IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7720 OF 2005
WITH
CIVIL APPLICATION NO. 2059 OF 2009

Shri P. K. Sidharthan … Petitioner
Versus
Union of India and others … Respondents

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Mr. A. S. Rao for the petitioner.

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CORAM : A. S. OKA AND M. S. SONAK, JJ.

DATE : 27th SEPTEMBER, 2018.

ORAL JUDGMENT (Per A. S. OKA, J.) :

1. This writ petition was called out for final hearing on 6th September, 2018. As none had appeared for the respondents, we had adjourned the petition till today to enable the learned Counsel for the petitioner to give notice to the respondents. Even today, none appeared for the respondents.

2. With a view to appreciate the controversy, a brief reference to factual position will be necessary. The petitioner was working in the Formation of Garrison Engineer (NW) Karanja as a Mech./Ref.HS-II under the Ministry of Defence. According to the case of the petitioner,

he passed a trade test for the post of Mech./Ref.HS-I in March, 1998 alongwith the other candidates and thus, he became qualified to occupy the said post.

3. The case made out in the Original Application filed by the petitioner was that there were 16 promotional vacancies in the post of Mech./Ref/HS-I, out of which one vacancy was reserved for Mr. Panlekar who had not passed the trade test and he had not reached the post of Mech./Ref. HS-II. In the Original Application, the petitioner submitted that 15 candidates who passed trade test for Mech./Ref/HS-I in March 1998 alongwith the petitioner ought to have been promoted to the post of Mech./Ref/HS-I with retrospective effect from 16th October, 1984. The case made out by the petitioner is that the said Mr. Panlekar had approached the Central Administrative Tribunal and as per the order dated 1st August, 1993 he was promoted to the post of Mech./Ref.HS II. The petitioner relied upon the letter dated 19th October, 1993 addressed to him by Garrisen Engineer stating that there is no vacancy in the category of Ref/Mech.HS-I for promotion.

4. The prayer in the Original Application made by the petitioner was for issue for a direction to grant promotion to him to the post of Mech./Ref.HS-I with retrospective effect from 16th October, 1984 with consequential benefits.

5. The Original Application filed by the petitioner was numbered as Original Application No. 622 of 1994. It appears that one Shri R. V. Raut and two others were similarly placed as the petitioner, filed Original Application No. 417 of 1995 for the same relief which was sought by the petitioner. It appears that the Original Application filed by the petitioner and the Original Application filed by Shri Raut and others were heard together on 25th August, 1999 and order was reserved. However, a separate judgment was delivered in the Original Application filed by the petitioner on 7th December, 1999, by which the same was dismissed. This is the judgment and order which is the subject matter of challenge in this writ petition. However, the Original Application filed by Shri R. V. Raut and others was allowed by order dated 20th January, 2000, by which respondents were directed to consider the case of the applicants in the said Original Application regarding their promotion to the post of Mech./Ref.HS-I according to their seniority in implementing the three grade structure within a period of three months. A direction was issued that in case they were found to be fit, they should be promoted along with consequential benefits including arrears of pay and allowances.

6. A review petition was filed by the petitioner seeking review of the judgment and order dated 7th December, 1999. In the review

petition, it was pointed out the Original Application filed by the petitioner and the Original Application filed by Shri R. V. Raut and others were heard together on 25th August, 1999. However, the same were decided by a separate judgment and order. It was contended in the review petition that the available promotional posts ought to have been 22 or 23. However, only 15 posts were filled in. It was contended in the review petition that the order dated 7th December, 1999 should be recalled and the Original Application should be reheard. A reply was filed to the review petition by the respondent. In the said reply, it was contended that after the judgment in the Original Application No. 417 of 1995, the case was referred to CESE, Pune for clarification who expressed an opinion that as on 15th October 1984, there was a ban and hence, the vacancies for HS-I post shall be as per strength of 205. It was contended that CAT had recorded a finding that the total strength was 240.

7. The learned Counsel appearing for the petitioner submits that the case of the petitioner was no different from the case of the applicants in Original Application No. 417 of 1995 and therefore, both the Original Applications were heard together but the judgments and orders were delivered separately and in companion Original Application, relief was granted to the applicants therein. He submitted that the judgment and

order passed by the Tribunal in Original Application No. 417 of 1995 has been confirmed by a Division Bench of this Court in writ petition filed by the respondents. On instructions, he submitted that in terms of the directions issued in Original Application No. 417 of 1995 the said Shri R.V. Raut and others were promoted and during the pendency of the petition, the petitioner had retired due to reaching the age of superannuation.

8. We have carefully considered the submissions. The specific case of the petitioner was that his case stood on par with that of Shri R. V. Raut and others who had filed Original Application. That is how both the Original Applications were ordered to he heard together.

9. We have pursed the judgment and order dated 20th January, 2000 in Original Application No. 417 of 1995 filed by Shri R. V. Raut and two others. In paragraph 14, the Tribunal has held that the sanctioned strength of the cadre was 240 and not 205. As the said judgment and order has been confirmed by this Court, we will have to proceed on the footing that the said finding regarding the existence of strength of 240 is correct. In fact, by way of reply to the review petition, the respondents contended that the said finding was factually incorrect and a prayer was made in the review to declare that sanctioned strength of the cadre of Mech./Ref.HS-I was 205 and three

grade structure as per policy dated 15th October, 1994 be implemented based on the strength of 205. Obviously, after the judgment and order in the case of Shri R. V. Raut and others had attained finality, it was not open for the respondents to contend that the sanctioned strength was not 240 and it was 205.

10. Thus, it follows that if the applicants in Original Application No. 417 of 1994 were granted promotion on the basis of the order issued on the said Original Application, even the petitioner will be entitled to the same relief.

11. Accordingly, the petition must succeed and we pass the following order:-

O R D E R

(i) If the respondents have granted relief of promotion and other consequential benefits on the basis of the judgment and order dated 20th January, 2000 in Original Application No. 417 of 1994 to the applicants therein, the petitioner shall be granted the same benefits within a period of three months from the date on which this judgment and order is uploaded;

(ii) It is obvious that even the retirement benefits granted to the petitioner shall be reworked on the basis of this judgment and order and necessary amount payable by way of difference shall be paid to the petitioner within a period of six month from the date on which this judgment and order is uploaded;

(iii) Rule is made absolute in the above terms;

(iv) Pending civil applications, if any, do not survive and the same are disposed of.

(M. S. SONAK, J.) **(A. S. OKA, J.)**