

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1283 of 2012

Date of CAV: 25.09.2018

Date of Pronouncement: 08.10.2018

Between:

P. Sudarshan, S/o. P. Laxmaiah,
Aged about 45 years, working as Draughtsman,
O/o. Sr. Quality Assurance Establishment (Electronics),
DGQA Technical Complex, Manovikas Nagar Post,
Secunderabad – 500009.

... Applicant

And

1. The Union of India, Rep. by
The Director-General of Quality Assurance
(Electronics), Ministry of Defence (DGQA),
Govt. of India, G-Block, Nirman Bhavan, New Delhi – 110 011.
2. The Controller,
Controllerate of Quality Assurance (Electronics),
J.C. Nagar, P.B. No. 606, Bangalore.
3. The Sr. Quality Assurance Officer,
Sr. Quality Assurance Establishment (Electronics),
DGQA Technical Complex, Manovikas Nagar Post,
Secunderabad – 500009.

... Respondents

Counsel for the Applicant ... Mrs. Rachana Kumari

Counsel for the Respondents ... Mr.K. Lakshman, Advocate for
Mrs. K. Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed against letters dt 22.12.2011 and 16.2.2012 issued by the 1st respondent in regard to the issue pertaining to Draughtsman Grade III.

2. The applicant who has done ITI (D'man civil) and Diploma in Civil Engineering was appointed as a Tracer in the respondents organisation vide lr dt. 7.8.1995 against backlog SC/ST vacancies, which he accepted and joined on 17.8.95 in the pay scale Rs 975-1540 (IV CPC). The respondents, as claimed by the applicant, vide Lr No.6(9)/90/D (QA) dt.18.7.1995 abolished the post of Tracer due to cadre restructuring. While doing so the Technical Directors were directed vide lr dt. 19.9.95 to redistribute, upgrade and surrender those posts which are unfilled and conduct DPCs to complete the exercise by 31.10.1995. Consequent to abolition of posts of Tracer they are to be upgraded as Draughtsman in the scale of Rs 4000-6000. Further, Min. Of Defense has also stated that Tracers are to be re-designated as Draughtsman Grade –III vide lr. dt. 11.11.1997 provided they have a minimum qualification of Matric + 2 yrs Diploma or equivalent as per recruitment rules. Thereupon 3rd respondent addressed 2nd respondent seeking clarification to upgrade the applicant as Draughtsman Grade –III to which the later confirmed that as per Min. of Defense lr. dt 15.9.95 all Tracers are re-designated as D'man Gr-III w.e.f 9.11.95. Accordingly, the applicant was posted as D'man Gr –III from 9.11.95 . However, since the applicant joined the respondent organisation on 17.8.95 as Tracer and the same post was abolished from 18.7.95 the 2nd respondent indicated vide lr. dt 14.12.2007 that his case for upgradation to D'man from 17.8.95 be taken up with 1st respondent who informed that the upgradation is not automatic and that the post of Tracer has to be upgraded first to Grade III and then it should be abolished. By not showing him against Gr-III D'man post from 17.8.95 the applicant is aggrieved that the 3 months of service will adversely effect his seniority and also ACP. Hence this O.A.

3. The contention of the applicant is that he joined on 17.8.95 and as per the respondents own directions the post of Tracer has to be upgraded as D'man from the date of joining the post of Tracer and not doing so is unfair despite repeated representations.

4. The respondents claim that promoting the applicant to the post of D'man grade III was a mistake as one has to possess 7 yrs service to get promoted to D'man grade from Tracer as per lr dt. 15.9.95 of Ministry of Defense and as per recruitment rules. Further the lr. dt. 19.9.95 stating that restructuring of the cadre in terms of promotions/recruitments etc has to be done as per recruitment rules and by holding DPC but it is not automatic. Further, the Ministry of Defense lr. dt 25.11.1997 places only the Tracers already re-designated as DM –III in pay scale of Rs 4000-6000 in all Defense establishments. The length of service was waived provided the tracers were directly recruited and had Matriculation and 2 yr diploma in Draughtsman or equivalent as per Min of Defense lr. dt 25.11.1997 and that the applicant was not recruited with this qualification and therefore he is ineligible. The applicant was placed in DM –III pay scale on 9.11.95 and that action of rectifying this error is being taken now by giving proper notice to the applicant. Hence the question of granting ACP will also have to be attended to accordingly. Further the applicant was informed appropriately on many occasions when he represented stating that the inadvertent error of placing him in D'man is being corrected.

5. Heard the learned counsel for both sides and perused the records.

6. The learned counsel for the applicant has emphasized that the respondents have to implement their own instructions given in writing. Not doing so is

irregular. It was equally opposed by the 1d. Counsel for the respondents stating that recruitment rules on the subject are to be adhered to and any anomalies in the process are to be rectified.

7. The applicant was recruited against tracer post which was to be abolished as per cadre restructuring ordered vide lr. dt 18.7.95. On being corresponded the applicant was posted against D'Man Gr-III on 9.11.95. The respondents admit that this is a mistake and it is against recruitment rules. In fact, to be promoted as D'man from Tracer one has to have 7 years of service and later it was relaxed to 5 yrs. Further, the length of service will be relaxed if one were to be recruited with matriculate plus 2 years diploma in Draughtsman as per Min. of Defense lr dt 15.9.95. Any action to be taken has to be within the purview of the recruitment rules which are mandatory in nature. The applicant does not satisfy this condition nor does he possess the 5 yr service to be re-designated as a D'Man on the date of his joining. The letter dt 19.9.95 does stipulate that only those posts which are unfilled are to be surrendered. In view of the open admission of the respondents that they did make a mistake in placing the applicant in D'man Gr-III and that they are initiating action to rectify by giving proper notice, it would be improper for this tribunal to interfere. The mistake committed by the respondents is a bonafide mistake. If not rectified it leads to negative equality. It does discriminate those who put in the requisite service and those who did not. Favouring those who did not is arbitrary. As Per Honourable Supreme Court, a bonafide mistake can be rectified as observed in **VSNL v. Ajit Kumar Kar,(2008) 11 SCC 591:**

“It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.”

8. The prayer of the applicant cannot therefore be acceded to for reasons cited and hence the O.A is dismissed with no costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 8th day of October, 2018

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