

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

Original Application No. 1359 of 1998

this the 16<sup>th</sup> day of January 2004.

HON'BLE MR. V.K. MAJOTRA, V.C.  
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Kamlesh Sharma, S/o late Sri Moti Sharma, R/o 2-D Ganga Ganj,  
PAC Krishna Nagar, Kanpur.

Applicant.

By Advocate : Sri R. Sripat.

Versus.

1. Union of India Ministry of Defence, through Secretary,  
New Delhi.
2. Commander Works Engineer (Project) Chakeri, Kanpur.
3. Garresson Engineer B&R, Chakeri, Kanpur.
4. Chief Engineer (A.E.) Allahabad.
5. Brij nath, presently MES 453554 Carpenter HG-I, under  
Garresson Engineer B & R Chakeri, Kanpur.
6. Matabadal, MES 452373 Carpenter H.S. Gr.I under Garress-  
ion Engineer, B & R, Chakeri, Kanpur.

Respondents.

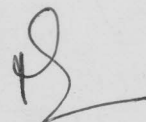
By Advocate : Sri G.R. Gupta.

O R D E R

PER MRS. MEERA CHHIBBER, MEMBER(J)

By this O.A., applicant has sought the following  
relief(s):

- "(i) quash the orders dated 7.7.1998 and 31.10.98  
issued by the respondent no.4 and 2 respectively  
(Annexures 12 & 15 respectively.)
- (ii) issue directions to the respondents to grant  
promotions to the applicant in Carpenter H.S.Gr.I  
and thereafter to Master Craftsman prior to the  
promotion of respondent nos. 5 & 6 and to maintain  
the seniority of applicant above them throughout  
and to grant the applicant all consequential  
benefits assigning there from.
- (iii) -----.
- (iv) -----."



2. It is submitted by the applicant that he was initially appointed on 4.1.1964 in the grade of Rs.85-128 and he is working since then without any break . Vide memorandum dated 19.4.1987 seme-skilled jobs were upgraded to skilled grade (Annexure-1). For this purpose, trade test was held on 7.5.87 in which applicant also appeared. However, before 14.5.87 that was the date fixed for practical test, applicant was informed on 11.5.1987 that his name has been deleted from the list of upgradation H.S. Gr.II 15% trade test (Annexure 3 page 23). Being aggrieved, he filed representation which was decided on 8.6.1987 informing the applicant that since he was placed as Carpenter w.e.f. 20.1.1972, his seniority is to be reckoned from this date. He is, therefore, not eligible for appearing in the test (page 28).

3. Applicant has submitted that in the seniority list of Industrial Workers issued by CWE, Kanpur on 30.12.85, applicant was shown at sl. no. 4, whereas respondent nos. 5 & 6 were below him at sl. no. 5 & 9 respectively (page 33). Therefore, being aggrieved, he filed O.A. no. 584 of 1987, which was allowed by judgment dated 15.7.93 (page 45-51).

4. Pursuant to the judgment, applicant was given Carpenter H.S. Gr.II w.e.f. 15.10.1984, but he seniority remained untouched even though his juniors respondent nos. 5 & 6 were promoted to the post of H.S. Gr.I w.e.f. 15.10.85. He has categorically stated that these promotions were given during the pendency of earlier O.A., but applicant has not been granted promotion as H.S. Gr.I. On the contrary, respondent nos. 5 & 6 have been given further promotion as Master Craftsman vide order dated 31.10.98, but even though applicant is senior to them, they have not been given the said promotion.

5. Respondents have opposed this O.A. They have submitted that initially applicant was appointed as Carpenter on 4.1.64 at Varanasi. He was transferred to ASC North Meerut, where he continued till 8.11.1968. Thereafter, he became

surplus staff. He was adjusted on 10.5.69 as a Mate in lower post then Carpenter under G.E. Jaipur and as per surplus staff Rehabilitation Scheme in case of posting in lower grade one has to give consent in writing that he accepts lower post. This clearly shows not only his unit was changed, but his trade was also changed on redeployment. Therefore, naturally he was not entitled to count his seniority w.e.f. 4.1.64 and it had to be reckoned as a Mate w.e.f. 10.5.69. He again became a Carpenter only on 20.1.72 on promotion and posted at G.E. East Meerut. Thereafter, he sought transfer to Chakeri Kanpur on his own request on compassionate grounds. On- ce again the law on compassionate ground is that one goes at his own expenses and is placed at bottom seniority at the place of transfer sought on compassionate grounds. Therefore, naturally his seniority at CWE, Khakeri, Kanpur would count w.e.f. 20.11.78 as his promotion/confirmation being Industrial personnel is on CWE area basis. Respondents have, thus, submitted that the applicant cannot be said to be senior to respondent nos. 5 & 6.

6. They have further explained that in earlier O.A., applicant relied on circular dated 8.10.86 which provided that provisions of CPRO 73/73 would be applicable to MES w.e.f. 16.12.85. Infact this G.O. dated 8.10.86 was declared invalid vide letter dated 25.8.89 (Annexure CA-1) in view of judgment given by Jaipur Bench of the Tribunal on 29.12.1987.

7. More-over in April'87, there were only two posts and maximum 6 persons could have appeared. There were already six persons available, so when it was pointed out by the union things were investigated and since these facts were revealed, applicant was stopped from appearing in the trade test. All these facts were not placed correctly before the Tribunal in applicant's first O.A., therefore, judgment dated 15.7.93 was passed. Complying with the directions, applicant was granted promotion as H.S. Gr.II w.e.f. 15.10.1984.

8. Another seniority list has been prepared, wherein applicant is shown at sl. no. 7, while respondent nos. 5 & 6 are shown at sl. nos. 1 & 2 respectively and all service details are given thereunder (Annexure CA-2). They have further explained that as per this seniority, there are persons senior to the applicant, therefore, he cannot claim promotion as H.S. Gr.I before them. They have further explained that respondent no. 5 was promoted as H.S. Gr.I w.e.f. 15.10.85, while respondent no.6 was promoted as H.S. Gr.I w.e.f. 11.8.89, so when applicant's turn would come, he would also be considered for such promotion. They have also explained that the seniority list of 30.12.85 was of CWE, Kanpur Area, while CWE Khakeri has been carved out, after division from CWE Kanpur and they have issued a fresh seniority list at Chakeri on 3.2.1999, wherein all the details have been given regarding applicant's postings and compassionate transfer etc. They have, thus, submitted the relief as prayed by the applicant cannot be given to him, therefore, O.A. may be dismissed.

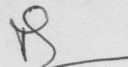
9. We have heard both the counsel and perused the pleadings as well.

10. Counsel for the applicant strenuously argued that once his seniority as on 30.12.85 was upheld by the Tribunal wherein he was shown senior to respondent nos. 5 & 6, naturally after his promotion as H.S. Gr.II he should have been given all consequential benefits also as the earlier judgment was not challenged by respondents in any court of law so it was attained finality. It is correct that respondents did not challenge the first judgment dated 15.7.93 in O.A. no. 584/87, therefore, in compliance with the said judgment, they gave promotion to the applicant w.e.f. 15.10.84 as H.S. Gr.II, but perusal of the said judgment shows neither the Tribunal had directed the respondents to grant consequential benefits to the applicant, nor it was directed that he should be given further promotion as H.S. Gr.I, even though applicant

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was admitted in para 4.N that promotion of respondent nos. 5 & 6 as H.S. Gr.I took place during the pendency of his first O.A. If that was so applicant should have claimed a definite relief to grant him further promotion also at par with the respondent nos. 5 & 6, but no such effort was made, therefore, at this stage, it is not understood how the applicant can challenge their promotions. Respondents have stated in their reply that respondent no.5 was promoted as H.S. Gr.I on 15.10.85, while respondent no.6 was promoted on 11.8.89 as H.S. Gr.I. Applicant's case was decided in the year 1993, therefore, he could easily have amended if he so wanted, but admittedly at that relevant time neither he sought nor any such relief was given by the Tribunal. Tribunal had given him a relief with regard to promotion as H.S. Gr.II only. That was complied with by the respondents and the applicant was promoted as H.S. Gr.II w.e.f. 15.10.84.

11. Now the question that arises is whether he can be granted further promotions at par with respondent nos. 5 & 6. It is rather unfortunate that the respondents did not place all the facts properly before the Tribunal in the first O.A. as a result of which relief was given to the applicant. Perusal of the first judgment shows that the relief was given to the applicant for violation of principles of natural justice, therefore, the proper course for respondents was to give a show-cause notice to the applicant detailing all the facts therein and giving him an opportunity to explain as why his seniority should <sup>not</sup> be corrected, but respondents did not even take that step. They have submitted that on verification when all these facts as mentioned above emerged out, they have already corrected the mistake and have taken out a fresh seniority list at CWE Chakeri in 1999 (Annexure CA-1), wherein the respondent nos. 5 & 6 are shown correctly at sl. no. 1, while applicant with all his details is shown at sl. no. 7. The question is whether they could have do so at their own without complying with the principles of natural



justice and whether we can quash the said seniority list without the same having been challenged by the applicant. The law is well settled that once a finding is given by a Court of law, it is binding on respondents and they cannot over look any judgment. Similarly, unless a seniority list is challenged specifically, the same cannot be quashed. Shortcomings are on both sides as respondents have corrected the seniority list on their own still without complying with the principles of natural justice and the applicant not having challenged the said seniority list.

12. Even though the position in law is well settled by now by the Hon'ble Supreme Court that on redeployment after being declared surplus a person has to be placed at bottom of seniority where he is being deployed and also on seeking request transfer on compassionate grounds to a different unit, one would be placed at the bottom of seniority list, where he has sought transfer.

13. It is also relevant to note that in para 526 respondents have now given all the details how applicant was declared surplus as Carpenter from ASC, Meerut in November '68 and was adjusted as a Mate, a lower post under G.E. at Jaipur under the surplus and rehabilitation scheme. This clearly shows that not only he was changed from one unit to the other, but even his trade was also changed. Thereafter, he was promoted as a Carpenter on 20.1.72 and posted under G.E. (East) at Meerut. Here again he sought transfer on request on compassionate grounds to Chakeri, so on the grant of his request transfer to Chakeri on 20.11.78, naturally he would have been placed at the bottom of seniority list at Chakeri. These facts though have stated categorically by the respondents in their Counter affidavit, but have not even been denied by the applicant in the Rejoinder, therefore, in law they are deemed to have been accepted. If these facts were not correct, applicant would have immediately controverted the same. In these circumstances,

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if respondents had to correct the seniority of the applicant, it cannot be said that such an action would be wrong. After all, no individual can be granted unintended and undeserving benefits as that itself would amount to arbitrariness. It is all settled by now that it is open to the Govt. to rectify the mistakes but for correcting the mistake, respondents ought to have complied with the laid down procedure of complying with the principles of natural justice.

13. Since we are satisfied that in the given circumstances, it was necessary to straighten out the facts and to correct the seniority of the applicant, we now give liberty to the respondents in the interest of justice to give a show cause notice to the applicant within a period of one month from the date of receipt of a copy of this order detailing therein all the facts as well as rehabilitation scheme and calling upon him to explain as to why he should not be given the correct seniority as per settled law. Applicant should be given reasonable time therein and in case applicant gives his representation within the stipulated period, respondents shall decide his correct seniority within three months thereafter at Chekari where he had come on request transfer on compassionate grounds. It is made clear that this would not give liberty to the respondents to upset the promotion of H.S. Gr.II already granted to the applicant pursuant to earlier judgment.

14. Since we are satisfied that seniority of the applicant needs to be corrected in accordance with law, therefore, he cannot get the relief as sought by him.

15. In view of the above discussions, this O.A. is disposed off in terms of directions as given in para 13 above. No costs

Member (J)

girish/-

Vice Chairman

16.01.04.