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1 of O.A 351/130/2016

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

No. O.A 351/130/2016

Date of Order: 18.12.2018

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Y.T Reddy
S/o Late N.R R.P Reddy
R/o Brichgunj
Under Port Blair Tehsil
South Andaman District

--Applicant

-vs-

1. The Union of India
Service through the Secretary
Ministry of Defence
New Delhi - 110001.

2. The Chief Engineer
Southern Command (HQ)
Pune, Maharashtra - 411001.

3. The Chief Engineer (A&N) Zone
Military Engineer Services,
Brichgunj Village
Junglighat Post, Port Blair
A&N Islands

4. The Garrison Engineer (I)
866 Engineering Works Section
867 C/o 99 APO
868 Birchgunj, Port Blair.

--Respondents

For the Applicant(s): Mr. R. George, Counsel
For the Respondent(s): Mr. V.D.S Balan, Counsel

ORDER (Oral)

Per: Bidisha Banerjee, Member (J):

Heard ld. counsel for both the parties.

2. The applicant by way of this O.A has sought for the following reliefs:

" a. A mandatory order directing the respondent authorities more particularly to the respondent No. 2, 3 & 4 and /or his subordinates, servants/agents/men and/or to any officer or officers to promote the applicant to the post of Motor Transport Driver, Grade-I w.e.f 01-04-2004 or from the date of the promotion of the juniors of the applicant and to release all the arrears of pay and consequential benefits.

b. An order be passed directing the respondents authorities to consider the case of the applicant for the promotion to the post of Motor Transport Driver, Grade-I w.e.f 01.04.2004.

c. An order be passed to set aside / quash/ cancel/rescind/ recall or withdraw the order dated 30.10.2015 passed by the Chief Engineer, Southern Command, Headquarters, Pune (Being Annexure A-15) and further directing the respondent authorities that not to give any effect or further effect to the speaking order dated 30.10.2015.

d. An order directing the respondents to certify and transmit the records relating to the instant proceedings so that consonable justice could be rendered.

e. To pass such order or further orders, direction/directions as your Lordships may deem fit and proper.

f. Cost and incidental cost."

3. The respondents have refuted the claim in their reply. They have categorically stated as under:

" The applicant was appointed as MTD Grade II on 23rd March 1988. He appeared in the Trade Test for MT Driver Grade II to MT Drive Grade I on 5th & 6th November 1997 and declared passed vide PTO No. 20/3/1998 dated 18th May 1988. Government of India, Ministry of Defence introduced three Grade structure for staff car driver vide Govt. of India, Ministry of Defence, New Delhi letter No. 1(1)/94/D(Civ-1 dated 05th December, 1996 and introduced corrigendum on 10th February, 2006. As per the para 5 of the said letter dated 05th December, 1996 the orders were applicable w.e.f 01st August 1993 where under the nomenclature of MTD Grade II was revised to CMD(Ordinary Grade).

Meanwhile, Govt. also introduced promotion scheme for civilian Motor Driver/revised pay scale as Vth RPR vide Govt. of India, Ministry of Defence letter No. PC/A/20001/1/E1C(V)/2730/Works dated 17th July, 1998. Under the said three Grade structure the applicant was re-

designated as Civ MT Driver (Ordinary Grade) w.e.f 01 August 1993. Again the three grade structure was converted to Four grade structure by Govt. of India, Ministry of Defence letter dated 09th April 2001 as CMD (Ordinary Grade), CMD Grade II, CMD Grade I and CMD Special Grade. The method of appointment to the post of Grade II and Grade I as a civilian motor driver became promotion on Non-Selection (Seniority-cum-Fitness). The three grade fresh Trade Test become mandatory to become eligible for their next promotion. CE, HQ, Southern Command vide letter dated 26th December, 2003 clarified that those who have passed the trade test prior to the above Govt. order will have to pass the trade test again for their next promotion. Therefore, the Trade Test previously cleared by applicant become inconsequential. He was allowed to appear again for Trade Test CMD (Ordinary Grade) to CMD Grade II and declared pass w.e.f 25th February, 2004 which he cleared.

Further he appeared at the Trade Test for CMD Grade II to CMD Grade I conducted on 07th April 2006 and declared pass w.e.f 07th June 2006. After passing of CMD Grade I Trade Test, the applicant was given promotion from CMD Grade II to CMD Grade I w.e.f 14th November 2011 with seniority from 01 April 2010. Shri Anant Ram and Shri Chittranjan Borai, the private respondents, were Senior to the applicant, as such they were promoted as CMD Grade I w.e.f 01st April 2008. Shri Anant Ram joined on 26th December, 1987 and the applicant joined on 23rd March, 1988. Further under the promotion scheme, the method of appointment to the post in Grade II and Grade I of CMD would be by promotion on non-selection (Seniority-cum-fitness) basis and subject to passing of Trade Test of appropriate standard. Accordingly, HQ SC vide their SRO No. 4/8/2004 issued

promotion for CMD (Ordinary Grade) to CMD Grade II against existing vacancies by the command w.e.f year 1996-97 to 2003-04. Shri Anant Ram who is senior was falling under the extent of availability of vacancies was promoted as CMD Grade II. Shri Chitranjan Borai and the applicant Shri YT Reddy both of their seniority was beyond the extent of availability vacancy. Hence, was not promoted.

Shri Anant Ram's promotion as CMD Grade I during the year 1st April, 2008 was not direct promotion to CMD Grade I. Shri Anant Ram was promoted as CMD Grade II vide HQCE, SE Pune, SRO NO. 4/S/2004 dated 10th February, 2004 for CMD Grade II to CMD Grade I and was promoted to CMD Grade I on 01.04.2008. Actual promotions given to Shri Anant Ram on availability of vacancy vide GE Brichgunj PTO No. 43 dated 26th October w.e.f 01st April, 2008.

Shri Y.T. Reddy was eligible for promotion from the date of passing of Trade Test i.e w.e.f 07th April, 2006, subject to availability of vacancy which the applicant got w.e.f 14th November 2011 with seniority from 01st April, 2010. The applicant was therefore due for promotion only w.e.f 14th November, 2011 and no junior superseded him.

In compliance of the order dated 25th March 2014, passed by Hon'ble Central Administrative Tribunal in O.A No. 351/00034/2014, speaking order issued by HQ CE SC Pune on 30th October, 2015."

4. On the basis of a trade test result of 1998 vintage, the applicant has attempted to claim seniority over the failed candidates but the respondents have adequately justified and clarified the position by way of their speaking order and it is palpable from the records that the applicant was never senior to Shri Anant Ram and Shri A. Shamsudeen Kunju in terms of the date of

appointment, however he succeeded in Trade Test held in 1998 ahead of those persons and even allowed himself to be subjected to the subsequent Trade Test held in 2004 without any demur when such other candidates also cleared the trade test along with the applicant. Therefore, the applicant has failed to show he was senior in MTD to the other cited persons.

5. Accordingly, we find no infirmity of the action undertaken by the respondents. However, ~~since~~ the applicant is languishing in Grade II for a long time, whereas such persons have been granted promotion in MTD-1 way back in 2001.

6. We hope and trust that the respondents would give a personal hearing to the applicant and make an honest endeavour to ameliorate his grievance suitably in regard to promotion to the post of MTD-1, while doing so, if the respondents come across any junior promoted to MTD-1 ahead of the applicant by virtue of trade test earlier to 2004, they shall appropriately redress the grievance of the applicant by issuing orders within 3 months.

7. Accordingly, the O.A stands disposed of: No costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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