

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 14th day of Aug 1996

O.A.No.113/96

Hon'ble Dr.R.K.Saxena, J.M.
Hon'ble Mr. D.S.Baveja, A.M.

1. Anwarull Haque aged about 44 years son of Sri Habibur Rehman, resident of type 2, 234, Armapur State, Kanpur.
2. Chandra Bali Prasad aged about 47 years son of Sri Kedu Prasad resident of plat No.637 Mai Basi, Shiv Nagar Maswanpur, Kanpur.
3. Beer Singh aged about 35 years son of Sri Kandhi Singh resident of A-438, Vishwa Bank Colony, Kanpur.
4. Subhash Chandra Gupta aged about 44 years son of late Sri Kishan Swaroop Gupta resident of house No. I.I.G. 1667, Awas Vikas Colony, Panki, Kalyanpur Road, Kanpur.

.....Applicants

C/A : Sri R.K.Nigam

Versus

1. Union of India through Ministry of Defence, Defence Headquarter, New Delhi.
2. General Manager (Administration), Field Gun Factory, Kanpur.

.....Respondents

C/R : Sri Ashok Mehiley.

JUDGMENT

(Hon'ble Dr. R.K.Saxena, J.M.)

The applicants have approached the Tribunal to seek the relief ~~for~~ quashing the order dated 20-1-96 Annexure-A1 and a writ in the nature of mandamus commanding

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the respondents to continue the applicants in the present pay scale of Rs. 1200 - 1800 as Fitter General (HS-II) with all benefits.

The case of the applicants in brief is that they had joined as Labour-B under the respondents. The dates of joining were different and were not material for the disposal of this case and thus they are not given here. It is, however, contended that the applicants in due course of time were promoted as Fitter General (HS-II) in the grade of Rs. 1200-1800 after passing the prescribed test which was held on 26-7-90. They had worked with their best of capacity and ability. Their pay was also fixed in the higher grade vide order dated 31-10-90 annexure-A3. They claimed to have acquired prescriptive right and lien of ^{the} post of Fitter General (HS-II). It is alleged that the respondent No.2 all of sudden passed the impugned order dated 20-1-96 annexure-A1 whereby the applicants were reverted to the post of Fitter General (skilled) in the grade of Rs. 950-1500. The contention of the applicants is that they had acquired a legal right on the posts of Fitter General (HS-II) in the grade of Rs. 1200-1800 and thus they could not be reverted unless the disciplinary action was started and punishment was awarded. It is further contended that the applicants were not given any show cause notice and therefore the impugned order was against the principle of natural justice.

The respondents filed counter-reply and took plea that the applicants No. 1, 2 & 4 were promoted w.e.f. 26-7-90 while the applicant No. 3 was promoted from 23-1-92. According to the respondents, writ petitions No. 1259 - 66 of 1985 filed by Bhagwan Sahai and others, were decided by

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Hon'ble Supreme Court and the appellants in the said cases were directed to be given skilled grade as against the semi-skilled grade u.s.f. 15-10-84. It is said that in terms of said judgement, these appellants were given the said benefit by being placed in the skilled grade of Rs. 260-400 (pre-revised scale). As a result of implementation of the judgement of Hon'ble Supreme Court, 38 employees came over and above the present applicants and other employees. Consequently the seniority of applicants was affected. In the revised seniority list of Fitter General (HS-II), the applicants were placed at serial No. 45, 50, 46 and 47 respectively. Because of this anomalous position, the applicants were compelled to be reverted and this fact was clearly mentioned in the impugned order annexure-A1. The respondents have also filed the copy of O.As. No.457/94 and 470/94 which were decided by Jabalpur Bench on 7-11-94 and the same ground and the claim of the applicants in these cases was not found established.

The respondents have also filed supplementary counter affidavit in reply to the rejoinder and it is reiterated that the reversion of the applicants was done on administrative ground based on the judgment of the Hon'ble Supreme Court. It is further contended that the applicants did not acquire substantive status as Fitter General (HS-II) and they continued as permanent labour-B. Thus there was no merit in the case.

The applicants have filed rejoinder in which the facts as were mentioned in the O.A., were re-affirmed. We have heard the learned counsel for the applicants and the counsel for respondents. We have also perused the record.

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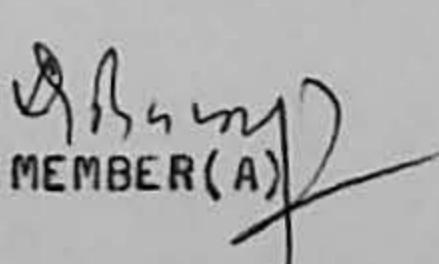
It is an admitted fact that the applicants were initially appointed as labour-B and in due course of time they were promoted as Fitter General (HS-II) in the grade of Rs. 1200-1800. The respondents also admitted that the applicants No. 1, 2, & 4 joined the posts of promotion on 26-7-90; whereas the applicant No. 3 had joined the post on 23-1-92. It is also admitted that the order about of reversion of applicants was passed. The question, however, arises if the applicants could be reverted from their posts if the direction of Hon'ble Supreme Court were required to be implemented. It has been pleaded on behalf of the respondents that 38 persons came over and above the applicants because of the judgment which was given by their Lordships of Supreme Court and for that reason the seniority of the applicants was lowered down. No doubt, the learned counsel for applicants argued that the judgement of Supreme Court has not been brought on record but merely by saying this, the existence of judgement of Supreme Court can not be doubted. The respondents have clearly averred in the counter-affidavit about the said judgment which resulted in lowering the seniority of the applicants. The implementation of the judgment of Hon'ble Supreme Court had created similar situation in Gray Iron Foundry, Jabalpur and two O.As. No. 457/94 Uma Shanker & others Vrs. Union of India & others O.A.No.470/94 Shyam Lal Yadav & others Vrs. Union of India & others were filed. In that case also the same ground of reversion was taken and in the light of fact of judgment of the Hon'ble Supreme Court was to be implemented, no force was found in these O.As. Thus the factum of the judgment rendered by Hon'ble Supreme Court can not be doubted.

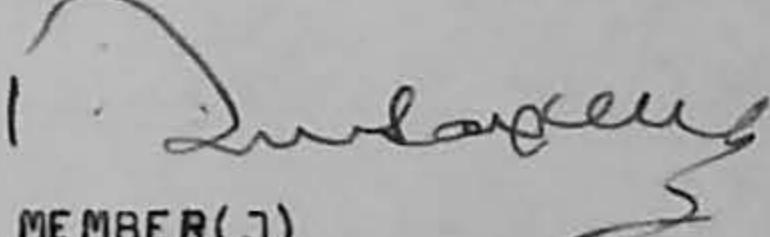
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The respondents have also placed the facts that because some of the employees were given benefit because of the said judgement of Supreme Court, the seniority list was revised. In that seniority list, the placement of the applicants came down. These facts are neither disputed nor their truthfulness can be assailed. On the revision of the seniority list and in the event of inclusion of certain employees in between, the position which is determined in respect of the junior employees, cannot be made a ground of dispute particularly when ^{such} ~~such~~ situation had occurred because of the implementation of the judgement of the Apex Court. In this way, the applicants can not be held to have acquired any legal right on the posts of Fitter General (HS-II). It would not be correct to say that the applicants had acquired any prescriptive right also. When the posts of promotion are limited and senior to the applicants are to be accommodated because of the judgment in their favour, only way remains open to employer is to revert the juniors.

On the consideration of all these facts and circumstances, we are of the view that there is no merit in the case and the D.A. stands ~~dismissed~~ dismissed. No order as to cost. The interim order which was granted to the applicants on 7-2-96, comes to an end.


MEMBER(A)


MEMBER(J)

T.S./-