
(2013) 02 RAJ CK 0045
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7395 of 2008

Chand Mohammed and Another

APPELLANT

Vs

Central Admn. Tribunal and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) LabIC 3713

Hon'ble Judges : Amitava Roy, C.J.;V.K. Mathur, J

Bench : Division Bench

Advocate : N.K. Khandelwal, for the Appellant; Sanjeet Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—Heard learned counsel for the parties. In challenge is the judgment and order dated 23.5.2008 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (for short herein referred to as "the Tribunal") in O.A. No. 116/2007 whereby the writ petitioners' assailment of the communication No. 10210/HS/778/EIC 2 dated 21.5.2007 circulating amongst others panel of FGM, HS-I and HS-II (category of placement of Master Craftsman) had been negated. Essentially thereby, the writ petitioners perceived claim of seniority in Highly Skilled category (for short herein referred to as "HS") in terms of the policy of restructuring engrafted in the letter dated 20.5.2003 (Annex. P/3) was declined.

2. The facts in brief necessary for the disposal of the instant petition are that the petitioners entered the service under the respondents as skilled workman on 18.1.1978 and 6.8.1971 respectively and were recruited as HS-II on 22.3.1995. While they continued to serve as such, the policy aforementioned for restructuring the cadre of artisans staff in the defence establishment was enforced. Paragraph No. 3 which has a vital bearing on the issues to be adjudicated deserves to be extracted and is reproduced herein below:--

3(a) Wherever the grade structure in the Industrial as well as in the Non-Industrial trades is already existing in the ratio of 65:20:15, in the erstwhile Skilled : HS-II : HS-I, the merger of HS-II and HS-I shall be treated to have come into effect from 1.1.96 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35 (20+15).

(b) The post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

(c) The selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% of 35% of the total) and the placement in this grade shall be w.e.f. 1.1.96 and up to the date of the issue of these orders.

(d) The placement of the individuals in the posts resulting from the restructuring and ratio revision, shall be made w.e.f. 1.1.96, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure.

(e) The above provision may also be made applicable, as a special case, in relaxation of the existing rules/instructions to the employees who have either retired or died after 1.1.96.

3. Thereunder, the existing grade structure in the Industrial as well as in the Non-Industrial categories in the ratio of 65:20:15, in the Skilled : HS-II : HS-I, was modified to the ratio of 65:35 corresponding to Skilled and Highly Skilled categories. Thereby HS-II and HS-I were merged w.e.f. 1.1.1996 into Highly Skilled class. Paragraph 3(c) prescribed that the selection from Highly Skilled grade following the merger to the grade of the Master Craftsman would be limited to 10% of Highly Skilled Cadre with the placement therein w.e.f. 1.1.96 and up to the date of the issue of the order carrying the policy. Paragraph 3(d) provided that the placement of the individuals following the merger and restructuring in the respective posts would be effective from 1.1.96, in relaxation of the condition, if any, of passing the trade test etc., as a one time measure.

4. According to the petitioners, in terms of these prescriptions of the policy, though they had not passed the trade test, they were entitled to be placed en-bloc along with the others at par with effect from 1.1.1996 above those who were junior to them in HS-II cadre irrespective of the fact that they had passed the trade test. As a matter of fact, the respondents, acting on their own interpretation of the policy, drew a combined seniority list of HS-I and HS-II incumbents on 2.4.2004 to be replaced on 17.5.2004, which according to the petitioners reflected the correct inter se seniority of the incumbents concerned being in conformity with the stipulations contained in the policy, more particularly in view of the paragraph 3(d) thereof.

5. As the sequence of events would reveal, Paragraph 3(d) of the policy dated 20.5.2003 was revised in compliance of a decision rendered by the Hon''ble

Central Administrative Tribunal, Ernakulam in O.A. No. 882/2003 interfering therewith. The amended paragraph 3(d) circulated with a corrigendum dated 27.3.2006 is quoted as follows:--

3(d) The placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made w.e.f. 1.1.96, in relaxation of the conditions, if any, i.e. trade test etc., as one time measure. However, the individuals who got promotion by way of passing trade test etc. between 1.1.1996 to 19.5.2003 would be en-bloc senior to those who got promotion as result of restructuring of cadre in relaxation of conditions of passing trade test etc. Cases of recovery/re-fixation of pay as a result of restructuring of cadre may be settled in the light of said clarifications.

6. It would be patent from the above extract that in the matter of placement and restructuring ratio w.e.f. 1.1.1996, individuals who had got promotion by way of passing trade test between 1.1.1996 to 19.5.2003 were required to be construed en-bloc senior to those who got promotion as result of restructuring of cadre in relaxation of conditions of passing such trade test. Indication for examination of the cases for recovery/re-fixation of pay as a result of restructuring of cadre was also made in the light of this clarification. Admittedly, to reiterate, the petitioners did not pass the trade test at the relevant point of time. They did not even impugn the validity of its corrigendum dated 27.3.2006 introducing the afore-narrated modification to paragraph 3(d) to the policy dated 20.5.2003. It is nobody's case that if inter se seniority of the persons concerned, is computed strictly on the basis of the consideration of passing the trade test as contemplated by corrigendum dated 27.3.2006 without recognising the length of service to be the only criteria, the petitioners cannot claim superior seniority over those who otherwise junior to them in HS-II had passed such test.

7. Mr. N.K. Khandelwal, learned counsel for the petitioners, has emphatically argued with reference to paragraph 3 of the policy dated 20.5.2003, seniority list dated 17.5.2004, communications dated 29.1.2004 and 24.2.2004 that a logical and combined reading of the contents of these documents would unmistakably establish that in terms of the letter and spirit of the policy of restructuring permitting one time relaxation in the matter of passing the trade test, the petitioners' seniority ought to have been based on the length of their service as on 1.1.1996 and that the impugned decision to the contrary on a wrong interpretation of the corrigendum dated 27.3.2006 is apparently erroneous. As the learned Tribunal did not examine this aspect of the matter in the correct legal perspective, the impugned judgment and order is untenable in law and on facts and is liable to be interfered with. In support of his contentions, learned counsel for the petitioners placed reliance on the following decisions of the Hon'ble Apex Court:--

(1) State of Uttaranchal and Another Vs. Sunil Kumar Vaish and Others,

(2) Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India

(UOI) and Others,

8. In reply, Mr. Sanjeet Purohit, learned counsel for the respondents has argued that a plain reading of the corrigendum dated 27.3.2006 vis-a-vis paragraph 3(d) of the circular dated 20.5.2003 would demonstrate, without any iota of doubt, that one time relaxation in the norm of passing of trade test notwithstanding the individuals who earned their promotion by way of passing the same between 1.1.1996 to 19.5.2003 had to be provided due weightage for the purpose of reckoning their seniority and as such, the petitioners, admittedly not having passed the said test, can, by no means, claim seniority over those who have been successful in the said test. He urged that the learned Tribunal has correctly analysed the facts and interpreted the combined effect of the circular dated 20.5.2003 and corrigendum dated 27.3.2006, particularly, paragraph 3(d) and that, therefore, no interference is called for.

9. We have examined the pleadings of the parties and have analysed their arguments as well.

10. The exercise undertaken by the respondents culminating in the order impugned before the learned Tribunal, admittedly has been in terms of the Policy dated 20.5.2003, Paragraph 3(d) whereof stood amended by the corrigendum dated 27.3.2006. A combined reading of the original and amended para 3(d), referred to herein above, in our opinion, leaves no manner of doubt that though to start with the placement of the individuals concerned in the posts resulting in restructuring and ratio division was to be made w.e.f. 1.1.1996, those who had meanwhile earned promotion by way of passing the trade test between 1.1.1996 to 19.5.2003 were intended to be assigned a higher seniority en-bloc in comparison to the others who due to the relaxation of the condition of passing such trade test were otherwise entitled to have their seniority computed with effect from the said date i.e. 1.1.1996. Though the petitioners' claim in the background of the policy and the ratio of skilled and high skilled incumbents in terms thereof for computation of their seniority with effect from 1.1.1996 on the basis of their length of service in H.S. Grade-II de hors the corrigendum, it does not admit of any debate with the advent of modification of para 3(d) as adverted to hereinabove, that higher seniority to those who had passed the trade test, even though junior to them were envisaged. Paragraph 3(d) of the policy, as modified by corrigendum dated 27.3.2006, in our view, conveys this prescription in unequivocal terms. In this view of the matter, in absence of any challenge to the corrigendum dated 27.3.2006 introducing this amendment to the original paragraph 3(d) of the Circular dated 20.5.2003, we do not feel persuaded to sustain the contention raised on their behalf that their seniority ought to be fixed in the H.S. grade in service on the basis of their length of service w.e.f. 1.1.1996, even if they had not passed the trade test. The corrigendum dated 27.3.2006 having mandated higher seniority to those who had passed the trade test between 1.1.1996 to 19.05.2003, in absence of any impugnement to this prescription, the petitioners' claim of higher seniority over the individuals who

were juniors by the measure of length of service but have passed the trade test by relying upon the unamended para 3(d) of the Circular does not commend for acceptance.

11. We have closely perused the impugned judgment and order. The learned Tribunal infact had precisely taken note of this aspect of the matter, principally based on the corrigendum dated 27.3.2006 and had resultantly negated the petitioners' challenge. In the conspectus of the facts as narrated above, we do not find any cogent or convincing reason to disagree with the conclusion recorded by the learned Tribunal. This is more so as this corrigendum that had brought in, this decisive change in the unamended paragraph 3(d), has remained unchanged as on date.

12. The authorities cited at the bar, in our comprehension, are distinguishable on facts and are of no avail to the petitioners.

13. In the result, the petition lacks in merit and is hereby dismissed. Stay petition also stands dismissed.