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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

26.07.2012

OA No. 503/2010

Mr. Rajvir Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

On the request of the learned counsel for the applicant,
list it on 28.08.2012 for filing rejoinder.

Anil Kumar
(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

ahq

28/08/2012

OA No. 503/2010

Mr. Rajvir Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents. - No. 1 to 4

None present for respondent No. 5.

Heard.

O.A. is disposed of by a separate
order on the separate sheets for the
reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of August, 2012

ORIGINAL APPLICATION No. 503/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Krishan Singh Meena son of Shri Jairam Meena, aged about 45 years, resident of 11/4, MES Colony, Kota, presently posted as Meter Reader (HS-II), Kota.

... Applicant

(By Advocate : Mr. Rajvir Sharma)

Versus

1. Union of India through its Secretary to the Defence, South Block, New Delhi.
2. Chief Engineer, Southern Command, Pune.
3. Chief Engineer, Jaipur Zone, Power House Road, Bani Park, Jaipur.
4. Garrison Engineer, Kota (MES), Near Circuit House, Station Road, Kota.
5. Shri B.G. Shelka, SK-I, C/o GE(P) Factory (i) Kirkee, Pune.

... Respondents

(By Advocate : Mr. Mukesh Agarwal – Respondent nos. 1 to 4
None for respondent no. 5.)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

"In conspectus of the above facts, it is prayed to Hon'ble Tribunal that this Hon'ble Tribunal may graciously be please to call for and examine the entire record of the case and

It is further prayed that this Hon'ble Tribunal may kindly be pleased to accept and allow this Original Application, and may kindly be pleased to quash and set aside the impugned order dated 23.2.2010 (Annexure A/1) in all respect and respondents may kindly be directed to promote the applicant as Store-Keeper Grade I in all respect with all consequential benefits since the date of promotion of respondent no. 5 and other Juniors, by giving the seniority on promotee post over and above the juniors.

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Cost of the Original Application may be awarded to the applicant.”

2. Learned counsel for the applicant submitted that the applicant was appointed on 28.05.1994 as Meter Reader (SK). Subsequently he was promoted as Meter Reader (HS-II) on 26.08.2002. The respondents promulgated a policy vide order dated 28.11.2003 (Annexure A/2) whereby it was decided that the cadre of meter reader and store keeper will be merged into a common cadre and combined cadre will be designated as store keeper cadre. It was further provided in the policy that the passing of the Departmental Store Keeper Grade I Examination for promotion from SK-II to SK-I was not essential for the existing Meter Reader HS-II. This was one time exception. The applicant was accordingly re-designated as Storekeeper-I vide order dated 08.03.2004 (Annexure A/3). The applicant appeared in MES Supervisory B/S Grade I Exam on 24.01.2005 and 25.01.2005 and he was declared passed (Annexure A/5). Subsequently the policy dated 28.11.2003 of the merger of the cadre of Meter Reader and Store-Keeper was declared illegal and it was cancelled. Therefore, the applicant was reverted from the post of Store Keeper to his original post of Meter Reader (HS-II) vide order dated 20.02.2006 (Annexure A/8).

3. The respondents thereafter issued a seniority list of Meter Reader (HSG) vide order dated 16.06.2006 (A/9). The name of the applicant is at sr. no. 14 of the seniority list while the name

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of respondent no. 5 appeared at sr. no. 17. Thus the applicant is senior to respondent no. 5 but even then the respondent no. 5 has been promoted to the post of Store Keeper Grade I on 01.12.2007 (Annexure A/10). Both the persons mentioned in this order are junior to the applicant. This order has been issued arbitrarily and malafidely without giving an opportunity of hearing to the applicant. Therefore, it is against the principle of natural justice and is against Articles 14 and 16 of the Constitution of India. The applicant was not even informed that the procedure for promotion has been initiated and there will be a test or selection who will be eligible for test. Had the applicant been informed then he would have appeared in the test or selection if required. The applicant had already passed the higher test and selection in the year 2005 but he was not given any information about the selection/test or promotion on the post of Store Keeper Grade I. The applicant was called for the test for Store-Keeper Grade I subsequently. He appeared in the test and was again declared passed even then the applicant was not given promotion to the post of Store Keeper Grade I from the date of promotion of his juniors.

4. Learned counsel for the applicant further argued that the applicant submitted an application in this respect that he has passed Store Keeper Grade I Examination vide Part II order dated 28.05.2008, subsequently vide Part-II order dated 09.06.2009 and has also appeared for B/S Grade I Examination and has passed the same as is evident from order published

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dated 27.07.2005. He stands on sr. no. 1 in the seniority list and, therefore, he must be given promotion on the post of Store Keeper Grade I/ BS Grade II being on sr. no. 1 at the earliest (Annexure A/12). The respondent no. 5 was allowed to appear in the selection/examination in the year 2003 of Store Keeper Grade I while the respondent no. 5 had not been promoted as HS- Grade II before appearing in the examination of Store Keeper Grade I. All these facts show that the respondents have not acted fairly in promoting respondent no. 5. If the applicant is not promoted as Store Keeper Grade I with effect from the date of his junior then his whole career will be spoiled because he will always remain junior to his juniors to the next grade. Therefore, learned counsel for the applicant argued that letter dated 23.02.2010 (Annexure A/1) be quashed and set aside and the respondents be directed to promote the applicant as Store Keeper Grade I with all consequential benefits with effect from the date of promotion of respondent no. 5 and other juniors.

5. On the other hand, learned counsel for the respondents argued that applicant appeared in SK-I examination and was declared pass on 28.05.2008 whereas cut off date for eligibility of promotion for the vacancy year 2007-2008 was 01st January, 2007 and, therefore, he was not eligible for promotion of SK-I for the vacancy year 2007-2008. Therefore, the action of the respondents is accordingly just, proper and as per the relevant provisions of rules and instructions on the subject. He also submitted that this OA has been filed by the applicant,

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challenging the promotion of respondent no. 5 dated 01.12.2007 whereas the applicant has filed this OA on 11.11.2010. Therefore, it is barred by limitation.

6. Learned counsel for the respondents further argued that the policy of merger of the post of Meter Reader and Store Keeper was cancelled vide order dated 20.02.2006 and the applicant after accepting the same is working as Meter Reader Grade II on the post on which he was working prior to 08.03.2004. He further argued that cancellation of this policy is not under challenge in this OA. Therefore, the averments of the learned counsel for the applicant that he was not heard before the cancellation of policy of merger does not hold good.

7. Learned counsel for the respondents further argued that private respondent no. 5, Shri B.G. Shelka, was Meter Reader (HSG) w.e.f. 03.04.2003 and passed Store Keeper Grade I Examination during 2003. As such he was eligible for promotion to Store Keeper Grade I as on 01.01.2007 on account of cut off date as per recruitment rules whereas the applicant has not passed the departmental examination of Store Keeper Grade I on cut off date and passed on 28.05.2008. Therefore, inspite of his seniority, he could not be considered eligible by the DPC. Therefore, the allegation of the applicant that inspite of being senior to respondent no. 5, he is not promoted is totally wrong, misconceived and baseless.

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8. He further argued that as per Military Engineering Services (Barrack/Stores Group 'C' Non Industrial posts) Recruitment Rules, 1989, the post of Supervisor Barracks/Stores Grade I was the selection post and for promotion, the essential qualification was "Supervisor Barracks/Store Grade II, who have passed Supervisor Barrak/Stores Grade I Examination and have five years regular service in grade". Thus only because the applicant is senior to respondent no.5 and that respondent no. 5 has been promoted vide order dated 01.12.2007, the applicant has no right of promotion as per relevant rules. The applicant declared passed in SK-I examination on 28.05.2008, which is also evident by perusal of Annexure A/11. Thus the applicant was not eligible/qualified for the vacancy year 2007-2008.

9. Learned counsel for the respondents submitted that the case of the applicant has already been examined by the competent authority and decision in this regard has already been intimated to him vide letter dated 23.02.2010 (Annexure A/1). Therefore, no action was required to be taken on the application submitted by the applicant. Thus, the present OA has no merit and it should be dismissed with costs.

10. Heard the rival submissions of the parties and perused the documents on record. It is not disputed that the policy of merger of the cadre of Meter Reader and Store Keeper was promulgated on 28.11.2003, which was subsequently declared as illegal and was cancelled vide order dated 31.03.2006 (Annexure A/7). This

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cancellation order is not under challenge in the present OA. The prayer of the applicant is that he is senior to respondent no. 5, therefore, he should be promoted from the date his junior employees have been promoted. Learned counsel for the respondents did not dispute that in the seniority list of HSG, the applicant is senior to private respondent no. 5 but he argued that private respondent no. 5 passed the Store Keeper Grade I Examination during 2003, as such he was eligible for promotion to Store Keeper Grade I as on 01.01.2007 i.e. cut off date as per the Recruitment Rules. Whereas the applicant though senior did not pass the departmental examination of Store Keeper Grade I earlier to cut off date but passed it on 28.05.2008. This fact has not been disputed by the learned counsel for the applicant. However, he argued that he was not given an opportunity to pass that examination at the relevant time. He argued that passing of departmental Store Keeper Grade I Examination for promotion from SK-II to SK-I was not essential for the existing Meter Reader (HS-II) as per the policy of merger. This was one time exception. Therefore, it was not required from the applicant to pass this examination. However, we are of the opinion that since the policy of merger was later on declared as illegal and was cancelled, therefore, this exception of not passing the Departmental Store Keeper Grade I Examination for promotion also goes away. Therefore, it was incumbent upon the applicant to pass the Departmental Store Keeper Grade I Examination for promotion from SK-II to SK-I. Subsequently the applicant also appeared in this examination and passed it on 28.05.2008. Since

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the applicant passed this examination on 28.05.2008, therefore, he was not eligible for promotion to SK-I for the year 2007-2008 as cut off date for eligibility of promotion for the vacancy for the year 2007-2008 was 01.01.2007. On the other hand, respondent no. 5, though junior to the applicant, passed this examination during 2003 and as such, he was eligible for promotion to Store Keeper Grade I as on 01.01.2007 that is cut off date as per the Recruitment Rules. Therefore, in our opinion, we find no irregularity/illegality in the promotion of respondent no. 5. Thus the applicant has failed to make out any case for our interference in the present OA.

11. Consequently the OA being devoid of merit is dismissed with no order as to costs.

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(Anil Kumar)
Member (A)
AHQ

K.S. Rathore

(Justice K.S.Rathore)
Member (J)