

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH  
NEW DELHI.

O.A. 490/88.

Shri S.K.Sharma ... Applicant.  
versus  
Union of India and others.. Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.C.Jain, Member(Admn).

For the applicant - Shri Ajit Pudussery, Advocate

For the respondents- Mrs R.K.Chopra, Advocate.

Date of hearing- 25.4.90

Date of Order - 30.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

This applicant has been filed by some Foremen and Assistant Foremen in the Ordnance Factory, Muradnagar and in certain other Ordnance factories being aggrieved by the order of the respondents dated 18.12.1987 (Annexure-H) by which the request made by the applicants for recasting their seniority was not accepted. They have prayed that though they were originally appointed in the cadre of Supervisor Grade 'B', the applicants 1 to 4 have to be treated as having been appointed in the grade of Supervisor Grade 'A'. It has also been prayed that the promotions granted to the applicants have to be treated as effective immediately from the date ~~ix~~ they completed two years of service as Supervisor Grade 'A'. Consequential benefits of seniority in the respective grades and the attendant monetary benefits are also prayed for.

2. The solitary ground on which the claim is urged is that such relief has been allowed by the respondents to certain other employees similarly situated as the applicants, based on the judgment obtained by them in their favour.

2

It is alleged by the applicants that instead of implementing the judgment for all the similarly situated employees, the respondents illegally implemented them only regarding those who filed <sup>the</sup> writ petitions, and, as a result thereof the seniority of persons like the applicants has been affected.

3. In the reply filed on behalf of the respondents, it is stated that the circular dated 6.11.1962 issued by the respondents directing that the Diploma-holders who have been appointed as Supervisor Grade 'B' are to be promoted as Supervisor Grade 'A' on completion of one year and to be further promoted as Chargeman Grade-II on completion of two years of service in the cadre of Supervisor Grade- 'A', and the circular dated 11.3.1967 directing that the Diploma-holders already working as Supervisor Grade-'B' should be promoted as Supervisor Grade 'A' with effect from 6.3.1963, were only directory in nature and that they cannot over-ride statutory Recruitment Rules framed ~~therein~~ under Article 309 of the Constitution of India. It is further stated that by the circular dated 20.1.1966, it was decided that the promotion of Supervisor Grade 'A' would be considered in accordance with normal Rules, that is, on the basis of their screening by the concerned Departmental Promotion Committee ( D.P.C. ) and not merely on completion of two years of service as Supervisor Grade 'A'. It is pointed out that by the later judgment of the Supreme Court in the case of R.D. Degaonkar and others vrs. Union of India ( Writ Petition No. 3632 of 1983 ), the reliefs claimed by them and certain others based on the earlier judgments ~~were~~ was not allowed.



4. The short point that arises for determination is whether the recasting of the seniority of some of the Foremen and Assistant Foremen based upon the judgment of the Madhya Pradesh High Court in certain writ petitions filed by them and which were allowed, confers any legal right on these applicants for the issue of the directions prayed for. By the aforesaid judgment, placing reliance on certain Executive Instructions issued in the years 1962 and 1963, the petitioners therein were allowed accelerated promotions to the cadre of Supervisor Grade 'A' and to the higher cadres, overlooking the statutory Recruitment Rules for promotion. 75 employees had filed a writ petition in the Allahabad High Court in the year 1972 for a direction for promotion to the post of Chargeman Grade-II placing reliance on the circular dated 6.11.1962. The petition was resisted by the respondents on the ground that under the Recruitment Rules promotion from Supervisor Grade 'A' to Chargeman Grade-II can only be made ~~only~~ on the recommendation of the Departmental Promotion Committee and after screening of the service records. Though the writ petition was dismissed by a Single Judge of the High Court on the ground of laches, and on appeal a Division Bench noticing that the conditions of service ~~is~~ <sup>are</sup> governed by statutory Recruitment Rules and holding that the circular dated 6.11.1962 does not indicate that as soon as a Diploma-holder completes two years of service in the grade of Supervisor Grade 'A', he would be automatically promoted to the post of Chargeman Grade II, dismissed the writ petition on merits. Against the judgment of the Division Bench Civil Appeal No.441/81 was preferred before the Supreme Court and by the judgment dated 2.2.1981 it was directed that the concerned authorities will consider

2

the cases of the appellants for promotion as Chargeman Grade-II and promote them to the said posts unless they are found to be unfit.

5. After <sup>the</sup> aforesaid judgment of the Supreme Court, several writ petitions were filed before that Court claiming <sup>the</sup> benefits allowed to the appellants in Civil Appeal No. 441/81. When the matter came up before a Bench of two Judges of the Supreme Court, as it was felt that the correctness of the judgment in C.A. 441/81 has to be looked into, the matter was placed before a Bench of three Judges, and have been disposed of by the judgment dated 28.3.1989. The writ petitions were dismissed holding that it is difficult to grant <sup>the</sup> relief prayed for simply on the basis of the judgment in CA 441/81. The submission of the counsel of the respondents that after the issue of the subsequent order dated 28.12.65 and the circular dated 20.1.1966, no Supervisor Grade 'A' could claim to have become eligible for promotion merely on completion of two years of satisfactory service, and his promotion thereafter would be effected only in accordance with normal rules was found to be acceptable. The legal effect of the circular dated 20.1.1966 was explained by the Court pointing out that it could not be treated to be affecting adversely any condition of service of Supervisor Grade A and that its only effect was that the chance of promotion which has been accelerated by the circular dated 6.11.1962 was deferred and made dependent on selection according to the Rules. The Court proceeded to state that after <sup>the</sup> coming into force of the aforesaid circular dated 20.1.1966, promotion could not be made just on completion

2

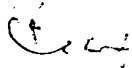
of two years of satisfactory service under the earlier circular of 6.11.1962 and that ~~though~~ <sup>the</sup> Supervisors Grade 'A' who had been promoted before coming into force of the later circular stood in a class separate from those whose promotions were to be made thereafter. <sup>this</sup> On these premise, the plea of discrimination was repelled. It was explicitly stated in the judgment that " for aught we know if the effect of the order dated 28.12.1965 and the circular dated 21.9.66 have been properly emphasised at the time of hearing of Civil Appeal 441/81 its result may have been different-".

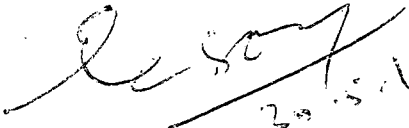
6. In view of the aforesaid judgment of the Supreme Court dated 28.3.1989, the reliefs claimed by the applicants which are identical to those claimed by the writ petitioners before the Supreme Court cannot be allowed. Counsel of the applicants emphasised that since their juniors have been placed higher in the seniority list, the list has to be recast. We are unable to accept the submission. It was only on the ground of the responsibility of the respondents to implement the mandate of the earlier judgments against them, that such recasting of seniority was made by the grant of accelerated promotions <sup>to</sup> those persons who secured judgments in their favour. Now that the Supreme Court has in an unambiguous terms laid down that there is no scope for the grant of accelerated promotion and that the promotion can only be in accordance with the statutory rules, the applicants cannot be allowed the reliefs prayed for, and and since they have been duly promoted to the higher cadres in accordance with the Recruitment Rules, no recasting of their seniority can be had.

16

6.

7. In the result, the application is dismissed.

  
374/1990  
( P.C. Jain )  
Member (Admn)

  
28.5.1990  
( G. Sreedharan Nair )  
Vice Chairman.

S.P. Singh/  
26.4.90.