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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

T.A. No.1244 of 1987.

Brij Swaroop Tripathi & another .....Applicants.

Versus

Union of India & others .....Respondents.

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.A.B.Gorthi,A.B.

( By Hon'ble Mr.Justice U.C.Srivastava,V.C.)

The applicants, after taking training of Supervisor Apprentice(Engineering), were appointed as Supervisor Grade 'A' in different years. Thereafter they were up-graded as Chargemen Grade-II on 1.1.80 and were promoted as Chargemen Grade-I on 16.6.80 in Ordnance Factory, Kanpur.

Under the statutory rules knowns as Indian Ordnance Factories (Recruitment, Conditions of Service of Class III Personnel) Rules,1956, the minimum qualifications have been prescribed for the post of Supervisor Grade 'A' and Chargeman Grade-I and II. The applicants, who were declared successful for supervisory apprenticeship training in competitive examination , were appointed as Supervisor Apprentice Trainee on various dates.

As sufficient number of qulified persons were not coming forward for the post of Supervisor Grade 'B', 'A' and Chargeman, the Government of India decided to offer incentive policy and announced recruitment under Rule 11 offering guaranteed promotion to the higher posts. Thereafter, the Director General, Ordnance Factories issued letter dated 21/23.11.62 ordering promotion to the post of Chargeman Grade-II and Supervisor Grade 'A' in accordance with letter dated 6.11.62 and principles/laid down. Thus,

1400 persons were recruited all over India during 1962-65 under the Scheme. In 1965, the Director General, Ordnance Factories further decided that ex-supervisor apprentices who were appointed and working as Supervisor Grade-A or in equivalent grades should also be given benefit of promotion on completion of two years service. Accordingly, a large number of persons were appointed as Supervisor Grade 'A' on completion of supervisory apprenticeship course and those who were recruited and appointed as Supervisory Grade 'A' directly, were promoted on completion of two years' service to the post of Chargeman Grade-II. Similarly, a large number of supervisor apprentices and diploma -holders were promoted to the post of Chargeman Grade II on completion of two years service as Supervisor 'A'. In view of the promotion of diploma holders, a number of writ petitions were filed before the High Court and later on the matter went to the Supreme Court in the case of 'Virender Kumar & others Vs. Union of India' which was decided by the Supreme Court in the year 1981 and which is reported in AIR 1981 Supreme Court 1771. In pursuance of the directions given by the Supreme Court, the petitioners were given promotion to the post of Chargemen GradeII from retrospective effect on completion of two years service and similarly those who were petitioners before the Hon'ble Supreme Court, were also given promotions to the post of Chargemen Grade II from Supervisor 'A'. The applicants, who were not the

party to the litigation, were not promoted and the juniors who litigated the matter, were promoted, that is why the applicants filed this writ petition before the High Court which by operation of law has been transferred to this Tribunal.

The applicants have prayed that a mandamus be issued directing the respondents to grant promotion to the applicants as Chargemen Grade-II on completion of two years service from the retrospective effect and treat the applicants as Chargemen II on expiry of two years service as Supervisor 'A' and further to promote the applicants to the post of Assistant Foreman on the basis of seniority and difference of pay and allowances may also be paid to them.

3. The respondents have opposed the application and have pointed out that in view of the decision of the Hon'ble Supreme Court only those who were the party before the Hon'ble Court could have been promoted. This matter came for consideration before the Bench of this Tribunal in the case of 'Vishwanath Verma & others Vs. Union of India' and other connected cases and the Bench after taking into consideration the case of 'Paluru Ramakrishnaiah Vs. Union of India' reported in AIR 1990 S.C. 167 in which Virender Kumar's case was overruled, held that the applicants were not entitled to the incidental promotion on the basis of Circular dated 6.11.62 to the post of Chargeman I and II and other promotional posts nor they can be deemed to have been appointed to the

post of Supervisor 'A' because of the dictum laid down by the Hon'ble Supreme Court in Paluru Ramakrishnaiah's case. Learned counsel for the applicant Shri J.N.Tewari contended that notwithstanding with the decision of the Division Bench, the applicants have been discriminated and they may be promoted to the post of Chargeman II. This question was considered by the Hon'ble High Court in Paluru Ramakrishnaiah's case wherein it has been held that:

"Where the supervisors in Grade 'A' in Ordnance Factories were promoted to post of Chargeman II on completion of two years' service on the basis of Circular D/6.11.62 before coming into force of order D/28.12.65 which required three years of service for promotion and circular D/20.1.66 which provided that promotions should be made in accordance with Rules, R.8 of which contemplated that appointments by promotion were to be made on the basis of selection list prepared in the manner provided therein. The supervisors whose cases came up for consideration for promotion after coming into force of order D/28.12.65 and circular D/20.1.66 could not complain that they were discriminated on the ground that they were not given benefit of Circular D/6.11.62. Supervisors 'A' who had been promoted before the coming into force of the order dated 28.12.65 and circular dated 20.1.66 stood in a class separate from those whose promotions were to be made thereafter. The fact that some Supervisors 'A' had been promoted before the coming into force of the order dated 28.12.65 and the circular dated 20.1.66 could not, therefore constitute the basis for a plea that those Supervisors 'A' whose cases came up for consideration for promotion thereafter and who were promoted in due course in accordance with the rules were discriminated against. They apparently did not fall in the same category."

4. Thus, in view of the above law, this application deserves to be dismissed and the

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distinction pointed out by Shri J.N.Tewari-  
learned counsel for the applicants is of no  
avail and accordingly the application is dismissed.  
No order as to costs.

*Anand Singh*  
MEMBER(A)

*h*  
VICE CHAIRMAN.

DATED: MAY 14, 1992

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