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RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 25 day of Jan 2008.

Original Application No. 529 of 2005 (U)

Hon'ble Mr. A. K. Gaur, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)

1. Bal Chandra, S/o late Atma Ram, R/o C/o Pataru Ram Okla Sundrarwale, Raipur, Dehradun.
2. Balbir Singh Chauhan, S/o Sri M.S. Chauhan, R/o B-15/ 14, New Type-II, Ordnance Factory Estate, Raipur, Dehradun.

... Applicants

By Adv. Sri Ashish Srivastava

VERSUS

1. Union of India through Secretary, Ordnance Factory Board, 10-A, Auckland Road, Kolkata.
2. General Manager, Opto Electronics Factory, Raipur, Dehradun.

... Respondents

By Adv. Sri S. Singh

ORDER

By Hon'ble Mr. A. K. Gaur, Member (J)

By means of this OA the applicants have sought quashing of order dated 08.07.2004 and order 24.06.2004 issued by the respondents No. 1 (Annexure A- and A-2) and also for seeking a direction commanding the respondents No. 1 and 2 to consider the candidature of the applicants for promotion to the post of

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Draughtsman from the post of Tracer and grant all consequential benefits. The applicants belong to SC/ST community. The services of the applicants are governed by the statutory rules namely "Indian Ordnance Factory Service" and Condition of Services of Supervisory and now Gazette Rules, 1989 (Annexure A-3). As per the aforesaid statutory rules the next promotion post for the Tracer is Draughtsman. In terms of the SRO 5% posts of Draughtsman shall be filled in by way of promotion amongst the existing Tracer, who have 03 years regular service in the feeding cadre. The educational qualification has been prescribed as matriculation with 03 years experience. The applicants made representations for grant of promotion after acquiring eligible service conditions for being promoted as Draughtsman. Vide letter dated 23.08.1995 the respondent No. 1 stated that there is ban on promotion vide letter dated 19.04.1993 issued by the respondent No. 1. It is clearly observed in this letter that no factory will effect promotion in the chain vacancies arising in Highly Skilled I/Draughtsman in the lower grade till further orders. In the organization of the respondents there are two categories of employees namely Industrial and Non-industrial and as such in terms of paragraph 7 of the letter dated 19.04.1993 the promotions from Industrial and Non-industrial cadre ought to have been stopped. However, the respondents continued with promotions of Industrial cadre. Vide representation dated 15.09.1997 the applicants again reiterated that they are not being promoted under the grab of the order dated 19.04.1993. However, in some of the factories a number of promotions were made from time to time.

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The applicant did not receive any reply in response to the aforesaid representation dated 15.09.1997. It was further followed by a reminder and a fresh application on 02.12.1997. According to the applicant the following vacancies were lying vacant against which the applicants could have been adjusted:

- a. On 30.10.1991 one Sri Rakesh Kumar SC candidate tendered his resignation, which was accepted on 30.10.1991.
- b. One Sri Larka Baxla ST died in harness on 26.10.1993.

2. The applicants have placed reliance on the Government order dated 10.06.1994 and 13.04.1976, according to which there would be no ban against the SC/ST vacancies to the extent of maintaining reservations quota. However, the letter dated 30.04.1976 stipulates that all clear vacancies arising due to death, retirement, resignation by the SC/ST candidate shall be filled. On the representation of the applicants vide order dated 01.12.1998 a rejection order was issued by respondent No. 2 (Annexure 4 to the OA). The aforesaid letter was issued in the light of letter dated 11.11.1998 of the respondent No. 1 specifying that the Tracer is not the feeding cadre of Draughtsman/Charge-man Grade II (Annexure A-5). It is pleaded on behalf of the applicant that the aforesaid letter of the respondents was in contravention to the SRO and being aggrieved by the same OA No. 325/99 was filed before this Tribunal. Vide judgment and order dated 12.04.2004 the OA was finally decided and the order dated 11.11.1998 was set aside, being issued in contravention to the SRO dated 04.05.1989 and further the respondents were directed to reconsider claim of

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applicants within a period of 03 months. Vide order dated 24.06.2004 the respondents again rejected the claim of the applicant on the ground that the post of Draughtsman was not a promotional post for Tracer. It has further been contended by the applicants that the respondents in paragraph No. B of the counter reply submitted that during 1993 to 1998 there was a ban on the post of Draughtsman, whereas in paragraph No. R, S, and T respondents stated that the claim of the applicants was already decided and rejected by the Ordnance Factory Board vide letter 11.11.1998. Vide letter dated 11.11.1998 all factories were advised not to promote Draughtsman from Tracer. According to the applicant the statement of fact give by the respondents that the ban was continued from 1992 to 1998 is a misleading fact, whereas the respondent have himself admitted this position that the ban was lifted vide order dated 15.10.1993 itself. Vide the factory letter dated 11.09.1997 the post of Draughtsman has been re-designated as Chargeman Grade-II.

3. By filing detailed counter reply the respondents submitted that during the same period of ban, in some other Ordnance Factories promotion from Tracer to Draughtsman were affected. According to the respondents the same has been done erroneously in contravention to the extant instructions at that time. To rectify such instances suitable instructions have been issued by the Ordnance Factory Board vide letter dated 08.06.1999. It is also urged on behalf of the respondents that such action of re-designation/reversion from Draughtsman to Tracer as well as

validity of Ordnance Factory Board instructions had been under judicial scrutiny and the Tribunal Hyderabad and Calcutta upheld the contents of Ordnance Factory Board Instructions/ Directive issued as such. The relevant paragraph of letter dated 08.06.1999 annexure 1 to the counter are being reproduced hereunder:

"The promotions which have been effected to the post of D' man after 10.5.93 are all irregular and is likely to create various complications. It has therefore been decided that all persons holding the post of D' man who have been inducted after 10.5.93 to the post of D' man shall be redesignated to Tracer w.e.f. 1.7.99 in the pay scale of Rs. 4000-6000/- All Tracers who were in the pay scale of Rs. 3200-4900/- are also getting upgraded pay scale of Rs. 4000-6000/- w.e.f. 20.4.99 vide M of D letter No. 45(1)/98/III/D(Fy-II) dt. 20.4.99 circulated under OFB letter No. 595/TRACER/A/NI/96 dt. 18.5.99. This will bring all existing D' man and Tracers in the same scale and at par and will solve all complications.

Factories which have promoted D' man inducted to the grade of D' man after 10.5.93 to the post of Ch' man are required to revert them to the post of Tracer in the pay scale of Rs. 4000-6000/- w.e.f. 1.7.99.

Factories are requested to take immediate action and intimate the action taken by them to O.F. Board latest by 12.7.99."

4. It has been submitted by the respondents that since 1993 to 1998 i.e. during the period of deliberation and consideration for restructuring the cadre of design and drawing staff, there was ban in filling up vacancies of Draughtsman and subsequently the post of Draughtsman were abolished in the Ordnance Factory Board. Both the applicants had completed 03 years qualifying service on the post of Tracer on 25.08.1994 and 17.04.1995 respectively. Prior to these dates in absence of minimum qualifying service as provided in SRO 14-E they could not be considered for promotion to the post of Draughtsman, and from 10.05.1993 in view of the imposition of ban of filling the vacancies of Draughtsman. In view of these facts the question of promotions of the applicants to the

post of Draughtsman does not arise. Respondents also submitted in their reply that the Tribunal's order dated 12.4.2004 to reconsider the applicants claim after proper self direction to the rules were to be complied within a period of 03 months from the date of receipt of the copy of this order. After reconsideration of the matter at length a conscious speaking order has been issued to the applicants vide letter dated 24.06.2004 and vide letter dated 08.07.2004. The Bench of the Tribunal sitting at Hyderabad vide order dated 08.04.2003 and Calcutta bench of the Tribunal has also taken an analogous view, by relying on the ratio of the decision of the Hyderabad bench, directed that the respondents are at liberty to take appropriate action as per law after giving due opportunity to the applicant.

5. The applicants have filed a supplementary rejoinder affidavit taking the plea that after setting aside the order dated 11.11.1998 a direction was issued by this Tribunal to the respondents to reconsider the case of the application for his promotion to the post of Draughtsman. In compliance of the said judgment the authorities concerned has passed order dated 24.06.2004 and as such it was a fresh cause of action, which can be challenged by filing fresh OA. The applicants have also stated that no positive date has been given that when ban was imposed and when it was lifted.

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6. The official respondents filed supplementary counter reply and referred paragraph 7 of the letter dated 19.04.1993. The paragraph 7 of letter dated 19.04.1993 reads as follows:

"No promotions will be made by the Factories after these promotions to the post of CM-II(T) till further orders. As all the posts falling vacant will be in the central pool in OFB. These posts will be released in phases after adjusting the NGOs strength as per sanctions. No factories will effect promotions in chain vacancies arising in HS-I/Draughtsman and lower grade till further orders. The promotion for the chained vacancies will be allowed by the OF Board after the promotions of HS-I etc., are effected and the reallocation of posts of NGOs are worked out."

7. It has been submitted by the respondents that 12 vacancies were to be filled up in the post of Chargeman Grade II (T) from highly skilled Draughtsman and I. Permission to fill chain vacancies in Industrial cadre was also specifically given in par 4 of the said letter. However, no permission to fill chain vacancies in Draughtsman was given, which shows that the ban on filling up chain vacancies in Draughtsman remained in force, whereas ban on filling up chain vacancies in Highly Skilled Grade I (Industrial) was lifted.

8. We have heard Sri Ashish Srivastava learned counsel for the applicant and Sri S. Singh learned Senior Standing Counsel, Govt. of India. From the careful analysis of the case, we come to the conclusion that since 1993 to 1998 i.e. during the period of deliberation and consideration for restructuring the cadre of design and Drawing staff. There was ban in filling up vacancies of Draughtsman and subsequently the posts of Draughtsman were abolished in the OFB. It is also seen from the record that both the applicants had completed 03 years qualifying service on the post of

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Treasure on 25.08.1994 and 17.04.1995 respectively. In terms of SRO 14-E, prior to these dates in absence of minimum qualifying service the applicants could not be considered to the post of Draughtsman and also in view of the imposition of ban of filling the vacancies of Draughtsman w.e.f. 10.05.1993. In view of these facts we are of the considered view that the question of promotion of the applicants to the post of Draughtsman does not arise.

9. We have also carefully seen the order passed by this Tribunal dated 12.04.2004 to reconsider the applicants' case. It is seen from the record that after reconsideration of the matter at length a conscious speaking order has been issued to the applicants vide letter dated 24.06.2004 and vide letter dated 08.07.2004. Learned counsel for the respondents has invited our attention that the Bench of the Tribunal sitting at Hyderabad vide order dated 08.04.2003 and Calcutta Bench of the Tribunal has also taken an analogous view by relying on the ratio of the decision rendered by Hyderabad Bench. Both these Tribunals granted liberty to the respondents to take appropriate action as per law after giving due opportunity to the applicants. From the perusal of paragraph 7 of the letter dated 19.04.1993 it is amply clear that no promotions were to be made after these promotions to the post of Chargeman -II till further orders. No factories were permitted to effect promotion in chain vacancies arising in Highly Skilled Grade I/Draughtsman and lower grade till further orders. We have also found that the ban was imposed vide letter dated 19.04.1993 for filling up chain vacancies in Industrial Cadre. This was

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subsequently lifted and the ban remained in force as far as post of Draughtsman is concerned. This ban remained in force for the post of Draughtsman was due to the fact that consequent upon the grant of higher pay scale to Draughtsman, and acute hierarchical anomaly has evolved in the post of Draughtsman and with a view to eradicate this anomaly, action to abolish the post of Draughtsman was taken in due course of time as well as revision of SRO was being considered at OFB. We have also seen the OFB letter dated 08.06.1999 wherein it is categorically declared that promotions from Tracer to Draughtsman during the period of ban was to be treated as erroneous and it was clearly ordered that such promotes may be reverted.

10. Learned counsel for the applicant solely argued that since the order of the Tribunal dated 11.11.1998 has been set aside by the Tribunal, it was not open to the respondents to take the shelter of the so called ban. We have carefully considered this point and in our considered view the respondents were directed to reconsider the applicants' claim for promotion to the post of Draughtsman/Chargeman. II after proper self-direction to the rules afore-stated within a period of 03 months and the aforesaid directions of the Tribunal have been duly complied with in accordance with rules, existing instructions and latest judgments on similar issues and accordingly, speaking order dated 24.06.2006 was issued.

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11. The present original application filed by the applicants against order dated 26.04.2004 does not contain any fresh point and is merely repetition of earlier original application no.325/1999. We have also considered the argument of the counsel for the respondents that the original application filed by the applicant is barred by principle of resjudicata. We may observe that after fresh reconsideration of the case by the respondents a separate and fresh cause of action has arisen and in our considered view the OA is not barred by principle of resjudicata.

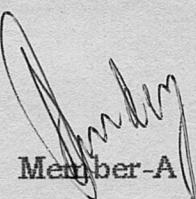
12. Learned counsel for the applicant has also argued that by passing order dated 24.06.2006 the respondents have circumvented the order and direction given by this Tribunal in OA No.12.04.2004. We do not agree with the said submission of the learned counsel for the applicant. After reconsideration of the case a speaking order dated 24.06.2006 was issued and there is no illegality in it. The respondents have also not committed any discriminatory action by resorting to promotion in industrial cadre. We also find that there is no contradiction in the order dated 24.06.2006 and 11.11.1998. As per order dated 11.11.1998 there was a complete embargo to fill up the post of Draughtsman by any means (in view of ban). We have also perused the various letters issued by the respondents from time to time and in our considered opinion no new matter has been brought out by the applicants warranting interference. The applicants have utterly failed to make out any case for issuing direction to the respondents for

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considering the candidature of the applicants for promotion on the post of Draughtsman from the post of Tracer.

13. The original application is accordingly dismissed. No Costs.



Member-A



Member-J

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