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Central Administrative Tribunal, Principal Bench

O.A.No.1114/2000

Date of Decision 25.4.2001

Shri Jai Prakash Sharma : Applicant
(By Advocate Shri Vijay Kumar Mehta)

Versus

UOI & Ors - Respondents
(By Advocates Shri A.K. Bhardwaj and M.K. Bhardwaj)

CORAM :

Hon'ble Mrs.Lakshmi Swaminathan Vice Chairman(J)
Hon'ble Mr.Govindan S.Tampi, Member(A)

1. To be referred to the reporter - Yes
2. Whether it needs to be circulated to - No
other Benches of the Tribunal

(Govindan S. Tampi)
Member (Admn)

Patwal.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1114/2000

(16)

New Delhi, this the 3rd day of April, 2001

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

Shri Jai Prakash Sharma
S/o Late Shri Munshi Ram
R/o G-245, Shriniwas Puri
New Delhi-110065

...Applicant.

(By Advocate Vijay Kr. Mehta)

V E R S U S

Union of India : Through

1. Secretary
Ministry of SSI, Agro & Rural Industries
Udyog Bhawan,
New Delhi - 110011.
2. The Development Commissioner
Small Scale Industries
Ministry of SSI, Agro & Rural Industries
Udyog Bhawan,
New Delhi - 110011.
3. The Director
Small Industries Service Institute
Ministry of SSI, Agro & Rural Industries
Okhla Industrial Estate
New Delhi - 110020

...Respondents.

(By Advocates Shri A.K.Bhardwaj and
Shri M.K.Bhardwaj)

O R D E R

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

Orders No.20025/39/87-Estt dated 5-5-2000 passed by the Assistant Director (Admn), Small Industries Service Institute (SISI), Ministry of SSI, Agro and Rural Industries, communicating to the applicant that he stood automatically reverted to Skilled Worker Grade II w.e.f. 1-7-97 and that of 3-3-2000, re-fixing the pay of the applicant in the pay scale of Rs. 3050-4590/- w.e.f. 1-7-97, are under challenge in this OA. These orders have been stayed under the order of the Tribunal dated 9-6-2000.

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2. Heard learned counsel for the applicant and the respondents.

3. Shri Vijay K. Mehta, learned counsel for the applicant points out that the applicant who joined initially as Helper on 1-1-1981, became a Skilled Worker Grade II, in which capacity he was attached to Lens grinding and polishing workshop. Following the promotion, on 20-1-1993 of one Shri Dharinder Kumar, who was junior to the applicant as Skilled Worker Gr.II, to Skilled Worker Gr.I, the applicant made a representation for his elevation as well, but the same did not evoke any response. It was followed by promotion to Skilled Worker Grade I of three other Skilled Worker Gr.II i.e. S/Sh. Gulzar Ahmed, Ospal Singh and Chattar Sujana, who were also junior to the applicant. Representations against these promotions also were negatived and the applicant was informed on 30-10-1995, that in terms of the Recruitment Rules promotions from Skilled Worker Gr.II to Skilled Worker Gr.I was considered on seniority-cum-fitness, as per trade wise seniority, which was disputed by the applicant by his representation dated 7-12-1995, followed by a reminder dated 20-5-1996, pointing out that earlier also there had been a few instances where promotions had been made to the post of SW Gr.I on the basis of common seniority without reference to any particular trade. He had also cited instances in the said communications. By order dated 31-12-1996, the applicant was promoted to the post of SW Gr.I in the Lens grinding and polishing workshop w.e.f. 1-1-1997, on ad hoc basis for a period of 89 days or till

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regular arrangement was made, whichever was earlier. This ad hoc promotion was further continued by order dated 17-4-97 to 30-6-97 or till regular arrangement was made, whichever was earlier. The applicant continued to work as SW Gr.I without any break till February 2000, whereafter in terms of the impugned orders he was treated to have been retrospectively reverted to the post of SW Gr.II w.e.f. 1-7-97. Hence this OA.

4. According to Shri Vijay K.Mehta, learned counsel, the post of SW Gr.I, a Group "C" non-ministrial post is governed by Small Industries Development Organisation (Group C ministerial post) Recruitment Rules, 1978 in terms of which recruitment to the above post was "by promotion of Skilled Worker (Gr.II), Category A & B combined, with not less than five years regular service in the grade, failing which by direct recruitment". Such promotions have been made on the basis of combined seniority in the grade of Skilled Worker Gr.II irrespective of and without reference to trade wise seniority. This has also been clarified by letter No.A.60015/15/2000-A (NG) dated 3-5-2000 issued by the office of the Development Commissioner, Small Scale Industries who is the Head of the Department of SISI that promotion from the Grade of SW Gr.II to SW Gr.I was with reference to the seniority position and not trade or seniority-cum-fitness basis. The applicant goes on to state that denial of promotion to him from 1993 onwards, while granting the same to others, who were his juniors, on the premise that the promotions were being ordered on tradewise seniority was illegal and

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discriminatory. In spite of his representations against the incorrect promotions granted to his juniors from 1993 to 1995, he got his promotion to SW Gr.I ultimately only w.e.f. 1-1-1997 and that too on ad hoc basis though there were vacancies against which he should have been regularly appointed so that he would get the seniority as SW Gr.I from the day on which his immediate junior got the same. Further, as the applicant has been continuously working 1-1-1997 as SW Gr.I and has been drawing his salary in the said post till February 2000, it was improper on the part of the respondents to have directed that he stood automatically reverted w.e.f. 1-7-1997 and his pay stood accordingly revised downwards. Mere reference to order dated 17-4-97, whereunder his ad hoc promotion was extended, was of no significance as he had all through in between continued function as SW Gr.I, a fact which is recognised by the Department itself in the Income-Tax statement sent by the said organisation for the accounting year 1998-99, showing him as SW Gr.I. The retrospective re-fixation of pay of the applicant in the pay scale of Rs. 3050-4590/- w.e.f. 1-7-97 and too without notice was illegal and arbitrary, as laid down by the Hon'ble Supreme Court in the case of Bhagwan Shukla Vs. UOI & Ors., (1994 (6) SCC 154), urges Shri Mehta, learned counsel. The impugned letter of 5-5-2000 rejecting his representation dated 6-4-2000 was also improper, according to the learned counsel. More so as there was no express order terminating his ad hoc appointment in July 1997 and he had continued to work as SW Gr.I till February. This reversion was a nullity in law as he was denied three increments in

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the grade of Rs.4000-6000 which fell due to him as SW Gr.I in January 1998, 1999 and 2000. This has caused severe pre-judice to him. While he was entitled to be promoted w.e.f. 20-1-93, from the date on which, Shri Dharinder Kumar, his junior was promoted, he had been promoted on ad hoc basis in 1997 and had subsequently been reverted retrospectively. This illegal act on the part of the respondents on the grounds which are totally unjustifiable and deserved to be set aside. Learned counsel for the applicant, Shri Mehta, therefore, fervently pleads. Reliefs sought by him are, therefore, as below :-

- (i) set aside the impugned orders dated 5-5-2000 and 3-3-2000 whereby the applicant is stated to have been automatically reverted as Skilled Worker Gr.II w.e.f.1-7-97 and consequent refixation of his pay w.e.f. said date in the pay scale of Skilled Worker Gr-II.
- (ii) declare that the applicant continues to work as Skilled Worker Gr.I without any break; w.e.f.1-1-1997 with all consequential benefits.
- (iii) direct the respondents to consider the applicant for regular promotion from the date his immediate junior was promoted as such, with all consequential benefits of seniority, pay fixation, increments, etc. and
- (iv) pass such other order (s) as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

5. The points raised on behalf of the applicant has been very vehemently rebutted by Shri A.K.Bhardwaj, learned counsel for the respondents in his counter reply as well as by himself and Shri M.K.Bhardwaj, learned proxy counsel during the hearing. According to him, the applicant was granted ad hoc promotion as SW Gr.I only for 89 days for the first time w.e.f. 1-1-97 and the same was extended up to 30-6-97 or till such time regular arrangement was

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ordered whichever was earlier and, therefore, he stood automatically reverted to SW Gr.II w.e.f. 30-6-97. As the applicant stood automatically reverted w.e.f. 30-6-97, he was entitled to draw pay and allowances only in his substantive post of SW Gr.II and whatever has been drawn and paid to him incorrectly treating him as working in SW Gr.I was improper and the impugned order had only rectified the mistake and directed the recovery of the excess amount so paid. The said decision cannot be faulted in any manner. According to Shri Bhardwaj, learned counsel, the applicant could not have been promoted as SW Gr.I either with Dharinder Kumar in 1993 or with Gulzar Ahmed, Ospal Singh and Chatter Sujjan in 1995 as the promotion to SW Gr.I was made on the basis of trade wise seniority in accordance with the Recruitment Rules prescribed for the post and there was no vacant post of SW Gr. I in the applicant's trade. Shri Bhardwaj reiterated that SW Gr.I was a selection post to be filled by promotion of candidates of the same grade and not on the basis of any common seniority in the grade, as claimed by the applicant. He fairly conceded that the office of the Development Commissioner (SSI New Delhi) had, vide its letter dated 30-5-2000 clarified that promotion⁰₂ to the grade of SW Gr.I should be on the basis of combined seniority, but stated that this will be given effect to in respect of all future promotions. This does not, however, support the case of the applicant that the earlier case of promotions had been ordered without following proper procedure and were, therefore, illegal. In terms of the directions governing ad hoc appointment/promotions, total period

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for which such arrangement can be ordered was limited to one year and the practice of giving technical breaks periodically and appointing the same person on ad hoc basis was not permitted. In cases where extending an any ad hoc appointment/promotion beyond one year, the approval of Department of Personnel and Training had to be obtained and if the same had not been so obtained such ad hoc appointment/promotions would automatically cease. It is in the circumstances that impugned orders had been issued intimating that the applicant stood automatically reverted w.e.f. 1-7-97 and that his pay stood re-fixed accordingly in Gr.II.

6. In the additional affidavit filed on behalf of the respondents on 13-3-2001, it is averred that the posts of SW Gr. I & Gr.II were created/sanctioned as per the specific requirement in the different trades and needs of specialised requirements in different workshops. Therefore, promotions had been generally taken up trade-wise up to May 2000 as per Recruitment Rules. This was the pattern which was followed from 1985 onwards and no pre-judice has been caused to the applicant's cause as alleged by him. However, after the receipt of clarification from the Development Commissioner's office, the practice has been changed and promotions have been ordered on the basis of common seniority.

7. The contents of above Affidavit have been disputed by the learned counsel for the applicant who states that the respondents have, according to their convenience and whims, promoted people inter-changing

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even trades of carpentary and mechanical, sheet metal and mechanical and still they were persisting with the averment that what has been done by them was correct.

8. On 19-4-2000 another communication has been filed on behalf of the respondents by Shri M.K.Bhardwaj, learned proxy counsel certifying that at the time of granting ad hoc promotion to Shri Jai Prakash from SW Gr. II to SW Gr. I on 1-1-1997, there was no vacant post of SW Gr.I in the trade of lens grinding. This plea was orally also raised by Shri Bhardwaj, learned counsel, though he could not answer the query from the Court, as to how a promotion could be made, either on ad hoc or regular basis without there being a vacant post. He, however, submitted that there was no difference between duties and functions of SW Gr.II and SW Gr.I which was the reason for ordering the adhoc promotion. Shri Mehta, learned counsel for the applicant interjected at that stage and indicated that the applicant had since been regularised in the same post which he has been holding all the while since 1997 and, therefore, the respondents' averment that there was no vacant post in SW Grade I in the lens grinding and polishing trade at the time of his promotion to adjust the applicant was incorrect and without merit.

9. We have carefully considered the rival contentions and have perused all the papers placed before us. While the applicant pleads that the impugned orders, in terms of which he stood automatically reverted to SW Gr.II w.e.f. 1-7-97 and consequently his pay stood re-fixed in the lower grade

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were illegal and against the Recruitment Rules, the respondents hold it to be contrary, as according to them, the promotions from Gr.II to Gr.I were being made trade-wise and in accordance with the Recruitment Rules. Perusal of the relevant Recruitment Rules i.e. Small Industries Development Organisation (Group C non-ministerial post) Recruitment Rules 1978, as amended in 1985, does not support the case of the respondents. It is seen that column 11 relating to SW Gr.I reads as below :-

"By promotion of SW Gr.II Category A & B combined, with not less than five years regular service in the grade".

We have tried in vain to find any reference to trade in the Recruitment Rules, which the respondents have been strenuously arguing for. Obviously, therefore, seniority in the grade, as canvassed by the applicant and not seniority in the trade, as argued by the respondents has to be the basis for promotion from SW Gr.II to SW Gr.I. This in fact has always been the case, as brought out by the clarification issued under letter No. A-60015/11/2000-A (NG) dated 30-5-2000, under which respondent-3 have been advised to promote SW Gr.II to SW Gr.I with reference to their seniority position and not trade on seniority-cum-fitness basis. Still the respondents have been presenting their case as if this clarification is only prospective in nature. This is a proposition, which we are not convinced about in the circumstances of the case and the specific wordings in the relevant Recruitment Rules. Therefore, evidently the applicant's case for promotion on the basis of his placement in combined seniority list prepared gradewise was legitimate and



could not have been denied on the specious argument that it had been ordered only on tradewise seniority. Therefore, he was correctly eligible for being considered for promotions since 1993, when his junior Shri Dharinder Kumar was promoted as SW Gr.I, if he was otherwise fit. However, as he had not approached this Tribunal at that time we feel that his claim for the benefit of promotion from the date on which his junior became SW Gr.I suffers from laches and limitation and has to fail. The same, however, is not the case with this challenge against the two impugned orders. It is not disputed that he had been promoted as S.W. Grade I even if on adhoc basis, w.e.f. 1-1-97 against a vacancy, notwithstanding the incorrect averment made by the respondent-3 on 19-4-2000. He had also continued to work in the same capacity till February 2000. He had further been regularised in the same post subsequently. Still, the applicant is shown to have been reverted by the impugned order with retrospective effect, which cannot be sustained in law. The contention of the respondents that the applicant stood automatically reverted when they have themselves stated that there were no difference in duties and functions between S.W. Grade II and S.W. Grade I cannot be accepted. This further shows that the applicant's averment that he had discharged his duties in the higher grade has not been rebutted. That being the case, his alleged automatic reversion and consequent refixation of salary by the impugned orders have no sanction in law and have to be set aside. This is the only way justice can be rendered to the applicant. We accordingly proceed to do so.

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10. In the result, the application succeeds and is accordingly partly allowed. The impugned orders are quashed and set aside. The respondents are directed to treat the applicant as having continued in the post of Skilled Worker Gr.I from 1-7-97, the date on which he was so promoted with all the consequential benefits of pay and allowances, including increments which were due to him in this post in 1998 & onwards as if the impugned orders had not been issued. The interim order dated 9-6-2000 is made absolute.

11. No costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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