

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.727 of 2000.

Tuesday, this the 20th day of April, 2004.

Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Hon'ble Mr. A.K. Bhatnagar, J.M.

1. Shri B.D. Palit,
aged about 46 years,
S/o Late S.K. Palit,
R/o DL/T-163, Armapore
Estate, presently employed
as Machinist HS II/T.No.108/SM,
Ordnance Factory, Kanpur.
2. Shri Umesh Chandra Mishra,
aged about 46 years,
S/o Shri Rishikesh Mishra,
R/o 201/5 Babupurwa Colony,
Kidwai Nagar, presently employed
as Machinist HS-II/T.No.133/MS III,
Ordnance Factory, Kanpur.
3. Shri S.K. Trivedi,
aged about 41 years,
S/o Late Ram Autar Trivedi,
R/o 127/1121, WI Saket Nagar,
Juhi, presently employed as
Machinist HS-II/T.No.153/MS III,
Ordnance Factory, Kanpur.
4. Shri P.N. Pandey,
aged about 43 years,
S/o Late Sheo Prakash Pandey,
R/o 58/LIG, Barra-5,
presently employed as Machinist
HS-II/T. No.109/SM II, Ordnance
Factory, Kanpur.
5. Shah Mohammed,
aged about
S/o Abdul Razzak,
R/o Plot No.275, Saiyed Nagar,
Rawatput, at presently employed
as Machinist HS II/T.No.133/MS III,
Ordnance Factory, Kanpur.
6. Shri R.K. Samaddar,
aged about 42 years,
S/o Late Jyoti Prasad Samaddar,
R/o G-1/520, Armapore Estate,
presently employed as Machinist
HS II/T. No.117/SM, Ordnance Factory,
Kanpur.

7. Vijay Singh,
aged about 41 years,
S/o Chheda Lal,
R/o 116/18, Rawatpur,
presently employed
as Machinist HS-II/T. No.121/SM II,
Ordnance Factory, Kanpur.
8. Shri C.S. Tewari,
aged about 41 years,
S/o Sri Ram Kishore Tewari,
R/o 3 78/12, Shastri Nagar,
presently employed as Machinist
HS-II/T. No.122/SM II, Ordnance
Factory, Kanpur.
9. S. Roy,
aged about 41 years,
S/o Late B.C. Roy,
R/o G-1/554, Armapur Estate,
presently employed as Machinist
HS II/T.No.126/SM II, Ordnance
Factory, Kanpur.
10. A.K. Tewari,
aged about 41 years,
S/o Sri C.P. Tewari,
R/o 119/297, Gunti No.5,
Darshanpurwa, Kanpur,
presently employed as
Machinist HS II, T.No.127/SM II,
Ordnance Factory, Kanpur .

.....Applicants.

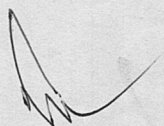
(By Advocate : Shri N.K. Nair)

Versus

1. Union of India,
through Secretary,
Ministry of Defence,
Department of Defence
Production, Government of India,
New Delhi.
2. Chairman,
Ordnance Factory Board/
Director General, Ordnance
Factories, 10-A, Shaheed
Khudi Ram Bose Road,
Calcutta-1.
3. Senior General Manager,
Ordnance Factory,
Kalpi Road, Kanpur.

.....Respondents.

(By Advocate : Shri A. Sthalker)



.....3.

O R D E R

By Hon'ble Maj. Gen. K.K. Srivastava, A.M. :

The applicants 10 in number, have instituted this OA filed under Section 19 of A.T. Act, 1985, challenging the action of the respondents in converting the applicants from the post of Examiner H.S. Grade II to the post of Machinist HS II in the Ordnance Factory Kanpur as published vide Factory order Part II No. 2332 dated 25.6.1999. The applicants have prayed for quashing the action of the respondents and direction for respondents to restore the applicants on the posts of Examiner HS II.

2. The facts, in short, are that the applicants were appointed in the Ordnance Factory, Kanpur as Junior Examiners during 1976 to 1979 after having undergone Trade Apprenticeship for three years under the Apprenticeship Act, 1961. The applicants were working, as Junior Examiners in the Quality Control Section ever since their appointment as Junior Examiners. They were promoted to the post of Examiner (Skilled) in the year 1981. Trade test for promotion was held on 16.6.1999 for their promotion to Highly Skilled Grade II alongwith 30 more candidates, 21 including the applicants passed the trade test held for Highly Skilled Grade-II. The grievance of the applicant is that no trade test for Machinists Highly Skilled Grade II was held and though the applicants have no experience of working in production side, yet they have been forced to join as Machinist Highly Skilled Grade-II by the impugned order dated 25.6.1999 (Annexure-A-1). The applicants filed a representation before the General Manager on 25.6.1999 (Annexure-A-4) followed by reminder dated 30.6.1999 (Annexure-5). When no decision was taken on their representation, they filed

....4.

a representation before Chairman/D.G.O.F., Ordnance Factory Board on 19.8.1999. However, as per the applicants no decision has been taken by any of the Authorities. Aggrieved by the same, the applicants have filed this OA, which has been contested by the respondents. Counter Affidavit and Rejoinder Affidavit have been exchanged.

3. Shri N.K.Nair, learned counsel for the applicants submitted that the action of the respondents is arbitrary. After the applicants passed the trade test they were asked to give under-taking for their transfer (option) as per the format (Annexure-A-3). The applicants did not give any under-taking and inspite of that the applicants were promoted and posted as Machinist Highly Skilled Grade II. Learned counsel for the applicants submitted that immediately after one month of the transfer of the applicant from Examiner side to Machinist side re-test was held and 37 persons were promoted as Examiner Highly Skilled Grade-II. There were sufficient vacancies and the contention of the respondents as brought out in their counter affidavit that there was immediate requirement in the Production side and, therefore, the applicants were transferred to the Production side, is unfounded. Besides, once the applicants have raised protest to the General Manager and then to the Chairman O.F. Board, the applicants should have been re-transferred as Examiner H.S. II. Instead of accommodating the juniors and the theory of the respondents that there was no vacancy, is falsified.

4. Learned counsel for the applicants finally submitted that the promotional chances of the applicants are bound to be adversely affected if they are forced to work as Machinist High Skilled Grade-II.



5. Resisting the claim of the applicants, learned counsel for the respondents submitted that the General Manager has full powers ^{as per} Ordnance Factory Board order dated 14.2.1964 and 13.3.1995. Learned counsel further submitted that the applicants are working in the same scale and there is no financial loss to them. Learned counsel for the respondents further submitted that the QA deserves to be dismissed as certain persons shall ^{be} affected ^{they} and have not been impleaded in case the QA is allowed.

6. We have heard the counsel for the parties, carefully considered their submissions and perused the records.

7. The main grievance of the applicants is that inspite of the fact that they have no experience of working of Production side, they have been transferred and posted as Machinist Highly Skilled Grade-II against their willingness. They refused to give option (Annexure-A-3) which is not disputed by the respondents.

8. The respondents in para 5 have stated that the General Managers ^{have} full powers without financial concurrence for creation of posts on Industrial Establishment, as per the Ministry of Defence letter dated 14.2.1964. We do not ^{dispute} ~~agree with~~ this contention of the respondents ^{but} ~~because~~ in this case the dispute is not regarding the creation of post but the dispute is regarding transferring the applicants from Examiner side to Machinist side.

9. Further the respondents in Para 5 (d) have stated that "due to general ban on recruitment by Govt. of India, on induction of the manpower, it is not possible to recruit/



(14)

induct more manpower in the trade of machinist by way of recruitment. Therefore, it was decided by the respondent No.3 to divert manpower from the trade of Examiner to the trade of Machinist based on the functional requirement of the factory in public interest as per the provisions of SRO-185 of 1994 and in terms of the powers vested with the General Managers of Ordnance Factories. The conversion/redesignation of manpower from the trade of Examiner to the trade of Machinist has been done in the public interest as well as in the interest of the employees so converted to the trade of Machinist." The respondents in the same para have also stated that if they were not transferred as Machinist they would have remained unemployed/idle.

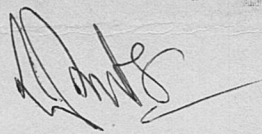
We are not persuaded to accept this plea of the respondents. We fail to understand as to why and how 37 persons junior to applicants were promoted as Examiner H.S. II just after one month the applicants were transferred from Examiner side to Machinist side ignoring the claim of the applicants. In our opinion, in administration fairness is required and since the applicants had already filed a representation before the General Manager on 30.6.1999 (Annexure-A-4), we would have appreciated if the Administration had accepted their request and adjusted them as Examiner HS II in preference to their juniors because the applicants have experience of number of years working as Examiner in the Quality Control Section. The applicants in para 9 of the Rejoinder Affidavit have specifically stated that the requirement of Examiners was met by taking the work of Examiners from Lab. Attendants, Women labourers and from other non-technical categories. The applicants have given names of such 8 persons which has not been disputed by the respondents by filing any supplementary counter affidavit. Besides, it has also been brought out

in para 9 of the rejoinder affidavit that 37 Examiner Skilled, most of whom appeared for trade test alongwith the applicants but failed, had again been promoted as Examiners HS II recently during the pendency of the OA as it is evident from the Factory order Part II No.5065 dated 3.11.2000. This has also not been disputed. Therefore, we have no doubt in our mind that the action of the respondents has been arbitrary and the same cannot stand in the eyes of law.

10. Learned counsel for the respondents also pleaded that the OA is liable to be dismissed for non-joinder of affected parties. We are not persuaded to accept this plea of the respondents because as argued by the respondents if the juniors are transferred from Examiner HS II to Machinist HS II, they would not be affected as they would be in the same scale. The respondents have miserably failed to justify ^{either} ^{as well} their action. There is no substance in the argument ^{advanced} by the respondents' counsel that applicants have been working satisfactorily as Machinist HS II since 1999 and they also passed the ⁱⁿ ⁱⁿ suitability test which was held afterwards. This argument of the respondents does not hold good to deny the claim of the applicants.

11. In the facts and circumstances and our aforesaid discussions, the OA is allowed. The order dated 25.6.1999 (Annexure-A-1) is set-aside in respect of the applicants and the OA is finally disposed of with direction to respondent No.3 to take back the applicants as Examiner Highly Skilled (as HS I and HS II have been merged) within two months from the date of communication of this order. No costs.


MEMBER (J)


MEMBER (A)

RKM