workman (list placed at Ann.A and B) against column 12 (in case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made) following provision has been made:-

"Promotion from persons in the skilled grade in the pay scale of Rs. 950-1500 in the same or allied trades with minimum regular service of 3 years in the grade and on passing the trade test".

5.3 As already stated above the trade of Book Binder is a skilled category. Further promotion to HSG-II has to be made from skilled grade. It is not disputed that the

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Book Binder after upgradation w.e.f. 16.10.81 belongs to skilled category. It has also come on record that the applicant has passed the trade test on 9th December, 94 and as such he was promoted from retrospective effect vide order dated 4th January, 95 (Ann.A1). Thus, the applicant was entitled for promotion not only on the basis of the clarification issued vide Para 3 of letter dated 19th April, 85 (Ann.C) but also on the basis of statutory rules as notified in November, 94. Thus, action of the respondents in reverting the applicant on filmy ground is arbitrary and not sustainable.

5.4 Now we may also deal with the second grievance of the learned counsel for the applicant that he is also entitled for promotion to HSG-II after putting one year's service in the skilled category or in any case after completion of 3 years service in the skilled grade that is w.e.f. 15.10.82 or atleast from 15.10.84. During the course of arguments, the learned counsel for the applicant submitted that he does not want to press this point at this stage and opportunity may be given to raise this contention before the authorities by filing a representation. Since the learned counsel for the applicant has not pressed this point, we need not to give any finding on this point.

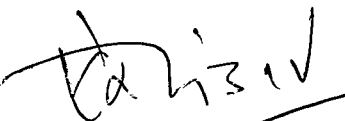
6. Consequently, this CA is allowed. The order dated 24.6.97 issued by the LAO (A), Alwar without issuing show-cause notice to the applicant and observing that over payment made to the applicant be calculated and arrear on account of excess amount be recovered from the applicant, is illegal. The applicant shall be treated to have been legally promoted w.e.f. 9.12.94 in terms of order dated

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4th January, 95 (Ann.A1) as if he was never reverted to the lower post of skilled category. The consequential reliefs, if any due to the applicant pursuant to the order dated 4th January, 95 (Ann.A1) shall be paid to the applicant within 3 months from the date of receipt of this order.

7. The OA stands disposed of accordingly with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)