

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

T.A.No.1685/87

(U.P. 15494/85)

Shri Vijai Prakash Gupta and another. : : : : : Applicant
Vs.

Union of India & Others. : : : : : Respondents.

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

Hon.Mr. K.Chayya, A.M.

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

The applicants were working as Assistant Foremen in Ordnance Equipment Factory Kanpur. They have filed a Writ Petition before the High Court praying for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to promote the applicants to the post of Foreman. By operation of law the application has been transferred to this Tribunal. The applicants have claimed the said promotion on the ground that the order dated 6/11/62 issued by Directorate General Ordnance Factories, in which it was decided that the same is applicable to the diploma-holders and direction was issued to the effect that the benefit of the said order be given to the diploma-holders similar to the applicants as respondents have given benefits to a large number of employees, the applicants have claimed that they ought to have been promoted as Chargeman Grade-II on 24-12-1964, and non-giving of the benefit of the same is violative of Article 14 & 16 of the Constitution of India.

2. According to the applicants they stand on a higher footing than Shri S.L. Kapoor and others who are juniors to them and they are also holders of diploma, who have been given promotion on the basis of the said order, but promotion was refused to the applicants.

3. The Government of India, Ministry of Home Affairs, vide its order dated 13/9/57 authorised the D.G.O.F. to issue instructions in the matter relating to the conditions of service. On 6-11-62 the D.G.O.F. issued a particular order. Thereafter another order was issued on 11/3/1963 directing that the diploma holders in Engineering who were recruited as Supervisor 'B' may be promoted as Supervisor 'A' after satisfactory completion of one year's service, and in future Diploma Holders in Engineering should be straight-away appointed as Supervisor 'A' Grade. In view of the said decision stated above, all these diploma holders who are not yet promoted to Supervisor 'A' because they have not yet completed one year's service as supervisor 'B' may be promoted as Supervisor 'A' w.e.f. 6-3-1963 so that they do not stand at any disadvantage as compared with those diploma-holders who are now to be recruited as supervisor 'A' in view of the D.G.O.F.'s decision. In view of the same, the applicants were granted promotions from Supervisor Grade 'B' to Supervisor Grade 'A'. According to the applicants, in view of the D.G.O.F.'s order dated 11/3/63 they ought to have been given promotion to the post of Chargeman Grade-II, after the completion of 2 years' service in the post of Supervisor Grade 'A' and as such they ought to have been promoted as Chargeman Grade-II, on 24-12-64. But they were not given the benefit of the order dated 6-11-62 and were promoted only on 23-4-1966. If the applicants had been given the benefit of the order dated 6-11-62 and had been granted promotion to the post of Chargeman Grade II on 24-12-64, then they would have earned promotion to the post of Assistant Foreman in or about the year 1975

by virtue of their seniority and merit. The applicants made representations in this behalf. So far as the order dated 6-11-62 is concerned, the Supreme Court had already decided that it is applicable to the diploma-holders and direction has been issued to the respondents to the effect that benefit of the said order be given to all the diploma-holders similar to the applicants, inasmuch as they have already ^{been} given benefit of the said order to a large number of employees. As some of the employees were not given the said benefit they have filed Writ Petition before the High Court. The Writ Petitions were heard by the High Court but as they were similar to the cases which were mentioned as heard ^{and stayed} by Supreme Court, these petitions were stayed. An Interim Order was passed by the High Court and the respondents were permitted to make promotions and also to consider and provisionally promote the applicants. Benefit of the interim order was given to various other employees but not to the applicants.

4. The respondents have opposed the application filed by the applicants and according to them the applicants are governed by the Service Rules known as Indian Ordnance Factory (Recruitment and Condition of Service of Class III Personnel) Rules which were framed under Article 309 of the Constitution of India, and these rules could not be amended by the Director General, Ordnance Factories by his executive decision. The respondents stated that except Shri S.L. Kapoor, no other employee was holding the post of Assistant Foreman. They were promoted from time to time in their turn on the basis of selection list prepared by the D.P.C. The applicants have also got promotion in their turn upto the post of Assistant Foreman. The promotion of the applicants were effected

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from the date prior to which the clarification dated 11-3-62 was issued. In view of the clarification all the diploma-holders who were not promoted as Supervisor Grade 'A' because they have not completed one year's service were to be promoted as Supervisor Grade 'A' w.e.f. 6/3/63 provided they have worked as Supervisor Grade 'B' satisfactorily. The applicants were not entitled to promotion to the post of Chargeman Grade II on completion of two years' service as Supervisor 'A' in view of the clarification dated 11/3/63. References to certain interim orders were also made by the respondents. It has been stated that the promotions were ordered in the grade of Foreman(Clothing/Leather) consequent upon the interim order passed by the High Court and the applicants No.1 and 2 were considered by the D.P.C. The applicant No.1 was not found suitable and the applicant No.2 was not promoted for want of vacancy. Both these applicants belong to the trade of Leather technology. Hence the order dated 6/11/62 was modified by letter dated 11/3/63 and as such it is not applicable to the applicants and they were not entitled to the promotion to the post of Chargeman, w.e.f. 24-12-64. They have been promoted to the post of Chargeman Gr.II w.e.f. 23-4-66 correctly in their turn. ~~The case was considered~~ In the case of Paluru Ramkrishnaiah Vs. Union of India and other connected petitions 1989(2) S.L.R. page 202 (S.C.) ~~In the said case~~ it was held that Executive-instructions cannot override the provisions of the Rules made under Article 309, and thus notwithstanding the issue of instructions dated 6th November, 1962 the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. The only effect of the circular dated 6th November, 1962 was that

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Supervisors 'A' on completion of 2 years' satisfactory service could be promoted by following the procedure contemplated by Rule 8. Under the said Rule only 2 years satisfactory service was required though the circular made it as three years. Now as far as the order dated 28/12/65 which provided a minimum period of service of 3 years in the lower grade is concerned, it was held that the promotion to the next higher grade and the circular dated 20/1/66 which provided that promotion in future will be effected in accordance with the normal rules and not merely on completion of 2 years' satisfactory continuous service had the effect of doing away with the accelerated chance of promotion and relegating Supervisors 'A' in the matter of promotion to the normal position as it obtained under the rules. The judgement of the M.P. High Court was affirmed ^{in which the operative portion of which was as follows -} to the effect that :-

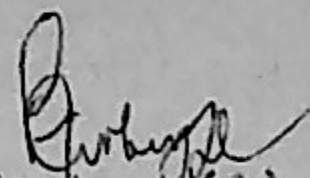
"All the petitioners are also entitled to promotion to the post of Chargeman Grade-II on completion of 2 years satisfactory service as Supervisor Grade 'A' and consequently notional seniority of these persons have to be fixed in the grades of Supervisor Grade 'A', Chargeman Grade-II, Chargeman Grade-I, and Asstt. Foreman in the cases of those were holding the said posts. The petitioners will also get their present salary re-fixed after giving them notional seniority so that the same is not more than those who are immediately below them."

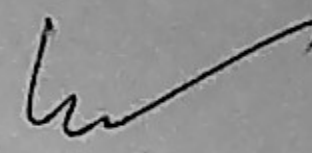
The said directions squarely applies in this case and accordingly the said directions are given in this case also with the result the applicants' promotions will date back from the year 1964, but on the principle of no work no pay

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they will not get any backwages for the period
except that they will get notional seniority. The
application stands disposed of in the above terms.
No order as to the costs.


Member (A)


Vice-Chairman.

Dated: 24/3/93, Allahabad.

(tgk)