

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(8)

O.A. No. 1099/88
~~MAXX~~

198

DATE OF DECISION 26.11.1991

Shri Rajender Singh & Ors. Applicant (s)

Ms. Mridula Roy Advocate for the Applicant (s)

Versus

Union of India & Ors. Respondent (s)

Mrs Raj Kumari Chopra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. To be circulated to all Benches of the Tribunal ? —

AB
26/11
(AMITAV BANERJI)
CHAIRMAN

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1099/1988. Date of decision: November 26, 1991.

Shri Rajender Singh & Ors. ... Applicants.

Vs.

Union of India & Ors. ... Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicants ... Ms. Mridula Roy, counsel

For the respondents ... Mrs. Raj Kumari Chopra, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

Shri Rajender Singh and 13 others, all working
as fitters and examiners in the Ordnance Factory, Muradnagar
District Ghaziabad (U.P) have filed the present O.A.
under Section 19 of the Administrative Tribunals Act, 1985
(for short 'the Act') seeking a direction to the
respondents to grant them seniority as per the order
of the respondents dated 8.4.1985, to grant the
applicants the benefit of the order dated 15.10.1984
by extending the recommendation of the Third Pay
Commission w.e.f. 1.4.1985 and to direct the respondents
to pay salary and arrears w.e.f. 1.4.1985 on the
basis of the scale applicable to the applicants, viz.,
Rs. 260-400.

65

The applicants' case is that they joined as Fettlers 'B' in the pay scale of Rs.196-232 plus Rs.10/- as special pay between 1974 to 1976. They have separate dates of appointments. They were placed in the scale of Rs.210-290 in the semi-skilled grade as fettlers w.e.f. 16.10.1981 in pursuance to the order of Govt. of India, Ministry of Defence dated 16.10.1981. The fitment of the industrial workers was done on the recommendations of the Expert Classification Committee appointed in terms of para 19 of Chapter 19 of the Report of the Third Pay Commission - vide order dated 16.10.1981. Respondent No.1, Ministry of Defence by letter dated 15.10.1984 passed an order based on the decisions taken by the Government on the recommendation of the Third Pay Commission for the upgradation of the semi-skilled Grade of Rs.210-290 to the skilled grade of Rs.260-400. It was clearly stated in paragraph (2) that it would take effect from the date of issue of the order, i.e., 15.10.1984. The applicants sat for the trade test and passed the same as is evident from the order of the Ordnance Factory, Muradnagar dated 8.4.1985. The above order also stated that the re-designation/intersectional transfer of the applicants have been sanctioned on the industrial establishment w.e.f. 1.4.1985. The respondents granted the designation w.e.f. 1.4.1985 but respondent No.3, General Manager, Ordnance Factory, Muradnagar refused to give the seniority to the applicants.

It was stated that the seniority had been given from the date of the passing of the order dated 8.4.1985.

The applicants were aggrieved that they had been placed lower in the seniority list and their juniors have become seniors. A representation followed to the authorities but before that could be decided, the respondents compelled the applicants to sit for another trade test. The result of the second trade test was declared by order dated 1.10.1986. The applicants were given seniority and scale of Rs.260-400 with effect from 1.10.1986, thus depriving them the scale from 1.4.1985 and seniority from the date of holding the post as Fettlers as stated in order dated 8.4.1985. A fresh seniority list was issued by letter dated 1.1.1988. The applicants thereafter represented to the authorities by letter dated 26.2.1988. The recommendations of the Third Pay Commission had not been extended to them w.e.f. the correct date thus depriving the applicants of salary and arrears due to them and seniority has not been granted as per orders passed by the respondents.

In their reply, the respondents took up the position that all the applicants were Fettlers under the un-skilled category of workman and they were in the pay scale of Rs.196-232 plus Rs.10/- special pay. The revision of pay scales was given effect from 15.10.1984 and the incumbents who were in the scale of Rs.210-290

prior to 15.10.1984 were only having the benefits of revision of pay scales. Some of the fettlers were declared surplus due to reduction of work-load in the factory. Accordingly 25 Nos. of Fettlers (Semi-skilled) were redesignated w.e.f. 1.4.1985 in the trades of Fitter General (Semi-skilled), Examiner (Semi-skilled), Examiner Engg. (Semi-skilled) and Machinist (Semi-skilled). The General Manager on sympathetic consideration allowed their redesignation on administrative grounds and the concerned individuals were allowed to retain their seniority from the date they were holding the post of Fettler (Semi-skilled) with scale of Rs.210-290 as per the willingness of the concerned individuals. It was stated that by this action these redesignations have not created any loss of seniority and pay of the concerned individuals as they were continuing in their pay scales of Rs.210-290 (semi-skilled grades) and they have been placed in the seniority correctly by giving them benefits of old seniority published on 9.12.1985. The redesignation has been done after holding trade test and after being declared suitable w.e.f. 1.4.1985. Of them, 25 I.Es have been promoted in their trades w.e.f. 1.10.1986 in the pay scale of Rs.260-400 by considering their seniority with retrospective effect. Individuals have been placed in the seniority correctly and by way of redesignation on administrative grounds the concerned

individuals have been allowed to retain their seniority in semi-skilled grades as a result of which they have been promoted in the skilled grades in the pay scale of Rs.260-400 whereas, their colleagues (Fettlers) are still in semi-skilled grade.

One of the applicants Shri Hira Lal indicated in an application that he had been placed at the appropriate place in the seniority list as per rules on the subject. It was stated that the applicants have been given seniority correctly and according to their seniority they have been permitted for trade test for their further promotion after qualifying in the prescribed trade test and they have been promoted accordingly.

The allegation that they were forced to appear in the trade test was denied. Lastly, it was urged that the applicants are not entitled to any reliefs and the Application is liable to be dismissed.

We have heard Ms. Mridula Roy for the applicants and Mrs. Raj Kumari Chopra for the respondents.

The principal question in this case is whether the applicants are entitled to their pay and seniority from 1.4.1985. They admittedly sat in the examination much later and having passed the trade test were assigned the seniority from 8.4.1985. The point for consideration is whether they are entitled to a higher pay scale and seniority w.e.f. a date when they were even not qualified. They only became qualified on having passed the trade test and consequently they could be appointed only after 1.4.1985 and not before.

Admittedly, the Fettlers were unskilled employees and they could not be admitted to the scale of Rs.260-400 unless they were skilled employees. It, therefore, became necessary for them to pass the trade test before they were assigned the higher scale of pay and consequently the seniority.

Learned counsel for the applicants cited a decision of the Supreme Court in the case of BHAGWAN SAHAI CARPENTER AND OTHERS Vs. UNION OF INDIA AND ANOTHER (AIR 1989 SC 1215). In the above case, the facts are entirely different. In the case before the Supreme Court, the petitioners who were employed in various categories of trades such as carpenter, masson, painter, upholster, plumber, pipefitter, sawyer and sign writer under skilled grade in Military Engineering Services under the Ministry of Defence had challenged the upgradation of some of the trades out of the 15 trades in the skilled grade on the basis of the recommendations made by the Expert Committee., constituted by respondent No.1 on the grounds inter alia that the fixation of higher scales of pay of some of these trades out of the 15 trades in the skilled grade ignoring the other trades as arbitrary, discriminatory and in contravention of the fundamental rights of the petitioners. Paragraph 6 of the report shows that by letter dated 15.10.84 the Govt. of India had mentioned that the President had accorded sanction to the upgradation of the following jobs from semi-skilled grade (Rs.210-290) to the skilled grade (Rs.260-400). The question of parity with the

case cited at the Bar would be available only when the applicants were in the pay scale of Rs.210-290. That is not the case in the present O.A. The applicants had not yet come to the above grade of Rs.210-290 and have not been able to pass the trade test. The earlier grade of Rs.196-232 plus Rs.10/- special pay was unskilled grade. The question of treating the applicants at par with those at the grade of Rs.210-290 is unwarranted.

It is also well settled that there is no fundamental right to a particular seniority and to any promotion. The principle of Articles 14 and 16 of the Constitution can be applied when the parameters are the same. The principle of "equal pay for equal work" can be applied where nature of duties performed by them are the same and they are placed in the same circumstances. What is necessary is that there should be an identical trade and grade. This was not available to the applicants in the present case.

Learned counsel for the applicants also cited an uncertified copy of the judgment of the Supreme Court in the case of ASSN. OF EXAMINERS, MURADNAGAR ORDNANCE FACTORY Vs. U.O.I. & ORS. (Writ Petition No.40 of 1991) decided by the Supreme Court on 31.7.1991 where the principle laid down by the Supreme Court was reiterated. This decision of the Supreme Court cannot be of any help to the applicants for it is stated in the judgment

that:

"The total number of the members shown in Annexure 'B' is 60. However, it is not known who out of them were in position on 16.10.1981. We would, therefore, direct the respondents to verify the service records of these employees and grant the benefit to those who were in position on 16.10.1981 in the grade of Rs.210-290 by upgrading them to the skilled category of Rs.260-400 w.e.f. that date on the ratio of this Court's decision in Bhaqwan Sahai Vs. The Union of India (AIR 1989 SC 1215)."

The Supreme Court further observed:

"Those who were not in position as on 16.10.1981 in the semi-skilled grade of Rs.210-290 will be entitled to placement in the skilled category of Rs.260-400 if they satisfy the requirements of clauses 'A', 'b', and 'c' of Clause (IV) in Chapter X of the Anomalies Committee's report to the extent of its acceptance, with or without modifications, by the Government of India."

In view of the above, since the applicants were not in the grade of Rs.210-290, they would not be upgraded to the skilled category of Rs.260-400 unless they pass the trade test and hence they would also be entitled to the seniority from the date of the declaration of the result of the trade test.

In the result, the O.A. is accordingly disposed of. There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)


Amitav Banerji
AMITAV BANERJI
CHAIRMAN