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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C. A. NO. 1111/87

New Delhi this the 10th day of November, 1994

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
HON'BLE SHRI P. T. THIRUVENGA DAM, MEMBER (A)

Naipal Singh S/O Kripa Ram,
C. M. (II),
Ordnance Factory Board,
Muradnagar (U.P.)

... Applicant

By Advocate Shri N. S. Verma

Versus

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

2. The Director General,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.

... Respondents

By Advocate Shri V. S. R. Krishna

ORDER (ORAL)

Shri Justice S. C. Mathur :-

The dispute in this application relates to seniority in the grade of Chargeman Grade-II in the Ordnance Factory Board under the Ministry of Defence, Government of India, resulting in denial of promotion to the applicant at the appropriate time.

2. The facts which are either admitted or established from the record are these :-

The applicant belongs to a Scheduled Caste community. On 3.9.1976, he joined the Inspectorate of Metals, Muradnagar as Junior Scientific Assistant Grade-II in the scale of Rs.380-560. With effect from 7.12.1979, he was promoted as Junior Scientific

Assistant Grade-I in the scale of Rs.425-700. The next higher post he could look forward to for promotion was Senior Scientific Assistant (non-selection, Class III post) in the scale of Rs.550-900. Before getting promotion to this higher post, the applicant was transferred w.e.f. 22.10.1984 to Ordnance Factory Board under the Ministry of Defence and posted as Chargeman Grade-II in the scale of Rs.425-700. In the Ordnance Factory Board promotion to the post of Chargeman was made from the posts of Supervisor Grade-A (Technical), Senior Planner, Senior Rate Fixer and Senior Estimators. These were feeder channel posts and were in the scale of Rs.380-560. W.e.f. 1.3.1977, the scale of pay of the feeder channel posts was raised to Rs.425-700, the same as the applicant was having in the Inspectorate of Metals and which he continued to have on the post of Chargeman Gr.-II in the Ordnance Factory Board. W.e.f. 1.1.1980, the feeder channel posts were merged with the post of Chargeman Gr.-II. The applicant was assigned seniority below those who were previously holding feeder channel posts, which, w.e.f. 1.1.1980 were merged with the post of Chargeman Gr.-II. The applicant represented against this assignment of seniority and asserted that he was drawing salary in the scale applicable to the post of Chargeman Gr.-II from a date earlier to 1.1.1980, and, therefore, he could not be treated junior to those who became Chargeman Gr.-II later to the said date. His representation was rejected. On 10.4.1986, a panel was published for promotion to the post of Chargeman Grade-I (Technical) for the vacancies of the year 1985

and 1986. The applicant's name did not find place in this panel. He preferred representation which did not bring any reply to him. On 6.8.1987, the applicant filed the present application in this Tribunal. After the filing of this application, the respondents promoted the applicant to the post of Chargeman Grade-I w.e.f. 8.2.1988.

3. In the present application, the case of the applicant is that he should rank senior to all those who became Chargeman Gr.-II on the merger of the lower post with the post of Chargeman w.e.f. 1.1.1980. It is submitted on behalf of the applicant that the applicant started drawing salary in the scale of Rs.425-700 which was the scale attached to the post of Chargeman Gr.-II w.e.f. 7.12.1979, earlier to 1.1.1980 and, therefore, he is entitled to rank senior to Supervisor Grade-A (Tech.), Senior Planner, Senior Rate Fixer and Senior Estimators who became Chargeman Grade-II w.e.f. 1.1.1980 as a result of the merger.

4. The application has been opposed on behalf of the Department who have asserted that the applicant has been assigned seniority correctly. It has been stated in the reply that earlier, the fact that the applicant belongs to SC category was not known to the office of the Ordnance Factory and that they came to know this fact subsequently. On acquiring knowledge of the correct position, necessary corrections were made in the seniority list. The DPC which met in April/May, 1986 empaneled him and he was promoted by order dated 27.1.1988 w.e.f. 8.2.1988.

5. In the rejoinder affidavit, the applicant has not disputed that he has been promoted to the post of Chargeman Grade-I w.e.f. 8.2.1988, but he has submitted that he was entitled to be promoted from the date persons junior to him were promoted.

6. There are two methods of determining seniority. One method is by reference to the scale of pay drawn by the applicant and the employees of the Ordnance Factory Board on the date the applicant came to be transferred to the Ordnance Factory Board, and the other is by reference to the status enjoyed by the applicant and the employees of the Ordnance Factory Board. In either case, determination of seniority will have to be based on the rules framed by the rule making authority and in the absence of rule, on the basis of the instructions issued by the appropriate authority. In the case on hand, we have on record circular No. 590/A/I dated 25.1.1985, issued by the Ministry of Defence, Government of India. The subject of this circular is, "Promotion of Transferee DGI Employees determination of Seniority." In paragraph 1, it is stated, "It has been decided that the seniority of DGI employees who have come on transfer to various factories both in Industrial and Non-Industrial Establishments will be reckoned from the date of holding the post in which transfer has been effected." The transfer order in respect of the applicant is dated 22.10.1984 and is annexed to M.A. No. 941-94 as Annexure M.A.-4. The applicant has been shown to

have come on transfer from the post of Junior Scientific Assistant Grade-I. Thus, on 22.10.1984 the applicant was not holding the post of Chargeman Grade-II in which his transfer was effected. The post of Chargeman Grade-II he came to hold only in pursuance of this order. Prior to 22.10.1984, the incumbents of feeder channel posts had acquired the status of Chargeman Grade-II by virtue of the merger effected on 1.1.1980. Thus, by applying the principle of status the applicant's claim of seniority cannot be sustained.

7. The learned counsel for the applicant, however, submits that despite merger, the former holders of feeder channel posts continued to be promoted to the post of Chargeman Grade-II and, therefore, they cannot claim to have acquired the status of Chargeman with effect from 1.1.1980. In this connection, the learned counsel invited our attention to the promotion orders passed in respect of Shri A. K. Relhan and Shri Sri Nath, Annexures MA-2 and MA-3 to M.A. No. 941/94. Both these orders are dated 15.7.1977, i.e., prior to the merger (1.1.1980). The submission is, therefore, misconceived.

8. We may now examine the applicant's claim with reference to equivalence of pay scales. The applicant started drawing salary in the scale of Rs. 425-700 which is pay scale of the post of Chargeman Grade-II also with effect from 7.12.1979. The pay of the feeder channel posts had been raised to Rs. 425-700 earlier with effect from 1.3.1977. Therefore, even by applying

the principle of equivalence of pay scale the applicant cannot claim seniority over the erstwhile holders of feeder channel posts.

9. In view of the above discussion, whether the seniority is determined on the basis of circular dated 25.1.1985 or on the basis of the date of acquiring the status of Chargeman Grade-II or on the basis of the date of being placed in identical scale, the applicant's claim of seniority is not established. The applicant approached the Tribunal with an entirely misconceived and imaginary grievance.

10. It was next submitted that certain persons who were placed junior to the applicant even in the seniority list drawn in the Ordnance Factory were given promotion while the applicant was superseded. The learned counsel for the respondents submitted that the applicant was considered earlier but he did not make the grade, and, therefore, he was not promoted. The submission of the learned counsel has not been placed on record through any affidavit or otherwise. This submission was made orally, obviously because the applicant himself did not make any specific allegation either in the original application or in the two M.A.s filed by him. Through the last M.A. only certain documents were sought to be placed on record. It was by reference to those documents that it was sought to be established that Shri Rao, junior to the applicant, was promoted to the higher post to which the applicant got promotion only after he filed the present application. We are accordingly not inclined to go into the question of promotion.

11. In view of the above, the application fails and is hereby dismissed, but without any order as to costs. Interim order, if any operative, shall stand discharged.

P. J. D.

Amur

(P. T. Thiruvengadam)
Member (A)

(S. C. Mathur)
Chairman

/as/