

CENTRAL ADMINISTRATIVE TRIBUNALALLAHABAD BENCHRegistration No. 142 of 1987Allahabad this the 6th day of Oct., 1994.

Hon'ble Mr. Justice B.C. Saksena, V.C.

Hon'ble Mr. K. Muthukumar, A.M.

Sri N.K. Mehta S/o Sri M.M.L. Mehta,
 R/o 67/2 Labour Colony Govind Nagar,
 Kanpur, working as Highly Skilled,
 Grade-I, bearing ticket No. 1175 MM/
 Section Ordnance Factory, Kanpur.

By Advocate Sri R.M. Shukla Applicant.

Versus

1. The Union of India through Secretary,
 Ministry of Defence, New Delhi.
2. The General Manager,
 Ordnance Factory, Kanpur.
3. The Works Manager (A),
 Ordnance Factory, Kanpur.
4. The Chairman,
 Ordnance Factory, Board,
 Calcutta.
5. Shri Mahabir Sharma,
 Working as Chargeman,
 Grade-II (T)/Mech/MM, Section
 in the Ordnance Factory,
 Kanpur.

By Advocate Sri N.B. ^{Singh} Shardwaj RespondentsBy Hon'ble Mr. K. Muthukumar, (Member-A)

1. In this Original Application the applicant has sought the direction of this Tribunal to the respondents to give promotion to the applicant in the post of Highly Skilled Workers (Mech./Engg./MM) w.e.f. 21.9.1976 and to the post of Chargeman Grade II w.e.f. 14.8.1980 treating the applicant as Senior to Sri Mahabir

Sharma, respondent no. 5, and the consequential benefits on these promotions.

2. The facts of the case briefly are as follows. The applicant was appointed as Mill Wright Grade-A w.e.f. 1st July 1971, after completion of necessary training in Ordnance Factory, Kanpur. The respondent no. 5 was also appointed as Mill Wright Grade-A in the subsequent batch after training, w.e.f. 1.1.1972. Both the applicant and respondents no. 5 were appointed on probation for six months and on satisfactory completion of probation they were regularised. By virtue of initial appointment the applicant was senior to the respondent no. 5. However, the respondent no. 5 was promoted to the next higher post of Highly Skilled (Mech/Engg/M.M) w.e.f. 21.9.1976. The applicant was however, promoted to the grade of Highly Skilled (Mech./Engg./M.M.) only w.e.f. 10.9.1980. The respondent no. 5 was further promoted to the next Supervisory grade of Chargeman-II w.e.f. 14.8.1980. In accordance with the recruitment Rules and Procedure enforce, the applicant contends that although he was senior to the respondent no. 5 in the initial appointment as Mill Wright 'A', he was denied his rightful promotion to the next higher grade when he had completed the requisite number of years of satisfactory service and was fit for promotion both by virtue of seniority as well as satisfactory services but was, however, superseded by the respondent no. 5 who had put in less than the prescribed minimum years of service for promotion to the next higher post of Highly Skilled (Mech./Engg./M.M.). The applicant is further aggrieved by the fact that he was not given

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his promotion to the next higher grade of Chargeman-II when the junior respondent no. 5 was promoted to the grade, because of his promotion to the grade of Highly Skilled only as late as 10.9.1980. The applicant has approached this Tribunal for suitable direction to the respondents to promote him to the respective higher posts from the dates when his junior respondent no. 5 was promoted to these posts.

3. In the averments made in the Original Application the main point urged is that is promotion to the next higher grade of H.S (Mech./Engg./M.M.) that the authorities had violated the rules and procedure governing the promotion to the grade of Highly Skilled as contained in Director General of Ordnance Factory confidential letter dt. 27th February, 1974 (Annexure-9 to this application). In this it has been provided that the promotion to the Highly Skilled Grade will be on the basis of seniority with the elimination of the unfit and a minimum period of experience of five years in the Skilled Grade will be insisted upon. The other averment is that the respondents nos. 1 to 4 have acted in arbitrary manner and have promoted the respondent no. 5 who is junior, first to the above post and had violated the Article 14, 16 and 311 of the Constitution and the promotion of the respondent no. 5 was therefore illegal.

4. In resisting the application the respondents have averred that the applicant was not found suitable for promotion and hence he was not promoted before the respondent no. 5. Although the applicant was senior to the respondent no. 5 by the appointment date in the grade of Mill Wright 'A', the applicant

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was categorised by the Director General of Ordnance Factory, Calcutta (D.G.O.F) with the proviso to promote the respondent no. 5 as Highly Skilled workmen after completion of one year satisfactory service but as he was not found suitable to the Highly Skilled Workmen after completion of one year, he was promoted to this grade w.e.f. 21.9.1976 when he was found suitable for the same; no such categorisation or remark was shown the name of the applicant in the categorisation list. The respondents have further averred that the respondent no. 5 was promoted to the post of Chargeman Grade-II w.e.f. 14.8.1980 as per a seniority and as per rules and, therefore, there had been no violation of the Rules and Procedures relating to the promotion of the applicant and there was no arbitrariness in the promotion nor any violation of the Articles 14, 16 and 311 of the Constitution. In reply to the averments made by the applicant that on his representation he was promoted on the post of Highly Skilled from the year 17.9.1980, the respondents have stated that the applicant was promoted as per his seniority and as per rules.

5. We have heard the learned counsel for the parties and perused the record.

6. The main thrust of the applicant's contention is that he was eligible for promotion to the next higher grade of Highly Skilled as he has completed five years, earlier than the respondent no. 5. The promotion of the respondent no. 5 merely on the basis of the Director General of Ordnance Factory endorsement that he may be promoted after one year of satisfactory service, would amount to discrimination. In the confidential circular vide an Annexure-9 it has been

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provided that the promotion is to be from amongst the suitable candidates with the minimum period of five years service on the basis of seniority with the elimination of unfit. The respondents have clearly and unequivocally averred that the applicant was not found suitable for promotion and denied in reply the averments in paragraph 6 D and E of the application. It is, therefore, reasonable to hold that at the time when his turn for promotion came up apparently he was not found suitable and, therefore, he was not promoted although he had the necessary seniority. The applicant, in the rejoinder has only blandly denied the aforesaid averments of the respondents but ~~has~~ not produced any material before us to substantiate his denial. In the light of this it can not be held that the applicant satisfied the minimum requirement for promotion to the grade of Highly Skilled at the relevant point of time as he was not found unsuitable. The respondents promoted him in the 1980 when he was found suitable. This Tribunal can not substitute itself for a Departmental Promotion Committee to assess the suitability of the promotion of the candidate and has to be guided by the averments made by the respondents and other material on record in such matters.

7. In regard to the further promotion to the grade of Chargeman Grade-II, however, we find from the record that the recruitment rules namely Ordnance Factory Rules, 1956 and the Annexure-5 to the Board's letter dated 12.2.1980 Annexure-9-A that the promotion to the post of Chargeman Grade-II is by selection.

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It is, therefore, clear that the applicant had no claim to the post of Chargeman merely on the basis of his seniority in the initial appointment and also by virtue of number of years of service he has completed. The respondent no. 5 was promoted to the grade of Chargeman-II on the basis of the selection ~~of~~ by the Departmental Promotion Committee which can not be called in question. Therefore, the applicant can not agitate on the promotion of respondent no. 5 to this post.

8. In the light of the above discussions we find that there is no merit in the application and the application is accordingly dismissed.

9. There is no order as to costs.

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Member (A)

6-10-1994

am/

Bchakraborty
Vice-Chairman