

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 30.09.2019
Order Pronounced on: 09.10.2019

ORIGINAL APPLICATION NO. 060/880/2017

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

- ...
1. MES No.508270, Kewal Krishan S/o Sh. Mangal Dass, aged 51 years, presently working as Refrigerator Mech. HS-I, in the office of Garrison Engineer, Mamun, Pathankot-145001, R/o H. No. 581, Siaili Kulian, Pathankot.
 2. MES No.509237 Mohinder Pal S/o Sh. Nago Ram aged 45 years, working as Refrigerator Mech. HS-II, in the office of Garrison Engineer, Near Mamun, Pathankot-145001, R/o V & PO- Behrampur, New Abadi, Teh. & Distt. Gurdaspur (Punjab)
 3. Varsha Devi Wd/o late Sh. Hari Singh (MES No.502377, Retd. Ref. Mech. HS-I from GE, Mamun, Pathankot), R/o Vill. Manwal Uprala, Teh. & Distt.-Pathankot.
 4. Babita Devi D/o Hari Singh, MES No.502377, Retd. Ref. Mech. HS-I from GE, Mamun, Pathankot) R/o Vill.-Manwal Uprala, Teh. & Distt.-Pathankot.
 5. Jodh Singh S/o Hari Singh (MES No.502377, Retd. Ref. Mech. HS-I from GE, Mamun, Pathankot) R/o Vill. Manwal Uprala, Teh. & Distt.-Pathankot.
 6. Balwan Singh S/o Hari Singh (MES No.502377, Retd. Ref. Mech. HS-I from GE, Mamun, Pathankot) R/o Vill. Manwal Uprala, Teh. & Distt. Pathankot.

....APPLICANTS

(By Advocate: Shri Jagdeep Jaswal)

VERSUS

1. Union of India through Secretary to Govt., Ministry of Defence, South Block, New Delhi.
 2. Engineer-in-Chief, E-in-C's Branch, Army Headquarters, New Delhi.
 3. Chief Engineer, Pathankot Zone, MES, Pathankot (Pb).
 4. Commander Works Engineer, Mamun, Pathankot (Pb).
 5. Sh. Baldev Raj, Refrigerator Mech.(HS-I), R/o VPO Sujampur, Teh. & Distt. Pathankot (Pb.)
 6. Sh. Jarnail Singh, Refrigerator Mech.(HS-I), R/o Village – Trehti Tarwara, PO Haryial, Teh. & Distt Pathankot (Pb.)
- (Respondent Nos.5 and 6 are working in the office of Garrison Engineer, Mamun, Pathankot -Punjab)

.....RESPONDENTS

(By Advocate: Shri Sanjay Goyal for respondents no. 1-4
Shri Rajesh Sehgal for respondents no. 5-6)

ORDER**ARCHANA NIGAM, MEMBER (A)**

This Original Application (O.A.) is directed against order dated 29.1.2015, (Annexure A-1), vide which the representation dated 17.2.2014 (Annexure A-2) filed by the applicants for considering them for promotion to the post of HS-II and MCM w.e.f. the dates their juniors were promoted has been rejected in an arbitrary and illegal manner. The applicants have also sought quashing of order dated 25.9.2008 (Annexure A-12) qua private respondents and order dated 29.1.2015 (A-2A) whereby private respondent no. 5 has been further promoted as Master Crafts Man, ignoring the claim of applicants.

2. The brief facts leading to this O.A., are that the applicants, who were initially inducted as Mazdoor, were promoted as Mate Refg. Mech. They were promoted as Refg. Mechanic (skilled) w.e.f. 30.3.2005, which was modified as per MOD letter dated 20.5.2003 and they were given promotion as Refg. Mech (SK) w.e.f. 1.8.2003, vide CWE Mamun letter dated 16.4.2007 (Annexure A-3). According to them they are eligible to be promoted as Refg. Mechanic (HS) as per MOD letter dated 20.5.2003, (Annexure A-4) and accordingly eligibility trade test was ordered by convening order dated 2.1.2006 for promotion of Refg. Mech (HS) and their names were considered in that trade test. The applicants appeared in the trade test, but their result for promotion to Refg Mech (sk) TP Ref Mech (HS) category was withheld vide letter dated 30.3.2006 (Annexure A-5), wherein under para 2 (c) stating that 'delete the names of those inidls who have not yet completed the probation period' despite the fact that applicants were given the benefit of promotion as Refg Mech (SK) w.e.f. 20.05.2003 and were not at all under probation period when the trade test was conducted in the year 2006. However, the result of the applicants was not declared.

3. Learned counsel for applicants argues that applicants have been granted the benefit of post of SK w.e.f. 1.8.2003, whereas private respondents have joined office with loss of seniority on the post of SK w.e.f. 19.2.2004 and 1.12.2006 and therefore are junior to the applicants in the cadre of Refg Mech (SK). He further argues that applicants qualified the Trade Test for promotion to the post of HS-II in the first attempt on 20.8.2008 and were deprived of such

chance by the respondents. The applicants have been superseded by the private respondents in the matter of promotion as HS-II for not fault of their, but due to delay attributable to the respondents, otherwise they have qualified the trade test in the first attempt. Therefore, the applicants have been illegally deprived of being promoted as HS-II despite being seniors and private respondents have been illegally granted such benefit of promotion and as such benefit requires to be granted to the applicants as well from the date it has been garneted to the private respondents. He further stated that promotion of applicants cannot be treated w.e.f. 1.8.2003 on the ground that it was granted as one time relaxation. He further argues that the respondents are wrongly interpreting the policy dated 20.5.2003 (Annexure A-4) in as much as there is no such stipulation and if one time relaxation is given, it is for all intents and purposes and is not limited or restricted for any particular benefit. The said policy is unconditional and therefore it cannot be said that promotion of applicants as Refg. Mech. w.e.f. 1.8.2003 is not applicable for all intents and purpose and will include the probation period as well. The learned counsel for applicants in support of his arguments has placed reliance on judgment of Hon'ble Punjab and Haryana High Court in case of **Mohd. Kamil vs. Union of India & ors** reported in 2008 (a) SCT 731, decision rendered by a Bench of this Tribunal in O.A. No. 672- PB-2010 - **Balkaran Singh vs Union of Indai & Ors.** dated 19.10.2011, in O.A. NO. 60/374/2015- **Ravi Bhushan & Ors. vs Union of India & Ors.** decided on 21.1.2016 further upheld by

jurisdictional High Court in CWP No. 14525 of 2016 –**Union of India represented by its Secretary, Govt. of India, Ministry of Defence, New Delhi vs Central Administrative Tribunal, Chandigarh Bench & Ors.**

4. The respondents no. 1-4 and private respondent no. 5 & 6 have filed their separate written statements refuting the claim of applicants. It is stated that applicants are not entitled for grant of promotion as HS for the vacancy year 2008-09 as they had not passed the trade test for Refrigerator Mechanic HS prior to 1.1.2008 as per SRO 204 of 1991 (Annexure R-1). It is further stated that prior to getting the antedated seniority w.e.f. 1.8.2003 as Refrigerator Meachanic (SK) by way of restructuring of cadre review (three Grade Structure) in relaxation of condition of passing trade test etc. as one time measure, they were promoted as Refrigerator Mechanic (SK) on 30.3.2005 and were placed on 2 year probation period vide Headquarter CWE Mamun letter dated 30.3.2005 (Annexure R-2). Since, at the time of conducting of trade test of HS in the year 2006 i.e. on 23.3.2006 the applicants were under probation period, hence they were not eligible and entitled to appear in test and therefore, their names were not considered by the Board of officers in the board proceedings. They have referred letter dated 23.10.2000 (Annexure R-3), wherein clarification on trade test was issued that 'All Industrial employees are eligible to appear in Trade Test for next promotion on completion of probationary period and on completion of 12 years of service for second promotion'. The applicants were initially appointed as

Mazdoor/Chowkidar and as per SRO 204 of 1991 (Recruitment Rules of Industrial) promotion hierarchy for Mazdoor (USK) is “ (a) Mate Fefg Mech (SSK)- Refg Mech (SK)- Refg Mech (HS-II)- Refg Mech (HS-I).” It is further stated that applicants got 2nd promotion as Refg Mech (SK) on 20.3.2005 and placed on two year probation period because they were promoted from Group-D to Group-C post. Hence they were not eligible to appear in trade test conducted on 23.3.2006 as per clarification. Thus the applicants are not entitled to the relief sought in the present O.A. Consequently, the O.A. deserves to be dismissed.

5. The applicants have filed rejoinders to the written statements filed by the respondents supporting the relief claimed in the O.A.

6. The learned counsel appearing for respondents argued on the lines of stand taken by respondents in their written statements. In support of their arguments they have placed reliance on the judgment of Apex Court in **State of Madhya Pradesh vs Shri Srikant Chaphekar** – 1993(1) SCT 280, **B.S. Bajwa vs. State of Punjab** – 1998 (1) SCT 670, **Dr. A.K. Mitra vs D. Appa Rao** -1998 (2) SCT 206, **Y Ramamohan vs Govt. of India**- 2002 (1) CLR 34 and **Rabindra Nath Bose & Ors vs Union of India & Ors.** 1970 (1) SCC 84.

7. We have heard the learned counsel appearing on behalf of respective parties and carefully gone through the pleadings available on record and given our thoughtful consideration to the entire matter.

8. In order to adjudicate the matter, the issue of seniority is examined in the first instance. Proceedings of the Board of Officers meeting, which convened on 19.3.2014 and subsequent dates, the seniority of Refg Mech (SK) category was decided as under:

Ser.No.	MES No. & Name	Design	Date of seniority	Remarks
1.	MES-508270 Sh.Kewal Krishan	Refg. Mech (SK)	01 August 2003	
2.	MES 508268 Sh. Sushil Kumar	Refg Mech (SK)	01 August 2003	
3.	MES 502377Sh. Hari Singh	Refg Mech (SK)	01 August 2003	
4.	MES 509237 Sh. Mohinder Pal	Refg Mech (SK)	01 August 2003	
5.	MES 508035 Sh. Baldev Raj	Refg Mech (SK)	19 Feb 2004	Transfer from GE (u) Udhampur. TOS on 19. Feb 2004
6.	MES 508029 Sh. Jarnail Singh	Refg Mech (SK)	01 Dec 2006	Transfear from GE (P) Jindrah. TOS on 01 Dec. 2006
7.	MES 509 504 Sh. Surjeet Singh	Refg Mech (SK)	01 Apr 2007	

From the above tabulated seniority, it is quite evident that Sh. Kewal Krishan is placed at serial no. 1 in the seniority list on the date of seniority being 1.8.2003 whereas private respondent Sh. Baldev Raj and Sh. Jarnail Singh are placed in seniority list at serial no. 5 & 6 respectively. On the issue of seniority, therefore, admittedly the applicant was senior to the private respondents.

9. The second issue that needs to be seen is to requirement of probation upon promotion as has been submitted by the respondents during the final hearing. It has been stated that

applicants have got second promotion as Refg. Mech (SK) on 20.3.2005 and placed on two years' probation because they were promoted from Group-D to Group-C posts. Hence, they were not eligible to appear in trade test conducted on 23.3.2006.

10. Bare perusal of the SRO 204, "shows that the promotion from Senior Mech Refg. (HS-II) and Refg Mech (HS-I) will be period of probation for two years for direct recruitment, but there will be no probation period for promotees." From the speaking order issued by Commander Works Engineer Mamun on 29.1.2015 the applicant has been informed that the Board of Officers had examined the seniority as per record and DPC held on 25.9.2008. Applicant could not be considered for promotion as he had not passed the trade test for HS prior to 1.1.2008 whereas Sh. Baldev Raj Ref. Mechanic and Sh. Jarnial Singh had passed the trade test for HS prior to 1.1.2008. It has been further clarified that such individuals who have got promotion by way of passing trade test between 1.1.1996 to 19.5.2003 will be enblock senior to those who have got the promotion as result of restructuring of cadre in relaxation of condition of passing trade test as one time measure only. Although the applicants had appeared for trade test of Ref. Mech. (HS) during the year 2006, but the result of the trade test was withheld and the applicants names deleted for the reason that they had not completed the mandatory probation period of two years for promotion from Mate Ref. (Mech) to Ref Mech (sk). Therefore, it is felt that greater clarity is needed in the

interpretation of SRO 204, which has been cited for prescribing the probation period of two years.

11. It is also seen from the records placed in file that the letter with reference to the trade test held on 30.3.2006 (Annexure A-5) has not been signed by the officer concerned. In this view of the matter, the deletion of the names of those individuals who had not completed the probation seems to be something that should be relooked and reviewed by the respondents. Needless, to add that this letter was issued with reference to HQ order No. 1115/TT/274/E1P dated 2.1.2006 and trade test held on 23rd and 24th March, 2006 which the applicants had passed.

12. Again, some doubts arise in our mind, as regards the application of probation period itself. Letter dated 26.3.2014 (Annexure A-16) mentions that the applicant Kewal Krishan had appeared in the trade test for promotion of Ref. Mech HS during 2006, but result of trade test was withheld and his name was deleted with the reason that individual has not yet completed probation period vide HQ letter No.1115/TT/392/EIP dated 20.3.2006. It is not out of place to mention, that above named individual was not on probation. He was as stated in this very letter promoted with retrospective effect.

13. In this view of the matter, we are of the opinion that the manner, in which the proceedings of the board have been convened, leave scope of doubts in our minds as to validity of the orders that have been issued. Needless, to state that various documents placed on record also create confusion as they run

contrary to each other. Finally, it is also on the record that there was irregularity in holding of the DPC and this also leads to some doubts as to the proceedings, in view of the fact that the holding of the trade test a condition precedent for promotion was not done as per a planned calendar. None of these facts have been adequately controverted by learned Counsels for the Respondents.

14. To sum up, admittedly the seniority of the applicants has been established and it is correct to say that applicants are senior to private respondents 5 & 6. This seniority has been disturbed subsequent to action taken by the respondent department in the application of the orders for promotion given to the applicants as outcome of restructuring of the cadre. In the common man's understanding a promotion is expected to give benefits of career growth rather than to prove to be a hindrance to the progression to applicant's career path. However, it appears that in the manner, in which the orders of promotion have been interpreted, read with the provisions of ban on the taking of trade test the promotion orders have become a bar to applicant's career growth.

15. It is apparent moreover that injustice has been done to the applicants, more so, as to trade test in question had already been cleared by them 2.1.2006. The very reason for promotion as consequence of restructuring of cadre should be to meet the need for the respondent department to have personal with relevant trade skills.

16. In this view of the matter, it does not deem appropriate, to delete the names of the applicants, who already had cleared this

trade test. We, therefore, are of the view that the applicants should be considered for promotion w.e.f. the date on which they cleared trade test which had been deleted on account of the ban on the taking of the trade test in the period of probation.

17. Consequently, fresh orders assigning seniority from the date when the applicants have passed trade test may be issued and benefits as per rules may be given with reference to the dates on which private respondents have been promoted with all consequential benefits.

18. The necessary order in this regard shall be passed by the respondents within a period of three months from the date of receipt of certified copy of this order. The O.A. stands disposed of in the above terms. No costs.

(ARCHANA NIGAM)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 09.10.2019
'SK'

