

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OT No. 302/96

K. C. Nath & Ors. Applicant(s)
Versus

Minor. 2. Pandey & Ors. Respondent(s)

M. B. Mehta & S. Sarma. Advocates for Applicant(s)

Mr. S. Ali, Sr. C.G.S.C. Advocates for Respondent(s)

Office Notes Date Courts' Orders

This application is in
form and within time
C. E. of Rs. 50/-

deposited vide

110/29/96 9/6/97

Date 1.4.97

Mr. S. Ali, Sr. C.G.S.C.
Dy. Registrar 1.4.97

6.1.97

Mr. S. Sarma for the applicants.

Mr. S. Ali, Sr. C.G.S.C for the respondents.

Heard Mr. S. Sarma on the prayer
for allowing the applicants to join
together in this single application.

Prayer is allowed as the terms and
conditions under Rule 4(5) (a) of the
C.A.T(Procedure) Rules 1987 are ful-
filled.

Heard Mr. Sarma for admission.
Perused the contents of the applica-
tion and the reliefs sought. The
grievance of the applicants is that
they should be considered for pro-
motion to H.S. Grade II from the date
when Sri Pandey was promoted. It is
seen that there is no case for scrup-
lous and decision in this applica-
tion at this stage. The applicants
had submitted representations before
the competent authority of the res-
pondents. The Assistant Garrison
Engineer E/M Borjhar vide his letter
No. 106/58/EM dated 13.7.96 had
returned the representations of the
applicants on the ground that their
cases had already been taken up with

6.1.97 the higher authority by the Commander Works Engineer(AF), Guwahati and further action will be taken on hearing from the higher authority. It has been submitted by Mr Sarma that up till now there has been no reply from the respondents. In the circumstances this application is disposed of with a direction to the applicants to submit fresh representations to the competent authority of the respondents within 1 (one) month from today and further that the competent authority of the respondents shall dispose of the representations of the applicants within 1 (one) month from the date of receipt of the representations.

The application is disposed of.
No order as to costs.

The applicants will be at liberty to approach this Tribunal again if they are still aggrieved with the order of the competent authority.

Copy of this order may be furnished to the counsel of the parties.

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Member

10/1/97
Copy of the order
has been issued to the
parties alongwith L/Admrs
of the parties vide S.N.
208 to 215 d: 15.1.97

✓

3/1
Central Administrative Tribunal

नियन्त्रित प्रशासनिक बहिकरण

31 DEC 1996

Gauhati Bench

गौहाटी बैचन्क

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH

(An application under Section 19 of the Administrative
Tribunal Act, 1985).

Title of the Case : O.A. NO. 300/96

Sri K.C. Nath & Ors. Applicants

-Versus-

Union of India & Ors. Respondents.

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For use in the Office

Date of filing : 31-12-96

Registration No. : 07.300/96

Copy send to
Mr. S. S. S. S.
S. S. S. S.
S. S. S. S.

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Filed by *Mr. D. D. Datta* on 30/12/1996

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH

(An application under Section 19 of the Administrative
Tribunal Act. 1985)

O.A. No. 80/..... of 1996.

BETWEEN

1. Keshab Chandra Nath
Son of Sri B. Nath
At present working as Ref./Mech.
Vill/P.O. : Borjhar, Guwahati-15 under MES,
Borjhar, Guwahati-15.
2. Sri Dinabandhu Gupta
Son of Sri K.N. Shah
At present working as Re. Mechanic, under
MES Borjhar, Guwahati-15.
3. Sri Bipin Bihari Singh
At Present working as Ref. Mechanic under
MES, Borjhar, Guwahati-15.

..... Applicants.

- AND -

1. The Union of India reprented by Secretary of Ministry
of Difence New Delhi.
2. Commandan work Engineers, Engineering service
New Delhi
3. Chief Engineer (Air Force) Shillong Zone Shillong-11.
4. Commandor Work Engineer (Air Force), Santipur, Guwahati-9.
5. Gerrison Engineer (Air Force) Borjhar, Guwahati-15

.... Respondents.

Contd.... P/2

Details of Application

1. Particulars of the orders against which the application is made.

This application is made against the deemed refusal of promotion to the applicants ignoring the settled proposition of "Principle of Next Below Rule" by the respondents. This application is also made against the order rejecting the prayers of the applicants in regards to their promotion.

2. Jurisdiction of the Tribunal :

The applicants declare that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :

The applicants further declares that the instant application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act. 1985.

4. Facts of the case :

(4.a) That the applicants above named were initially appointed under the respondent, since 1971, 1960, and 1970 respectively. All the applicants have come before the Hon'ble Tribunal making grievance against the empathy shown by the respondents in regards to their promotion to the next higher Grade i.e. H.S. Gr.II. The circumstances which necessitated the filing of the instant case are similar. The Prime cause ^{action for which they} of pray redressal of these grievances are also similar in nature and hence the applicants crave leave of this Hon'ble Tribunal to allow them to join together in the single application invoking, Its power under rule-4 (5)(a) of Central

Yes

Contd... P/3

Administration Tribunal (Procedure) Rules- 1987.

(4.b) That all the applicants are citizen of India and as such there are entitled to all the rights protection and privileges as guranteed by her constitution of India and laws framed there under.

(4.c) That as stated above all the applicants have been working since long under the respondents. For better appreciate of the facts a tabular chart showing the service particulars of the applicants as follows :-

I) . Applicant No.1, Sri Keshab Ch. Nath joined in the service under Assistant Garrison Engineer Borjhar as Motor Pump Attendant in the year 1971. He worked up to 1977 in the same capacity and got promoted on 6.8.77 as Ref. Mech. (Skilled) and has been working in the same capacity till date.

II) Applicant No.2, Sri Dinabandhu Gupta joined in the service of MES. as chowkidar in the year 1960. Subsequently he was promoted to Motor Pump Attendant with effect from 1-5-1871. Lastly, he was promoted to Ref. Mech.(Skilled) with effect from 22-7-1977 and working in the same capacity till date.

III) Applicant No.3, Sri Bipin Bihari Singh joined the service under MES as Motor Pump Attendant with office from 7.4.1970. On 22.7.1977 he was promoted to Ref./Mech ~~(Skilled)~~ ^(Skilled) And ^{with effect} till date , He is stagnatting in the same capacity.

(4.d) That as stated above in the tabular chart all the applicants are holding the post of Ref./Mech. since long. As per the avenue of promotion they are required to be promoted to H.S. Grade-I¹. as per later dated 18-4-1986 issued by the respondents to consider the case of promotion from skilled to H.S. Grade-II as a special one time concession only on the basis of seniority without obligation to qualify in the ~~Ex~~ Trade Test.

A copy of later dated 18-4-86 is annexed hereto as Annexure-1.

(4.e) That the applicants above named state that one Shri K.K. Pandey (MES/224292) who is much junior to the applicants has promoted to the post of H.S. Grade-II w.e.f. 15-7-1958. The names of applicants are in Sl.No.6, 4 and 5 respectively, Whereas the name of Sri K.K. Pandey is at Sl.No.7.

A copy of the extract of gradation list dated 17.4.1989 is annexed as Annexure-2.

(4.f) That the applicants being aggrieved by their non-promotion to H.S. Grade-II made several representations stating that their cases had been ignored and their juniors have been ~~far~~ promoted superseeding them.

(4.g) That pursuant to their complaints and knowing the facts that said Sri K.K. Pandey is much junior to the applicants. The respondents vide its order dated 8.7.92

cancelled the order promotion of Sri K.K. Pandey and reverted him to his original Post that is skilled grade from H.S. Grade-II

It will be pertinent to mention here that said Sri K.K. Pandey approached the Hon'ble Tribunal Vide O.No. 137 of 1992. The Hon'ble Tribunal on hearing the parties on 7.9.1995 allowed his said application. In the said order dated 7.9.98 passed in O.A. No. 137/92 the Hon'ble Tribunal hold that the order dated 8.7.1992 cancelling the promotion of said Sri Pandey is bad in law and the said order was set aside and quashed.

- A copy of order dated 7.9.95 passed in O.A. No. 137/92 is annexed hereto as Annexure-3.

(4.h) That in view of the said order dated 7.9.95 passed by this Hon'ble Tribunal said Sri Pandey was retained in his post of H.S. Grade-II though he is much Junior to the applicants in the instant application. The applicants made several representation but due to the pendency of the said O.A. the respondents were handicapped. Finally on 18.3.96 the applicants made representations to the concerned authority for their promotion to H.S. Grade-II.

Copy of one of such representation filed by applicant No.1 is annexed hereto as Annexure-4.

(4.i) That after receipt of the annexure-4 representation, the respondents on 13.7.96 replied that their cases has already been taken up with higher authority vide their letter No. 1016/C K.K.P/148/E-1 NB dated 2nd May '96 and further action will be taken up on hearing from higher authority.

: 6 :

A copy of the letter dated 13.7.96 enclosing the said letter dated 2.5.96 ~~the said~~ is annexed as Annexure-5 and 5A respectively.

(4.j) That till the date of issue of Annexure-5 order nothing has been communicated to the applicants. The respondents knowing fully well the situation that said Sri K.K. Pandy is much junior to the applicants have acted illegally by promoting him above this applicants. As per the Annexure-2 Gradution list dated 7.4.1989 the in clear that the applicants are much senior to said Sri K.K. Pandey, However the respondents have not considered the name of the applicants, for the reasons best known to them.

(4.k) That the applicants submit that in view of the settled principles of "Next below Rule" their cases are required to be considered from the date when Sri Pandey was so promotted. As per the guidelines (Annexure 1) the applicants were required to be promoted but instead of the considering the case of the applicants and on a wrong motion said Sri Pandey has been promoted.

(4.l) That the applicants submit that there is no disput that the applicants are much senior to said Sri Pandey and they are required to be promoted w.e.f. the date on which said Sri Pandey was so promotted. It is further submitted by the Applicants that the respondents ~~in~~ consideration of some extraneous factors has been delaing the matter. Hence this application praying for as a direction to the respondents to promot the applicants from Skilled Grade to H.S. Grade-II with respr-ospective effect i.e. from the date on which Sri Pandey was so promoted with all consequential benefits.

5. Grounds for Relief with legal provisions :

(5.a) For that prima facie the action/inaction on the part of the respondents are illegal, arbitrary and violative of the principles of Natural Justice and have same are liable to be scrutinised by this Hon'ble Tribunal.

(5.b) For that it is a settled proposition of law that, in respect of promotion, basing only on the seniority critaria, the senior most person must be considered first for the said promotion and as and when the junior person is so promoted the cases of the seniors is automatically required to be considered from the date on which his junior was so promoted or earlier i.e. from the date from which he was due for the said promotion and hence the matter required to be examined by this Hon'ble Tribunal in respect of the present applicants.

(5.c) For that the action on the part of the respondents are in violation of the settled principles of "Next below Rule" and hence the applicants are required to be promoted w.e.f. the date on which Sri Pandey was so promoted or earlier to that, with all consequential benefits.

(5.d) For that it is clear that in all respect the applicants are senior to said Sri Pandey and the respondents have not yet disputed the fact that the applicants are not eligible for the said promotion and accordingly the applicants are entitled to be granted with the relief sought for in this application.

(5.e) For that the Hon'ble Tribunal vide . Its order dated 7.9.95 quashed the cancellation order of promotion of said Sri Pandey and hence there is no earthly reasons as to why for the same benefit, the applicants are required to come before this Hon'ble Tribunal, and accordingly the respondents are required to be directed for their promotion without further delay.

(5.f) For that in any view of the matter in action of the respondents are not sustainable in the eye of law.

6. Details of Remedies Exhausted :

The applicant declares that he has no other alternative or efficacious remedy than to come under the protective hands of this Hon'ble Tribunal.

7. Matters not previously filed or pending before any other court :

The applicant further declares that he has not filed any application, writ petition or suit before any other Court and/or authority and/or any other Bench of this Hon'ble Tribunal in respect of the subject matter of the instant application nor any such application writ petition or suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances stated above, the applicants most respectfully pray that the Hon'ble Tribunal may be pleased to admit this application, call for the records

of the case and upon hearing parties on the cause or causes that may be shown, be pleased to grant the following reliefs to the applicants.

i) To direct the respondents to promote the applicants to H.S. Gr.II with retrospective effect i.e. ~~as~~ from the date on which said Sri Pandey was so promoted or earlier with all consequential service benefits.

ii) To direct the respondents to assign the correct seniority position taking into account the present facts and circumstances of the case.

iii) Cost of the application.

iv) Any other relief/reliefs to which the applicants are entitled under the facts and circumstances of the said case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim order prayed for :

The applicants at this stage do not pray for any interim order. However they crave leave of this Hon'ble Tribunal to file such application as may be required to get appropriate interim order during pendency of this application.

10. The application is filed through advocate.

11. Particulars of the I.P.O.

- i) I.P.O. No. : 809 349471
- ii) Date : 4/12/96
- iii) Payable at : G.P.O., Gauhati.

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VERIFICATION

I, Shri Keshab Chandra Nath, S/O Sri Benudhar Nath, aged about 47 years, at present workings as Ref/ MECH (Skilled) under the Garrison Engineer (AF) Borjhar Guwahati-15, do hereby solemnly affirm and verify that the statements made in the instant application in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

I am the applicant No.1 in this instant O.A. and I am authorised to sign this verification.

And I sign this verification this the 29th day of Dec. '1996 at Gauhati.

Keshab Ch. Nath

Applicant

ANNEXURE 1

ASSAM MES EMPLOYEES UNION
Registered Under Indian T.U. Act. xvi of 1926
Regd. No-452
Affiliated with AIDEF. Affiliation No. 130
Head Office: ROWRIAH JORHAT-5
Liasion Office: BORJHAR GAUHAT 12-A-15

Ref. No. AME S/EU/HO/23

Date: 18 April '86

To
All Central Office Bearers
and
Secretarys of the Branches

INTRODUCTION OF 3GRADE STRUCTURE TO COMMON
CATEGORIES OF INDUSTRIAL PERSONEL

Comrades,

Acopy of the G of I, M of D letter No. 1(I)/80/ D(ECC/IC) Vol- III dt. 8 April '86 is enclosed herewith. Please go through this letter in conjunction with E-in- C's Br. letter No-90270/89/EIC dt. 4 July '85 and our Circular letter No-AMES/EU/HQ/23 dated 13 March '86.

Para II A(b), II B (b) of the Annexure-1 to the Govt. Orders dt, 8 April '86 is applicable for MES. Through the Govt. Orders in Para-II.A(b) stated first about H.S. Gde-1, but promotion of 35% of Skilled Categories to be upgraded first to H.S. Gde-II as stated in para II(B)(b)(I) to (iii). In order to do the same the following steps may be followed:-

- (a) 1st: Calculate the authorized strength of H.S Grade-II for each group as given in Appendix A in E-in-C's letter No-90270/89/EIC dt. 4 July '85. This is to be calculated on 35% of the authorized strength less the nos. of existing of charge Elect, Charge Mech and Charge Mech(Ref.) where applicable. This was explained in last CWC meeting at Jorhat on 6th April '86.
- (b) 2nd: Insist your CWC to group Turner, Moulder, Welder and Blacksmith for purpose of calculating 35% of the authorized strength of H.S Grade-II in terms of Govt. of India, M of D letter dt. 15th Oct. 1984. This is required due to the fact that numberswelder, Turner is very less in a CVE Area.
- (c) 3rd. Seniority list of each trade of the common category to be checked. While determining the seniority of cabinet Maker, Electrician, Fitter (those promoted from pipe Fitter), care to be taken to count their seniority from the skilled grade from which they are promoted. Seniority of S/C and S/F candidates for each trade to be drawn.
- (d) 4th: 20% of the authorized strength will be promoted as per seniority following the 40 point roster. The promotion will be effected from 15th Oct. 1984 anticipated for the next increment from 1st Oct. 1985.

Alvin
93 form

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(e) 5th: Balance 15% of the authorised strength will be promoted after passing trade test for HS Gde, II. They will get two chances for T/Test within 30.6.86. They will be promoted wef 15 Oct. 1984 and 40 points roster will be followed.

(f) 6th: 15% of the authorised strength of each Grade will be promoted to HS Gde.-I after passing the ~~the~~ Trade Test and promotion will be effected from 15.10.85.

(g) 7th: Workers who are due to retire within the period from 15.10.84 should be included in the seniority list as per the para B (b)(ii) of the above letter.

Please ensure the correct implementation of the orders and no times should be allowed to the authorities for asking clarification from higher authorities.

(D.K. NATH)
General Secretary
ASSAM M E S EMPLOYEES UNION

Dinesh Nath

This issues with the concurrence of Ministry of Defence (Finance), vide U.O. No. 384/Dir(Implementation)/86 dated 8th April 1986.

Yours faithfully

Sd/ -X-X-X-X-X-X-
(III, AHUJA)
DEPUTY SECRETARY TO THE GOVT. OF INDIA

ANEXURE-A

ANNEXURE TO MINISTRY OF DEFENCE LETTER NO. 1(1)/87/D(ECC/IC)/
VOL.III dated 8th April, 1986.

INTRODUCTION OF THREE GRADE STRUCTURE IN 23 COMMON
CATEGORIES JOB WHICH HAVE BEEN ALLOWED BENCH MARK.
PERCENTAGES IN HIGHLY SKILLED GRADE I

1. Units under DGOF/DGI

(a) In any unit on which Ministry of Defence (Department of Defence Production) letter No. 1(32)/82/D(Inspection), dated 11-4-1985 has been even partially implemented, the benefits of letter dated 11-4-85 shall be allowed to all eligible functionaries covered under Ministry of Defence letter No-3808-3823/DS(O&M)/Civ.I/84 dated 15-10-84. Implementation shall mean the issue of an order by the Head of the Unit concerned notifying the names of the workers who have been promoted to Highly Skilled Grade I or Highly Skilled Grade II. To elucidate if such implementation has taken place in respect of even one worker in a given unit, all the remaining eligible workers in that unit shall be similarly benefited viz. promoted to Highly Skilled Grade-II and from Highly Skilled Grade-II to Highly Skilled Grade-I as the case may be, in terms of the Ministry of Defence letters of 15.10.84 referred above, and a rears paid accordingly.

(b) In a unit in which Ministry of Defence (Department of Defence Products) letters of 11.4.85 referred to above has not been implemented as defined in (a) above, and not even a single worker has been promoted by the units management to Highly Skilled Grade-I or Highly Skilled Grade-II under the relaxation stipulated in the Ministry of Defence (Department of Defence Production) letter dated 11.4.85, no worker will be given the benefits of Ministry of Defence letter of 11.4.85. All the workers in such units shall be covered as under para-II below.

.....3/-

Revised copy

No. 1 (1)/8 O/D(ECC/1CO) Vol.-III
 Government of India
 Ministry of Defence
 New Delhi, the 8th April, 1986

To
 The Chief of the Army Staff
 New Delhi
 The Chief of the Naval Staff
 New Delhi
 The Chief of the Air Staff
 New Delhi

Subject: Fitment of Industrial Workers in Pay-Scales
 recommended by the Third Pay Commission.

Sir,

I am directed to say that in this Ministry's letter Nos. ~~xxxxxxxxxxxxxx~~ 3808-3823/DS(O&M)/Civ-I /84, dated the 15th Oct. 1984, it was, inter alia, clarified that Highly Skilled Grade-II and Highly Skilled Grade-III scales should be introduced in common category Skilled Jobs, listed in Annexure-I of those letters, with bench mark percentages as laid down therein. It was clarified Vide OM No.1(2)/80/D(ECC)/IC/Vol.III(PC), dated 19th April, 1985, that pending the framing of the formal Recruitment Rules, promotions to Highly skilled Grade-II and Grade-I would be subject to passing the Trade Tests and experience as specified therein.

2. The matter has been reconsidered in consultation with Indian National Defence Workers Federation and All India Defence Employees Federation and a negotiated approach arrived at, as in Annexure-A to this letter. Accordingly, promotions to Highly Skilled Grade-II/Grade-I shall be regulated in accordance with the provisions of Annexure-A. Promotions already made but which are not in consonance with Annexure-A, shall be regulated in terms of the provisions in Annexure-A and excess/unauthorised payments in respect of such promotions shall be regulated in accordance with the normal rules. It should be noted that the one-time relaxation prescribed in Annexure-A is applicable only to workers in the common category jobs enumerated in Annexure-I to this Ministry's letter No. 3008-3823/DS(O&M)/Civ-I/ 84, dated the 15th Oct., 1984, and is not to be treated as a precedent in other cases.

3. I am also to request that necessary administrative instructions should be issued, as required under paragraph II A(b) of Annexure-A, by the stipulated date and copies of the same sent to the Ministry. I am further to request that quarterly implementation report in respect of this letter may please be sent to the administrative sections concerned in the Ministry. The first report indicating the position as on 30th June, 1986 should reach by the 5th July 1986 and so on.

Ans for

II. All units under DGOF/DGI as in I(b) above and all other units under the Ministry of Defence.

In so far as workers in the units under DGI/DGOF of the category as in I(b) above and in all other units under the Ministry of Defence are concerned, their cases shall be covered as follows:-

A. Promotion to Highly Skilled Grade-I.

(a) In any unitxx Recruitment Rules were in existence, the workers satisfying the prescribed criteria shall be eligible for promotion to Highly Skilled Grade-I with effect from 15.10.84.

(b) In any unit in which Recruitment Rules were not in existence on 15.10.84, workers shall be considered for promotion after passing the trade test or after clearance by DPC, as may be prescribed. However, in so far as the experience criteria is concerned, it shall be relaxed from the normal 2/3 years to one year, as a special one time concession. Workers qualifying the trade test shall be promoted to Highly Skilled Grade-I with effect from 15.10.85. Pending finalisation of Recruitment Rules, administrative instructions, prescribe the criteria to be followed in effecting promotions from Highly Skilled Grade-I to Highly Skilled Grade-I, will be issued by 31st May, 1986.

B. Promotion Skilled Grade to Highly Skilled Grade-II

(a) In units in which the Recruitment Rules exist, the same shall be enforced to cover all promotion cases.

(b) In units in which Recruitment Rules are not enforced the promotion of workers shall be as follows:-

(i) 20% of the vacancies as on 15.10.84. shall be filled merely on the basis of seniority, without obligation to qualify in the trade test.

(ii) Out of the 20% slab, as in (i) above, all workers who are due to retire within the period from 15.10.84 to 30.4.86 shall be included. If the number of such retirees exceeds 20%, only up to that extent, the 20% stipulation for Highly Skilled Grade-II shall be exceeded.

(iii) Over and above the 20% vacancies, referred to in (i) above, a further 15% post will be operated at Grade-II level (till promotions are made to Grade-I on the basis of the trade test referred to in 1A(b) above) and Skilled workers will be promoted to Grade-II subject to their passing the test within two chances by 30.6.86. Those who qualify shall get the benefit x of promotion w.o.f. 15.10.84.

If, however, the number of promotees to Highly Skilled Grade-II exceeds 20% due to the number of retirees being large, the additional 15% shall be reduced so that the total number of workers getting on to Highly Skilled Grade-II on 16.10.84 shall not exceed 35%.

Revised form

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III. As regards the cases of workers who have received excess/unauthorised payments, the same shall be regulated as per normal rules.

IV. The one time dispensation in paragraph-I and II above, which related to 23 common categories of workers recommended bench mark percentages by the Anomalies Committee and which would be operational only for a single day (viz. 16.10.84) shall not be quoted as a precedent and no fresh demand raised for extending singular benefits to other categories of workers.

Review

6. 17. 4. 89
1. 2. 3. 4. 5. 6. 7. 8. 9.

Dhan Kumar E.3.50 Assam Passed
Baruah 4236 MPA(Pt) 02.22.75 To GE

2. 224599 Sandkar 17.3.50 Bihar Metric Dist. Refs/Shech 2.12.75 BORJA

RefTech 5.4.75 No GS MARANT 5.4.75

3. 22.5.29 1.5.49 Silcher ESTC Pitt
Govinda Aswan passenger Pittman May Ref# 782297 GS

Proven ~~Received~~ ~~4.4.57~~ B.C.H.(P.T) 18 NAGARJU 4.4.57
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Date 10-20-58

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 K K Pandav 30.1.71 Rec'd. tech 1.4.81 27.3.71

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69 100-1457 Gausdorff Passed SEP 1980
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100-1457 100-1457

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALI BENCH : C.I./A.D.T.5

O.A. No. 137 of 1992.

Date of hearing 7.9.95

Sri Kamakhye Kumar Pandey

PETITIONER(S)

Mr. K. Bhattacharjee

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. A. K. Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

M.G.Chaudhary

Judgement delivered by Hon'ble Vice-Chairman.

Attn: [unclear]

- 19 -

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 137 of 1992.

Date of decision : This the 7th day of September, 1995.

The Hon'ble Justice Shri M.G.Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member(Administrative).

Sri Kamakhy Kumar Pandey,
S/o Late R.S. Pandey,
Ref/Mech/(H.S. Grade-II)
Class III employee
AGEE/M Digaru.

... Applicant

By Advocate Mr. K.Bhattacharjee.

-versus-

1. The Union of India,

2. Commander Work Engineers
Military Engineer Services
A.T.Road, Santipur,
Guwahati-781009.

... Respondents

By Advocate Mr. A.K.Choudhury, Addl. C.G.S.C.

O R D E R

CHAUDHARI J (V.C.)

The applicant joined the Military Engineers Services (MES) as a Mazdoor in 1965. He was promoted as Motor Pump Attendant in 1972. By order dated 14.12.1987 issued by the A.E. he was informed to keep himself in readiness for promotion to the post of Charge Refrigerator/ Mechanic (Grade-I post). By order dated 11.2.1988 he was promoted to that post with effect from 6.1.1988. That order was however cancelled by subsequent order dated 19.2.1988. Against that cancellation he preferred a representation. In

After

reply he was informed on 15.7.88 that he had been wrongly promoted and therefore it was cancelled but he was eligible to be promoted in skilled grade to the post of Refrigerator/Mechanic (Grade-II) and was promoted to that post instead to Grade-I. Once again that promotion was also cancelled by the order dated 8.7.92 issued by the Garrison Engineer(AF) Borjhar, Guwahati. The said order is challenged in this O.A.

2. It is the contention of the applicant that although his first promotion was wrongly cancelled but he had accepted that position and great injustice has been done to him by cancellation of the second promotion also and the said cancellation is illegal. He avers that he had passed the relevant trade test and was promoted after being selected and there was no reason to cancel his promotion for the second time within the span of 15 years of service in the ~~Force~~ ~~Trade~~. The promotion was cancelled nearly after about 7 years. The applicant also points out that Dhan Kumar Baruah and G.S.Mishra could not be preferred over him having regard to the interse seniority position and the date of passing the trade test.

3. The reason for the cancellation can only be inferentially gathered from the impugned order to have been the result of a complaint of Dhan Kumar Baruah and G.S. Mishra in consequence of which a Board of Officers was appointed and a Review DPC was constituted to remove anomalies in the seniority list. In pursuance of its report the applicant was required to be demoted.

Answered

4. The written statement unfortunately is not of any particular assistance to gather the precise reasons for cancellation of the promotion of the applicant which as initially stated had been given according to the guidelines. It is also not the case of the respondents that the applicant was not eligible for the second promotion. A vague statement has been made in paragraph 5 of the written statement that the applicant could not be promoted as per the guidelines of E-in-C under three grade structure and area seniority which had not been kept in mind while issuing the promotion order. Neither the guidelines have been produced nor what is meant by three grade structure has been explained nor any seniority list has been produced. Similarly in paragraph 7 it is vaguely stated that the applicant was junior to other six Nos. of Refrigerator/Mechanic Skilled, such as Dhan Kumar Baruah, etc. and the senior individuals had represented regarding the irregular promotion (of the applicant) and the complaint was found genuine. The respondents have not categorically stated as to what was the seniority position of Dhan Kumar Baruah vis-a-vis the applicant nor they have referred to the position of G.S. Mishra. That was material to be explained as the reason for cancellation of the promotion of the applicant was that complaint. The complaint of the said persons is also not precise and it is difficult to know as/exactly on what ground the applicant was demoted.

5. A copy of the report of the Board of Officers is annexed to the written statement. That also is not sufficient to throw any light on the material aspects. All

Ans

that it goes to show is that G.S.Mishra was senior to the applicant and had passed the trade test on 28.5.79 prior to the applicant who had passed it in September 1980. There is however no mention about Dhan Kumar Baruah or his position vis-a-vis the applicant. Moreover no reliance can be placed on that report as its correctness is rendered doubtful from the circumstance that although it was supposed to be the Board of 'Officers' one of its Members was the Union Secretary who cannot be described as 'Officer'.

6. In short the picture is not at all clear and it is not therefore possible to gather that the order of cancellation of promotion of the applicant is based upon any valid ground or was in accordance with the applicable rules. These aspects were required to be examined by the authority to whom the applicant had filed the representation on 3.7.92 namely the Commander Works Engineer (A/F), Guwahati. In that representation the applicant had pointed out that he was placed at serial No. 1 in the merit list of qualifying candidates for promotion and was accordingly promoted and although he had represented his case earlier it was not being considered and injustice was done to him. In this connection it is also material to note that by the notice of the proposed order dated 8.6.92 the applicant was called upon to show cause, if any, against the proposed action thereunder within 15 days from the date of receipt of the notice (order). The order was received by the applicant on 2.7.92. Thereafter he had indeed filed his representation on the very next day after receiving the order i.e. on 3.7.92. However the impugned order was passed on 8.7.92. It does not refer to

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the representation and looking to the small time gap the order in all probability appears to have been passed without considering the representation. That inference is strengthened from Annexure 'X' also dated 8.7.92 whereunder the AGE E/M DIGARU forwarded the representation of the applicant received on 7.7.92 through proper channel, to the superior authority namely Garrison Engineer, Borjhar for due consideration. That clearly goes to show that the representation could not be considered and was not considered by the Garrison Engineer who has passed the impugned order. Thus after having called upon the applicant to show cause the impugned order has been passed even without waiting for the period of notice to expire and receipt of a representation. It is pertinent to note that in the fowarding letter the AGE E/M Digaru had stated thus "the individual has already rendered services in the trade for more than 16 years. Before taking any action, due consideration may please be given to the length of services rendered". This vital aspect however could not be considered by the Garrison Engineer who unfortunately had passed the impugned order on 8.7.92 before receipt of the letter.

7. Thus the respondents have not explained the grounds on which the impugned order can be sustained and they have also not acted in consonance with principles of natural justice in passing the order without considering the version of the applicant. Interest of justice therefore requires that the representation of the applicant is considered by the Garrison Engineer, Borjhar on merits in the light of the circumstances interalia that the promotion was being cancelled after 7 years and that too on

Acw 9/6

a complaint of other employees to which complaint the applicant was not a party and had no opportunity to show cause against it and the view expressed by the AE as reflected in Annexure X. It will be open to the said authority to take such decision as he thinks proper on the representation and intimate the same to the applicant. The applicant will be at liberty to pursue legal remedies if he feels aggrieved with the decision.

In the result the impugned order dated 8.7.92 cancelling the promotion of the applicant as Ref/Mech-HS Grade-II is hereby quashed and set aside without prejudice to the right of the respondents to take appropriate steps consistently with the decision on the representation of the applicant dated 3.7.92 and to pass such order as may be called for in respect of the applicant in the light of the decision on the representation by the Garrison Engineer (A/F), Borjhar. As a consequence of quashing the impugned order the applicant shall be deemed to be continuously holding the promotional post till further orders are passed after consideration of his representation as indicated above.

The O.A. is allowed in terms of the aforesaid order. No order as to costs.

A

Final

From : MES/225107
 Shri Keshab Ch. Nath
 Ref/Mech (SK)

To The CWE (AF) Gauhati
 Ga uhati- 9
 (Through proper Channel)

Sub : PROMOTION FROM REF/MECH SKILLED TO THE GRADE HS-II

Sir, With due respect and humble submission I may again submit the following facts in continuation of my applications dated 27-May, '88, 16Luly'88, 8th Nov'88 and 25 th Jul. 91 for your kind consideration and favorable order Please:-

- (i) I am serving in the Grade of Ref/Mech (SK) wef 6 Aug'77 and become pt on 1st April '81.
- (ii) I have completed about 18 yrs in this grade with my sincere duty.
- (iii) As such I may be promoted to the grade HS-II from Ref/Mech (SK) getting me one time relaxation under three grade structure, letter April'86 in E-in-C's Branch Army HQ DHQ New Delhi.
- (iv) In this connection CAT Gauhati Branch order dt. 07-9-95 against the O.A. No 137 of 1992 may kindly be looked into whereas other salient feature for promotion have been examined such as length of senior etc. and as per E-in-C's order on the subject no Junior should superside his senior under my circumstances.
- (v) Based on these guidelines Hon'ble CAT Gauhati Branch has quashed and set aside the impunged order dt. 8-7-92 cancelling the promotion of MES/224292 Shri K.K. Pandey as HS-II and allowed to held the post of HS-II till further decision on his representation. Thus it transpire that my claim of seniority over Shri K.K. Pandey has not been over rubed by Hon'able CAT.
- (vi) It is pointed out that the undersigned should have been promoted to grade of HS-II prior to Shri K.K. Pandey. The reason to being that my seniority in the grade of Ref/Mech (SK) in 6-8-77 and seniority of Shri K.K. Pandey in this same grade in 8-8-77 evidently I am senior to Shri K.K. Pandey. I therefore request to your honour to promote me to the grade of Ref/Mech HS-II wef ~~15-7-88~~ 15-7-88.
- (vii) It may kindly be noted Sir, that if a kindness reply is notforth coming within 45 days the under signed will be compelled to go to the court of law for natural justice.

Thanking you Sir.

Yours faithfully.

Dated: 18th March '96
 Copy to:-
 1. The Union Secretary

(K.C.Nath)
 MES/225107
 Ref/Mech (SK)
 Borjhar

Tele :359 (AF)

Office of the AGE
E/M Borjar
Guwahati- 15

106/58/EM

13 July, '96

Shri B B Singh , Refg/Mech

Shri Kesha b Ch Nath -do-

Shri Dina Bandhu Gupta -do-

PROMOTION FROM REFG/MECH(SK) HS-II

1. Reference your application dated 01 Jun '96 , 30 May '96 and 05 Jun '96 respectively.
2. Your application for promotion from Refg/Mech(SK) to HS-II was fwd to CWE(AG) Guwahati but the same has been returned by them stating that the case already been taken up with higher authority vide their letter No.1016/C/KKP/148/EINB dt. 02 May '96 and further action will be taken on hearing from higher authority.
3. Hence, your application at reference is returned herewith alongwith a copy of CWE(AF) Guwahati letter quoted above for your information and necessary action.

Encls :- (3 sheets)

(Jagwant Singh)
Lt.
AGE E/M Borjar

Jagwant Singh

Tele : 545082

Commander Nirman Engineer AF
 Commander Works Engineer, AF
 A.T. Roa d, Santipur
 Gauhati-781 009

1016/C/KKP/148/EINB

02 May, '96

E-in-C's Branch
 Army Headquarters
 DHQ PO New Delhi-11

CA NO ***** 137/92 FILED BY SHRI K.K. PANDEY AND
CA NO-152/92 FILED BY SHRI M. PASWAN

1. *Reference your HQ letter No 90237/4340/EIC (3)/Legal-B
 dated 13 Dec. 95.

2. The following documents are submitted herewith :-

- (a) Opinion of CGSC in respect of CA 137/92
- (b) -do- CA 152/92
- (c) Opinion of CWE
- (d) Opinion of MOL Calcutta

3. The following documents has already been submitted as per our
 letter shown against each :--

- (a) CAT Judgements : Vide our No 1016/C/KKP/106/
 EINB dt. 06 Nov. '95
- (b) Copy of CA alongwith : Vide our No 1016/C/KKP/118/
 itsenclosures EINB dt. 26 Dec. '95.
- (c) Copy of counter affidavit : -do-
- (d) Copy of statement of case ; -do-
 andparawise comments

4. As per the CAT Judgement , Shri KK Pandey has been allowed
 to retain his promotion with the seniority of 8-8-77. In
 this connection it is submitted that the following individuals
 whose names were left out earlier and senior to Shri K.K.
 Pandey are now claiming for promotion and also seeking
 for permission to file asuit in the civil court in vase they
 have not been considered for promotion :-

	<u>Date of seniority</u>
(a) MES/225189 Shri Govind Singh	12.7.77
(b) MES/224593 Shri Bipin Bihari Singh	22.7.77
(c) MES/224226 Shri Dina Bandhu Gupta	22.7.77
(d) MES/225107 Shri Keshab Ch. Nath	06.8.77

5. You are requested to advice further on this matter
 please.

Attn: Mr. Nath

Encls : As above
 Copy to :-
 HQ CE EC Calcutta
 HQ CE Shillong

Sd/- *****
 (SR Nath)
 Tech Offr
 Offg Adm Offr
 for CWE (AF)