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RESERVE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 6th day of December, 1996
Original Application No. 864 of 1988

District : Dehradun

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

1. SN Sharma, Son of Pt. Mittar Lal.
2. DN Thapliyal, Son of Late Kirti Ram Thapliyal.
3. SP Bahel Son of Late Hukam Chand.
4. SD Tyagi Son of Late CB Tyagi
All Upper Division Clerks in the Office of the
Ordnance Factory, Dehradun.
5. AS Tomar Son of Late MMukand Singh,
Cashier Ordnance Factory, Dehradun.
6. Darshan Lal son of VD Uniyal.
7. Smt. S. Dutta, wife of Sri PK Dutta.
8. Madan Pal Singh Son of Shri Niranjan Singh.
9. MR Joshi son of Late DD Joshi.
10. Ashvini Kumar Son of Shri CL Khurana.
11. PS Rawat Son of Sri Gulab Singh Rawat.
12. Vijay Kumar Son of Sri Manto Lal.
13. KK Sharma Son of Sri Charanjit Sharma.
14. SS Bisht son of GS Bist.
15. Bal Ram Singh son of Sri Tulsi Singh.
16. Satendra Singh son of Sri Jai Singh.
17. SD Kukshai son of Late Sri PD Kukshai.
18. GD Tiwari son of Sri GD Tiwari.
19. Smt. B. Mukherjee w/o Late SC Mukherjee.
20. Smt. Veena Nangia w/o Late SK Nangia
21. Ved Prakash son of Late SR Singh.
22. Smt. Madhu Arora, wife of Shri Rajesh Arora.
All Lower Division Clerks in the Office of the
Ordnance Factory, Dehradun.

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23. NP Dobhal son of Late RP Dobhal.
24. TPS Rawat son of Late GS Rawat.
25. Anil Kumar Sharma son of Shri AC Sharma.
26. Om Prakash Sharma son of Shri SM Sharma.
27. MN Dhyani son of Sri MD Dhyani.
28. SK Pradhan son of Late Vikram Singh.
29. Ram Ashish Prasad son of Shri SN Ram.
30. SK Dhingar son of Sri KD Dhingra.
31. HS Rawat son of Shri GS Rawat.

All Store Keepers in the Ordnance Factory, Dehradun.

(By Sri VBS Negi & Sri MS Negi, Advocates)

. Applicants

Versus

1. The General Manager
OPTO Electronics Factory Dehradun.
2. The General Manager, Ordnance Factory Dehradun.
3. Shri HK Pathank, Office Superintendent Gr II
4. Shri PS Rana, Office Superintendent Gr II.
5. Shri SS Saini, Office Superintendent Gr II.
6. Shri KC Kapoor, Office Superintendent Gr II.
7. Shri R.A. Gupta, Supervisor 'A' (NT).
8. Shri Om Prakash, Supervisor 'A' (NT).
9. Shri R.S. Khatri, Supervisor 'A' (NT).
10. Shri A.P. Bahuguna, Supervisor (NT)
11. Shri PS Qasain, Supervisor 'A' (NT).
12. Shri Jagdish Prasad, Supervisor 'A' (NT).
13. Shri AK Sharma, Supervisor 'A' (NT)
14. Shri Anil Kumar, Upper Division Clerk,
15. Smt. SP Devi, Upper Division Clerk.
16. Shri Yashwant Singh,
Upper Division Clerk.
17. Shri V.D. Balodi, Supervisor 'B'/NT(S).

All Respondent nos. 3 to 17 are working in the
Office of the OPTO Electronics Factory, Dehradun.

(By Km. Sadhna Srivastava, Advocate)

. Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of an order no. 171 dated 25-5-1988 passed by respondent no. 1 and to direct the respondents to promote the applicants, who were superseded, giving them entire benefit of the promotion w.e.f. 25-5-1988. There are in all 31 applicants in this case. The first four are Upper Division Clerks in the Ordnance Factory, Dehradun. The next 18 are Lower Division Clerks, whereas the remaining 9 applicants are Store Keepers in that Factory. It appears from the averments made in the OA that promotions in the factory are made from Lower Division Clerks to Upper Division Clerks and from Upper Division Clerks to OS Grade II, whereas the Storekeepers are promoted to the post of Supervisor Grade 'B' on the basis of seniority in the respective grade. Before April 1988, there was a Project Cell in that Ordnance Factory, which was functioning under the supervision and control of Ordnance Factory Dehradun. The ministerial staff of the factory were being transferred to Project Cell and persons in Project Cell would also be transferred to the factory. The Government, however, was actively considering the question of bifurcating the Project Cell from the factory and to constitute Project Cell into an independent factory. In the background of such a possibility, on 19-9-1985, a meeting of the works committee was held between the representatives of the management and those of the employees. It is stated that it was decided in that meeting that if any situation arose whereby a junior ministerial staff of the factory on transfer to the Project Cell became

entitled to further promotion against the vacancies of the Project Cell, such junior person would be transferred back to the factory and senior person of the factory would be promoted against the vacancies of the Project Cell. Subsequently, the Ordnance Factory Board, Calcutta issued the order dated 2-4-1988 directing that the Project Cell shall start functioning independently w.e.f 4-4-1988. The Government, however, in the meantime on 25-2-1988 had sanctioned different posts in the establishment of the Project Cell. In the relevant GO issued on 25-2-1988, directions regarding filling up of these posts were also given. It is stated that prior to this bifurcation, a common seniority list of LDCs, UDCs and Storekeepers were being maintained irrespective of the posting of the staff either in the factory or in the Project Cell. The grievance of the applicant is that on 25-5-1988, the General Manager of the Project Cell promoted respondent no.3 to 17 to various higher posts against the posts sanctioned for the Project Cell thereby superseding the senior persons in the Ordnance Factory Dehradun. This, it is stated, is in violation of the decision taken in the meeting dated 19-9-1985.

2. The respondents have filed a counter affidavit in which it has been stated that Opto Electronic Project was functioning as part of Ordnance Factory, Dehradun under the supervision and control of ^{the General Manager of} that factory i.e. respondent no.2. This Project Cell was created in the Ordnance Factory, Dehradun itself in order to develop and monitor ~~the~~ activities of a new factory to be set up eventually. In the course of time, an independent unit with the name of ^{Opto} Electronic Factory was constituted. However, at the inception stage, non-industrial staff inducted in the Project Cell were being ^{taken} ~~trained~~ from the

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various sections of the Factory at Dehradun.

It has been admitted that a meeting was held on 19-9-1985 between the Factory Management and the representatives of the employees. It has been stated that as the Project Cell was functioning as an integral part of the Ordnance Factory Dehradun, promotion to higher post in the Project Cell were being effected on the basis of a combined seniority of the employees treating the Project Cell ^{as a} ~~part~~ and parcel of the factory. However, in the meeting held on 19-9-1985, the representatives of the employees voiced their apprehension that in the event an independent status was conferred on the Project Cell, some senior persons who have been transferred to Project Cell on promotion to higher posts could become recipients of further promotion in the new factory ahead of their senior counterparts in the Ordnance Factory Dehradun.

3. The General Manager Ordnance Factory, Dehradun, ^{who} was the Chairman of the meeting appreciated this apprehension on the part of the staff members and clarified that the existing posting in the Project Cell had been made irrespective of the seniority keeping in view the fact that the Project Cell was part and parcel of the factory and he accepted as a matter of principle that upon separation of the Project Cell the posting should be readjusted ^{as far} ~~with~~ no disadvantage ^{to} ~~be~~ caused to anybody. It was accordingly decided that upon separation of the Project Cell from the factory, the persons who were likely to reap undue benefit on promotion would be transferred back to the Ordnance Factory Dehradun and the senior persons of the factory would be posted in their place. Thus, ~~if~~ the senior UDCs of the factory were transferred to the Project Cell, ~~this~~ obviating any chance of prejudice to them.

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4. It has further been stated by the respondents that immediately after separation of the Project Cell from the Ordnance Factory, Dehradun, a decision was taken at the level of the Ordnance Factory Board that all the persons physically working in the Project Cell on 3-4-1988 would be transferred to upto Electronics Factory wef 4-4-1988. The transfer orders of the centrally controlled posts were accordingly ordered by the Ordnance Factory Board whereas it was decided that similar orders of ~~transferred~~ in respect of the persons holding factory-based posts would be issued by the General Manager Ordnance Factory, Dehradun, who, issued orders accordingly. The combined seniority list was operative till 3-4-1988 whereafter upto Electronics Factory started functioning as an independent unit and all promotions of non-industrial personnel were made on the basis of the seniority in that new factory.

5. The applicants have filed a rejoinder affidavit reiterating their contentions in the OA. They have further stated that the posts in dispute were sanctioned by the Government Order dated 25-2-1988 by which date the two units were not bifurcated and, therefore, if the promotions were made immediately thereafter, the applicants should have been senior to the respondents nos. 3 to 17.

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

7. Admittedly, prior to the bifurcation of upto Electronics Project from Ordnance Factory, Dehradun, promotions against the posts of the Project Cell were made on the basis of a combined seniority list. This was rightly so as the Project Cell continued as

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part and parcel of the Ordnance Factory Dehradun. However, the position changed entirely wef 4-4-1988 when the Project Cell started functioning independently as a separate factory. Since the posts in dispute are factory-based post, the question of effecting promotions to higher posts of the newly constituted factory on the basis of a combined seniority list of personnel of both the factories did not arise. By the decision of the Ordnance Factory Board, the personnel who were actually in position in the Project Cell immediately prior to the separation of the unit were posted to their new unit and thereafter such personnel only were entitled to promotion to the higher post of that unit. Admittedly, the promotion in dispute have taken place after the Project Cell was separated from the Ordnance Factory, Dehradun and was made ^a ~~the~~ separate unit. Therefore, promotion of the applicants, who were posted in the Ordnance Factory Dehradun, against the higher posts of Opto ~~the~~ Electronic Factory would have been clearly irregular. The applicants could have challenged the decision of the Ordnance Factory Board for posting of the personnel in situ and would have demanded the posting of the senior personnel of the factory to the newly constituted factory transferring the erstwhile junior personnel from the Project Cell to Ordnance Factory Dehradun. As this was not done we see no reason how the subsequent promotions which are impugned in this OA could be successfully challenged merely on the basis of the decision which was arrived at a ~~date~~ meeting held on 19-9-1985 between the Management of the Factory and the Staff representatives.

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8. In view of the foregoing we see no merit in this application and the same is dismissed accordingly, leaving the parties to bear their own costs.

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Member (R)

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Member (A)

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