

Central Administrative Tribunal, Principal Bench

O.A. No.1260/2003

New Delhi this the 22nd day of February, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Naik, Vice Chairman (A)

Gulshan Kumar
Mechanic Refrigeration
O/o Garrison Engineer (R&D)
Lucknow Road,
Delhi-110 054.

Residential Address

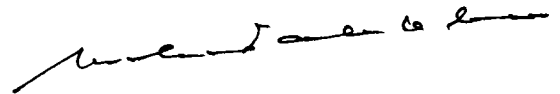
Gulshan Kumar
C-452, First Floor,
Gali No.10, Majlis Park,
Near Adarsh Nagar,
New Delhi-110 033.

.....Applicant

By Advocate: Shri S.N.Anand.

Versus

1. Union of India through Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Garrison Engineer (R&D)
Lucknow Road,
Delhi-110 054.
3. The Chief Engineer,
Western Command Headquarters,
Engineers Branch,
Chandi Mandir,
Haryana.
4. The Commander Works Engineer (P)
Delhi Cantt.-110010.



5. Shri Ram Narain
Senior Mechanic Refrigeration.
O/o Junior Engineer MES,
MES Complaint Center, INMAS Hospital,
Lucknow Road, Timarpur,
Delhi-10 054.
6. Shri Anil Kumar
Refrigeration Mechanic HS-II,
C/o AGE E/M Metcalf House,
Defence Science Center,
Delhi-110 054.

.....Respondents

By Advocate: Shri N.K. Aggarwal, Counsel for respondent Nos. 1 to 4.

Shri Yogesh Sharma, Counsel for respondent No.5.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

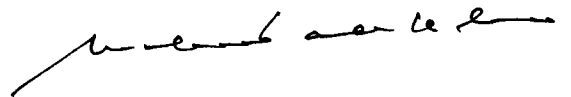
The OA is filed for the grant of following reliefs:-

- (a) Direct the official respondents to consider the applicant for promotion to HS-II with reference to his juniors Ram Narain and Anil Kumar (Respondents 5 and 6 herein) and promote him as such, if found fit with all consequential benefits;

Or

Alternatively, in case regular promotion cannot be given for whatever reason, direct respondents to give benefit of 2nd ACP taking into consideration past services from the date of joining the Department 30.12.1978, as has been given to respondent No.6 in OA 421/1994; and

- (b) Pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.



2. The applicant joined CWE Udampur, J&K of the respondent as Refrigeration Mechanic on 30.12.1978. He sought transfer on compassionate grounds and was posted as Refrigeration Mechanic (CWE) at Delhi where he joined on 24.8.1981. For promotion from Refrigeration Mechanic to Highly Skilled Grade-II the eligibility condition was (i) 3 years regular service in the feeder grade and (ii) passing the trade test. The applicant passed the trade test on 25.7.1986. ~~One~~ junior of the applicant, namely, respondent No.5 Shri Ram Narain who did not pass the trade test and had also not rendered 3 years regular service in the feeder cadre was promoted de hors the Rules, firstly ~~to~~ HS Grade-II and subsequently ~~to~~ HS Grade-I. A senior to him Shri Manjeet Singh Ahluwalia challenged his promotion to HS Grade-I in OA No.555/1993 which was allowed and the promotion of the respondent No.5 from HS Grade-II to HS Grade-I was quashed. The CWP No.2267-1999 filed by the respondent No.5 challenging the said order was dismissed by the Hon'ble High Court. Another junior of the applicant, namely, Shri Anil Kumar has also been promoted to the grade of HS-II vide order dated 24.12.1994. The applicant was granted first financial upgradation under ACP Scheme w.e.f. 9.8.1999 but despite rendering 25 years unblemished record, he has not been granted second financial upgradation under the said Scheme. The applicant had been making representation for his promotion from the date his juniors were given first promotion to HS Grade-II, but to no effect. Hence the OA.

3. The official respondent No.1 to 4 in the counter refuted that any junior to the applicant was considered for promotion from Refrigeration Mechanic (Skilled) to Refrigeration Mechanic (Highly Skilled-II). It is stated that Shri Ram Narain, respondent No.5 was selected for promotion from Refrigeration Mechanic (Skilled) to Refrigeration

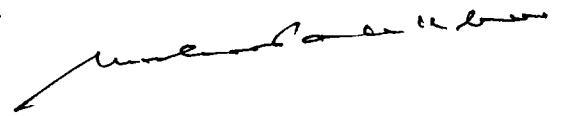
Shri Ram Narain

Mechanic (Highly Skilled-II) being a SC candidate. He was also given one time relaxation from passing the trade test as per extant rules. Shri Anil Kumar, respondent No.6 was promoted in pursuance to the order of the Tribunal dated 12.9.1994 passed in OA 421/1994 (Annexure R-1). He was appointed as Refrigeration Mechanic (Skilled) on 12.9.1970 and had also passed the trade test for further promotion on 30.4.1974. It was further submitted that after the dismissal of the Writ Petition filed by Ram Narain, he has been reverted back to the grade of HS-II. As regards the second financial upgradation under ACP Scheme it was stated that he will become entitled to it on his turn.

4. The respondent No.5 in the counter has also denied the allegation of the applicant and has submitted that he has already been reverted to the lower post, therefore, the OA was not maintainable. It is also stated that the applicant has already been granted alternative relief of second financial upgradation under the ACP Scheme and the OA has become infructuous. He further submitted that the respondent No.6 Shri Anil Kumar was granted seniority w.e.f. 15.10.1984 in compliance with the order dated 12.9.1994 in OA 421/1994 which has become final. It is also stated that the OA is barred by time. The respondent also submitted that the applicant had passed the test for promotion to HS-II on 25.7.1986 whereas the respondent No.6 had been promoted to HS Grade-II w.e.f. 15.10.1984, therefore, he was senior to the applicant. Other allegations have also been denied.

5. Respondent No.6 did not contest the OA.

6. In the rejoinder the applicant has reaffirmed his allegations and controverted the case of the respondents pleaded in their respective counter.



7. We have heard the learned counsel for the parties and gone through the record.

8. At the outset it was pointed out that the applicant had already been granted second financial upgradation under ACP Scheme vide order dated 17.7.2004. This is not disputed by the applicant. The alternative plea, therefore, stands satisfied.

9. The applicant is still aggrieved that he was not promoted to HS Grade-II when his juniors Shri Ram Narain and Shri Anil Kumar respondent Nos.5 and 6 have been granted this promotion long back. At the hearing it was pointed out by the learned counsel for respondent No.5 that the applicant had been promoted from the post of Refrigeration Mechanic (Skilled) to Refrigeration Mechanic, HS Grade-II and has drawn our attention to Annexure R-I to his counter. At the bar, counsel for the applicant has to concede that the applicant has since been promoted to HS-IIInd Grade w.e.f. 24.5.2003. But it was contended that the applicant ought to have been promoted from the date his juniors, respondent Nos.5 and 6 were given similar promotions.

10. The learned counsel for the respondents though initially argued that the notice of the OA was issued by the Tribunal on 20.5.2003 only in respect of the alternative relief claimed by the applicant but when his attention was drawn to the order of this Tribunal dated 10.9.2004, he did not press this argument.

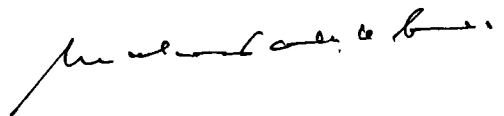
11. As regards Shri Anil Kumar, respondent No.6, the document which has been filed by the applicant prove that he was given seniority w.e.f. 15.10.1984. He had also passed a trade test and was eligible for promotion to the grade of HS-II. The applicant on the other hand passed the trade test only on 25.7.1986. The applicant cannot be held to be senior to Shri Anil Kumar. In fact, the argument of the applicant is that Shri Anil Kumar had been transferred to Delhi on his own request, therefore, as per extant rules he ought

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to have been given seniority at the bottom of the list, but it was not done. We need not dwell into this question further since we are not deciding the question of seniority of Shri Anil Kumar. Shri Anil Kumar was shown senior in the seniority list, which is not under challenge, ^{and he} had passed the trade test before the applicant and has been promoted to the grade of HS-II notionally with retrospective effect from 15.10.1984. The order is final. It has not been challenged in the present OA either. Shri Anil Kumar by all account is senior to the applicant and applicant cannot have any grievance against his promotion to the Grade of HS-II.

12. Shri Ram Narain, respondent No.5, is admittedly junior to the applicant. Neither the official respondent nor the respondent No.5 has disputed this fact. A confusion is tried to be created by the official respondent as well as the respondent No.5 that the respondent No.5 has since been reverted to the lower post in pursuance to the order of this Tribunal which was upheld in appeal filed by Shri Ram Narain in the Hon'ble High Court. They have not stated that Shri Ram Narain had been reverted from the Grade of HS-I to the Grade of HS-II and he is working in HS Grade-II.

13. It is admitted by the official respondents in their counter that Shri Ram Narain had not passed the trade test and that he was given exemption from passing the trade test. It has also not been denied that he did not have three years regular service when he was promoted to the grade of HS-II on 15.10.1984. Any how his promotion to the grade of HS-II is not under challenge in the present OA. We, therefore, need not go into the question whether the promotion is in accordance with or de hors of rules. But the fact remains that Shri Ram Narain was promoted to the grade of HS-II on 15.10.1984. Furthermore, he is junior to the applicant. The promotion was granted to Shri Ram

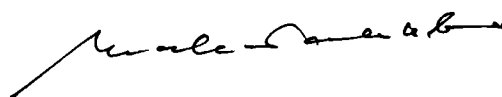


Narain, according to the averment made in the counter, by relaxing the eligibility conditions. At the time of promotion of Shri Ram Narain the applicant was not eligible for promotion. He passed the trade test on 25.7.1986. He could not have been promoted prior to that date. At that time he had rendered more than three years regular service.

14. The official respondents have no answer to the claim of the applicant that he being eligible for promotion to HS Grade-II, i.e., having 3 years regular service and having passed the trade test why was he not considered for promotion when his junior had already been given the promotion. For parity reason the applicant, therefore, is entitled to be considered for promotion from the grade of Refrigeration Mechanic (Skilled) to the Grade of HS-II w.e.f. 25.7.1986.

15. The applicant had filed an alleged seniority list Annexure A-3 in which the name of Shri Anil Kumar and Shri Ram Narain were shown at S.No.18 and 16 respectively. It was disputed on behalf of the respondents that it was the seniority list. The list neither had the date nor had the signature of any authority. Counsel for the official respondents on the other hand drew our attention to the judgment of this Tribunal passed in the case of M.S. Ahluwalia where there was a reference of revised seniority list. When he was asked to produce the revised seniority list he had no answer. On the other hand he produced a letter dated 19.11.2004 issued by SE (CWE) Project which had nothing to do with the inter-se seniority of Refrigeration Mechanic. List filed by the applicant, therefore, cannot be held to be a seniority list of Refrigeration Mechanic.


16. An argument has also been raised on behalf of the official respondents and respondent No.5 that the OA is barred by time. The applicant has already filed an application for condonation of delay in filing the OA. We have carefully considered the

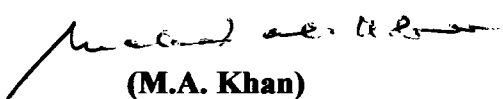


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fact stated in the application. We have also taken note of the peculiar facts of the present case and do not find that interest of justice should be crucified at the ~~alter~~^{of} limitation prescribed. We, therefore, are inclined to condone the delay, if any, in the filing of the OA.

17. The result of the above discussion is that the OA succeeds. The respondents are directed to consider the applicant for promotion from the grade of Refrigeration Mechanic to HS Grade-II (Refrigeration Mechanic) from 25.7.1986 and pass a reasoned and speaking order within a period of 3 months from the date of receipt of the order. In the peculiarity of the facts and circumstances, the parties are left to bear their own costs.


(S.K. Naik)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh