



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.O.A.560 of 2013

Date of order : 02.05.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SHYAMAL KUMAR SARMA

VS.

UNION OF INDIA & OTHERS

For the applicant : Mr. S.K. Datta, counsel  
For the respondents : Mr. B.P. Manna, counsel

ORDER (ORAL)

Per Ms. Jaya Das Gupta, A.M.

The applicant in this O.A., Sri Shyamal Kumar Sarma has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) An order quashing and/or setting aside the purported speaking order dated 15<sup>th</sup> October, 2012 and the impugned communication dated 21<sup>st</sup> November, 2012;

b) An order directing the respondents to consider the case of the applicant solely on the basis of his qualification and to grant him appointment as Junior Engineer, Electrical or Mechanical by way of promotion or otherwise as was directed by this Hon'ble Tribunal in O.A.No.496/12 and further directing the respondents to grant all consequential benefits and while considering the case the respondents should also keep in mind the fact that as per 6<sup>th</sup> Pay Commission recommendation all Group-D posts have been upgraded with Grade Pay of Rs.1900/ although the main thrust may be directed to be given on the qualification as was given earlier in O.A.No.496 of 2009;

c) An order directing the respondents to produce/cause production of all relevant records;

d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Brief facts of this case are that the applicant was working as a Chowkidar under Garrison Engineer(North), Kolkata Military Engineers Services. He is also a Science Graduate with Diploma in Mechanical Engineering and as per his submission, he was recommended and certified for consideration for promotion to the post of Junior Engineer. Since he was not promoted, he approached this Tribunal by filing O.A.No.496 of 2009 which was disposed of by order dated 29.06.2012 directing the respondents to reconsider his case for the post of Junior Engineer, Electrical & Mechanical in view of his qualification. The order dated 29.06.2012 passed in O.A.496 of 2009 is set out below:-

"The present original application is preferred by the applicant before this Tribunal under Section 19 of AT Act 1985 with the following reliefs:-

(a) Direction upon the respondents to consider his case for promotion to the post and scale of pay as Junior Engineer, Electrical and Mechanical in ensuring DPC in time;

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(b) Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper."

2. The case of the applicant is that he was appointed on post of Chowkidar and he was absorbed with the effect from March, 1999. The applicant has also claimed that he passed B.Sc. Examination in 1987 and has also passed Engineering Diploma Examination in Mechanical from State Council of Engineering & Technical Education, Govt. of West Bengal, Central Calcutta and also obtained 1<sup>st</sup> Class Diploma in the said Examination. The applicant also claims that he is an OBC candidate and also passed Vehicle Mechanical (SS) in the trade test in the year 2003 as such he comes under consideration in the Skilled Grade Category. The applicant also submits that his name has already sued for consideration by A.G.E.(N), Kolkata and also recommended by G.E.(N), Kolkata. Since he has passed B.Sc. and Diploma in Mechanical Engineering, the applicant also claims for promotion to the post of Junior Engineer, Electrical and Mechanical.

3. The learned counsel appearing on behalf of the respondents filed their reply and also vehemently argued and denied the averments made in the original application. The respondents pointed out that the present original application is barred by limitation and liable to be dismissed. The respondents in their reply not denied the appointment of the applicant on the post of Chowkidar and also submitted that the issuance of circular for promotion from Master Craftsman Highly Skilled and Skilled to JE(Civil) and JE(E/M) category was issued and the names of eligible candidates were forwarded. The respondents also pointed that as per SRO/45 of 2008 minimum qualification of departmental candidate is provided which is as under:-

- (a) The individual has to pass Matriculation or equivalent;
- (b) The individual has to pass the Diploma in Civil Electrical/Mechanical Engineering from the recognized institute or University;
- (c) The individual has to pass possess eight years of regular service in highly skilled grade and for semi skilled category with 16 (sixteen) years of regular service;

The respondents also pointed out that the applicant has passed the B.Sc. Examination in the year 1987 and also passed the Diploma in Mechanical Engineering from State Council of Engineering & Technical Education, Govt. of West Bengal and also an OBC candidate. The respondents also pointed out the DPC for promotion from Chowkidar to Mate Vehicle Mechanic was held in the year 2004 and 2007 and the name of the applicant cannot be considered for promotion due to less vacancies. And as on date the name of the applicant stands at second position in the seniority list. The respondents also pointed out that as per the Recruitment Rules, the applicant is not eligible for consideration as the departmental candidate. However, the case was forwarded for higher authorities but the same was rejected by the Headquarter. The decision taken by the higher authorities was duly communicated to the applicant.

4. The applicant filed their rejoinder and in the rejoinder mostly the averments made in the original application are reiterated. The applicant through his rejoinder once again prayed for consideration of this case sympathetically.

5. Heard the learned counsels and perused the records.

6. It is not in dispute that the applicant was appointed with the respondents as a Chowkidar and has also passed the B. Sc. Examination and having Diploma in Mechanical Engineering. The applicant is also an OBC candidate and passed trade test for Skilled Grade. The Recruitment Rules are also clear to extend that one has to pass Matriculation Examination and should have passed Diploma in Civil and Mechanical Engineering from the recognized institution or University and has to possess eight years of regular service in highly Skilled Grade failing which 16 years regular combined service in the Semi Skilled Grade. The case of the applicant was considered and rejected by the authorities and the same was communicated to the applicant and after the said rejection order the applicant again made a representation to the authorities for consideration of his case for promotion. The applicant is working as a Chowkidar and the qualification of the applicant is B.Sc. with Diploma in Mechanical Engineering which he has passed in the year 1993. The applicant has also obtained the Diploma in 1<sup>st</sup> Class from the State Council of Engineering & Technical Education, Govt. of West Bengal.

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7. Considering the facts of the case and the qualification of the applicant and the pending representation of the applicant we feel it appropriate to issue a direction to the authorities to reconsider the case of the applicant for giving him promotion to the post of Junior Engineer, Electrical and Mechanical considering his educational qualifications. The said consideration may be done within a period of next 3 months and the decision so taken be communicated to the applicant.

8. With the above observation the O.A. stands disposed of. No order as to costs."

3. As per the aforesaid order, a speaking order was passed on 15.10.2012 which runs as follows:-

"SPEAKING ORDER

MES/208603 Shri Shyamal Kumar Sarma,  
Chowkidar  
GE(N) Kolkata  
46, BT Road, Kolkata-50

SPEAKING ORDER : IMPLEMENTATION OF HON'BLE CAT KOLKATA BENCH ORDER AGAINST JUDGEMENT DATED 29 JUN 2012 IN RESPECT OF OA NO.496 OF 2009

"1. OA No.496 of 2009 has been filed by you in the Hon'ble CAT Kolkata Bench Kolkata, praying for the following relief:-

- (a) Direction upon the respondents to consider the case for promotion to the post and scale of pay as Junior Engineer, Electrical and Mechanical in ensuing DPC in time;
- (a) Any order and or further order or orders as the Hon'ble Tribunal may deem fit and proper.

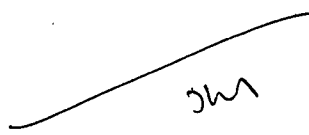
2. The Hon'ble CAT Kolkata vide Para 07 and 08 of its order dated 29Jun 2012 has directed the following:-

- (a) "Considering the facts of the case and the qualification of applicant and the pending representation of the applicant we feel it appropriate to issue a direction to the authorities to consider the case of the applicant for giving him promotion to the post of Junior Engineer, Electrical and Mechanical considering his educational qualifications. The said consideration may be done within a period of next three months and the decision so taken be communicated to the applicant.
- (b) With the above observation the OA stands disposed as No order to costs."

3. In compliance of Hon'ble Tribunal order dt.29 Jun 2012 your representation/case for promotion to the post of JE(E/M) has been reconsidered and following emerges:-

- (a) In accordance with recruitment rules the promotion to the post of JE(E/M) can be granted to the highly skilled tradesman with eight years service and skilled tradesman with 16 years of service. Whereas you are neither highly skilled tradesman nor skilled tradesman.
- (b) It has been noted that you have passed the trade test for Mate Vehicle Mechanic which is semi skilled category. However you have not been promoted to the post of even Mate Vehicle Mechanic due to non availability of vacancies.
- (c) Thus you are in the post of unskilled category at present.

4. In view of above your claim for the promotion to the post of JE E/M is not covered as per existing rules. As such your representation can not be accepted to.



5. Notwithstanding above, your case for promotion to the post of JE (E/M) shall be considered as and when you complete 16 years as skilled tradesman or 08 years as highly skilled tradesman as per the relevant recruitment rules. As per RRs only industrial personnel are eligible for promotion to JE.

6. With the issue of this speaking order, Hon'ble CAT Kolkata Bench order dt.29 Jun 2012 in OA No.496/2009 stands complied with.

Place : Kolkata  
Dated : 15 Oct 2012

(M. Girishwar)  
Co  
Offg CE Kolkata Zone."

4. The rules of recruitment for promotion to the post of Junior Engineer(Electrical & Mechanical) is set out below:-

Name of post	Number of post	Classification	Scale of pay(Rs.)	Whether selection cum-seniority or selection by merit	Age limit for direct recruits	Whether benefit of added years of services admissible under Rule 30 of Central Civil Services(Pension) Rules, 1972
1	2	3	4	5	6	7
2.Junior Engineer(Electrical and Mechanical)	2161* (for the year 2008)  *Subject to variation dependent on work load	General Central Service Group 'C' Non-Gazetted Non-Industrial-Non-Ministerial	Rs.5000-150-8000(Entry Grade)	Not applicable	*18-27 years Note : 1. Upper age limit will be relaxable up to the age of 35 years for departmental candidates.  Note 2. The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India(and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu & Kashmir State, Lahaul and Spiti District and Pangl Sub-Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshdweep).  Note:3 In respect of the posts, appointment to which are made through Employment News or other advertising media, the crucial date for determining the age limit will, in each case, be the last date up to which the Employment Exchanges are asked to submit the names of last date of receipt of application given in the "Employment News" or other advertising media.	Not applicable

20

Educational and other qualifications required for direct recruits	Whether age and educational qualification prescribed for direct recruits will apply in case of promotees	Period of probations, if any	Method of recruitment whether by direct recruitment or by deputation or absorption and percentage of post. to be filled by various methods	In case of recruitment by promotion or deputation or absorption, grade from which promotion or absorption to be made	If Departmental Promotion Committee exists, what is the Composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment
8	9	10	11	12	13	14
(a) Matriculation or equivalent (b) Three years Diploma in Electrical or Mechanical or Automobile Engineering from recognized Institute or University or Board Or Degree in Electrical or Mechanical or Automobile Engineering from recognized Institute or University or Board or equivalent.	Not applicable	Two years	(i) 80% by direct recruitment. (ii) 20% by promotion from amongst Departmental employees failing which by direct recruitment.  Note : 10% of the posts to be filled by way of direct recruitment will be filled by deputation or reemployment (for Ex-Servicemen) in accordance with (Re-employment in Central Civil Services and posts) Rules 1979 notified under Government of India, Ministry of Home Affairs GSR No.1530 dated 29 Dec. 1979 and at amended and possessing qualification as specified in Column B failing which by direct recruitment.	Highly Skilled holding qualifications as indicated in Column 8 with eight years regular service in Highly Skilled grade failing which sixteen years regular combined service in the grade of Highly Skilled and Skilled failing both Skilled holding qualifications as indicated in Column 8 with sixteen years regular service in the grade failing both by direct recruitment. Note 1. The service rendered as Master Craftsman will be deemed to be included for eligibility criteria. Note 2. Master Craftsman will be enblock senior to Highly Skilled and Skilled. .....(not legible) The Armed Forces Personnel including combatants from Corps of.....(not legible) due to .....(illegible) or who are to be transferred to (...not legible) within a period of one year and have .....(not legible)  Deputation up to the date on which they are due for release from the Armed Forces. Thereafter they may be re-employed as civilian employees in entry grade of Rs.5000-8000	Group 'C' Departmental Promotion Committee consisting of :- 1) Chief Engineer or his nominee with not less than the rank of Superintending Engineer or equivalent - Chairman 2) Executive Engineer or equivalent - Member 3) Group 'A' Civilian Gazetted Officer or a Commissioned Officer not connected with the Department - Member	Not applicable

5. On a perusal of Column 12 of the Recruitment Rules, it is clear that the departmental candidates having the qualifications as mentioned in Column No.8 for direct recruits, will be considered for promotion provided :-

- (a) They are Highly Skilled workers with 8 years' regular services in the Highly Skilled grade; or
- (b) 16 years' regular combined services in the grade of Highly Skilled and ~~Skilled~~ <sup>Skilled</sup>; or
- (c) Skilled with 16 years regular services in the grade, failing which, by direct recruitment

6. It is an admitted fact that the applicant had joined the service as a Chowkidar and he was neither in the Highly Skilled nor in the Skilled grade. A Supplementary Affidavit has been filed by the applicant today i.e. on 02.05.2016 from which it appears that vide order No.1448/PROMPT/1062/EIC(2) dated 02.11.2015 the applicant at Sl. No.31 was promoted from

the post of Chowkidar to the post of Mate(Electrical) from 07.01.2010. The applicant has submitted that Mate(Electrical) falls in the Semi-skilled category. Hence, as per the requirement under Recruitment Rules, the applicant even after promotion remained in the Semi-skilled category i.e. neither he is in the skilled category nor in the Highly Skilled category and as per the Recruitment Rules, he is not eligible for promotion to the post of Junior Engineer. Hence, we do not find anything wrong in the impugned speaking order which has been passed by the respondent authorities. There is no cause of interference in such order.

7. The O.A., therefore, lacks merit and it is dismissed. No cost.

(J.DAS GUPTA)  
Administrative Member

  
(JUSTICE V.C. GUPTA)  
Judicial Member

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