

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2035/1997

New Delhi, this the 5th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. Shri Brij Bhushan Sharma
Chargeman - I (T)
P.No. 853869 (O.F.Muradnagar)
S/o Shri Basant Rai Sharma
R/o New Defence Colony
Murad Nagar.
2. Shri S.D.Tomar,
Chargeman - II (T)
P.No. 853900 (O.F.Muradnagar)
S/o Shri Ram Swaroop Singh
R/o 37/Q/215, O.F.Estate, Muradnagar.
3. Shri A.S.Gupta
Chargeman - II (T)
P.No.896328 (O.F.Muradnagar)
S/o Shri S.P.Gupta
R/o New Defence Colony
Muradnagar.
4. Shri S.C.Gupta
Chargeman - II (T)
P.No. 853986,
Ordnance Factory, Muradnagar
S/o Shri R.P.Gupta
R/o 3/516, New Defence Colony
Railway Road, Muradnagar
Distt. Ghaziabad.
5. Shri Amarpal Singh
Chargeman II (T)
P.No. 853987,
Ordnance Factory Muradnagar
S/o Shri Narain Singh
R/o QA-64, Ordnance Factory Estate
Muradnagar, Distt. Ghaziabad.
6. Shri Brijinder Singh
Chargeman - II (T)
P.No.853988,
Ordnance Factory, Muradnagar
S/o Shri Amar Singh
R/o 22-A, Ordnance Road
Meerut Cantt, MEERUT.
7. Shri Rajpal Singh
Chargeman - II (T)
P.No.853989
Ordnance Factory, Muradnagar
S/o Shri Bhagwat Singh
R/o 24/Q/105, Ordnance Factory Estate
Muradnagar, Distt. Ghaziabad.
8. Shri Sunder Lal Gupta
Chargeman - II (T)
P.No.853990

Ordnance Factory, Muradnagar
S/o Shri Chhedelal
R/o 14/QA/74 Estate Muradnagar.

9. Shri S.K.Rajniwal,
Chargeman I (T)
P.No.853936
Ordnance Factory, Muradnagar
S/o Shri Ram Kishan
R/o 10/III Type/76
O.F.Estate, Muradnagar.

10. Shri Vikram Singh
Chargeman - II (T)
P.No.853942
Ordnance Factory, Muradnagar
S/o Shri Ikhtyar Singh
R/o Vill. & Post, Jalalabad,
Ghaziabad.

11. Shri Daljit Singh
Chargeman - II (T)
P.No. 853991
Ordnance Factory, Muradnagar
S/o Shri Pratap Singh
R/o 11/III Type 82
O.F.Estate, Muradnagar.

...Applicants

(By Advocate Shri S.D.Sharma)~

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Ministry of Defence Production
South Block
New Delhi.
2. Ordnance Factory Board
through its Chairman
10-A Auckland Road
Calcutta - 700 001.
3. General Manager,
Ordnance Factory,
Muradnagar, Distt Ghaziabad.

...Respondents

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

O R D E R

By Hon'ble Shri Govindan S.Tampi, Member (A)

Grant of notional promotion and seniority in the grade of Chargeman II and thereafter in grade of Chargeman I is sought for in this OA.

2. MA No.1945/1997 for joining is allowed.

3. Heard Shri S.D.Sharma, learned counsel for the applicants and V.S.R.Krishna, learned counsel for the respondents.

4. Briefly stated, facts of the case are that all the eleven applicants had joined as apprentices in factories under Directorate General Ordinance Factory (DGOFF), with avenues for promotion as Craftsman Grade A (T), Supervisor B (T), Chageman Grade II and Chageman I (T) and Assistant Foreman (T) in that order. In 1978, it was decided that all the ex-journeyman, who were supervisors 'B' be given notional seniority, but they could not become senior to those in Grade 'A'. Some employees of Ordinance Factory at Eishapore, moving the Court got the benefit of notional promotion and seniority on transfer as well. However, this could not be given effect to as no factory was prepared to take them on transfer. Still, on the basis of Tribunal's order, issued following an order of the Hon'ble Supreme Court's, few journeymen were transferred to various factories, though the staff side had opposed it. By its circular dated 19.10.1992, General Managers of Factories were directed to give notional seniority only to those Ex-journeyman, graded as 'B' and to hold review DPC for promotion to Supervisor-B only from them. This meant that supersession of erstwhile 'A' grade workman was imperative. Revised seniority lists were also to be accordingly published, on the dates when those who have become juniors to erstwhile 'B' grade, were promoted as Supervisor 'B' (T). Before that a Circular dated 7.9.1992, had proposed for grant of notional seniority and promotion to those graded 'B' and 'A' in

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1978 and that it could be done within six months from actual gradation. If the juniors were already promoted as Supervisor 'B', these also could be so promoted, subject to their being found fit by DPC. The clause relating to transfer was also deleted. In view of the above circulars, the applicants were given notional promotion as 'A' grade workmen and Supervisor 'B' from the dates on which their juniors had got promotions. Applicants came to be accorded seniority in position to those who were already working as Chargeman II or I, and they became eligible for the said promotions but they were denied the same. Naturally the higher seniority accorded to them was not translated into results. Following the representation by the N.G.O. Associations, orders were issued refixing pay and allowances in the higher grade, for the applicants. Hence this application.

5. In their OA, the applicants plead that they be granted promotion and seniority as Chargeman II and I and Foreman with all consequential benefits. Denial of the promotion was against the principles of equality as enshrined in Articles 14 and 16 of the Constitution. They are entitled for promotion or elevation, vis-a-vis their admitted juniors and the same cannot be denied to them, on whatever imaginary grounds on which the respondents are attempting to do, plead the applicant.

6. Respondents contest the above. According to them, all individuals who were graded 'B' on the successful completion of their journeyman ship were to be granted notional seniority in grade 'A' workman, six

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months later than their actual gradation and notional promotion to Supervisor grade B (T) on the dates when their juniors were promoted. This was only on notional basis without the benefit of arrears of pay and allowances on re-fixation. Accordingly all the applicants were given notional seniority in 'A' Grade workmen and notional promotion to Supervisor 'B'(T) from the date their juniors were given the promotion. Besides, Supervisor 'B' notionally promoted, were appointed by transfer on Chargeman II (T) along with others. They are also presently holding the post of Chargeman I/II. Their representation is for grant of notional seniority and further promotion as Chargeman I(T)/ AF (T). It is pointed out by the respondents that the applicants have been given their due and for further promotions if any have to wait for their turn. They also state that as the impugned events relate to 1992, OA filed in 1997 is hit by limitation. In terms of Chellam Committee's report grant of notional seniority was available only in workman Grade I and then to Supervisor B(T) and was to continue thereafter. It is also averred by the respondents that on the very same issue, similarly placed employees of Ordnance Factory, Khamaria filed OA No.217/1987 before Jabalpur Bench of the Tribunal which was disposed of on the finding that those who have been given notional seniority cannot be obviously ranked above those who were regularly promoted earlier. The SLP filed against the said judgement (OA No.1690/1993 by K.M.K.Nair and Ors Vs.UOI) was dismissed by the Hon'ble Apex Court. That being the case nothing survives and the application should be dismissed is what the respondents plead..

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7. In their detailed response, the respondents aver that the applicants had originally failed in the gradation test to get 'A' and were categorized as 'B'. Subsequently on the recommendation of Chellam Committee, they were promoted to skilled grade A, with provision for getting notional seniority after six months with liability for transfer elsewhere. Transfer clause was deleted subsequently. Hence the promotion of the applicants to 'A' grade and as supervisor 'B' purely on notional basis. Grant of this seniority was only notional and nothing further turned on that; according to the respondents.

8. In their rejoinder, the applicants plead that once seniority has been granted to them, other consequential benefits should follow and they should be promoted to the higher grade earlier than their juniors, even if they have come to occupy the position earlier. Otherwise, the grant of seniority would be a hollow exercise, plead the applicant.

9. Both the counsel-S/Shri Sharma and Krishna-reiterated their positions during the oral submissions.

10. We have carefully considered the matter. The issue that calls for determination is whether the applicants who were given notional seniority/promotion as skilled Grade 'A' and then to Supervisor 'B' from the dates their erstwhile juniors were promoted, could carry the benefit for further promotion as Chargemen II/I/Assistant Foreman (T). While according to the applicants, without the grant of consequential benefits, grant of notional seniority would be

meaningless, the respondents point out that those who got the notional seniority almost as a concessions, cannot get any further benefit on that. It is on record that the applicants on completion of their training did not make the skilled grade 'A' but could only get grade 'B'. Only subsequently with the adoption of Challem Committee's report, they were also given elevation to Group 'A' on a notional basis and on a concessional basis. That being the case, the applicants cannot seek seniority for further promotion over others, though erstwhile juniors to them, who have been promoted as Supervisor 'B' on regular basis. Our decision is fortified by the decision of the Hon'ble Apex Court in Civil Appeal No 1690/1993, /SLP No.13257/1991 wherein it has been held that the appellants in the said case (similarly placed as the applicants before us now) have "neither the law nor the equity on their side". Ratio of the said decision is squarely applicable to the facts of this OA and against the applicants.

11. The respondents have raised a preliminary objection of limitation against the OA, but as the issue for determination ultimately is concerned with fixation of pay and allowances- a continuous cause of action, this OA is not hit by limitation. The same, however, does not come to the assistance of the applicants, as their case fails on merits.

12. In the above view of the matter, OA fails and is accordingly dismissed. No costs.

(Govindan S. Tampi.)
Member (A)

/vikas/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

5/10/2011