

(13) *AT*
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated This the 14th day of May 1999.

Coram:- Hon'ble Mr. S. Dayal, Member (A.)

Hon'ble Mr. S.K. Agarwal, Member (J.)

Original Application No. 603 of 1995.

1. Bhikha Ram aged about 51 years
son of Sri Ganga, Working as
Machinist- H.S. Gr.II,
Ordnance Factory, Dehradun.
2. Kali Ram aged about 51 years
son of Sri Chohar Singh
Machinist- H.S. Gr.II
Ordnance Factory, Dehradun.
3. Bhoop Narain aged about 51 years
son of Sri Kul Prasad
Machinist H.S. Gr. II
Ordnance Factory, Dehradun.
4. Govind Singh aged about 50 years
son of Sri Kishan Singh,
Machinist-H.S. Gr.II
Ordnance Factory, Dehradun.

... Applicants.

Counsel for the applicants:- Sri K.C. Sinha, Adv.

Versus

1. Union of India through Chairman,
Ordnance Factory Board,
10-A, Auckland Road, Calcutta.
2. General Manager, Ordnance Factory,
Dehradun.

... Respondents.

Counsel for the respondents:- Sri N.B. Singh, Adv.

Original Application No. 602 of 1995.

1. Anil Kumar Goswami aged about 38 years
son of Late Sri Ram Saran Giri,
R/O C-type 11/3,
Ordnance Factory Estate,
Raipur, Dehradun.
2. P.K.Dhyani,
aged about 40 years
s/o Late Sri Chinta Mani Dhyani,
5, Bindalwala, Nesh Willa, Road,
Dehradun.

. . . Applicants.

Counsel for the Applicants:- Sri K.C. Sinha, Adv.

Versus

1. Union of India,
through Chairman,
Ordnance Factory Board,
10-A, Auckland Road, Calcutta.
2. General Manager,
Ordnance Factory, Dehradun.

. . . Respondents.

Counsel for the Respondents:- Sri N.B. Singh, Adv.

Original Application No. 696 of 1995.

1. Shri Niwas aged about 50 years,
son of late Sri Hardev Singh
R/O Quarter No. 37/2,
Ordnance Factory Estate, Raipur, Dehradun.
2. Jug Lal aged about 37 years
son of Late Sri Binza Ram,
R/O 12/6, Type II,
New Ordnance Factory Estate,
Raipur Dehradun.

. . . Applicants.

Counsel for the Applicants:- Sri K.C. Sinha, Adv.

Versus

1. Union of India through

Chairman, Ordnance Factory Board,
10-A, Auckland Road, Calcutta.

2. General Manager
Ordnance Factory, Dehradun.

... Respondents.

Counsel for the Respondents:- Sri N.B. Singh, Adv.

Order

(By Hon'ble Mr. S. Dayal, Member (A.))

These three O.As. were heard simultaneously and a common order is being passed as these O.As. involve common question of law and facts.

2. The applicants in all these O.As. have come before us for setting aside order dated 14.6.95 by which they were reverted to the grade of Machinist Oil Man (skilled) or Machinist Polisher (Skilled) or Examiner (Optical) skilled from the post of Machinist H.S. Gr.-II or Examiner (O.P.T.) H.S.-II. The applicants have also sought the benefits privileges of continuity of service in the scale and grade of Machinist H.S. Gr.II as if order dated 14.6.95 had not been issued. They have also sought a direction to the respondents to assign them seniority in the grade of Machinist H.S. Gr.-II.

3. In O.A. 696/95 the additional relief of setting aside the reallocated seniority list dated 21.4.95 has also been sought.

4. In O.A. 602/95 the setting aside of combined seniority list of the two different posts

and scale of Examiner (O.P.T.) skilled and Examiner (O.P.T.) H.S. Gr.II dated 21.5.94 has also been sought.

5. The facts as stated by the applicants are that the four applicants in O.A. 603/95 had been appointed as Polisher and Oilmen in Ordnance Factory at Dehradun and on recommendations of committee under the chairmanship of Sri A.K. Guha, were allowed to take examination for the post of Machinist skilled and were redesignated as Machinist skilled. They were allowed to appear in the prescribed trade test for promotion as Machinist H.S.Gr.-II and were declared successful by factory order dated 7.2.90. The applicant No.1 was promoted as Machinist H.S. Gr.-II with effect from 12.4.1990. The applicant No.2 was promoted to the said post by order dated 28.3.91. Applicant No.3 was also promoted to the said post on 28.3.91 and applicant No.4 was promoted to the said post on 28.2.92.

6. The applicants 1 and 2 in O.A. 602/95 were promoted as Examiner (O.P.T.) H.S. Gr.-II by order dated 16.3.90. Applicants No. 1 and 2 in O.A. No. 696/95 were similarly promoted by order dated 12.4.90 and 28.3.91 respectively.

7. Members of certain trades of M.E.S. had filed a petition in the Apex Court between Shri Bhagwan Sahai Carpenter and others Versus Union of India and others (1989 S.C.C. (L.& S.) page 348) and a direction was issued in that case to respondent No.1(Chairman) Ordnance Factory Board to extend the benefit of pay scale of skilled grade to the applicants with effect from 16.10.81. In the wake of this judgment a number of other petitions were filed before the Apex

Court in Writ Nos. 40/91, 492/91, 915/91, 855/91, 521/92, 644/92 and 649/92 and similar directions were given in those writ petitions also. In compliance of these judgments upgradation was made effective from 16.10.81 and relocated seniority list was issued on 21.4.95. The applicants were declared juniors to the persons whose upgradation had been ante dated with effect from 16.10.81 and were reverted. It is the contention of the applicants that they could not have been reverted because they had passed the requisite trade test and that the Apex Court had not give any direction for their reversion.

8. The arguments of Sri Shrish Chandra Brief Holder of Sri K.C. Sinha for the applicant and Kumari Sadhna Srivastava Addl. Standing counsel appearing for Sri N.B. Singh have been heard. The pleadings on record have been considered.

9. The respondents in their counter reply have stated that the Government of India in compliance of the judgment of the Apex Court in Bhagwan Sahai Carpenter and others Vs. Union of India (Supra) had decided to ante date the pay scale of 23 trades from 15.10.84 to 16.10.81 by their order dated 19.3.93. The applicants were holding the post of Oil Men (Skilled) and Polisher (Skilled) and were upgraded as Machinist (Skilled) on the basis of recommendations of Guha Committee on or after 1.1.82. As a result of the directions of the Apex Court in Bhagwan Sahai Carpenter and others Vs. Union of India (Supra) the seniority list was revised after ante dating the skilled grade of 23 trades with effect from 16.10.81. The dilemma before the respondents was either to promote all those who had become senior

to the applicants on account of their ante dating of seniority or to revert the applicants and post their seniors on the post so vacated by the applicants. The second alternative was considered to be the only feasible alternative due to non availability of vacancies in H.S. Gr.-II. The respondents have also drawn attention to the order of Central Administrative Tribunal Jabalpur Bench in O.A. 457 and 440 of 1994 wherein a similar situation, the revision of seniority and the promotion of persons become senior on the basis of revised seniority was upheld. The Division Bench has, however, considered it proper to protect their present emolument by grant of personal pay to be adjusted against future increments till the applicants in those cases acquire the right to promotion to highly skilled grade-II on the basis of revised seniority list. The respondents have also drawn attention to judgment dated 14.8.96 in O.A. 113/96 between Anwarul Haque and others Versus Union of India and General Manager Field Gun Factory Kanpur by which the petition of the applicants was dismissed.

10. We have perused the judgment of the Apex Court in Bhagwan Sahai Carpenter and others Vs. Union of India and others 1989 S.C.C. (L&S.) page 348 in which extending the benefit of skilled grade pay scale of Rs. 260-400 with effect from October 15, 1984 with respect to some of the trades and giving benefit to other trades on the basis of recommendations of Anomalies committee with effect from 16.10.81 was found to be discriminatory and the following directions were given:-

" In the aforesaid premises, the writ

(P)

petitions are allowed. Let a writ of mandamus be issued directing respondent 1 to extend the benefit of the pay scale of skilled grade to the petitioners with effect from Oct. 16, 1981. The respondents are also directed to pay to the petitioner the higher scale of pay of the skilled grade from Oct. 16, 1981 to Oct. 14, 1984. All arrears of pay be made to the petitioners as early as possible but not later than three months from the date of this judgment."

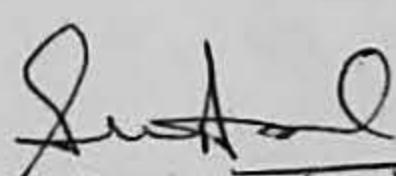
Similar directions were issued in Association of Examiner Muradganj Ordnance Factory Vs. Union of India and others in Writ Petition No. 40/1991 decided by the Apex Court on 31.7.91. Thus the contention of the applicants that the Apex Court had not specifically considered the question of promotion to H.S. Gr.-II is correct. However, the natural corollary of ante dating the seniority of certain tradesmen on the basis of the judgments of Apex Court was that their promotion to the next grade had to be considered after their seniority had been revised as the posts in H.S. Gr.-II were not available, the promotion of seniors on the posts occupied by their juniors was also in order.

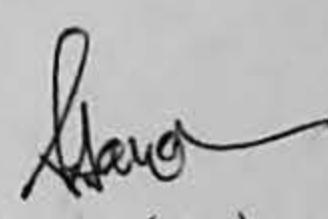
11. In the light of the above facts, the applicants are not entitled to the reliefs sought for by them. The challenge to the seniority list dated 21.4.95 for making representations and the seniority list was to have been deemed to become final in case such representations were not received. We, however, concur with the relief given by Division Bench of Jabalpur in O.A. 457/94 between Uma Shankar and others Vs. Union of India and others and in Shyam Lal Yadav and

others Vs. Union of India and others in O.A. 470/94 by a common judgment dated 7.11.94 protecting the present emoluments of the applicant by grant of personal pay to be adjusted against future increments till they acquire the right to promotion to the highly skilled grade-II according to their revised seniority. The respondents have mentioned in their counter reply in O.A. 696/95 that a proposal had been sent to the Audit Authority for protection of the pay of the applicants.

12. We therefore direct that the emoluments which the applicants were drawing at the time of their reversion shall be protected by the respondents by granting personal pay to the applicants to be adjusted against future increments till the applicants acquire the right to be promoted to highly skilled Gr.-II according to their seniority.

There shall be no order as to costs.


Member (J.)


Member (A.)

Nafees.