

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 30th day of May 2003.

QUORUM : HON. MR. S.K. AGRAWAL, A.M.
HON. MRS. MEERA CHIBBER, J.M.

O. A. No. 29 of 2002

Dham Prakash Verma S/O Late Dr. S.N. Verma R/O 7, Bengali
Mohalla, Karanpur, Dehradun, retired as Junior Works Manager,
Ordnance Factory, Dehradun..... Applicant.

Counsel for applicant : Applicant in person.

Versus

1. The Union of India through the Secretary, Ministry of
Defence, South Block, New Delhi.
2. The Director General, Ordnance Factories and the Chairman,
Ordnance Factory Board, 10-A, Shaheed Khudi Ram Bose Road,
Kolkata..... Respondents.

Counsel for respondents : Sri G.R. Gupta

O R D E R

BY HON. MR. S.K. AGRAWAL, A.M.

The applicant has filed this application before this
Tribunal for seeking relief on the following points :-

- i) "To correctly implement the directives, advice and
orders in the true spirit and intent of the judgment
dated 05.01.87 retrospectively abiding by the
statutory provision contained in recruitment rules
S.R.O.4/56 (3&9) and S.R.O.8/73 (2,4,15,16,31,32)
giving proper weightage to exceptional qualifications
- ii) To place the petitioners in the seniority rolls of
Engineer-Production (Optical) retrospectively w.e.f.
their respective dates of appointments and to promote
the exceptionally qualified and experienced petition-
ers to the J.T.S. posts of A.W.M. in 'Engineer
(Optical)' and 'physicist' against 40% promotional
quota vacancies available between 11.09.82 to
25.02.87, the period when certain persons were
appointed "dehors rules" and in violation of stay-
order dt. 16.04.85 by H.C. Allahabad, creating
superhumary posts if necessary to protect the
legitimate rights of the petitioners guaranteed by
Article 14,16,19&21 of the Constitution.

- iii) To grant all consequential benefits of subsequent promotions in S.T.S., J.A.G. and S.A.G. retrospectively with financial benefits including arrears of pay and allowances placing them above/ at par with the persons illegally/unlawfully appointed/promoted against posts of 'Engineer-Production (Optical)' and 'Physicist' including all pensionary benefits.
- iv) To compensate the petitioners appropriately for keeping them under perpetual disgrace and humiliation for unjustly overlooking and usurping their legitimate rights guaranteed by Art.14,16,19 & 21.

2. The brief facts of the case are that the applicant was appointed by the Executive Authority as Optical Apprentice for specific training in Optical production, design and inspection on 1.2.1963 at Ordnance Factory, Dehradun. The applicant had requested for change of trade Optical Tech. to Mechanical on compassionate ground. The Executive authority namely D.G.O.F. turned down the request on the strength of Rule 9 of S.R.O.4/56 which says that each officer will be placed in the appropriate category on the basis of technical qualifications and experience and his seniority determined in accordance with Rule 10. The rule further provides that no officer placed in post in any category will normally be eligible for promotion or transfer to a post in any other category stating clearly that change of trade and training centre will not be possible.

3. The applicant has drawn our attention to the decision dated 5.12.86 in O.A. No.1444/86(T) wherein it was observed by this Tribunal as under :-

"It is evident from these averments that there is no consistency in the stand taken by defendants. Engineer (Optical) has specialized qualification requirements, Asstt. Foreman (Optical) which was advertised has also specialized qualifications. Thus, it is evident that for posts in the Optical category everyone belonging to the mechanical or production classification cannot be considered,



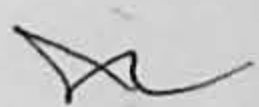
it is only those who were recruited as Optical apprentices or as Asstt. Foreman (Optical) can be eligible for those posts. Thus, in fact, a common seniority roll has no meaning and it will be better for the defendants to consider the separation of the cadre. They are in the best position to weight the factors involved and should arrive at a policy by which the legitimate rights of the petitioners and others belonging to the optical category are not jeopardised by having a common seniority as has been said in the petition."

4. With the above direction of the Tribunal, however, respondents replied that after having considered the various aspects they decided bonafidely and in the best and larger interest of NGOs of Optical Trade, it will not be advisable to create a new Optical Trade and their interest will be best protected by having a common cadre.

5. The applicant had also filed another O.A. No.209/90 which was decided on 29.7.92 dismissing the same on the point of res-judicata with the observation that since a Committee has been constituted for considering separation of Optical in the seniority list on 18.10.89, the Committee should arrive at a decision soon.

6. The applicant had thereafter filed contempt petition in C.A.1241/92 which was dismissed by order dated 28.9.92. Another Review petition in C.A.1241/92 was again filed which was also dismissed by order dated 28.4.93 that no error is apparent on the record. In another contempt petition No.138/01 in T.A.1444/86 the same was again dismissed vide order dated 21.12.01 that the defendants have performed the exercise as per direction of this court and hence the direction given by this Tribunal is not violated by the respondents.

7. The grievance of the applicant is that the policy to protect the legitimate right of the applicant has not been made by the respondents till date. The applicant thereupon



filed a writ petition No.42227/00 in the Hon'ble High Court of Allahabad which had observed that the relief regarding promotion and consequential benefits claimed by the petitioner therein may be entertained by the appropriate bench of the C.A.T. The writ petition was accordingly dismissed with a right to the petitioner to approach to an appropriate bench of the C.A.T. The applicant thereupon approached the Hon'ble Supreme Court by filing a public interest litigation which was not admitted and the applicant was advised to approach the same bench of the Tribunal for proper relief.

8. In a recent decision pronounced by the Hon'ble Supreme Court on 2.5.2001 in Civil Appeal No.15001/96 in the case of S. Murugan and others Vs. Union of India and another reported in 2003 SCC (L&S) 80 wherein combined seniority list was prepared by merging together the Machinist cadre and the Engineer cadre as per the decision of the Tribunal in that regard. It was held by their Lordships of Supreme Court that constitution and formation of a cadre is the prerogative of the employer and it is for the employer to decide which unit of service would constitute a cadre. It was further held by the Hon'ble Supreme Court ^{in fact case} that when in all other ordnance factories, the employees belonging to the Machinist group and the Engineer group ^{are} _{are} from one cadre, there is no rational for the employees working in the factory concerned herein to claim that there should be two different cadres.

9. However, similar controversy was agitated before the Lucknow Bench of the Tribunal wherein it was held in O.A. No.367/90 in the case of K.P. Singh and others Versus Union of India and others that the creation of bifurcation of the cadre and merger is purely an administrative matter. In the exigencies of the matter, Government decides to merge a particular department and bifurcates does not call for any interference in this regard. While holding this, support

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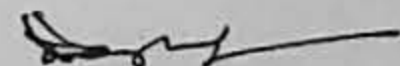
was taken from the decision of the Hon'ble Supreme Court in the case of State of Kerala Vs. M.K. Krishnan Nair and others AIR 1970 SC 747 wherein it was held that it was not and can not be disputed that it is open to the State Govt. to constitute as many cadres as may be found necessary since it was the exclusive jurisdiction of the Govt. to bifurcate or merge the cadres and accordingly it being the jurisdiction of the Government an employee cannot have any say in the matter.

10. Now judging the whole matter from the legal side, we are of the view that once certain directions were given by this court and the same were considered by the respondent authority bonafidely and in the best interest of the applicant and subsequently another O.A. filed by the applicant against the decision of the Government was also dismissed by this Tribunal on the point of res-judicate, the applicant in the present case has no locus-standie to raise that very same point again before this Tribunal, Besides, the two contempt petitions and one review petition filed by the applicant were also similarly dismissed by this Tribunal.

11. Hence in our view there is no case for the applicant to approach this Tribunal again and again on the same point which has already been decided by this court not once but twice and as such, the present O.A. would also be similarly hit by the rule of res-judicata.

12. In view of the above discussion, the present O.A. is also accordingly dismissed with no order as to costs.


J.M.


A.M.

Asthana/