

(2019) 01 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00311 Of 2015

Umesh Pandey (Fireman)

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0029

Hon'ble Judges : Bharat Bhushan, J;Gokul Chnadra Pati, J

Bench : Division Bench

Advocate : A.K. Singh, J. Nayak

Final Decision : Dismissed

Judgement

Bharat Bhushan, J

1. Applicant, Umesh Pandey, a Fireman at Air Force Station, Chakeri has filed this Original Application (O.A.) for following reliefs:-

a) A writ, order or direction in the nature of certiorari quashing the impugned order dated 28 August, 2014, SRO Sl. No. 69/2014, Entry No. 11 (Department Promotion Committee), passed by respondent No. 05 (Annexure A-1 to compilation -I) at AFS, Kanpur pertaining to cancellation in toto of the AF station (Station Routine Order) SRO Sl. No. 8/2014 dated 27th January, 2014, Entry No. 13 (for constitution of Departmental Promotion Committee, DPC as per rule in force on date) at Station Civil Admin Section on 28 Jan 14 at 10.00 hrs. in connection with promotion of Fireman to LHF.

b) A writ, order or direction in the nature of Mandamus directing the concerned authorities of the Department to finalize the pending list pertaining to promotion of the applicant from the post of Fireman to LHF in accordance of the "Findings" dated 14th August, 2012 of "Departmental Screening Committee" assembled on 25.7.2012 as per rule of DPC (Annexure A-1 to compilation -II) which was also approved by respondent No. 05, on 24 August, 2012 and respondents may also

be directed to promote the applicant as per bona-fide request made in the application dated 18 July 2013, 12 March 2014 and 02 June 2014 (i.e. Annexure Nos. A-7, A-17 and A-23 to compilation -II to Original Application respectively) in the existing vacancy for the post of LHF at AFS, Kanpur w.e.f. 1.6.2013 after the retirement of Shri Ram Roop-LHF on 31.5.2013 (Annexure A-5 to compilation - II).

c) A writ, order or direction in the nature of mandamus directing the respondents to consider the promotion of the applicant from the post of Fireman to LHF as per DPC Rule existing on date in consonance with the Unit Seniority List dated 1 June 2012 (Annexure A-4 to compilation II) 31 December 2013 (Annexure A-12 to compilation II) and 21 March 2014 (Annexure A-18 to compilation II) at AFS Kanpur being supported by Model Roster/Post-Based Rosters for promotion for cadre strength up to 13 posts (Annexure A-13 & A-14 to compilation-II).

d) Any other writ, order or direction at this Hon'ble Tribunal may deem fit and proper.

e) To award costs.

2. The applicant was initially appointed on the post of fireman on 8.1.1990 at Air Force Station, Chakeri, Kanpur (in short AFS, Kanpur) and was promoted to Fireman Grade- I in the month of January, 2005.

3. Subsequently, posts of Fireman Grade-I and Fireman Grade-II were merged into single grade of Firemen w.e.f. 1.1.2006 at AFS, Kanpur.

4. Applicant claims that earlier promotions in his cadre at AFS, Kanpur were granted as per seniority list maintained in the department.

5. For applicability of reservation roster, a clarification was sought from HQ MC, Indian Air Force (IAF). HQ MC, IAF clarified that promotions are to be governed as per laid down provisions in respective of Recruitment Rules (RRs) in accordance with model roster.

6. The Board of Officers (BOO) had examined the promotions made earlier since 2nd July 1997 and found that two scheduled caste (S.C.) candidates had already been promoted from Fireman Grade-I to Lead Hand Fireman(LHF).

7. A Departmental Promotion Committee (DPC) was constituted which recommended that as per existing seniority Sri A.K. Awasthi, Fireman Grade-I and Sri Vijay Kumar , Fireman Grade-I be promoted to the post of LHF. Both of them accepted promotion from September, 2010.

8. Applicant claims that one Raj Kumar (S.C.) was promoted from November 2011 as per existing seniority without reservation.

9. Applicant has also claimed that vide HQ MC letter No. MC/2958/4/1/52/SAASO (RTI) dated 24th February 2014, it was clarified that "13 Point" reservation roster was applicable for promotion of Fire Fighting Staff w.e.f. 15.10.2010 and since

then, promotions are being granted as per seniority-cum-fitness under reservation roster. Two posts of LHF were lying vacant at AF Station, Kanpur since 22nd December, 2011. Departmental Screening Committee was assembled on 25.7.2012 to examine the service records of eligible Fireman in the Grade Pay of Rs. 1900/- for promotion to LHF in Grade Pay of Rs. 2000/- as laid down in the Recruitment Rules and Government letter No. Air HQ/23049/Fire Fighting) PC-4 dated 18 November, 2011.

10. The Committee recommended the names of five Firemen for consideration of promotion to LHF in the Grade-Pay of Rs. 2000/- to Departmental Promotion Committee. At Sl. No. 1,2,3 and 4 were the candidates of unreserved category and at Sl. No. 5, was a candidate of S.C. category. The details are reproduced as below:-

Sl.No.

P/A No.

Name

Category

Trade

01

42440-N

Sri Ram Sewak

UR

F/Man

02

42441-S

Sri V.P. Shukla

UR

F/Man

03

43105-S

Sri Umesh Pandey

UR

F/Man

04

43106-A

Sri A.K. Dwivedi

UR

F/Man

05

43251-S

Sri Chaman Lal

SC

F/Man

11. The proceedings of DPC was initiated in the department on 24.8.2012 for consideration of promotion.

The committee finally recommended the names of two Firemen, namely Sri Ram Sewak and Sri V.P. Shukla, placed at Sl. No. 1 and 2 respectively amongst the list of total five candidates prepared by Departmental Screening Committee

12. The record reveals that both Sri Ram Sewak and Sri V.P. Shukla accepted the promotion from Fireman to LHF. It appears that one post of LHF became vacant on 1. 6.2013 after retirement of Sri Ram Roop, LHF w.e.f. 31. 5.2013.

13. The applicant claims that list prepared by Departmental Screening Committee whereby Sri Ram Sewak and Sri V.P. Shukla had been promoted, contains his name at Sl. No. 3. Therefore, on the retirement of Ram Roop, LHF w.e.f. 31.5.2013, he is automatically entitled to be promoted to the post of LHF w.e.f. 1. 6.2013. He further claims that even 13 point reservation roster also provides that next promotion to LHF should be from un-reserved category. He claims that list had been finalised by DPC which was subsequently approved by AOC. The applicant claims that instead of promoting him, some senior officers are keen to give undue advantage to Sri Chaman Lal, a candidate of reserved category, who had been placed at Sl. No. 5 of Fireman as on 1.6.2012.

14. Applicant claims that he moved several applications to the respondents authority but of no avail. He claims that information obtained through Right to Information Act reinforces his claim. He is senior most Fireman at the Station. Therefore, he should have been promoted immediately on the retirement of one Ram Roop, LHF.

15. The applicant claims that respondent No. 5 cancelled the Entry No. 13 of SRO Sl. No.8/2014 dated 27 January 2014 for constitution of DPC.

16. Applicant further states that according to SRO 1990, that Fireman Grade -I may be eligible to appear in the Trade Test after 3 years of service from the date of appointment being conducted by the Department concerned for promotion

from the post of Fireman to LHF. The applicant claims that if this provision had been made applicable well within time, the present applicant would have been eligible for aforesaid trade test exactly in the year 1994 and in fact, he could have been promoted to the post of LHF from Fireman. Now, he has lost that chance because of negligence and mistake committed by the Department. He has admitted that he is still entitled for promotion to LHF as had been done earlier. He claims that his various representations and communications have not resulted any action on the part of department, therefore, he has been compelled to file the present O.A.

17. The respondents have filed their counter reply disputing most of the facts enshrined in the O.A. The respondents claim that their station contains 08 posts of LHF, out of which one post is vacant w.e.f. June 2013 after retirement of Sri Ram Roop, LHF. A DPC was ordered vide SRO No. 8/14 dated 27 January, 2014.

18. Board of Officers (BOO) had asked to produce recruitment rules for promotion to LHF from Fireman. They have admitted that in the past, promotions were granted on the basis of seniority-cum-fitness. However, this position has now changed.

19. As per Air H.Q. letter No. Air HQ 123064/Griev/MC/PC-4 dated 24 Jan 2011, AF, Kanpur has been informed that bigger reservation roster is to be maintained for the cadre which consists of 13 or more posts. Since cadre of LHF at Kanpur station has only 8 posts, therefore, 13 point reservation roster is applicable. This reservation roster for promotion of Fire Fighting Staff was implemented w.e.f. 15.10.2010. Since then promotions were being granted as per seniority-cum-fitness in accordance with reservation roster. Now rule provides that passing of trade test by candidate is mandatory for promotion to LHF.

20. The respondents have clarified that proper guidelines for examination/trade test for Fire Fighting Staff was not available, therefore, station approached the higher authorities to provide guidelines to conduct trade test of fire fighting staff.

21. The recruitment rules regarding promotion to Fire Fighting Staff were received at station vide HQ MC letter No. MC/5901/56/PC dated 15 May 2014 which provide that success in trade test is mandatory for promotion. Therefore, the DPC was cancelled and applicant could not be promoted.

22. Heard Sri A.K. Singh, learned counsel for applicant and Sri J. Nayak, learned counsel for respondents.

23. Admittedly, the applicant is senior most Fireman at the station. He believes that 13 point reservation roster means that next post in LHF is for un-reserved category. Admittedly, one post of LHF is vacant with the retirement of Ram Roof, LHF w.e.f. 31.5.2013. Applicant claims that earlier, there was no requirement of passing trade test for promotion to LHF from Fireman. Admittedly, he has not cleared the trade test. Applicant claims that he has been cleared by Departmental Screening Committee and subsequently, by DPC. His name found

place at Sl. No. 3 of that list and once the post of LHF became vacant on 31.5.2013, he is automatically entitled for promotion.

24. We are not in agreement with his claim that no DPC is required. Fact of the matter is that at the time of constitution of earlier DPC, only two posts of LHF were vacant at Kanpur. The Departmental Screening Committee and DPC recommended the names of Sri Ram Sewak and Sri V.P. Shukla for promotion. Both of them accepted the promotion and with their promotion proceedings of that DPC became closed as there was no other vacancy at that point of time. Fact of the matter is that the DPC was constituted precisely to consider for promotion of two Firemen to the post of LHF. It is pertinent to point out that these promotions were done under then prevailing rules.

25. Claim of applicant that recommendation of DPC is applicable for 12 to 18 months is misleading. The recommendations of DPC may continue to be operative till vacancies are filled. Had two promoted persons not accepted promotion to LHF, then claim of applicant could have been considered in the earlier DPC, which cleared the names of Ram Sewak and V.P. Shukla. Other names were merely for the standby purpose. Meaning thereby that if the senior promoted persons in the list do not accept the promotion, then persons lower in the list can be asked to join the post and no fresh DPC is required. Once Sri Ram Sewak and Sri V.P. Shukla accepted their promotions, other recommendations of DPC became otiose.

26. We are convinced that applicant cannot claim promotion on the basis of recommendations of earlier DPC which has fulfilled his task and its recommendations will no longer operative.

27. The applicant claims that a DPC was ordered in Jan. 2014 but same was cancelled by respondent No. 5 without any reasonable cause. The respondents have clarified that new recruitment rules were received from HQ MC IAF vide MC/59012/56/PC dated 15 May 2014. These rules make it mandatory of passing of trade test for promotion of Fireman to LHF. Therefore, the department was compelled to cancel the DPC.

28. After promotion of Sri Ram Sewak and Sri V.P. Shukla, the next vacancy arose w.e.f. 1.6.2013. The DPC was immediately ordered. Unfortunately, due to non-passing of trade test by the candidates, the DPC could not be completed by BOO and it had to be cancelled.

29. It is pertinent to mention that AFS, Kanpur received copy of recruitment rules regarding promotion of Fire Fighting Staff vide HQ MC letter No. MC/59012/56/PC dated 15 May 2014 in which passing of trade test was made mandatory. Copy of recruitment rules is available on record as Annexure CA-1. Letter circulated by Girish Kumar is dated 29 April, 2013. The notification of recruitment rules is dated 26.2.2013. The respondents claim that they received recruitment rules vide letter No. MC/59012/56/PC dated 15 May 2014. Once, the new rules were made applicable, the DPC could not have promoted the applicant

under old rules. Recruitments and promotions are always done on the prevailing rules. Prevailing rules require passing of trade test. Admittedly, the applicant has not cleared the trade test. Therefore, he cannot claim promotion merely because earlier promotion had been done under different rules.

30. It is pertinent to point out that the vacancy of LHF arose on 31.5.2013. Rules circulated by the department are dated 29.4.2013. In fact, these rules are known as Fire Fighting Staff Recruitment Rules, 2013 vide SRO 14 dated 26.2.2013. Meaning thereby, that these rules were in vogue since 26.2.2013. Once the AFS, Kanpur became aware of these rules, there was no way, they could have promoted the applicant under earlier rules.

31. We have carefully examined all material available on record. We believe that this O.A. is devoid of merit and is liable to be dismissed.

32. Accordingly, O.A. is dismissed. No order as to costs.