

(Reserved on 23.04.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 15th day of oct., 2014.

Original Application Number. 689 OF 2007.

**HON'BLE MR. SHASHI PRAKASH, MEMBER (A)
HON'BLE MS. JASMINE AHMED, MEMBER (J).**

R.K. Pandey s/o Ram Niwas Sharma, Aged 32 years, R/o N T-III/294, Maitri Nagar, Armapore Estate Kanpur.

.....Applicant.

VE R S U S

1. Union of India through Secretary Ministry of Defense, Department of Defense Production, Govt. of India, 184-B, South Block, New Delhi-110011.
2. General Manager, Field Gun Factory, Kalpi Road, Kanpur.
3. Chairman, Ordnance Board, 10-A, S.K. Bose Road, Kolkata-700001.

.....Respondents

ALONGWITH

Original Application No. 828 of 2008

(U/S 19, Administrative Tribunal Act, 1985)

1. H.M. Tripathi, s/o Late R.B. Tripathi, aged about 56 years, R/o 52/2, Shastri Nagar, Kanpur.
2. Awadh Bihari Singh, s/o Rama Shankar Singh, aged 56 years, r/o F/33, Armapur Estate, Kanpur.
3. N.C. Nigam, s/o Late Ram Narain Nigam, Aged 51 years, r/o 109, LIG, A-Block, Gujaini, Kanpur.

Aforesaid applicants are working as Charge men Grade-I in the Field Gun Factory at Kanpur.

.....Applicants.

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1. Union of India through Secretary Ministry of Defense, Department of Defense Production, Govt. of India, 184-B, South Block, New Delhi-110011.

2. General Manager, Field Gun Factory, Kalpi Road, Kanpur.
3. Chairman / Director General, Ordnance Factory Board, 10-A, S.K. Bose Road, Kolkata-700001.

Advocate for the applicant : Shri O.P. Gupta
Advocate for the Respondents: Shri Saurabh Srivastava

O R D E R

(Delivered by Hon'ble Mr. Shashi Prakash, A.M.)

As the subject matter in both the O.As are one and the same and the relief/s sought by the applicants are similar, merely having different dates would not in any way disturb the ultimate finding to be given by this Tribunal. Therefore, as requested by the counsel for either sides, both the O.As have been heard together and decided by a common order. For ready reference the facts of the O.A No. 689/2007 are taken

2. By way of the instant Original Application the applicant has prayed for declaring that the directives of the O.F. Board dated 6.11.2003 as communicated to the applicant vide letters dated 23.10.2003 and 3.1.2004 are inconsistent and ultra vires to the relevant promotional rules as laid down in column 12 of SRO 13 E of Indian Ordnance Factories Group C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules 1989 and the same (Anne. No. 2 & 3) may be quashed. Prayer has also been made for a direction to the respondents to grant notional seniority to the applicant on the post of Charge man grade -1 with retrospective from 19-4-2003 with all consequential benefits including different of salary and other monetary benefits.

3. Briefly stated, the facts of the case are that the applicant was initially recruited and appointed as Chargeman Grade-II on 19.04.2000 in the Field Gun Factory, Kanpur. On completion of 3 years on 18.4.2003 as a Chargeman Grade -II he became eligible for the consideration to next promotion as Chargeman Grade -I in view of column 12 of SRO 13 E. Since the posts of Charge man -I were vacant in the Field Gun Factory at Kanpur, applicant being eligible represented for promotion as Chargeman Grade-I with effect from the date of his eligibility. The G.M. vide order dated 23.10.2003 informed the applicant that as per extent OFB directives, Charge men Grade-II of Gen. Category, having seniority of 10.5.1993 or earlier only, are to be considered for promotion to the Charge man Grade-II w.e.f. 19.4.2000 and rejected the claim of the applicant for promotion. The applicant was promoted as Charge man Grade-I vide order dated 24.1.2005(Annexure No. A-4). The applicant preferred representation to the Secretary, Ministry of Defence on 2-5-2005 stating that he has completed three years service as Charge man Grade-II on 18.4.2003 and as per SRO, he acquired eligibility for next promotion as Charge man Grade-I on 19-4-2003 instead of 24.1.2005. It is the contention of the applicant that the sister factories had provided promotions as Charge man Grade- I to the several persons immediately after they completed three years service as Charge man Grade-II by order issued in the year 2003 & 2004 regardless of the contents of order dated 23.2.2003 and 3.1.2004. The applicant was, however,

promoted and given only notional seniority w.e.f from 22.12.2014 (Annexure No. A-9).

4. Grievance of the applicant in the instant case is that since applicant has been promoted as Charge man Grade-I much later with reference to the date of eligibility, despite existence of vacancy, he will remain below in all India gradation list of Charge man Grade-I as per S.R.O and will not get earlier chance for next promotions and his number will come for the consideration to the next higher promotions such as Assistant Foreman, Foreman and Junior Works Manager much after the promotions of his several juniors working in the sister factories.

5. Upon notice respondents have filed their counter affidavit stating that the applicant is not entitled for promotion for CM-I w.e.f. 19.4.2003 as claimed by him. The applicant has been rightly granted notional seniority w.e.f. 22.12.2004 because the Ordinance Factory Board letter dated 17/22.12.2004 was effective from the date of issue. It is contended that the Ordinance Factory Board vide letter No. 3265/CH1 (T) IR/A/NG dated 27.1.2003 (Annexure C.A-1) issued instructions on the subject matter of promotion from CM-II (T) stating that only those CM-II(T) who are holding the post of CM-II from 10.5.1993 or earlier, should only be considered for promotion to CM-I(T) in all trades. If vacancies still exist then also No Junior CM-II (T) holding the post after 10.5.1993 should be considered for promotion to CM-I (T) in all trades.

However, for SC/ST persons having lower seniority, the instructions were to promote them against these vacancies as per reservation roster. As per the existing instructions dated 21.10.2003 (Annexure CA-2), the persons holding CM Gr.-II (T) in General Category having seniority of 10.5.1993 or earlier only, are to be considered for promotion to CM Gr. I (T). As the applicant was holding the post of C.M Gr. II (T) w.e.f. 19.4.2000, his request for promotion of CM Gr. I (T) could not be considered at that point of time. The Ordinance Factory Board vide letter dated 6.11.2003 (Annexure CA-3) further clarified that the promotions are to be effected only trade-wise taking into consideration the available vacancies in CM-I of a particular trade only. Vacancies available in a different trade can not be used for promoting persons from another trade.

6. It has further been clarified by the respondents that even if vacancies are available in CM-I of a particular trade, if taking into account total existing strength and operating strength, as there are no overall vacancies in CM-I(T) no promotion can be given for any trade. It is contended in the C.A that the representation of the applicant dated 22.12.2003 for his promotion from 19.1.2003 has been replied by a detailed order. The respondents have further stated that the applicant completed three years service on 18.4.2003. At that time there was clear instruction of Ordinance Factory Board letter No. 3265/CH-I(T)/IR/A/NG dated 27.1.2003 that the person holding seniority as on 10.5.1993 or earlier only

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may be promoted. No junior can be promoted and as per letter No. 1001/MISC/Policy/A/NG dated 20.3.2003, the applicant was also not eligible for promotion in the year 2003-04. When the revised sanction vide Ordinance Factory Board letter No. ZBB/REV/2004/A/NG dated 17/22.12.2004 was received then only his case could be considered for promotion because the applicant had completed the eligibility criteria on 1st January 2004.

7. The applicant has filed Rejoinder stating that the instructions/clarifications of the Ordinance Factory Board dated 20.3.2003 (para 5 of C.A.) dated 27.1.2003 (para 6 of C.A.) and dated 6.11.2003 (para 8 of C.A.) are the administrative orders issued by the Board from time to time and these instructions are expected to be followed to the extent, they are in consonance with the Statutory provisions of the recruitment/ promotional rules made for the purpose of appointment and promotion. Administrative orders not be implemented ignoring the statutory provisions on the subject. In support of this contention, learned counsel for the applicant has placed reliance upon a Full Bench judgment of **Hon'ble Allahabad High Court wherein it has been held that Executive instructions/ Govt. Orders can not take place or can not prevail over the statutory provisions/ rules.**

Therefore, in the light of above legal position, aforesaid instructions/clarifications of O.F. Board dated 27.1.2003, 20.3.2003 and 6.11.2003 may not be given effect to the extent these are not in the interest of the employees and also not

consonance with the statutory rules of promotion as mentioned in column 12 of SRO 13 E of IFC group C Supervisory and Non Gazetted Cadres Rules 1989. Regarding the clarification dated 6.11.2003, it has been said 'Promotions are to be affected only trade wise taking into consideration available vacancies in CM-I of a particular trade only. Vacancies available in a different trade cannot be used for promoting persons from another trade.' In this clarification it has further been stated that 'even if vacancies are available in C.M. -I on a particular trade, if taking into account total existing strength and operating strength (sanctioned strength), there are no over all vacancies in C.M. -I then no promotion can be given for any trade.' As the applicant is adversely affected from the subsequent part of the clarification which says that even if vacancies are available in C.M. -I on a particular trade, if taking into account total existing strength and operating strength (sanctioned strength), there are no over all vacancies in C.M. -I then no promotion can be given for any trade.

8. Heard Shri O.P. Gupta, learned counsel for the applicant and Shri S. Srivastava, learned counsel for respondents.

9. Learned counsel for the applicant submitted that he has challenged instructions issued by the Ordinance Factory Board, dated 6.11.2003, on the grounds that it is contrary to column 12 of S.R.O. 13 E of the Indian Ordinances Factories, Group-C supervisory and non-gazetted cadre Rules 1989 and being against

the interest of the employees. As per the applicant's counsel order dated 6.11.2003 being only in nature of instructions/directives cannot override the provisions of the relevant S.R.O and hence, denial of applicants promotion w.e.f. date of his eligibility is wrongful. The case of the applicant is that as per the relevant provision of the S.R.O. relating to promotion, the applicant became eligible for promotion to the post of Chargeman Grade-I w.e.f. 18.04.2003 i.e. after completing 3 years of service. It is also averred that on the date the applicant became eligible vacancy was existing in the department and therefore there was no basis for denying him the entitled promotions. Moreover since the applicant had become eligible for promotion prior to the issue of the circulars which are under-challenge in this Original Application, they could not have been applicable in his case.

10. The learned counsel for the applicant's counsel also pointed out that other employees in sister factories received the benefit of promotion without giving effect to the aforementioned directives issued by the Ordinance Factory Board. In this regard reference was made to (**Annexure A-6**) by which 3 persons similarly placed had been promoted to the cadre of Chargeman Grade-I work. Concluding his arguments the counsel for the applicant stated that if the applicant is promoted at a later date, it will have adverse effect on the prospects of his career in the long run regarding consideration his promotion for higher posts which is undertaken

by the respondents on the basis of All India Seniority relating to all the factories from time to time.

11. The arguments of counsel for the applicant have been countered by the counsel for the respondents who argued that the applicant who had represented this case for his promotion dated 22.08.2003 was duly replied vide letter dated 23.1.2003, and subsequently vide letter dated 3.01.2004, informing him that although there may have been a vacancy in the C.M. Grade-I (T) on the date where the applicant attained eligibility for promotion, it was accruable to him only if there was over all vacancies in C.M. Grade-I (T) Cadre. Having regard to the fact at that point of time there were 22 excess posts of C.M Grade-I(T), it was not possible to consider the promotion of the applicant as prayed by him. So far as the points relating to the grant of promotion from C.M. Grade-II to C.M. Grade-I in other organization was concerned, the learned counsel for the respondents submitted that such comparison cannot be made as each factory is a separate unit and promotion in each of there was contingent upon the availability of vacancy in each factory.

12. From the above, it is seen that the claim of the applicant for promotion is primarily based in his becoming eligible as per the relevant provision of the S.R.O. dealing with the issue of promotion. However, his case could not be considered on account of the fact that on the date, he became eligible as per the data made available,

there was no vacancy in the cadre of Grade-I Chargeman taking into account overall cadre strength Furthermore, the applicant could not be promoted in view of clear cut off date of 1993 provided in the directives issued by the Ordinance Factory Board dated 6.11.2003. So far as implementation of the provision of S.R.O. relating to promotion was concerned, it is to be noted that as per the column 13 of the S.R.O. 13 E an employee merely became eligible for promotion from Grade of Chargeman -II and Chargeman Grade-I after completion of 3 years but could not be permitted given the condition mentioned in due the aforementioned circular which have been challenged in this OA. Here it may be appropriate to consider whether these circulars which provided the manner in which the provisions of column 12 of S.R.O. 13 E, were be implemented in Gun Factory are contrary to or have traveled beyond the aforesaid provisions of S.R.O. We feel that answer to this question is in negative. Recruitment Rules are in nature of laying down the base line with regard to different parameters that need to be followed while filling up various categories of posts. The provisions provided therein are to be adhered to as and when a Department resorts to recruitment of posts. However, the Departments are at liberty to issue clarifications, explanation and elucidation of these provisions for its proper adherence. The directives under challenge in this OA, are essentially clarifications issued by Ordinance Factory Board taking the over all position of the relevant cadre positions in account and ensuring that the intention envisaged in the Statute is carried out in the right spirit.

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In the instant case they are in no way, are either in nature of contradiction to the provisions of S.R.O. nor have traveled beyond its scope. They are plainly within the confines of the relevant provisions of the S.R.O. and therefore cannot be considered to be ultra-vires. The applicant had cited the following judgments in support of his argument:-

1. **P.N. Premchandran Versus State of Kerala and Ors. 2004 SCC (L&S) 170.**

2. **M.S. Tewari & Ors. Versus Union of India & Ors. O.A. No. 2480/2009 order dated 2.12.2010 C.A.T. Principal Bench, New Delhi.**

13. A perusal of these judgments suggests that they do not apply to the facts of this case. While one of the of the judgment deal with a matters relating to grant of irregular promotion, the other relate to the application of the relevant recruitment rules while considering promotion against the vacancies.

14. While considering the facts of this case it also needs to be recognized that it is well settled that no employee has a vested right to chances of promotion (**Chandragupt Vs. Secretary Government of India, Ministry of Environment Forces AIR 1995 SC 44**), as chances of promotion are nor conditions of service. The reduction of the chances of promotion does not affect any right of the individual employee. Accordingly, reduction in the chance of promotion does not amount to a

change in the conditions of service and the rules which merely effect the chance of the promotion cannot be regarded as changing the conditions of service. In the case of **M.**

Longanathan Vs. T.N. Electricity Board, 1995

(Supplement (3) SCC 395) The Apex Court has clearly observed that mere hope or expectation to get benefit of promotion under the service rules is not an accrued right which can be protected even when the rules are amended. In another case, the Apex Court has gone on to state that "there is no fundamental right to promotion but an employee has only right to be considered for promotion when it arises in accordance with the relevant rules" **Director, Lift Irrigation Corporation Ltd. & Ors. Vs Prabat Kiran Mohanti & Ors, (1991) 2 SCC 295.**

15. From the position as stated herein before it is plain that mere eligibility or chance of promotion does not entitle an employee to promotion. Hence, the claim of the applicant is not tenable and the OA accordingly lacks merit. It is dismissed. No costs.

Jasmine Ahmed
(MS. JASMINE AHMED)
MEMBER- J.

L. Prakash
(SHASHI PRAKASH)
MEMBER- A.

Sunny....