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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A.No.720 of 1987.

V.S.Herlekar & othersApplicants.

Versus

Union of India & two others Respondents.

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

Hon'ble Mr.S.N.Prasad, J.M.

(By Hon'ble Mr.A.B.Gorthi, A.M.)

The applicants in this case are the Assistant Foremen and Chargemen -II of Ordnance Factory, Dehradun. They joined as apprentices during 1962-65. On completion of apprenticeship, they were appointed as Supervisors 'A' on various dates between 1964-66. Their claim in this application is that firstly the period of their apprenticeship should reckon towards their length of service and secondly they should be deemed to have been promoted on completion of two years' service as Supervisors 'A'.

2. Admittedly, the rules governing their recruitment which are titled 'the Indian Ordnance Factory (Recruitment and conditions of service of Class III personnel) Rules, 1956 (Recruitment Rules, for short) do not specifically state whether the period of apprenticeship would or would not count towards their length of service or for purpose of seniority and promotion. There was, however a 'Scheme for technical training of apprentices' issued in 1950. The said scheme laid down that apprentices would be appointed on the recommendation of Central Selection Board after a written test and interview. The period of training for different disciplines ranged from 2½ years to 4 years. A rate

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of pay was fixed separately for each trade, ranging from Rs.60/- to 95/-. Para 11 of the Scheme is reproduced below :-

"11. Post Training Employment :

(a) On satisfactory completion of the apprenticeship course the apprentices will be graded by the Director General, Ordnance Factories as fit for appointment to the grade of Chargeman Grade I or II or Supervisor 'A' or 'B' and unfit. While Government offer no guarantee of appointment, successful candidates will be offered appointment in the grades in which they have qualified subject to the availability of vacancies and subject to their being found fit, both physically and in other respects for such an appointment.

(b) An apprentice who within three months of the announcement of the results of the gradation list is offered appointment in the grade for which he has qualified shall on his failure to join appointment render himself liable to refund to the Government the stipends he has received during the training.

(c) On appointment every apprentice will be required to execute a bond with two sureties for the proper fulfilment of the conditions in the preceding subparagraph."

3. In 1965 another Scheme replaced the 1950 Scheme bringing about only a few changes but this latter Scheme was superseded by yet another Scheme in 1969. This 1969 Scheme is called 'the Scheme for the technical training of Supervisors 'A' (on probation) in Ordnance and Clothing Factory.' The contents of the 1969 Scheme showed that the freshly recruited trainees were being referred as Supervisors 'A' (on probation). Some such Supervisors 'A' (on

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probation) recruited under the 1969 Scheme approached Madhya Pradesh High Court claiming that the period of probation should be counted for the purpose of determining their seniority. Since Rule 10(1)(iii) of the Recruitment Rules clearly provides for giving the benefit of probationary service and for the continuous service in the same grade to be the criteria for determining the seniority, The High Court upheld the petitioners' claim vide its judgment dated 12.12.84 in C.M.W.P.No.896 of 1982. In view of the verdict of the High Court, the applicants claim that since their training as apprentices was the same as that of Supervisors 'A' (on probation), it should also count for the purpose of their seniority and length of service.

4. The second claim of the applicants is based directly on a Circular dated November 6, 1962 issued by the Director General of Ordnance Factory (D.G.O.F) laying down that all those diploma holders who work satisfactorily as Supervisors 'A' (Tech.) or equivalent grade for two years in Ordnance Factory should be promoted to Chagemen. Since the period of two years was changed to three years vide DGOF letter dated 28.12.65, some of the affected employees agitated the issue, which finally went up to the Hon'ble Supreme Court. In that case, 'Virendra Kumar & others Vs. Union of India & others' AIR 1981 Supreme Court 1775, the appellants' grievance was that although a large number of Supervisors 'A' were promoted to the post of Chageman II on completion of only two years' service, the authorities improperly introduced a fresh stipulation that they would not be considered for promotion unless they completed three years of service. Accepting the contention of the appellants that they

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were being discriminated, the Supreme Court allowed the petition and directed the concerned authorities to consider the case of the appellants for promotion on completion of two years' service.

5. The second claim of the applicants may be dealt with first. The decision of the Hon'ble Supreme Court in the case of Virender Kumar (Supra) came to be reconsidered by a larger bench of the court in 'Paluru Ram Krishnaiah & others Vs. Union of India' J.T. 1989 (1) Supreme Court 595. Relevant observations of the Hon'ble Supreme Court in the said case are reproduced below :-

"It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule. Notwithstanding the issue of instruction dated 6th November, 1962 therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion the said procedure could not be abrogated by the executive instruction dated 6th November, 1962. The only effect of the circular dated 6th November, 1962 was that Supervisors 'A' on completion of 2 years' satisfactory service could be promoted by following the procedure contemplated by Rule 8. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand was to be governed by the Rules. This right was conferred by Rule 7 which

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interalia provides that subject to the exception contained in Rule 11, vacancies in the posts enumerated therein will normally be filled by promotion of employees in the grade immediately below in accordance with the provisions of Rule 8. The requirements of Rule 8 in brief have already been indicated above. Rule 12 provides that no appointment to the posts to which these rules apply shall be made otherwise than as specified in these rules. This right of promotion as provided by the Rules was neither affected nor could be affected by circular. The order dated 28th December, 1965 which provided a minimum period of service of three years in the lower grade for promotion to the next higher grade and the circular dated 20th January, 1966 which provided that promotions in future will be effected in accordance with the normal rules and not merely on completion of two 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."

6. In view of the above, there can be no doubt that the second relief claimed by the applicants that they be deemed to have been promoted to the post of Chargemen-II on the date of completion of two years' service as Supervisors 'A' has to be rejected.

7. Adverting to the claim of the applicants for counting the period of their apprenticeship as service for seniority etc, it is seen that the Recruitment Rules and also the 1950/1965 Scheme are silent on this aspect, thus giving scope for vehement

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arguments from the learned counsel for both the parties. Shri Ashok Mehta for the applicants asserted that in view of the fact that those recruited under the 1969 Scheme were designated as probationers and that the Madhya Pradesh High Court declared the period of probation as part of service, the period of apprenticeship of the applicants should also be treated as service for purpose of length of service, seniority etc. One of the important grounds taken in support of their claim is that the 1969 Scheme is essentially identical to the 1950/1966 Scheme and that since it replaced the previous two Schemes, the applicants should also be governed by the 1969 Scheme and that accordingly their apprenticeship should be viewed as the same as the probation referred to in the 1969 Scheme. From this point of view, the judgment of the Madhya Pradesh High Court in C.M.W.P. No.896 of 1982 should govern their cases too, and accordingly the period of apprenticeship should, like the period of probation in the 1969 Scheme, count towards length of service and seniority.

8. The question that arises is that whether the 1969 Scheme can be applied to the applicants' case and if not, will it amount to discrimination offending the guarantee of equality embodied in Article 16 of the Constitution. There can be no doubt that when the applicants joined as apprentices it was the 1950 Scheme (and 1965 Scheme for those who joined in that year), that was operative. This Scheme made two aspects very clear; firstly they

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were initially recruited for training as apprentices and secondly they were to be 'appointed' only after their successful completion of training and that there was no guarantee that they all would be so appointed after training. On the other hand, the 1969 Scheme introduced the new concept of appointing the freshly recruited candidates as Supervisors 'A' (on probation). On appointment, every Supervisor 'A' (on probation) will be required to execute a bond to the effect that he would complete the full period of probation and serve the Government for a period of three years atleast from the date of satisfactory completion of probation. Under the 1950 and 1965 Schemes, the bond to be executed by an apprentice was to the effect that if an appointment was offered to him, he would serve for three years atleast from the date of appointment. A true interpretation of the 1950/1965 Scheme would be that the apprenticeship was merely a pre-appointment training and was not intended to count as service. The respondents were, therefore, well within the frame-work of the Scheme in ignoring the period of apprenticeship while reckoning length of service of the applicants. As regards applying the judgment of the Madhya Pradesh High Court in C.M.W.P.No.896 of 1982 to the case of the applicants, it will not be reasonable to do so, because firstly in that judgment what was interpreted and applied was the 1969 Scheme and secondly the 1969 Scheme is not identical to the 1950/1965 Schemes which were only applicable to the applicants.

9. Lastly we may refer to an argument advanced on behalf of the applicants that under Rule 276 of Factory Procedure Manual for Ordnance Factories, when a new Scheme is introduced, its benefits should

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be extended to all the employees already serving. Rule 276 reads as under:-

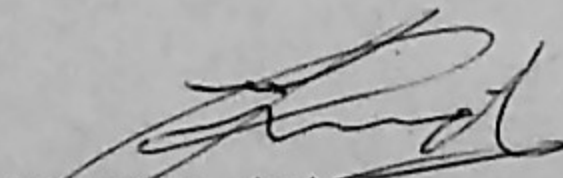
"276. Revision of conditions of service:-
When rules pertaining to the condition of service of a particular class of employees are revised unless anything to the contrary is specifically stated, the revised rules will apply to all employees already serving in that class if they are more favourable than the existing terms and conditions of service as they should not be put in a less advantageous position than future recruits."

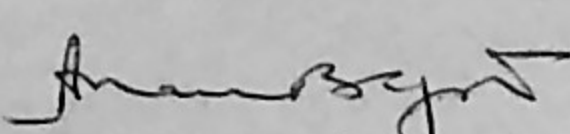
10. Obviously, the above rule applies to the conditions of service after appointment and not to the terms of recruitment applicable prior to appointment. It was this nature of appointment on initial recruitment that underwent a change in the 1969 Scheme and hence benefit under the said Scheme cannot be demanded by the applicants.

11. Although references to some other judgments were made in the application and the counter reply, it will not be necessary to refer to all of them here, the issues raised therein having been finally resolved in Paluru Ram Krishaniah's case, to which we have already made a reference.

12. In view of what has been stated above, we find no merit in the application and it is hereby dismissed.

13. There shall be no order as to cost.


MEMBER (J)


MEMBER (A)

DATED: 22-2-1992

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