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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2279 of 1995(PB)
with
O.A.No.2218 of 1995

Dated this 13th day of January, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC(J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

OA.2279/PB/95

Narendra Kumar
R/o A-10/5
Purbasha Housing Estate
160 Maniktala Main Road
Calcutta-54.

... Applicant

(By Advocate:Shri G.D. Gupta)

Versus

Union of India, through

1. Secretary to the Govt.
of India, Ministry of Defence
Department of Defence Production
and Supplies, South Block
New Delhi-11.
2. The Director General of Ordnance
Factories/The Chairman
Ordnance Factory Board
10 Auckland Road
Calcutta-1.
3. Shri S.K. Singh
Works Manager
Small Arms Factory
Kanpur-208001.
4. Shri M.R. Sublok
Works Manager
Ordnance Factory
Katni-483503.
5. Shri K.R. Murthy
Works Manager
Ordnance Factory
Ambajhari
Nagpur-440021.
6. Shri Thaminder Singh
Works Manager
Ordnance Factory
Ambajhari
Nagpur-440021.
7. Shri Arvind Kr. Agarwal
Joint Director
Ordnance Factory Staff College
Ambajhari
Nagpur-440021.

8. Shri Dipak Kr. Talukdar
Works Manager
Rifle Factory
Ishapore-740144.
9. Shri S.P. Saxna
Works Manager
Heavy Vehicles Factory
Avadi
Madras-600054.
10. Shri R.S. Jauhari
Works Manager
Ordnance Factory
Kanpur-208009.
11. Shri D.K. Chatterjee
Ammunition Factory
Kirkee
Pune-411003.
12. Shri B.P. Maitey
Works Manager
Ordnance Factory
Bhusawal, At & P.O. Bhusawal
Maharastra.
13. Shri T.G. Subramanian
Works Manager
Ordnance Factory Project Meadak
P.O. Yaddumailaram-502205.
14. Shri R. Muthuvel
Works Manager
Heavy Vehicles Factory
Avadi
Madras-54.
15. Shri T.K. Mandal
Deputy Director
Ordnance Factory Board
10A Auckland Road
Calcutta-1.
16. Shri Rajib Chakraborty
Deputy Director
Ordnance Factory Board
10A Auckland Road
Calcutta-1.
17. Shri Pulakranjan Mandal
Deputy Director
Ordnance Factory Board
10A Auckland Road
Calcutta-1.
18. Shri Om Prakash Raisadi
Works Manager
Engine Factory
Avadi
Madras-600054. Respondents

(By Advocate: Shri V.S.R. Krishna)

O.A.No.2218/95

1. Prabhat Verma
S/o Dr. K.L. Verma
R/o 226 Ravindra Nagar
Adhartal
Jabalpur (M.P.).
2. Bharat Singh
S/o Shri B.N. Singh
R/o 12/2 Gun Carriage Factory Estate
Jabalpur (M.P.).
3. C.B.S. Markam
S/o Shri U.S. Markam
Works Manager
Ordnance Factory Khamaria
Jabalpur (M.P.).

... Applicants

(By Advocate:Shri G.D. Gupta)

Versus

Union of India, through

1. Secretary to the Govt.
of India, Ministry of Defence
Department of Defence Production
and Supplies, South Block
New Delhi-11.
2. Chairman
Ordnance Factory Board
10A Auckland Road
Calcutta-1.
16. Shri Rajiv Chakraborty
Deputy Director(G)
Ordnance Factory Board
10A Auckland Road
Calcutta.
17. Shri P.R.Mandal
Deputy Director
Ordnance Factory Board
10A Auckland Road
Calcutta.

... Respondents

(By Advocate: Shri V.S.R. Krishna)

O R D E R

Hon'ble Mrs. Shanta Shastry, M(A)

As common issues of law and facts are involved in both these O.As. these are being disposed of by a common order as below:-

OA.No.2279/PB/95

In this OA the applicant has challenged the impugned orders dated 14.11.1994 and 1.1.1995 whereby the seniority of the applicant has been downgraded vis-a-vis his juniors. The reliefs sought are:

- i) To direct the respondents to modify/amend the impugned seniority list of Senior Time Scale officers of the Indian Ordnance Factories Service as on 1.1.1995 by placing the applicant between sl.no.16 and 17 in that list;
- ii) Declare the impugned order of 14.11.1994 as not valid in law;
- iii) To direct respondents to make a fresh Review DPC of 1987;
- iv) to direct respondents to hold a fresh Review DPC for promotion to Junior Administrative grade by cancelling the one held on 15.5.1995; and
- v) To quash the memo dated 16.5.1995 rejecting the representation of the applicant.

2. The applicant had appeared in the Combined Engineering Services Examination held in the year 1982. On selection he was allotted to the Indian Ordnance Factories Services (IOFS), as an engineer

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under the Ministry of Defence, Department of Defence Production and Supplies. He was issued an offer of appointment vide letter dated 31.3.1984 asking him to report at Jabalpur by 10th April, 1984. Applicant states that by a subsequent letter dated 11.7.1985 the time for joining the service was extended by the respondents upto 31.7.1985. He joined on 1.8.1985 at Ordnance Factory, Muradnagar, Ghaziabad, U.P. in the Junior Time Scale (JTS) of IOFS. After completion of four years of service, he was promoted to the senior time scale (STS) w.e.f. 11.8.1989.

3. Subsequent to the joining of the applicant a seniority list was published on 1.4.1986 placing the applicant at serial No.51. Till 1990 the seniority lists of officers of junior time scale and senior time scale were shown separately and discipline wise. But subsequently from 1.7.1990 all officers technical and non-technical were clubbed together in the seniority list of JTS. This was so in respect of STS also. According to the combined seniority list of 1.7.1990, the applicant's seniority was shown at S1.No.75 above Shri S.K.Singh, respondent No.3 and below Shri A.K. Tiwari, who were shown at S1.No.76 and 74 respectively. In the seniority list of 1992 circulated on 1.1.1993 the applicant was placed at S1.No.103 above respondent No.3. This inter-se seniority was retained in the list of STS as on 1.1.1994.

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4. Thereafter, however, the respondents issued the impugned letter dated 14.11.1994 giving notional promotion to 26 officers in the grade of STS in the IOFS. Their seniority was also revised. The applicant was not promoted. The new seniority list brought out on 1.1.1995 placed the applicant at S1.No.33 and placed his junior i.e. respondent No.3 at S1.No.17. 16 other junior officers were also placed above him.

5. Applicant states that one Shri S.P.Saxena, who is also from the IOFS, had filed O.A. No.679/91 in the Madras Bench of the Tribunal as he was not considered along with his batchmates in the DPC for STS held on 25.3.1987 because he had not completed four years qualifying service before 31.12.1987. The O.A. was allowed with directions to the respondents to consider him for promotion in a review DPC of 25.3.1987 and to assign him his due seniority deeming that he had been promoted w.e.f. 20.2.1988. In pursuance of the judgment dated 16.10.93 in the OA.No.679/91 the respondents held a review DPC on 4.10.1994 and issued the impugned orders dated 14.11.1994 and 1.1.1995. Based on the seniority of 1.1.1995 a DPC was held on 15.5.1995 to promote officers further to junior administrative grade of IOFS.

6. The applicant is aggrieved at having lost his seniority. He contends that according to the note 4 below rule 27 of the Recruitment Rules of IOFS

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officers whenever a junior is promoted his senior should also be considered for promotion irrespective of the length of service put in by him. This rule was overlooked by the respondents when they did not consider him for promotion in the Review DPC of 4.10.1994 as a result of which his seniority has been pushed down below his juniors. The learned counsel for the applicant argues that he has been discriminated against in that in a similar case of Shri R.K. Sharma who joined on 5.4.1980 and who was shown senior to one Shri Elango who joined on 3.1.1979 on the basis of the merit order recommended by the UPSC his seniority continued to be maintained even in the seniority list of 1.1.1995. The applicant claims that he was entitled to be considered in the review DPC of 4.10.1994 and even if not considered his seniority should not have been altered.

7. Some non-entitled juniors were considered to the exclusion of the applicant. For example Shri Rajiv Chakraborty and Shri Pulak Ranjan Mondal who were not entitled to be considered in 1987 were upgraded. According to the applicant the entire seniority list was anomalous.

8. The applicant represented against the impugned orders on 15.3.1995. He was informed on 15.5.1995 that the same had been forwarded to the Ministry of Defence. No decision was communicated. In the meantime a DPC for the post of Junior

Administrative Grade of IOFS was held on 15.5.1995 on the basis of the seniority list of 1.1.1995. His representation for his promotion to the STS was rejected on 16.5.1995.

9. The learned counsel for the respondents states that the applicant was asked to join on 10.5.1984. With due permission he reported on 31.1.1985. Then he remained absent unauthorisedly from 5.2.1985 to 25.4.1985 and again from 6.5.1985 he was absent. He also gave an application dated nil to treat his joining in service as withdrawn as he failed to submit the required surety bond. Again after a specific request made by him he was allowed to join on 31.7.1985 as a very special case vide letter dated 11.7.1985. He reported on 1.8.1985. He wilfully and knowingly avoided joining service as per time specified in the appointment letter.

10. According to instructions of DOPT dated 6.6.1978, appointment offer cannot be kept open for a period exceeding nine months. Joining after nine months one forfeits one's seniority. Yet the applicant was allowed to join and was allowed his due seniority in the beginning.

11. The respondents have also raised the plea of limitation. Though the applicant was promoted in 1989, later than his batchmates and juniors he is challenging the promotion now in 1998. Thus the O.A. is fraught with laches and is barred by limitation.

12. The learned counsel for the respondents argues that only those persons who have completed four years of service in the feeder grade are eligible for promotion to the STS of IOFS. While agreeing that the note 4 below rule 27 of the Recruitment Rules of IOFS officers stipulates "that if an officer appointed to any post in the service is considered for promotion all persons senior to him in the grade shall also be considered notwithstanding that they have not rendered the requisite number of years of service", the respondents contend that this is subject to the eligibility of the officer, i.e. the officer should have completed his probation period. The applicant had not completed his probation when DPC was held on 25.3.1987. Therefore though considered, he was not found fit for promotion. The DOPT have modified the statutory Recruitment Rules vide their instructions dated 19.7.1989 wherein it has been reiterated that probation period must be completed to be considered for promotion. The counsel relies upon the judgment in the case of Prabha Devi Vs. UOI reported in 1988(7)ATC 63 wherein it was held that seniority alone is no criteria for promotion to next higher grade. Eligibility is the first and foremost consideration for promotion. He avers that the Hon'ble Principal Bench of CAT have also vindicated the stand of the respondents in their judgment dated 11.7.1997 in O.A. No. 23 of 1997 in the case of Lambodar Mishra Vs. Union of India and others.

13. The applicant has relied on different judgements of different Benches of CAT in OA. No. 419/93 dated 13.7.1997 of Bombay Bench, OA. No. 1742/93 dated 23.4.1998 of Allahabad Bench and OA. No. 896/97 dated 23.10.1998 of Madras Bench.

14. We have heard the learned counsel for both the applicant and the respondents and have also perused the judgements cited. The entire issue is centered around the criterion of completion of probation period for consideration of promotion.

15. We shall first deal with the point relating to limitation.

16. According to the applicant though he was promoted in 1989 his seniority was not disturbed. Therefore, though the cause of action arose in 1987 he did not agitate the matter. It was only when the impugned order of 14.11.1994 and seniority list of 1.1.1995 were issued that he got a jolt and represented at once and filed the O.A. in 1995. Thus there is no delay and his application is within the prescribed time limit. We are inclined to accept the explanation especially since it is a matter of promotion and seniority, promotion of juniors to the exclusion of seniors provides recurring cause of action. Therefore, the objection on ground of

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limitation is rejected.

17. The learned counsel for the applicant has taken us through all the five judgments cited by him. All these judgments related to the same issue of promotion of seniors irrespective of the number of years of qualifying service if their junior is promoted and the criterion of completion of probation period for promotion.

18. In the judgement in O.A. No. 419/93 decided on 13.6.1997 the Bombay Bench allowed the OA following the ratio in O.A. No. 679/91 in case of S.P. Saxena Vs. UOI and others decided by Madras Bench of the Tribunal on 15.10.1993. There was no specific reference to probation period in this OA but the very fact that though the applicant had put in less than four years qualifying service, in fact had completed it only in 1991 yet he was allowed to be promoted from 1989, by implication it would mean that non-completion of probation was not considered a bar. A writ petition No. 6610 of 1998 filed in the High Court by respondents in this connection was dismissed thus making the order final in O.A. No. 419/93.

18. In O.A. No. 1742/93 of Allahabad Bench the issue of completion of probation period was discussed and it was held that since the note No. 4 under rule 27 of the Recruitment Rules for IOFS does not make an exception that a person who is senior and has not completed the probation period is not required to be considered for promotion, the same cannot debar the

promotion. The respondents had not produced any instructions of DOPT in this regard and even if there be any instructions the applicant could have been considered for officiating promotion. Relying on the judgment dated 13.7.1997 of the Bombay Bench in OA No. 419/93, the O.A. was, allowed.

19. The third case is the O.A. No. 896/97 decided on 23.10.1998 by the Madras Bench. In this case the main point was of probation. It was held that though the DOPT issued instructions on 19.7.1989 to make completion of probation period a precondition for promotion they had not been translated into statutory rules and they cannot therefore have the force of statute. Therefore, as on 25.3.1987 the instructions of 19.7.1989 of the DOPT not being relevant the OA was allowed and the applicants' seniority was restored. Though the case of Lambodar Misra (supra) is cited as supporting the stand of the respondents detailed reasoning has been given in the aforesaid judgments of different benches for not following the same. We do not consider any need to dwell on it further.

20. The applicant in this case is similarly placed and since the main issue has been dealt with elaborately and with detailed reasoning in the OAs cited earlier, we do not consider it necessary to repeat the same. Suffice it to say that the applicant's case is fully covered by the ratio in the judgements cited by the applicants particularly the

decision in OA.No.896/97 dated 23.10.1998 of the Madras Bench.

21. OA.No.2218/95

The applicants three in number are similarly placed to the applicants in OA.No.2279/95. They were also selected to the IOFS and were appointed initially in the Junior Time Scale (JTS) in the IOFS on 25.4.1985, 28.6.1985 and 31.5.1985 respectively. They were promoted to the Senior Time Scale (STS) on completion of four years of service on 29.4.1989, 30.6.1989 and 31.5.1989 respectively. The respondent nos-3&4 were also initially appointed to the service on 28.2.1985 and 21.8.1984 respectively. The two respondents were promoted to the STS on 28.2.1989 and 3.11.1988 respectively. Consequent upon the judgement dated 15.10.1993 in the case of S.P. Saxena (supra), a Review DPC was held in 1994 and 26 officers were granted notional date of promotion to the STS in the IOFS vide order dated 14.11.1994. Their juniors viz. respondent nos.3&4 figure in the list of promotees to the exclusion of the applicants. Consequently their seniority has been refixed in the STS as per the seniority list released on 1.1.1995. According to this the seniority of respondent nos.3&4 has been revised to 81(B) and 81(C) respectively as against their original seniority of 122 and 123 respectively as on 1.1.1993. Similarly in the seniority list of STS officers of the IOFS the names of respondent

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nos.3&4 are mentioned at sl.no.31 & 32 respectively whereas the names of the applicants are at sl.no.36, 35 & 45 respectively. Though the applicants joined the service later than the respondents by virtue of their merit ranking recommended by the UPSC at the time of selection, they were senior to the respondent nos.3&4 till the date of issue of the impugned revised seniority list. Thus respondent nos.3&4 have now been given unwarranted benefit of seniority over and above the applicants.

22. The applicants therefore have prayed for quashing of the seniority list showing positions as on 1.1.1995 to the extent the names of respondents 3&4 have been placed at sl.no.25 & 26 respectively. The applicants also have sought a direction to the respondents 1&2 to restore the position of seniority in respect of the applicants and the respondent nos.3&4 as it existed in the seniority list of 1.1.1993. The applicants have also submitted that the judgment dated 15.10.1993 delivered in OA.No.679/1991 of the Madras Bench in the case of S.P. Saxena was a judgment in personam and not in rem. Therefore, the applicants have sought a declaration to the effect that the said judgment should be made applicable only in respect of Shri S.P. Saxena, the petitioner in that case and not to any other person.

23. The learned counsel for the official respondents has argued that the applicants have no

case because on the date of the original DPC i.e. 25.3.1987 they had not completed two years of probation and therefore they were not eligible in terms of the recruitment rules. The applicants were considered by the Review DPC held on 4.10.1994 but their cases were not recommended because of their non completion of the probationary period on the relevant date. The learned counsel for the official respondents also asserted that the judgement in the case of S.P. Saxena (supra) is in rem and as the question of promotions to STS was discussed at length after discussing the recruitment rules as well as the instructions issued by the DoP&T, necessary directions were issued with regard to the promotions and, therefore, in compliance of the orders passed by the Hon'ble Tribunal in the said case the official respondents held a Review DPC on 4.10.1994 to consider the proceedings of DPC held on 25.3.1987 for promotion in the grade of STS in the IOFS Group 'A'. All other identically placed persons with Shri S.P. Saxena were considered by the Review DPC. It cannot be that the benefit of the judgment is extended to one individual denying the same to other identically situated persons of the same batch.

24. The applicants' main stand is that their juniors have been placed above them in the seniority list for no fault of theirs and according to the recruitment rules they being senior to respondent nos. 3&4, their seniority should have been maintained

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above respondent nos.3&4.

25. In this OA also the main reason for denying promotion on the due dates and for depressing their seniority vis-a-vis their juniors is that the applicants had not completed two years of probation. Thus cases of these applicants are also squarely covered by the judgements cited in the OA.No.2279/95. They are similarly placed to the applicants in the OA.No.2279/95. The observations made in OA.No.2279/95 are equally relevant and applicable to the applicants in this OA also.

26. In view of our observations above, we are of the considered view that the applicants in both the OAs should not have been excluded from promotions in the Review DPC held on 4.10.1994 on the sole ground of their non-completion of the probation period. They are entitled to restoration of their original seniority, i.e. prior to the revision of 1.1.1995 above respondent no.3 in OA.No.2279/95 and above respondent nos.3&4 in OA.No.2218/95. They should also have been considered for promotion to higher Junior Administrative Grade at the relevant time.

27. In the facts and circumstances of the case, we set aside the impugned order dated 14.11.1995 and the impugned revised seniority list of 1.1.1995 to the extent they affect the interests of the applicants vis-a-vis their junior respondents in both the OAs.

Consequently, the memo dated 16.5.1995 in respect of applicant in the OA.No.2279/95 is also quashed.

28. The respondents are directed to:

(i) Hold a fresh Review DPC of 04.10.1994 to consider the applicants in both the OAs for promotion to STS with effect from the date their juniors were promoted.

(ii) Recast the seniority of the applicants in the seniority list of 1.1.1995 vis-a-vis respondent no.3 in OA.No.2279/95 and respondent nos.3&4 in OA.No.2218/95 and thereafter assign appropriate places to them as per their original seniority in the JTS.

(iii) The respondents shall also hold a fresh Review DPC of 15.5.1995 to consider the applicants for further promotion to the Junior Administrative Grade from the date their juniors were promoted according to the rules.

(iv) We do not order any arrears of pay etc. to be paid. However, other consequential benefits such as seniority, further promotion etc. to

which the applicants may be entitled, be considered according to law and rules.

(v) These directions be complied with within 3 months from the date of receipt of a copy of this order. A copy of the order of recasting the seniority should be sent to the applicants also.

29. In the result, both the OAs are allowed. No costs.

Shanta Shastry
(Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman (J)