

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 888 OF 2001

ALLAHABAD, THIS THE 22<sup>nd</sup> DAY OF NOVEMBER, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)  
HON'BLE MRS. ROLI SRIVASTAVA, MEMBER(A)

Shri R.S. Bajpai son of Late Shri R.R. Bajpai  
r/o 128/669 Y-I Kidwai, Nagar, Kanpur Nagar.

....Petitioner

(By Advocate : Shri R.M. Shukla)

V E R S U S

1. The Union of India through its Secretary, Ministry of Defence (Production) Govt. of India, New Delhi.
2. The Chairman Ordnance Factories Board, 10-A Auckland Calcutta.
3. The General Manager, Field Gun Factory Kalpi Road, Kanpur Nagar.

.....Respondents

(By Advocate : Shri Saumitra Singh)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

Applicant has filed restoration application No.889/02 as this case was dismissed in default on 26.11.2001. It is submitted by the counsel that his mother was serious as she was suffered from High Blood Pressure and Heart problem, therefore, he could not attend the court on 26.11.2001.

2. In view of the statement made by counsel for the applicant, this restoration application No.889/02 is allowed. O.A. is restored to its original number. Counsel for the applicant does not wish to file any rejoinder in this case, therefore, we are hearing both the counsel who are ready in

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the matter. Order passed separately.

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

- (i) to issue a writ order or direction in the nature of a writ of certiorari quashing the seniority list No.184 dated 19.09.2000 published by the respondent No.3.
- (ii) to issue a writ order or directions in the nature of a writ of mandamus commanding the respondents to place the name of the petitioner at correct place above the name of Istiyaq Hussain on the basis of seniority list dated 19.03.1986 in the seniority list dated 19.09.2000 and grant all the benefits like promotion in higher grade and post and pay all the pay and allowances admissible under the Rules with effect from the date of his Junior's promotion and grant of higher pay-scale in the interest of justice and equity.
- (iii) Cost of the petition be awarded to the petitioner.
- (v) to issue any other writ order or directions which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

4. It is submitted by the applicant that he was appointed as Junior Examiner vide letter dated 04.04.1979 in the pay-scale of Rs.210-290/- in Inspectorate of Armaments(Field Gun) Armapore Post Kanpur and he joined his services on 17.04.1979 under Director General Inspection. He was promoted as Examiner Gr.II in the pay-scale of Rs.260-400/- in the skilled grade. However, pursuant to the decision given by Hon'ble Supreme Court in the case of Bhagwan Sahai Carpenter, the pay-scale of semi skilled Rs.210-290/- were upgraded as Rs.260-400/- (AIR 1989 S.C. 1215). In the meantime applicant was



transferred in public interest from D.I.A. (field Gun) Kanpur to G.M. Field Gun Factory Kanpur in the pay-scale of Rs.260-400/- . His promotion in the pay-scale of Rs.330-480/- was withdrawn after the judgment of Bhagwan Sahai Carpenter's case. After transfer, he joined his duties in Field Gun Factory Kanpur in October 1984.

5. It is submitted by the applicant that his seniority could not have been changed and it should have been fitted in the integrated grade on the basis of continuous regular service in that grade subject to inter-se seniority in the respective grade being maintained. He has also relied on C.S.R.41 Article 26. Being aggrieved he gave representation against the seniority list dated 19.09.2000 praying therein to place him above Shri Istiyaq Hussain but his representation was rejected vide order dated 15,11.2000. He has, thus, filed the present O.A.

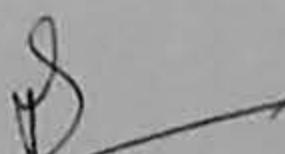
6. Respondents on the other hand have submitted that applicant has not impleaded Shri Istiyaq Hussain as respondent in the petition even though he has prayed that his name be placed above Shri Istiyaq Hussain. Therefore, this O.A. is bad for non-joinder of necessary party.

7. On merits they have explained that the employees who were transferred to the factory side as mentioned above, were holding the post of Examiners in different grades viz. Examiner(Semi Skilled), Examiner(Skilled), Examiner(Highly Skilled Grade-II) and the Examiner (Highly Skilled Grade-I) The applicant who was holding the post of Examiner(Skilled) at the time of transfer, had also joined factory side in the year 1984. They have further explained that the guidelines for determining the inter-se-seniority amongst

the persons so transferred from Quality Assurance Establishment, and the persons already working in that grade in the factory, were issued by the Ordnance Factory Board, Calcutta vide letter dated 01.02.1984 which inter-alia states as under in it's paragraph No.(iii):-

"Combined Seniority list, categorywise, will be prepared intergrating the transfers with the existing factory personnel. The Principle of fixation of the inter-se-seniority detailed in CSR-41, Article 26 which reads, where a person is transferred with work from one department to another Central Govt. Department, the seniority will remain unchanged and fitted in the integrated grade on the basis of continuous regular service in that grade subject to inter-se-seniority in the respective grade being maintained. "

8. Respondents also submitted that another circular dated 02.01.1985 was issued by the Ordnance Factory Board, Calcutta and it was inter alia mentioned therein that " the seniority of DGI employees who have come on transfer to various Factories both in Industiral and non Industrial establishment will be reckoned from the date of holding the post in which transfer has been effected.(Annexure CA-2)". According to the aforesaid direction of the Board, dated 02.01.1985 the seniority list of such persons viz. Factory personnel already holding the post of Examiner(skilled) and the transfers from Inspectorate of Armament (FG) was prepared and their seniority was reckoned from the date of holding of the grade/trade of Examiner(Skilled). They have, thus, submitted that in view of the above decision, applicant was informed vide memo dated 26.04.1999 that according to final decision in this respect, the incumbent of DGI will be granted seniority with effect from the date of holding the post. They have, thus, prayed that there is no merit in the O.A. the same may be dismissed.



9. Applicant has not filed any rejoinder, meaning thereby that the averments made by respondents are deemed to have been accepted by him. Firstly applicant has sought placement in the seniority above Shri Iстияq Hussain but he has not been impleaded as respondent in the O.A., therefore this petition is bad for non-joinder of necessary party as law is well settled that no adverse orders can be passed at the back of the person and in case the order as prayed by the applicant was to be granted, it would have affected the rights of Shri Iстияq Hussain. Therefore, this O.A. has to be dismissed on the technical ground itself. Even otherwise, respondents have explained that vide circular dated 02.01.1995, the seniority of D.G.I. employees who had come on transfer from various factories both in Industrial and non-industrial establishment was to be reckoned from the date of holding the post <sup>to</sup> which transfer has been effected. Validity of circular has not been challenged by the applicant, therefore, he would be governed by this circular and as per the circular, applicant has rightly been placed in the seniority list from the date, he was holding the post in which he had been transferred.

10. In view of the above discussions, we find no merit in the O.A. The same is accordingly dismissed with no order as to costs.

*Govind*  
A.M.

*J.M.*  
J.M.

shukla/-