

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 390 of 2017**

**Present:** Hon'ble Mr.Gokul Chandra Pati, Member (A)

**Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Shyamala Suna, aged about 42 years, S/o Khamari Suna, At-Ordnance Factory Badmal, PO-Badmal, Dist.-Bolangir, Odisha.

.....Applicant

## VERSUS

1. Union of India, represented through Secretary, Ministry of Defence, North Block, Central Secretariat, New Delhi – 110001.
2. Director General, Indian Ordnance Factories, Ordnance Factory, S.K.Bose Road, Kolkata.
3. General manager, Indian Ordnance Factories, Bolangir (P), At-Badmal, PO-Gandapatrapalli, Saintala, Dist-Bolangir, Pin No. 767032.
4. Works Manager, Indian Ordnance Factories, Bolangir (P), At-Badmal, PO – Gandapatrapalli, Saintala, Dist.-Bolangir, Pin No. 767032.

### .....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.G.R.Verma, counsel

Heard & reserved on : 17.1.2020 Order on : 24.1.2020

## O R D E R

**Per Mr.Gokul Chandra Pati, Member (A)**

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(i) The order No. 2032/Seniority/DBW/LB/240 dated 10.06.2017 under Annexure A/5 as well as the show cause notice dated 10.04.2017 under Annexure A/2 (so far the applicant No.1 is concerned) may be quashed.

(ii) Any other relief or reliefs the Hon’ble Tribunal deem fit and proper be granted.”

2. Initially the OA was filed by two applicants out of which one applicant’s name was deleted vide order dated 29.6.2017 of this Tribunal, leaving the name of one applicant in this OA. The applicant was initially appointed through direct recruitment as a Danger Building Worker (in short DBW) under the respondent No.3 since 2.8.1998 and was promoted to High Skill Grade on 2.5.2003. It is stated in the OA that the seniority list for the DBWs working under the respondent No. 3 as on 1.1.2015 was prepared and circulated according to the date of joining (Annexure-A/1). The applicant is aggrieved since a show cause notice dated 10.4.2017 (Annexure-A/2) has been issued to

the applicant for placing some other DBWs above him in the seniority list, whom the applicant considers to be his junior. The applicant submitted the reply dated 10.4.2017 (Annexure-A/3) to the show cause notice. It is further stated in the OA that earlier the respondents had refused to revise the seniority list for 1997-98 vide order dated 8.12.2011 (Annexure-A/4) of the ground that it was time barred. But in this case, the respondents did not accept the reply of the applicant to the show cause notice by passing the order dated 10.6.2017 (Annexure-A/5), which is impugned in this OA alongwith the show cause notice at Annexure-A/2.

3. The grounds advanced in the OA are that the impugned order dated 10.6.2017 (A/5) violates the circular dated 7.1.2016 of the Ministry of Defence (Annexure-A/6) and it is not as per the settled position of law as laid down by Hon'ble Apex Court and hence, it is not sustainable. It is further averred that the principles of natural justice have not been adhered to since the applicant's reply has been rejected in a perfunctory manner. It is also averred that as per the settled law laid down by Hon'ble Apex Court, the cases of settled seniority cannot be unsettled and hence, action of the respondents to modify the seniority, will unsettle the position.

4. Counter filed by the respondents opposing the OA stated that there are 32 OAs filed by the employees praying for the same relief for which, it was suggested that all these OAs be listed and heard together for analogous hearing. It is averred that the seniority of the employees in a cadre is governed by the instructions of the Department of Personnel and Training (in short DOPT) and the SROs as applicable to the applicant. It is averred in the Counter that action taken by the respondents like issue of the show cause notice dated 10.4.2017 (A/2) for rectifying the seniority list and of the order dated 10.6.2017 (A/4) rejecting the representation of the applicant are as per the DOPT instructions and the SROs. It is also stated that the Union representatives had raised the issue of seniority and a number of representations were received on the issue of seniority, which were duly considered by the respondent No.3 and action was taken to modify the seniority as per the existing instructions of Government and the same is not arbitrary. It is further averred that the revision of the seniority is not in contravention of the Ordnance Factory Board's circular dated 7.1.2016 (Annexure-A/6 of the OA).

5. The applicant has filed the Rejoinder stating that some of the persons whose seniority is proposed to be placed above the applicant vide the show cause notice dated 10.4.2017 (A/2) had filed the OAs before this Tribunal challenging their seniority and the OAs were dismissed. The list of these OAs

has been enclosed at Annexure-A/7 of the Rejoinder. It is averred that in spite of dismissal of their OAs, their seniority positions are proposed to be changed now by the respondents in this case and they have been promoted to HS Grade-I by the order dated 10.2.2018 (Annexure-8). It is stated that since the claims of the persons concerned have been turned down by the Tribunal, it is not understood how the respondents are proposing to modify their seniority by placing them above the applicant.

6. Heard learned counsel for both the sides. Learned counsel for the applicant submitted that 15 persons who were juniors to the applicant had challenged their seniority positions in different OAs before this Tribunal and these were dismissed vide the details in Annexure-A/7 of the Rejoinder and now these persons are being treated as seniors to the applicant as per the executive order dated 10.6.2017 (Annexure-A/5), which is illegal. It was further submitted by learned counsel for the applicant that the orders of the Tribunal in above cases were not challenged by the employees who had claimed seniority vis-à-vis the applicant. Learned counsel for the applicant also filed copy of the order of this Tribunal in the OA Nos. 103 and 208 of 2012 with similar facts and circumstances.

7. Learned counsel for the respondents was heard. He submitted the reply to the Rejoinder with copy to the applicant's counsel alongwith a copy of the seniority list of DBWs as on 1.1.2001. It was submitted by learned counsel for the respondents that the seniority was required to be fixed on the basis of the DOPT circulars copies of which have been enclosed with the reply to Rejoinder. In reply to the order of the Tribunal dismissing the OAs claiming seniority over the applicant, learned counsel pointed out to the submissions in para 4.2 of the reply to Rejoinder stating that in the seniority list dated 1.1.2015 (A/1), the applicant's position was at serial No. 51. Other employees who were senior to the applicant being appointed earlier and were promoted to High Skilled Grade w.e.f. 16.11.1996 whereas the applicant was promoted to the same Grade w.e.f. 20.5.2003. It was further submitted that those employees had challenged their seniority position before the Tribunal, but the OAs were dismissed as they did not make all the juniors party to the OA. Learned counsel for the respondents drew our attention to the circular dated 17.8.2017 (Annexure-R/8 of the reply to the Rejoinder) which states that if there is discrepancy in the seniority list due non-adherence of the SRO, then such seniority list cannot be treated as the settled seniority and the cadre controlling authority can take action to remove the discrepancy.

8. We have considered the pleadings as well as the submissions by the parties. It is noticed that the only document furnished by the applicant to

demonstrate that he is senior to other employees mentioned in the show cause notice dated 31.3.2017, is the gradation list as on 1.1.2015 (Annexure-A/1). No other document has been furnished by the applicant in this OA in support of his contention that he is senior to the persons whom the respondents consider to be senior to the applicant as per the instructions of the DOPT and the SROs. Perusal of the seniority list of the DBWs as on 1.1.2015 at Annexure-A/1 of the OA shows that it is stated to be a draft seniority list. The applicant claims that his seniority position shown in the draft seniority list as on 1.1.2015 (A/1) is the correct seniority based on the date of joining and it is wrong to modify the same subsequently as the settled position of seniority cannot be unsettled.

9. The circular dated 4.8.2015 stated that the seniority of the employees will be governed as per the DOPT OMs dated 4.11.1992 and 3.7.1986 and the OFB circulars on the subject were withdrawn. It is further stated in circular dated 4.8.2015 as under:-

“..... Accordingly, promotion from Skilled to Highly Skilled Grade-II will be made as per the seniority fixed for Semi-skilled grade (entry grade) which will be arrived at as per merit of the select panel, without any linkage to the date of up-gradation to the Skilled Grade.

It may so happen that a person lower in the merit list of recruitment (in Semi-skilled grade) joins earlier due to early clearances of PVR. In such case, the person lower in the merit list will complete his/her qualifying service and be up-graded to Skilled Grade on earlier date as compared to a person higher in the merit list. However, person higher in the merit list will not lose his seniority and will be placed above the person lower in the merit list after getting up-gradation to Skilled Grade.”

10. It was clarified in the circular dated 7.1.2016 that the circular dated 4.8.2015 will not have retrospective effect, by stating as under:-

“Reference is drawn to the above referred OFB Circular wherein instructions were issued by OFB for determination of seniority in connection with Direct Recruitment in the Industrial Establishment. It has since been brought to the notice of O.F.Board that some factories are initiating action for recasting the seniority position from retrospective effect.

In this connection it is hereby clarified that the Hon’ble Supreme Court in a catena of cases has held that **‘cases of settled seniority cannot be unsettled after a long lapse of time’**.

Any action on behalf of the factories from retrospective effect will lead to massive upheaval in settled seniority position and litigations by affected employees, which will be against the spirit of the principles laid down by the Hon’ble supreme Court in various cases. Thus the above instructions are to be implemented only in cases of recruitment taking place in Semi-skilled grade on or after the date of issue of the circular of even number dated 04.08.2015, without recasting of seniority with retrospective effect prior to 04.08.2015.”

11. Further, the circular dated 17.8.2017 (Annexure-R/5) was issued by the respondent No. 2, clarifying as under:-

“This has reference to the above cited OFBOL letter. It is clarified that, the seniority of Industrial Employees will be counted from the semi-skilled

grade without any linkage to skilled date w.e.f. 04.08.2015 in accordance with OFB letter No.Per/I/Seniority/2015-16 dated 04.08.2015.

Prior to issue of this letter, seniority of IEs should be counted from the date of skilled grade as per OFB letter No. 590/OFBOL/A/I dated 24.12.2002 and not from the date of induction/entry/promotion in the semi-skilled grade.

However, provisions contained in relevant SROs cannot be ignored at any time hence, Foot Note No. 14 and other provisions contained in SRO 18E of 1989 and 185 of 1994 should be taken in to account whenever a junior employee is considered for selection for promotion and senior employee has completed probationary period.

It is further reiterated that if there is any discrepancy due to non-implementation of relevant SRO provisions, such seniority cannot be treated as settled seniority and necessary action should be taken by cadre controlling authority to remove the discrepancy as per rules.”

12. It is noticed that the above circulars have not been challenged in this OA. From the circulars/clarifications of the respondent No. 2 as extracted above, it is clear that the circular dated 4.8.2015 will not have retrospective effect except that when the provisions of the SRO 18E of 1989 and 185 of 1994 were not implemented, the seniority cannot be treated as settled seniority and it can be corrected by the cadre controlling authority. The respondents have taken the different grounds in the show cause notice dated 10.4.2017 (Annexure-A/2) for modifying the seniority of different persons vis-avis the applicant. The grounds pertaining to violation of the SRO provisions will be permissible for modifying the seniority as per the circular dated 17.8.2017 (Annexure-R/8 of the reply to Rejoinder). For some persons noted in Annexure-A/2, the grounds taken in the show cause notice do not appear to be as per the circular dated 17.8.2017, which need to be examined by the authorities.

13. The applicant has enclosed a copy of the order dated 8.12.2011 (Annexure-A/4) in which the representation of another employee regarding discrepancy in the seniority list for the year 1997-98 was rejected by the respondents on the ground that it is time barred. The applicant has not furnished copy of the seniority list for the year 1997-98 or any other seniority list in which the applicant has been shown to be senior to the persons mentioned in the show cause notice, as claimed by the applicant. Based on the documents furnished by the applicant, it cannot be said that the draft seniority list dated 1.1.2015 (A/1) reflects the settled position of seniority according to which he was senior to others who are being placed higher in the seniority by the respondents by the impugned order dated 10.4.2017 (Annexure-A/2). The applicant has also not included as parties in this OA the persons who are claimed to be juniors to him so that they could have been heard before taking a final decision in the matter.

14. The applicant's reply dated 24.4.2017 (Annexure-A/3) to the show cause notice was perused. No document has been furnished in the said reply to show that the applicant was senior to the persons mentioned in the show cause notice dated 10.4.2017 (A/2), as claimed in the reply. No final seniority list prior to the list dated 1.1.2015 (Annexure-A/1) has been furnished by the applicant in support of his claim to show that his seniority was a settled issue as he was shown as senior in the older seniority list which was duly finalized. Hence, the averment in the OA that his reply has been rejected perfunctorily, does not have any basis.

15. The applicant has taken a ground that the action of the respondents to modify the seniority with retrospective effect is not as per the circular dated 7.1.2016 (Annexure-A/6) of the Ordnance Factory Board, which has reiterated the ratio of the judgment of Hon'ble Apex Court that the 'cases of settled seniority cannot be unsettled after a long lapse of time.' The said circular also stated that recasting of the seniority with retrospective effect prior to 4.8.2015 will be against the above principle. In reply, the respondents in para 12 of the Counter have stated that there was no violation of the circulars dated 4.8.2015 and 7.1.2016 of the Board in this case. As discussed earlier, in certain cases as mentioned in the circular dated 17.8.2017 (R/8), modification of the seniority is permissible for violation of SRO for some employees while fixing their seniority and in these cases, corrective steps by the authorities can be permissible.

16. Learned counsel for the applicant has cited the order dated 24.3.2015 passed in OA No. 103/2012 (Nabin Kumar Hota vs. Secretary to Govt. of India), in which the applicant was found to be junior to the persons against whom he was claiming higher seniority as per the seniority list published in 2003, which was not challenged by the applicant in that OA (as observed in para 11 of the Tribunal's order in OA No. 103/12). It is also not very clear how the applicant in the present OA (No. 390/17) is involved in the cited OA since he was not a party to the OA No. 103/12. Further, in the seniority list of DBWs as on 1.1.2001, copy of which was furnished by the respondents' counsel, the applicant of OA No. 390/17 Sri Shymala Suna was placed at serial no. 212 and other employees named in the show cause notice at Annexure-A/2 were placed higher in the said seniority as on 1.1.2001.

17. In the circumstances as discussed above, this OA is disposed of with liberty to the applicant to file a fresh appeal before the Respondents no. 2 through the official channel against the impugned order dated 10.6.2017 (A/5) within one month from the date of receipt of a copy of this order, enclosing the documents and/or copy of the order of the Tribunal in the OAs referred in the

Rejoinder or relied upon by the applicant's counsel in support of the applicant's claim that he was senior to all or some of the persons mentioned in the show cause notice at Annexure-A/2 and/or to show that the circulars dated 7.1.2016 and 17.8.2017 (Annexure-R/8 of the reply to Rejoinder) have been violated by the respondents in this case. If such an appeal is submitted by the applicant within the time as stipulated above, the respondent no. 2 will consider the appeal afresh as per the provisions of law taking into account the documents furnished by the applicant in his appeal and the circulars dated 7.1.2016 (Annexure-A/6) and 17.8.2017 (Annexure-R/8) and dispose of the said appeal by passing a speaking and reasoned order, copy of which will be communicated to the applicant within three months from the date of receipt of the appeal from the applicant as stated above. It is made clear that status quo in respect of the applicant's seniority will be maintained as per the order dated 29.6.2017 of this Tribunal passed in this OA till communication of the speaking order to the applicant as above and that if no appeal is submitted by the applicant within time as stated above, the above status quo order in respect of the applicant's seniority will stand vacated.

18. The OA is accordingly disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

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