

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 PRINCIPAL BENCH
 NEW DELHI

O.A.No. 1144/88.

Date of decision. 6.5.1994

HON'BLE SHRI B.N. DHOUNDIYAL, MEMBER (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri S.K. Mishra,
 Chargeman Grade I,
 Ordnance Factory,
 Ministry of Defence,
 Govt. of India,
KANPUR.

E-61, Armapur Estate,
 P.O. Armapur,
Kanpur.

Shri M.B. Mirza,
 Chargeman Grade I,
 Ordnance Factory,
Kanpur.

No.T/III-194, P.O.
 Armapur, Kanpur.

... Applicants

(Advocate By Shri Pradeep Mishra)

versus

Union of India, through
 Secretary, Ministry of
 Defence, South Block,
 New Delhi.

Ordnance Factory Board
 through Chairman,
 Ministry of Defence,
 Government of India,
 10-A, Auckland Road,
Calcutta.

... Respondents

(Advocate by Shri R.M. Bagai)

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7 Hon'ble Smt. Lakshmi Swaminathan, Member (J) 7

The two applicants who were working as Chargeman
 Grade I in the Ordnance Factory, Kanpur have filed this
 application under Section 19 of the Administrative Tribunals

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Act in which they have challenged the combined
selection list of Assistant Foreman/STA(T) for
the years 1985 and 1986 issued by the Director
General of Ordnance Factories on 11th June, 1986
and the seniority list of Chargeman Grade I
(Mechanical) issued by the Director General of
Ordnance Factories (DGOF) in April, 1985.

2. The brief facts of the case are that the applicants were initially appointed in the post of Supervisor Grade III on December 27, 1961 and 15th June, 1961, respectively, in the Office of the Director General of Inspection, Ministry of Defence and were posted at the office of Inspectorate of Armament, Khamaria, Jabalpur. In 1980, the applicants were placed in the promotion panel vide order dated 26th May, 1980 in which the applicants were shown for promotion to Chargeman I in S.Nos. 5 and 11, respectively. The respondents by their order dated 27th May, 1980 effected the promotion and transfer of the applicants from Jabalpur to Kanpur. The applicants 1 and 2 joined their posts at Kanpur on 5.8.1980 and 5.7.1980, respectively.

3. Some time in 1984, the Government of India had taken a decision to merge the Directorate of Inspection

and Directorate General of Ordnance Factories cadre, which took place with effect from 1.10.1984. The Director General (Ordnance Factories), being the cadre controlling authority thereafter integrated the seniority of the Director General (Inspection)'s employees transferred, including the applicants, in the respective grades on merger in Director General (Ordnance Factories) Organization with reference to their holding the post in the earlier Directorate.

4. The main grievance of the applicants is that their seniority in the grade of Chargeman Grade I in Directorate General of Inspection should be reckoned as per the date of empanelment and not the date of joining the post, as followed by the respondents in preparing the combined seniority list after the merger of the organizations of Directorate General of Inspection and Directorate General of Ordnance Factories.

5. The learned counsel for the respondents has submitted that the above promotion order to the grade of Chargeman Grade I issued by the Director General of Inspection was much earlier to the date of merger of Directorate General of Inspection with Directorate General of Ordnance Factories cadre and, therefore, has no bearing on the fixation of seniority of the applicants and other persons after they

were transferred consequent on the aforesaid merger.

According to them, their seniority had been correctly

fixed in accordance with the Ministry of Defence Memo.

dated 11.3.1965 and Article 26 of Central Civil Service

Regulations according to the date of their joining

the post.

6. The Respondents have taken the preliminary objection that the application is barred by limitation as the applicants are challenging the DPC held in June, 1986 by filing this application only on 7th June, 1988. Three other preliminary objections taken were -

(a) that this Tribunal does not have jurisdiction

since all the records of the case are at

Calcutta or at Kanpur;

(b) that the application has only been signed and

verified by applicant No. 1, Shri S.K. Mishra

and not by applicant No. 2, Shri M.B. Mirza; and

(c) that since the applicants are claiming seniority persons

over 17 $\frac{1}{2}$, the application is bad for non-joinder

of necessary parties.

7. In view of the specific order passed by the then

Chairman of this Tribunal dated 10.6.1988 that the matter

may be retained in the Principal Bench, we proceed to hear

and dispose of this application and objection (a) above is

rejected.

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8. Having regard to the provisions of Section 22 of the Administrative Tribunals Act, relief, if any, which may be granted to applicant No. 1 will also apply to accordingly applicant No. 2, We over-rule the objection (b) above regarding non-verification of the application by applicant No. 2 in this case.

9. For the reasons given below, since we are not inclined to give any relief to the applicants, the objection of non-joinder of necessary parties is not relevant and hence not dealt with.

10. According to the learned counsel for the applicants, relevant the date for the purpose of seniority for empanelment in the grade of Chargeman Grade I as per the order dated 25th May, 1980 is the date of empanelment and the inter-se seniority of empanelled officials should be in the order their names appear in the panel. According to ^{the} applicants the Ordinance Factory Board filled the additional vacancies arising as a result of the merger in 5 different batches in June, 1980 without constituting any departmental promotion committee. They state that the promotions have been made merely on the basis of seniority in the grade of Supervisor Grade 'A'. They have referred to principle 7 relating to the determination of seniority of transferees

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and submit that according to this, when a person is transferred from one Department to another Department of the Central Government, his date of seniority will remain unchanged. They had made a representation on 16.10.1986 against the panel of 1986 for promotion to the post of Assistant Foreman (Mechanical) to which they state that they have not received any reply. It is also their contention that no option had been given to them at the time of the merger in 1984. This last plea can be straight away rejected as being an after thought and clearly barred by limitation.

11. The learned counsel for the respondents has drawn our attention to para 2 of the order dated 27th May, 1980 which reads as follows :-

" The above promotion/transfers are approved on the recommendation of DPCII and will take effect from the date of receipt of this letter or the date of assumption of duties of higher grades, whichever is later. The order of seniority on promotion will be shown in the select list."

As per the letter written by the applicants, copies placed at Annexures R-I and R-II, they had requested for assuming charge as Chargeman Grade I on 25th July, 1980 and 24th

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June, 1980 respectively. Accordingly, their position in the list as on 16th July, 1984 (Annexure III) has been shown correctly from the date of their assumption of duty of the higher grade. This order also shows that the promotion/transfers of the concerned officials to the post of Chargeman Grade I has been done on the recommendation of the DPC. Hence, the applicants contention that their date of seniority should be from the date of empanelment and not from the date they assumed charge of the higher post is untenable and is, therefore, rejected.

12. The Respondents have stated that the DPC held in June 1986 had considered persons who were holding the post of Chargeman I (Mechanical) upto June, 1980, and since the applicants joined after this cut off date they could not be considered for promotion to Assistant Foreman (Mechanical). The representation of the applicants have also been replied. We also do not find any discrimination against the applicants as alleged by them, as no Chargeman I, who has joined later has been shown senior to them in the list placed at Annexure III. Considering the facts and circumstances of the case, we find that there is no substance in the contentions of the applicants, and the same are rejected.

13. On the question of limitation, it will be seen from the reliefs sought by the applicants that they have

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only challenged the DPC panel of 1986 in the O.A.

At the hearing, the learned counsel for the applicants

referred to the application filed by him on 15.2.1994

for condonation of delay in which he has stated that

as the seniority list of 1.4.1985 was not final because

of certain anomalies in it, another list was circulated

on 12.5.1987 thus bringing the application within the

prescribed time. This latter seniority list of 1987 has,

however, not been challenged in the O.A. Apart from

this, in the application for condonation of delay it

is stated that the O.A. had been filed in March, 1988

whereas from the records it is seen that it was filed

only on 7th June, 1988. On the facts of the case, the

applicants have failed to give sufficient cause for the

delay and the application is time barred. In the circum-

stances, the application is also dismissed on the ground

of limitation

14. In the result, the application fails and is

dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (Judicial)

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)