

Reserved on 07.05.2024
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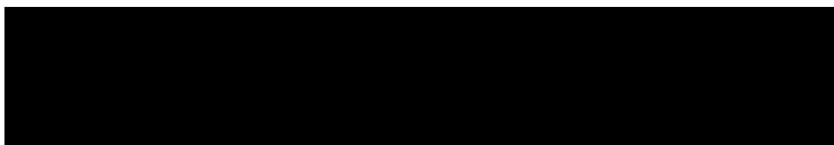
**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No.651 of 2014

Present:

Hon'ble Mr. Justice Om Prakash VII, Member-(Judicial)
Hon'ble Mr. Mohan Pyare, Member- (Administrative)

Raghvendra Singh Yadav, S/o Prem Singh Yadav,



.....Applicant

By Advocate: Shri M.K. Upadhyay

Versus

1. Union of India, through Secretary, Ministry of Defence, Raksha Mantralaya, Bharat Sarkar, New Delhi.
2. AOC-in-C,
HQs Maintenance Command, IAF
Vayu Sena Nagar, Nagpur.
3. Commanding Officer No.29 E.D.,
Air Force Chakeri, Kanpur.

-----Respondents

By Advocate: Shri Jitendra Nayak

ORDER

Delivered by Hon'ble Mr. Mohan Pyare, Member-(Administrative)

Shri M.K. Upadhyay, learned counsel for the applicant and Shri Jitendra Nayak, learned counsel for the respondents are present.

2. By way of this original application the applicant has sought the following reliefs:-

“(a) To issue an appropriate writ, order or direction in the nature of certiorari, call for record and quash the impugned order dated

29.04.2014 passed by respondent Commanding Officer and communicated through letter dated 01.05.2014.

- (a-i) This Tribunal may graciously be pleased to quash the order dated 31.10.2014 (Annexure A-3).
- (b) To issue an appropriate writ, order or direction in the nature of mandamus and restrain the respondents from interfering in the working of the applicant as Carpenter in Group 'C' category and pay him salary of the post month to month.
- (c) To award any other relief to the applicant which may be deemed just and proper by this Tribunal.
- (d) To award the cost of this application to the applicant."

3. The brief facts of the case are that the applicant was appointed as Lascar vide appointment order dated 31.01.2002 and transferred to 29 E.D., Air force on 14.05.2004. He was allotted Pass No.29ED/458. The AFO 51/78 governs recruitment rule pertaining to Civilians working in Indian Air Force. The said rule was amended vide letter dated 11.06.2003 by HQ Maintenance Command IAF. A Depot Routine Order dated 30.05.2012 was issued inviting application from eligible Civilian employees working in group 'D' category for promotion to the post of Carpenter in Group 'C'. The applicant applied undertook examination, test trade testing board and was selected and offered promotion vide appointment letter dated 15.07.2013. He was allotted fresh service number bearing P.A. No.45030-G. The HQ Maintenance Command IAF issued a letter dated 05.11.2013 directing the Commanding Officer to cancel the D.P.C., consequential promotion of the applicant and directed to hold fresh D.P.C. in the month of February, 2014. The commanding officer in a letter dated 02.12.2013 informed HQ Maintenance Command IAF that D.P.C. was held in fair and proper manner and in the interest of service. The proceeding was in order and not in violation of AFO 51/78. Still commanding officer cancelled the appointment of applicant with reference to letter dated 05.11.2013 vide its letter dated 29.04.2014 which was communicated to the applicant in a letter dated 01.05.2014 on 06.05.2014. The commanding officer is competent authority to convene the D.P.C. and make appointment of Civilians in Group 'C'

or Group 'D' and there is no need to get approval from higher authority. The cancellation of appointment of applicant is without any issuance of show cause notice and providing him opportunity to defend his case which is arbitrary, illegal and in violation of Article 14 and 16 of the Constitution of India. Para 11 of AFO 51/78 provides for allotment of maximum marks 200 for the practical and 100 marks for oral. The allegation in the letter dated 05.11.2013 that the trade test was conducted for 300 marks instead of 400 is arbitrary, hypothetical and against para 11 of AFO 51/78. As alleged in the letter dated 05.11.2013 that AFO 51/78 does not contain any provision of constitution of D.P.C. only in February in the year is not correct. It does not have any express provision prohibiting reconstitution of D.P.C. in a month other than February of the year. The constitution of D.P.C. in which applicant was promoted was undertaken in the interest of service and cancellation of appointment of applicant is improper, unjust and illegal. The appointment of applicant in a letter dated 15.07.2013 was held in accordance with Recruitment Rules (amended) 2003. The cancellation of promotion of applicant has adverse effect and civil consequences on his grade pay allowances etc. which was cancelled without providing any opportunity of being heard to applicant, which is arbitrary, illegal and in violation of principles of natural justice. The applicant has submitted his representation against the order dated 29.04.2014 which was disposed of by the respondents by a non-speaking order without assigning any reasons. On the basis of above, the applicant has requested to set aside the impugned orders dated 29.04.2014 and 31.10.2014.

4. The applicant has further submitted that the commanding officer is competent to convene the D.P.C. and cancellation of appointment order at the instance of HQ Maintenance Command IAF dated 05.11.2013 without providing opportunity and without issuing show cause notice to the applicant is arbitrary, illegal and in violation of Article 14 and 16 of the Constitution of India and also in violation of principles of natural justice.

5. Per contra the respondents in their counter affidavit has submitted that written examination and trade test for the post of Carpenter was conducted on 26.3.2013 in accordance with AFO 51/78 but candidates who appeared in written examination could not secure the recommended marks and were declared failed. The Board of Officers were reconstituted during the month of June 2013 and second D.P.C. was conducted in which applicant was declared pass. Later it was found that proceedings of BOO is not envisaged in the said AFO and there were serious deficiencies, hence HQ Maintenance Command IAF declared it ab-initio void and set aside the proceedings. Consequently, the promotions were cancelled. In the instant case, the Rules and guidelines were not followed by the BOO so the D.P.C. has been set aside and resultant promotion granted to the applicant was cancelled. As per para 21 of AFO marks allotted for test under rules will be (i) Written Test-100 marks (ii) Oral Test-100 Marks (iii) Practical Test-200 Marks whereas in the case of applicant the exam (i) Written Test-100 Marks (ii) Oral Test-100 Marks (iii) Practical Test-100 Marks. As per provisions of AFO 51/78 the written test and trade test shall be conducted once in February month of every year and above AFO does not contain any provision of re-constitution of afresh board in the event of failure of shortlisted candidates. Hence, the D.P.C. was cancelled by the competent authority. The applicant was promoted to the post of Carpenter through Limited Departmental Examination and his service condition was altered but his salary and allowances was not upgraded. No financial benefits was given to the applicant and the pay band of Group 'D' and Group 'C' Carpenter (Skill) are same i.e. 5200-20200 and applicant was granted Grade Pay of Rs.1900/- under 1st MACP. The grade pay of Group 'C' Carpenter (Skill) is also Rs.1900/-. So applicant was not provided any financial benefits on his promotion and when his promotion was cancelled there was no financial loss to applicant. Learned counsel for the respondents submits that the above original application is devoid of merit and the same is liable to be dismissed.

6. In his rejoinder affidavit the applicant has submitted that commanding officer is appointing authority and competent to constitute Board of officers and approve the proceedings of the board and offer appointment to the applicant. The respondents have not specifically disclosed as to who was the competent authority and what were other serious deficiencies in the conduct of DPC to make a proper and effective reply. The respondent commanding officer under the pressure of HQs Maintenance Command passed the impugned order dated 29.04.2014 which is not in accordance with law. The AFO 51/78 has outlived its utility after passage of Recruitment Rules-2003. The pay of the applicant was not fixed after his promotion but it is not correct to say that he did not suffer any financial loss. Paragraph 4 of AFO-51/78 provides three types of Trade Testing Rule viz. (a) Part I for Civilian Technician held against civilian trades (b) Part II for Civilian Technician held again Workshop Staff and Supervisory Staff. Para 11 of AFO 51/78 further provides marks for Part I category whereas para 21 of the SFO provides for Part II category. The marks in examination for promotion of applicant held under category Part I and not under category Part II. Hence the averment by the respondents is contrary to provisions of AFO 51/78.

7. In their supplementary counter affidavit dated 11.08.2017 the respondents have submitted that as per AFO 51/78 the written examination and trade test should be conducted during the month of February every year and AFO does not contain any provision of re-constitution of a fresh Board/DPC in the event of failure of shortlisted candidates. The DPC in question was constituted during the month of June instead of February in violation of AFO 51/78. Further trade test exam should be of 400 marks but the same was conducted for only 300 marks. In the above supplementary reply the respondents have submitted that as per para 21 of AFO 51/78 the marks allotted for trade test from Group 'D' to Group 'C' (Industrial) will be (i) Written

test-100 marks. (ii) Oral test-100 marks (iii) Practical test 200 marks. In the instant case, there were 100 marks for written examination 100 marks for practical examination and 100 marks for oral test. Hence there was discrepancy in DPC.

8. Heard the rival submissions of the parties, verified the documents and gone through the documents available on record. We find that respondents have not annexed any authority in support of their claim.

9. The AFO 51/78 in para 4 prescribe Trade Test Rules which is reproduced below:-

“4. Trade Testing rule are as under:-

- (a) Part I for the recruitment and departmental test for civilian technicians held against civilian trades.
- (b) Part II for recruitment and departmental tests for civilian technicians held against ‘workshop staff’ and ‘supervisory staff’ of Gps I and II posts.
- (c) Part III gives the syllabus for each test, trade-wise.”

In para 11 of AFO 51 Marks allotted for test under these rules will be :-

- (a) 200 marks for practical.
- (b) 100 marks for oral.

S.R.O. No.50 dated 06.03.2003 prescribes Rules to amend the Indian Air Force Group ‘C’ and ‘D’ Industrial Posts Recruitment Rules 1990, in the Indian Air Force. In Rule 12 the criterion for promotion of Group ‘D’ employees is prescribed as under:-

“Promotion: Group 'D' employees who have at least five years of service in the unit/establishment and have
 Either
 acquired Industrial Training Institute Certificate in the appropriate/akin trade/field

OR

passed requisite trade test and desirably passed Xth standard.

Absorption: Persons serving in similar, equivalent or higher grades in the lower formations of Defence Services and having the qualifications as specified in column 8.

Deputation/re-employment: The Armed Forces Personnel due to retire or who are to be transferred to reserve within a period of one year and qualifications prescribed shall also be considered. Such persons would be given deputation terms upto the date on which they are due for release from the Armed Forces; thereafter, they may be continued on re-employment. Deputation terms upto the date on which they are due for release from the Armed Forces, thereafter, they may be continued on re-employment.

Note: The Departmental Candidates who are in the feeder category will not be eligible for consideration for appointment of. deputation. Similarly deputationists shall not be eligible for appointment by promotion. (The period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/Department of the Central Government shall ordinarily not exceed 3 years. The maximum age limit for appointment on deputation shall be, not exceeding 56 years, as on the closing date of receipt of the applications)."

10. It is a fact that applicant was promoted by the respondents after conduct of examination/DPC. Even if, we presume that there were discrepancies in the conduct of examination, proper opportunities should have been provided to applicant by issuing show cause notice and inviting their submission before cancelling their promotion. If there was any discrepancy in conducting the DPC, it is the respondents who conducted the DPC and promoted the applicant should be held more responsible than the applicant. There is no allegation that applicant has used unconstitutional or illegal means to get promoted. The respondents have not produced any authority to support their contention that DPC can't be conducted 2nd time in a year or trade test should be for 400 marks instead of 300 marks as in the present case.

11. In view of the above observations, the applicant has merit in the original application. Accordingly, the original application is allowed. The impugned orders dated 29.04.2014 and 31.10.2014 are quashed and set aside. Respondents are directed to restore the applicant to a position where he was prior to order dated 29.04.2014 and 31.10.2014 and provide all service benefits within four months from the date of receipt of certified copy of this order. No Costs.

All the related MAs stands disposed of.

(Mohan Pyare)
Member (Administrative)

(Justice Om Prakash VII)
Member (Judicial)

/Neelam/