

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.365 of 1999.

Allahabad, this the 16th day of November, 2007.

**Hon'ble Dr. K.B.S. Rajan, Member-J
Hon'ble Mr. K.S. Menon, Member-A**

K.D. Nigam and others Applicants

(By Advocate : Shri M.K. Upadhyay)

Versus.

Union of India and others Respondents

(By Advocate : Shri A. Sthalker)

(Details of the parties at the end of the order)

O R D E R

By Dr. K.B.S. Rajan, Member-J

The applicants 23 in number, have filed this OA seeking the following reliefs:-

"8 (1) The decision of the respondent NO.3 rejecting the representations of the applicants against the revision of the then existing seniority-list of Charge man Grade II, communicated to the applicants vide identical letters dated 9.4.1999, copy of which is Annexure CA-12 of the counter affidavit, be quashed.

(2) The so-called finalized seniority list of Charge man Grade II (Tech) as on 1.7.1996 published by the respondent NO. 3 vide Circular No. SAF/49/SENIORITY/DGM(A)/CO dated 10.4.1999 be quashed and the seniority positions of the applicant vis a vis the respondents NO 4 to 17 and their juniors, as they existed prior to the illegal malafide revision of the seniority list of charge-man Grade II as on 1.7.1996, be quashed and the respondent NO., 3 be directed to strictly confirm to the Ordnance Factory Board/DGOF letter NO. 571/A/1 (General) (Ex Journeymanship) dated 7.9.1992 (Annexure A-5 of the OA) in the matter of determination of seniority of the applicants vis-à-vis their juniors.

(3) *The illegal arbitrary and malafide reversion of the applicants nO.1 to 10 published vide GM/SAF order part II NO.727 dated 26.4.1999 (Annexure CA-14 of the counter affidavit) and the consequent supersession of the applicants NO. 1 to 10 by their juniors, respondents NO. 8,9, 10, 12 and 14 published vide factory order, part II No. 728 and 730 dated 26.4.1999 (Annexure CA-15 of the Counter affidavit) be quashed with all consequential benefits and further promotions, pay fixations etc. accruing to the applicants NO.1 to 10.*

(4) *The respondents NO. 1 to 3 be directed not to ignore the notional seniorities granted to the applicants respectively in the cadre of Workman-A and Supervisor-B/Tech, re-designated as Chargeman Grade II, for further promotions to the higher grades of Chargeman Grade I and above."*

2. The facts in brief are as under:-

Applicants at the material point of time were working as Chargeman I/II in the Small Arms Factory Kanpur. And so are the private respondents. The applicants have undergone the Apprentices Training under the Apprentice Training Scheme in the ordnance Factories under the Apprenticeship Act, 1961, which consisted of one year basic training, followed by training for 2 years at Artisan Training Schools and then Journeyman ship training of one year. Provision exists for such trained candidates being appointed as Skilled Craftsman Grade A in the scale of Rs 140 - 180 and 150 - 180. The applicants, after qualifying in the trade test were though entitled to be appointed as skilled craftsman Grade A. were given by the DGOF appointment of Grade B in the scale of Rs 110 - 143 or Rs 125- 150. This matter was discussed in the JCM meeting which recommended notional seniority s A Grade Craftsman from a date six months after the initial appointment in Grade B. This report was accepted by the DGOF and memorandum dated 6-7- 98 was issued in this regard. Promotion would be based on the notional seniority. In the revised seniority, applicant No. 1 was on the top, while Respondent No. 4 at 108. Applicants have given their consent for transfer on promotion. However, the authorities did not effect any transfer and retained the applicants only as A Grade workers with notional seniority, whereas others in other Units were given promotion as

Supervisor B, with the notional seniority remaining the same. Applicants' promotion as per the pre-revised seniority was, however, granted which was based on the pre-revised seniority.

3. After the conversion of charge man Gr. II from Supervisor B, a fresh seniority list, taking into account the notional seniorities of the applicants was published in 1996, vide Annexure A-9. In that the name of the applicant has been reflected at serial No. 27 while that of Respondent No. 4 (the senior most amongst the private respondents) at 30. Those who were converted as Chargeman Gr. II from supervisors were treated separately as compared to those who were only given designation of Supervisor B from the grade of HS 1 and subsequently re-designated as Chargemen Gr. II. As per quota Rota rule, seniority was arranged between those two categories. This seniority list of 1996 was followed by the issue of another seniority list vide Annexure A-10. Herein also, the name of the applicant is placed above respondent No. 4. Thereafter, yet another seniority list had been issued vide Annexure A-1 in which the name of the applicant had been placed below the aforesaid Respondent No. 4. Representations against the above mentioned seniority list were filed by the affected parties, vide Annexure A-11 to 13 and the applicants were threatened of being reverted on the basis of the revised seniority vide Annexure A-1. Thus, the applicants have come up with this OA for a direction to the respondents to adopt the earlier published Annexure A-9 or A-10 seniority and the latest seniority at Annexure A-1 be quashed and set aside.

4. Respondents have contested the OA. According to them, after publication of the seniority list at Annexure A-9, representations have been received and the whole mater was referred to the Ordnance Factory Board for clarification. The OFB vide their letter dated 23-08-1994 and dated 13-05-1998 clarified that the notional seniority granted to the B Grade workman in the grade of A Grade was only for the purpose of

promotion to Supervisor B (T) and it would not continue for further career prospects. As a result of revision of the seniority list, a review DPC was held to review the DPCs convened to consider promotion from Chargeman Gr. II to Chargemen Gr. I in the mechanical stream. The applicants who were erroneously promoted as Chargeman I in terms of the wrong seniority list have now been reverted to the post of Chargeman Gr. II vide order dated 26-04-1999, as their name did not figure in the review DPC select list as a result of revision of seniority list in terms of courts judgments vide OFB orders dated 23-08-1994 and 13-09-1998. Para 15(b) of the counter refers.

5. At the time of hearing, counsel for the applicant referred to the decision of the Kolkata CAT in OA No. 355/99 decided on 26-05-2006, whereby order dated 23-08-1994 of the OFB was held to be effective prospectively and as such, those who were the beneficiaries anterior to the publication of the order dated 23-08-1994, their promotions cannot be reviewed. The relevant portion of the said Kolkata order is as under:-

6. "In the present case, on the strength of notional seniority the applicants enjoyed promotions and, for the reason of an executive instructions issued subsequently, the Respondents intend to revert the applicants. Executive instructions are always prospective in character and that cannot be extended to prejudice the applicants who are already enjoying the benefits on the strength of previous instructions. Thus, for the reason of the executive instructions (issued after grant of promotion to the applicants) the applicants cannot be reverted."

6. Counsel for the applicant submitted that the aforesaid order would have substantial impact upon the case of the applicant, whereby his grievances would be redressed. Counsel for the respondent has not denied the existence of the order of the Kolkata Bench.

7. The above decision of the Kolkata Bench, is fully endorsed by us. As a result, the respondents are directed that their action in consequence of the Kolkata Bench Tribunal order dated 26-05-2006 be applied to the case of the applicant also.

In case of any adverse impact on the basis of implementation of the Kolkata Bench Tribunal, the applicants shall be given due notice.

8. With the above observations, the OA is disposed of. No cost.

Menon

MEMBER-A

Witn. "

MEMBER-J