

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

O.A. No. 876/87

S. Sampath.....Applicant

Versus

Union of India and others. Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, A. M.

The applicant impleading 60 private parties has approached the Tribunal challenging supersession which according to him has been done and wrongly decided the seniority by the Chairman Ordnance Factory Board by making promotion to the junior administrative grade (selection grade) of respondent no.3 to 28 with effect from 17.11.82, respondent no.29 with effect from 14.1.83 and respondent no. 30 to 34 with effect from 14.2.83, respondent no. 35 to 36 with effect from 8.9.83, respondent no.37 to 45 with effect from 17.1.84 and respondent no. 46 to 60 with effect from 29.9.84. He has also challenged the supersession of the applicant due to wrong assignment of seniority in making promotion to the post of General Manager/Dy. Director General in the senior administrative grade level II in the pay scale of 2250 - 2500 of the respondent no.8 to 21 with effect from 31.3.86 and of the respondents no.22 to 26 with effect from 29.8.86. The seniority list of the Indian Ordnance Factory of service Officers circulated by the Board letter dated 24.3.86 which is a combined inter se seniority of officers of all the categories working in various grades making private respondents senior to the applicant and also the question by which the respondents along with the order dated 24.4.87 and the applicant's representation dated 4.9.86 in the matter of supersession and wrong assignment of seniority has been rejected, that is why

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the applicant has prayed that the combined seniority list dated 24.3.86 of the officers of the Indian Ordnance Factory service officers Class I Junior Administrative Grade (Selection grade and the order dated 24.9.87 may be quashed and the respondents be directed to prepare a fresh seniority list of the officers of all categories taking into consideration the date of selection, the appointment in junior time scale thereafter all the officers be treated differently due to categories or in the alternative to consider all the eligible officers of all categories as per rule 26 of 1972 Rules on the basis of seniority in the feeder grade junior time scale may be considered for promotion post and the direction may be issued to the respondents to promote the applicant in the said grade from the date earlier when his juniors were given promotion in the said grade. The applicant who is a member of Indian Ordnance Factory service has challenged seniority. The challenge of the applicant is based on the ground that no rule or regulation or any xxxxxxxx instructions have been issued by the respondents for determining the interse seniority of all the officers working in different categories for the purpose of making promotion on the higher post of the officers of all categories which to be considered as complete with each other and without preparation of any valid seniority list the promotions have been made. The sanctioned strength of the grade being categorywise in the 1954 as well as 1974 rules. The Appointing Authority have discretion to admit the retirement and thereafter make appointment after giving adequate opportunity

to all the categories but the discretion means the valid and judicial administration and not an arbitrary means as during the last 25 years no criteria and standard for a particular quota of various posts and various grades of each category has been laid down. The respondents have ~~been~~ acted arbitrarily and whimsically in making the promotion in various graded of category. The spirit of service rule have been violated under Articles 16 and 18 of the Constitution of India. According to the applicant the entire ~~hierarchy~~ in the grade is not maintained ~~tradewise~~ and in case that would have been done, there would not have been any grievance. The Rules only contemplate categorywise appointment on certain level and thereafter the combined selection list without laying down any proper guideline the authority cannot be permitted to act arbitrarily in giving the promotion. According to the applicant although till 1954 Rules remain in force they have no opportunity to make complaint as he was given promotion on a latter date. After ~~pre~~malgamation of 1972 Rules it has become difficult for the respondents for making certain categorywise seniority rule. In as much as rule 26 of the said rule prohibits the same after grade of senior administrative grade, ordinary grade in as much as higher grade rule and to make consideration of officers of each category equally made for all posts in respect of their categories. The applicant has also challenged on the ground that the respondent no.2 did not take into account the actual number of vacancies in the trade of

promotion as per rule existed in administrative exigency and the reliance on the Government of India Circular 1961 was fully unjustified and the same does not apply to the case to interse seniority of various categories has to be prepared. The respondents have justified their action and have contended the seniority list of officers in various grades circulated from time to time in accordance with the various grades and the seniority in the grade exists as some letters of the relevant department for promotion committee and the promotion orders were issued from time to time. The applicant cannot claim seniority of the officers already promoted to the higher grade and the recommendations made by the departmental promotion committee. According to the respondents as per IOFS recruitment rules seniority of all officers upto and including the grade of JAG(OG) is tradewise and hence the question of maintenance of interse seniority amongst various trade does not arise. When separate tradewise list is maintained the seniority of all the officers can be reckoned only in the trade and cannot be interlinked or compared with the seniority in other trades. Accordingly the applicant was not rightly considered for promotion along with other officers in other trades. Even if the name of particular person is included in the panel prepared by the departmental promotion committee a person cannot claim benefit of the same as the seniority given only with respect of the recommendation made by the departmental promotion committee. According to the respondents

prior to 1978 promotions to the erstwhile Deputy General Manager were made on the basis of combined eligibility list of the officers in the grade of Manager which was in accordance with the recruitment rules. Subsequently, after the amendment of the rules the seniority list was made in the grades of JASG and above common to all trades. This was also in accordance with the recruitment rules. It will be proper to make reference to the relevant rules as were in force when the selection in question took place. There is some difference in 1954 Rules and the Rules made subsequently in the year 1960-61. The designation given in Appendix - 6 of 1954 Rules were revised alongwith the pay scales. But in 1972 Rules, minor changes were made. Section 2 (h) of the Rules defined as under :-

Sl.No.	Designation of post	Prescribed pay Scale	Grades from which promotion is permissible
1.	Director General, Ordnance Factories	2000-2250	Dy. Director General Ordnance Factories Asstt. Director General Ordnance Factories, Supdt. Grade-I.
2.	Deputy Director General, Ordnance Factories	1600-100-1800	Asstt. Director General, Ordnance Factories, Supdts. Grade-I and II.
3.	Asstt. Director, General, Ordnance Factories	1300-60-1600	Supdt. Grade-II, Dy-Asstt. Director, General, Ordnance Factories, Works Manager
4.	Supdt., Grade-I	1300-60-1600	Supdt. Grade-II, Works Manager, Dy. Asstt. Director General, Ordnance Factories.
5.	Supdt., Grade-II	1000-50-1400	Works Manager, Dy. Asstt. Director, General, Ordnance Factories

6- Dy. Asstt. Director General Ordnance Factories	600-40-1000 1000-1050-1050 1100-1100-1150	Asstt. Works Manager Techni- cal staff Offi- cer, Officer Supervisor
7- Works Manager	600-40-1000-1000 1050-1050-1100- 1100-1150	Asstt. Works Manager Tech- nical staff Officer
8- Asstt. Works Manager Technical Staff Officer	350-350-380-30- 590-EB-30-770-40- 850	Foreman, Store holder, Staff Asstt. and in special cases from Asstt. Foreman Asstt Store-holder and Charge- man

(vi)

That rule 4 of 1954 Rules prescribes sources of recruitment and quota if any for a particular source. For the convenience xxxxxxxxxxxxxxxxx relevant rule 4 of 1954 Rules is being quoted below:

"4(a)- 80 per cent of the vacancies in the grade of Assistant Works Manager will normally be filled by competitive examination (vide Part-II of the rules) so far as Engineers and Administrative Officers are concerned and by selection (vide part-IV of the rules) so far as the remaining categories in this grade are concerned. The remaining 20 per cent of vacancies in the grade will be filled by promotion/transfer in accordance with Part-III of these rules. In making such promotions due care will be taken to ensure that within the over all percentage prescribed for promotions adequate promotions are made to each of the categories specified in Rule 2 of these rules.

(b) Technical staff Officers shall be recruited from among Asstt. Works Managers.

(c) The other grades mentioned in Appendix -VI will be filled by promotion/transfer vide Part-III of these rules.

(vii) That a perusal of the aforesaid rule 4 will show that the lowest grade in service was liable to be filled in by direct recruitment as well as by promotion to the extent prescribed under rule 4(a). However, for remaining grades, source/method of recruitment was only promotion or transfer.

(viii) That rule 5 of 1954 rules confers power upon the government to determine the method or methods to be employed for recruitment. Rule-5 of 1954 rules are as under:-

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"5-Subject to the provisions of rules 3 and 4 Government shall determine the method or methods to be employed for the purposes of filling any particular vacancies or such vacancies as may require to be filled during any particular period and the number of candidates to be recruited by each method."

(ix) That Part-III of 1954 Rules lays down method of recruitment by promotion and it consists of five rules i.e., Rule 23 to 27. ~~THE EIGHT RULES OF THIS~~
~~MANUFACTORY~~ Rule 23 to 27 are being quoted below:-

"23-Recruitment by promotion to the Grade of Asstt. Works Manager shall be made by selection on merit on the recommendation of a duly constituted Departmental Promotion Committee. In cases where a Member of the Union Public Service Commission is included in the Departmental Promotion Committee he shall act as Chairman. The officer(s) selected will be appointed by Government."

"24- Promotion to the higher grades mentioned at Item-1-8 of Appendix-VI to these rules shall normally be filled by selection on merit from among suitable persons from the lower grade indicated therein on the recommendation of a duly constituted Departmental Promotion Committee."

"25- The recommendations of the Departmental Promotion Committee shall be referred to the Commission where necessary for ratification."

"26- Recruitment by transfer to any of the above grade, from other services or departments shall, if necessary be made by Government after consultation with the Commission where necessary.

"27- If the power to make appointment in the service is delegated by Government to any officer that officer may exercise any powers of Govt. under this part of these rules."

(x) That the aforesaid recruitment rules did not contain any provision for determination of seniority hence vide Ministry of Defence letter dated 6.1.1961 the seniority rules for the non-gazetted and gazetted officers of Ordnance factories were issued. vide annexure-1.

(x-A) That a classification was also issued by respondent no. 2 vide its letter dated 10.8.1970. vide annexure-2.

(xi) That sometimes in the year 1960-61 the designations mentioned in the Appendix-VI of 1954 Rules were revised alongwith the pay scales as follows:-

<u>Designation</u>	<u>Pay scales</u>
1. Director General	3500/-
2. Addl. Director General	3000/-
3. Dy. Director General/ General Manager (S.G.)	2250 - 2500/-
4. General Manager, Grade-I /Asstt.-Director General-I	1800 - 2200/-
5. Dy. General Manager/General Manager-II/Asstt-Director General-II	1600 - 1800/-
6. Manager/ Senior Dy. Assistant Director General	1100 - 1400/-
7. Deputy Manager/ Dy. Assistant Director General	700 - 1250/-
8. Assistant Manager/ Technical Staff Officer	400 - 950/-

(xii) That 1954 Recruitment Rules were superseded by the rules framed in the year 1972 by gazette notification dated 20.1.1973.

(xiii) That 1972 Rules made minor changes in the categories of services and vide rule 2(h) nine categories were shown to be included in the services. For the convenience of this ~~Memorandum~~ Rule 2(h) is being quoted below:

"2-DEFINITION:- In these rules unless the context otherwise requires:

(h) "Services" :- means the Indian Ordnance Factories Services Group-A which consists of the post or grades or time scales mentioned in Appendix-I annexed to these rules and comprises of the following categories of officers, namely:-

- (i) Engineers (Mechanical/Electrical)
- (ii) Chemists
- (iii) Metallurgists
- (iv) Leather Technologists
- (v) Clothing Technicians
- (vi) Administrative officers (non Technical)
- (vii) Designers
- (viii) Psychologists
- (ix) Physicist. "

Provides that the Government may in consultation with the Commission;

(i) include in the service many post or grade or time scale other than those included in Appendix I annexed to these rules or exclude from the service a post or grade or time scale included in the said Appendix, or

(ii) Appoint an officer, the post or grade or time scale held by whom is included in the service under item (i) above, to the appropriate grade of service in a temporary capacity or in a substantive capacity as may be deemed fit and fix his seniority in the grade in consultation with the Commission."

(xiv) That Appendix-I attached to 1972 Rules shows various grades of IOFS Class-II which is being quoted below:

Sl.no.	Designation of the post	No. of post	Scale of pay	Designation
1-	Director General of Ordnance Factories/ Chairman	1	3500(fixed)	- do -
2-	Addl. Director Gener- al of Ordnance Facto- ries/Member	8	3000(fixed)	- do -
3-	Sr. Administrative Grade Level-I	15	2500-125/2 2750/-	Dy. Director General-I/ G.M.(S.G.)
4-	Sr. Administrative Grade Level-II	15	2250-125/-2 2500	Dy.D.G.-II/ General Manager
5-	Jr. Administrative Grade (Selection grade)	54	2000/-125/2 2250/-	Joint General Manager/Direc- tor
6-	Jr. Administrative Grade (ordinary grade)	220	1500-60-1800 100-2000	Dy.G.M./Joint Director
7-	Senior Time Scale	367	1100(6th year or under 50- 1600	Works Manager/ Dy. Director
8-	Junior Time Scale	355	700-40-900-EB- 40-1100-50- 1300	Asstt. Manager/ Asstt. Director

(xv) That rule 4 of 1962 rules prescribed per-
centage of vacancies to be filled by various methods
or recruitment which is being quoted below:

"4-Percentages of vacancies to be filled by
various methods of recruitment.

60 per cent of the vacancies for the Junior
Time scale shall be filled by competitive
examination from among the Engineers and
Administrative officers (non technical) and
by selection from the remaining categories
as specified in rules 31 and 32 of Part-IV
and rule 38 of Part.V-The remaining 40
percent of the vacancies shall be filled by
promotions, transfer or deputation. In making
promotions due care will be taken to ensure
that within the over all percentage prescribed
for promotion adequate promotions are made to
each of the categories specified in clause (h)
of rule 2

(b) The other grades mentioned in Appendix-I
annexed to these rules shall be filled by
promotion, transfer or deputation (vide part-
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III of those rules) failing which by recruitment in accordance with Part-V of these rules."

Rule 26 is as follows:

26-Recruitment to certain posts by promotion

(1) Promotion in the posts or grades or time scales in serial number 1 to 6 of Appendix-I annexed to these rules shall normally be made by selection on merit. Promotion to the post of serial number 7 shall be made on the basis of seniority cum fitness, from among suitable persons from the corresponding lower posts indicated therein on the recommendation of a duly constituted Deptt.

Promotion Committee ; provided that in the posts mentioned in serial no. 6 and 7 care is taken to ensure that vacancies belonging to each of the categories specified in clause (h) of the rule 2 are normally filled by persons of the respective category in lower posts.

(2) The minimum years of service to be rendered in the various posts or grades or time scale from the purposes of promotion specified in Appendix-II annexed to these rules.

2. The factual position in short is that the applicant appeared in Interview for permanent appointment on the post of Assistant Manager in the year 1962 before the Union Public Service Commission in the trade of Leather Technologist and was placed at serial no.3 in the seniority list. The applicant was appointed as Assistant Manager on Probation on 4.10.63 while the respondent nos. 3 to 60 were recruited in various trades in the recruitment years 1962-63 and 63-64. According to the applicant the natural consequence is that by virtue of rule 24 all the incumbents working in the grade of Assistant Works Manager/Technical Staff Officer were eligible to be considered for promotion post of Works Manager/ Dy. Assistant Director General which is also designated as Dy. Manager/ Deputy Director. A complaint of the applicant that all the incumbents of all the categories were not considered and the departmental

promotion committee which was constituted in the year 1967 considered the cases of all eligible incumbents of all categories including the applicant and the respondents no.3 to 60 but the order of promotion of the respondents alone was issued and not of the applicant. At that time 5 posts were vacant in the trade of Leather Technologist but only 2 persons were earlier promoted and the applicant was given order of promotion on 27.1.1968 without assigning any reason for this delayed promotion. In the mean time the respondents no. 3 to 60 were promoted in the next higher grade of Dy. Manager/ Dy. Director on 12.6.67 although they were junior to the applicant having been selected by the commission in the subsequent selections. In the list dated 27.7.67 they were also shown junior to the applicant but they scored the mark over the applicant for getting promotion to the higher post earlier. Again a DPC was constituted in 1970-71 although the applicant was found fit yet promotion was not given to him. Even though 4 vacancies were existed in March 1971. In the mean time 1973 Rules came into force with effect from 20.1.1973 even though Rule 26 provides filling in of the posts of all categories and a combined seniority list of all categories and promotion on the basis of the same should be made and yet the same was not done and this led to the applicant to file representation.

3. Learned counsel for the applicant contended that the rules envisaged were not followed and in place of 1954 rules 1973 rules would have been followed. The applicant who

was senior to the respondents no.3 to 60 earlier would have been promoted and even otherwise the applicant was interviewed earlier along with the respondents no. 3 to 60 for the post of Leather Technologist there was no justification for not giving him promotion along with 2 other candidates. Learned counsel for the applicant contended that even otherwise the applicant was not given the seniority by virtue of his seniority that is to get the promotion earlier to the respondents. According to him though after the amendment all the categories were specified and that is why no such discretion was left and the rules did not provide for preparing the seniority list and accordingly the applicant's seniority may be considered earlier when the respondents were entitled to get the promotion. In this connection reference was made to the case of Om Prakash Sharma and others Vs. Union of India and others, A.I.R. 1985 Supreme Court 1276 wherein it was observed that :

" Where staff employed in different units under the administrative control of one higher officer are borne on a common seniority list, when because of trifurcation re-amalgamation all are brought back on the common seniority list, their position ante must be reflected in the seniority list. Original seniority must prevail otherwise any other view would be denial of equality of opportunity in the matter of public employment guaranteed under Article 16 of the Constitution of India."

The facts of the case were slightly different and

it was a case that all the units were under the one administrative control and thereafter again there was a trifurcation reamalgamation. Reference has been made to the case of State of Andhra Pradesh Vs. Dr. N. Ramachandra Rao and others, 1990(3) SCC 590. In this case there was a determination between various speciality of the seniority, State Medical Service, Promotion to Administrative post. All the respondents were recruited as Civil Assistant Surgeon upon selection by the State Public Service Commission. The court observed that :

" In the medical profession there are specialities and specialities, but it is generally accepted that they are not of equal importance or utility. However, the promotions are allowed on the basis of the respective specialities and the availability of promotional vacancies in such specialities. A junior with relatively less important speciality may be fortunate enough to get quick promotion than his senior with a different speciality. The juniors who get accelerated promotion on account of fortuitous circumstances depending upon their speciality and availability of vacancies in such speciality should not be allowed to march over their seniors for appointment to administrative posts. Any advantage gained by juniors on such fortuitous circumstances

of having some speciality and promotion should not impair the rights of their seniors for promotion to posts where speciality or teaching experience is not called for. The seniority determined in order of speciality should not therefore be the basis for promotion to administrative posts.

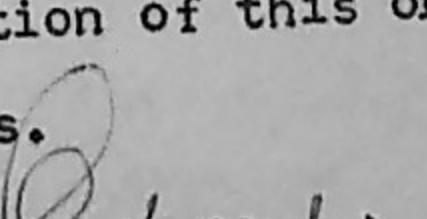
Any rule providing for the contrary may be vulnerable to attack on the ground of arbitrariness.....

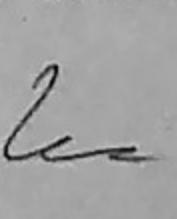
It would be unreasonable and unjust to exclude the service and overlook the vertical seniority in the substantive cadre to which everyone was selected by the Public Service Commission."

4. Learned counsel for the respondent contended that the rules have not been correctly interpreted in case of stop of seniority. Learned counsel for the applicant contended that no list has been prepared tradewise for inter se seniority of the applicant but there was some discretion for the appointing authority to allow promotion to the posts of all categories and that is why the same has been done. In this connection reference has been made of the cases decided by some officers of the Indian Ordnance Factory Service. In that cases also promotions were given in the grade of junior administrative officer (SG). The applicant challenged the promotion and raised the grievance that his case was not considered and the selection was unlawful. The Tribunal was of the view that the rules themselves have not distributed posts of JAG(SG) categorywise

but in absence of the memorandum of the ~~2~~ said rules did not make any difference. There were 9 categories for which the appointment have been made on various aspects was ~~not~~ lost sight off, and the question as to how many posts should be allotted to a particular category will depend upon the various ~~patterns~~ as envisaged from time to time and such change may arise on account of increase of work load in a particular category or decrease of work load in another category. This aspect is required to be dealt with by the department and a latitude of categorywise distribution of pormotion postssshould be considered as the same rests to the needs of the department. The Tribunal was of the view that the administration has power to fix up distribution of posts to adjudicate proper effect of the rule 26 of the said distribution could not run ~~xxxxix~~ counter to the recruitment rules. The said case was slightly on a different point as setforth or less procedure adopted for theposts categorywise and this have been done in this case. In that even although seniority as claimed by the applicant could not have full play as has been contended by the learnedcounsel for the applicant. In our opinion although rule 2 provides for a particular grade of all the categories and thereafter the grade of categorywise are provided. Rule 26 which deals ^{with} recruitment of certain posts by promotion in the grade of time scales at serial no.1 to 6 (which was not the case before the Bombay Tribunal) was normally to be made by selection on merit. The promotion to the post of serial no.7 was to be made on the basis of seniority cum fitness amongst suitable persons. The applicant may

approach by the departmental promotion committee and care is to be taken that vacancies belong to rule 2 of the category are normally filled by persons respectively in accordance with the rules. In our opinion rule 26 leaves some scope in the hands of appointing authority to consider the post categorywise. It may be that in particular category there may be vacancies in some categories there may be lesser vacancies and that is not to be lost sight off all together. But even though if the vacancies ~~xxx~~ existed as has been alleged by the applicant, there was no justification, as none has been pleaded, for not giving promotion to the applicant but promotion was given to his juniors merely because of course as has been laid down in the case of Ram Chandra Rao and of course the seniority has not to be given. The promotion to the higher post arises and merely because two persons were given promotion for other categories. The case of seniority is also to be taken into account and accordingly this application is allowed in part and the respondents are directed to fill the vacancies against the existing grade and the respondents are directed to promote the applicant with effect from the date against the existing vacancy in the year 1986 and consider his case for higher promotion in accordance with the seniority and let it be done within a period of 3 months from the date of communication of this order with no order as to the costs.


A.M.


V.C.