

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 314 OF 1998.

Cuttack, this the 31st day of March, 1999.

JAGDISH CHANDRA SUBUDHI ROY. ... APPLICANT.

- VERSUS -

UNION OF INDIA & OTHERS. ... RESPONDENTS.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.3.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.314 of 1998.
Cuttack, this the 31st day of March, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.) .

...

Jagadish Subudhi Ray,
aged about 35 years,
S/o. Dasarathi Subudhi Roy,
At-Debinagar, Po. Chashapada,
District-Cuttack.

.... Applicant.

By legal practitioner: -

(Petitioner in person)

-Versus-

1. Union of India represented through
Secretary to Government of India,
Ministry of Defence, Central Secretariat,
New Delhi.
2. Indian Ordinance Factories Board,
represented through Director General
of Ordinance Factories/Chairman,
Ordinance Factories Board, At: 10A
Auckland Road, Calcutta, West Bengal.
3. General Manager, Ordinance Factory,
Badmal, At. Badmal, Po. Badmal,
Dist. Balasore, PIN 767 770.
4. Deputy General Manager,
Ordinance Factory, Badmal,
At. Badmal, Po. Badmal, Dist. Balasore.
5. Works Manager,
Ordinance Factory, Badmal,
At. Badmal, Po. Badmal, Dist. Balasore.

... Respondents.

By legal Practitioner : Mr. Uma Ballav Mohapatra, Additional
Standing Counsel (Central) .

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the seniority list dated 28-5-1996 at Annexure-8 and for a direction to the Respondents to give promotion to the applicant to High Skilled Grade-II with effect from 13-8-1996 with all consequential benefits.

2. The facts of this case, according to the applicant are that on being sponsored by the employment exchange, applicant was called to an interview by the Respondents on 27-3-1990 for the Post of Fitter General. He was successful in the interview and was declared selected alongwith 31 others. He was given an appointment letter for the post of Danger Building Worker (in short DB Worker) in letter dated 19-7-1990 (Annexure-A/2). According to the applicant, out of 31 selected persons, at the first instance ten candidates including applicant were given appointment letter. Subsequently, in letter dated 28-8-90 (Annexure-A/2 series) he was issued another appointment letter in the post of DB Worker. Accordingly, applicant joined on 11.9.90 in the post of DB Worker. On 13.12.1991, the General Manager, Ordnance Factory, Badmal, Respondent No.3 issued an order (Annexure-A/3) re-designating DB Workers ~~xxxxxxx~~ Semi-skilled as fitter Refrigeration and A/c. (Semi-skilled), Fitter/Instrument (semi-skilled), Cable Jointer (Semi-skilled), Fitter/Pipe (semi-skilled) and Fitter/General (semi-skilled). In this order, applicant was re-designated as Fitter/General, Mechanical (Semi-skilled). In this order, it was also mentioned that the seniority of the

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of the employees in the re-designated post is to be reckoned from the date of holding the post of D.B.Worker in the Semi-skilled grade. In order dated 20-10-1992 (Annexure-A/4), seven Fitters in different grades, coming under semi-skilled category were called to a Trade Test for Fitter Skilled grade. Applicant was not called to the Trade Test and amongst Fitter General, one Manobodh Budek was called to the Trade test. In September, 1993, applicant was called for the Trade test for Fitter General Skilled category and on being successful in the Trade test, in order No. 718, dated 29.9.93 (Annexure-A/5), applicant was promoted to Fitter Skilled Grade alongwith others. In this order, applicant's name stands at Sl. No. 1. On the same date i.e. on 29.9.1993, Respondents issued another order No. 719, dated 29.9.93 (Annexure-A/6). In this order, it was mentioned that 33 Pump Attendants (Semi Skilled) are re-designated and promoted with immediate effect or from the date of assuming the charge of higher posts of Fitter/General, Mech. Skilled. Applicant's case is that these Pump Attendants joined their service in May, 1990 without obtaining Police verification report. Petitioner further states that on 11.7.94, Semi-skilled confirmation merit list was published, which is at Annexure-A/7. According to the applicant, in this merit list, applicant's name was at Sl. No. 7. Therefore, on 28-5-1996, a seniority list was published by the Deputy General Manager, Ordnance Factory, Badmal, Respondent No. 4 for the Skilled grade employees, in which the applicant's name was shown against Sl. No. 35, instead of Sl. No. 1. This impugned seniority list is at Annexure-A/8. Being aggrieved by his position in the seniority list at Annexure-A/8, applicant approached Respondents 3 and 4 in person repeatedly but without any result. A written

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representation made by him on 14-12-1996 (Annexure-A/9) was also not considered. He sent several reminders and further representation to the Chairman, Ordnance Factory Board and these have also been annexed to this OA. Ultimately on 8-2-97, in letter at Annexure-A/10, applicant was informed that he has filed representation after a gap of three years but his case is being looked into along with other representations and the result thereof would be intimated to the applicant in due course. Thereafter, the petitioner has also made several reminders putting forth his grievance to the Authorities, but no communication has been made to him in this regard. In view of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents, in their counter, have stated that the applicant was issued with an appointment letter as DB Worker on 28.8.90 but the applicant has annexed the appointment letter of one Shri J.K. Baghel. Respondents have also admitted that the applicant was re-designated later on as Fitter/General. Respondents have further stated that in order dated 20.10.92 at Annexure-4, only one Fitter General namely Shri M. Budek was allowed to take the Trade test for Fitter/General Skilled Grade taking into consideration the fact that there was backlog of SC vacancy in the said grade and Shri Budek was the senior most amongst the SC candidates in Fitter/General (Semi-skilled Grade) and therefore, the question of ignoring the case of the applicant is not at all correct. Respondents have further stated that the fact that in the promotion order dated 29.9.93 at Annexure-A/5 applicant's name stands at Sl.No.1 does not indicate his placement in the seniority list or his placement on the basis of merit. It is further stated that Pump Attendants (semi skilled)

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were re-designated as Fitter/General (skilled Grade) merging the Pump Attendant trade with that of the Fitter/General Trade. Fitment of Pump Attendant Trade with Fitter/General Trade, has nothing to do regarding placement of the applicant or anybody else. It is further stated stated confirmation of Industrial employees (Semi-Skilled Grade), after completion of probationary period in the same grade, was published in the year 1994. The list at Annexure-A/7, is neither merit list nor seniority list and in the list, the applicant has been placed against Sl.No.86 and not at Sl.No.7 as alleged by him. Respondents have further stated that in the impugned seniority list at Annexure-8, applicant's name has been correctly shown against Sl.No.35 and Shri M.Budek's name has been rightly shown at Sl.No.1 because he belongs to SC community and was promoted to Skilled Grade on 27.7.1993. Respondents have further stated that according to the existing Govt.order governing seniority of Industrial employees, any industrial employee promoted to a particular grade will be treated senior to the Industrial employees promoted to the same grade at a later date. Persons shown against Sl.Nos.2 to 23 in the impugned seniority list, were Pump Attendants (Semi-skilled) who were promoted along with the applicant to the Post of Fitter/General (Skilled Grade) on the same day and as they have completed higher length of service in Semi Skilled Grade, compared to that of the applicant, they were given higher seniority. It is submitted that these Pump Attendants have been selected by an earlier selection Board than the one which promoted the applicant to the skilled grade. It is further stated that the applicant was given repeated hearing and the fact of his seniority was explained to him in detailed by the competent authority but the applicant has not been

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satisfied with that. It is further stated that the order at Annexure-A/5, nor the confirmation order at Annexure A/7 is the seniority list. On the above grounds, respondents have opposed the prayer of the applicant.

3. Applicant, in his rejoinder, has stated that 32 candidates, who were selected in the post of Fitter/General were appointed in three batches to the Post of DB Worker. Applicant was appointed in the second batch on 11.9.90. According to applicant, in the Gazette Notification of Government of India dated 6.7.89, at Annexure-12, which is Ordnance Factories (Group 'C' and 'D' Industrial Posts) Recruitment Rules, 1989, the Trade of Pump Attendant is shown at schedule B against Sl.No. 137. Applicant states that Fitter/General has been shown against Sl.No. 16 in Schedule A to the notification. It is further stated that according to Schedule A, against the post of Fitter/General, different categories like Master Craftsman (Highly Skilled Grade I, Highly Skilled Grade II, Skilled and Semi Skilled) has been mentioned but against the Post of Pump Attendant, which is at Sl.No. 137, in Schedule B, only the word Semi-skilled is mentioned. This shows that from the Post of Pump Attendant, there would be no further promotion whereas the applicant's Fitter/General trade, promotion can be upto the level of Master Craftsman. It is further stated that with the implementation of the recommendation of the Guha Committee accepted by the Ordnance Factory Board, for rationalisation of trades and grades in the Gazette Notification, it has been clarified that certain trades are dead end posts without any further promotion. Further it is submitted that though the recommendation were submitted way back in 1989, the merger or renaming as suggested by Guha Committee could not

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be implemented or incorporated in S/O dated 6.7.1989 at Annexure-A/12. It is further stated by the applicant that Ordnance Factories Board, in their letter/order dated 28.7.89, at Annexure-A/14 issued orders incorporating the operative instruction for Industrial employees and in para-2.2.2 it has been mentioned that the individuals in the trades listed for merger will be eligible to apply to the trade test. The merger will be in the same grade without any promotional benefits subject to their passing the trade test. Applicant was recruited as Fitter General along with 31 others. Initially, they were appointed as DB Worker but, subsequently, were redesignated as Semi Skilled Fitter General, maintaining his seniority from the date of appointment as DB Worker. It is further stated that according to Government of India instruction at Annexures-A/15 and A/16, he should have been upgraded to the level of Skilled grade immediately after completion of two years of service and therefore, his upgradation to Skilled grade should have been effected from 11.9.92 instead of 29.9.1993. Applicant has further re-iterated that he was left out from the trade test, when M. Budek was called for the trade test. It is further stated by him that no trade test was held from 20.10.1992 upto July, 1993. If the trade test would have been held between 20.12.92 to 27.7.93, he would have been promoted to Skilled Grade and would have been placed in Sl. No. 1. Respondents promoted 83 (thirty three) Pump Attendants to Skilled Grade on 29.9.93. Had he been upgraded to Skilled Grade before one day i.e. on 28.9.93, he would have been treated senior to the Pump Attendants and his position would have been in Sl. No. 2. Applicant has further stated that in OA No. 258/94 filed by Yudhistir Pradhan and 65 others, including

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the applicant, which is pending for judgment and in case, the applicant is allowed promotion one day prior to the promotion of the Pump Attendants, then he would have been senior to them. It is further stated that the Management has violated the Guha Committee recommendations of 1989 where the recruitment of Pump Attendant's trade was strictly restricted/banned/abolished but inspite of that 33 Pump Attendants were recruited in the year 1990, and therefore, to adjust, them they were appointed as Fitter General. It is further stated that confirmation list which is at Annexure-A/7, is the merit list and accordingly his position should have been in Sl. No.7 if all the 32 persons recruited with him were put together. On the above grounds, the applicant has reiterated his prayer made in the original application.

4. We have heard the petitioner in person and Shri U.B. Mohapatra, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents and have also perused the records. Petitioner has submitted a written note of submission which has also been taken note of. At the conclusion of the hearing, learned Additional Standing Counsel Mr. Mohapatra was directed to submit the circular of the Govt. of India regarding governing the seniority of Industrial employees as also the merit list of 32 candidates, who were recruited along with the applicant. In response to the direction of this Tribunal, learned Additional Standing Counsel has filed two circulars dated 28.7.89 which have been annexed by the applicant at Annexures-A/13 and A/14. Learned Additional Standing Counsel has also filed a set of documents indicating the interview ~~marks~~ marks obtained by the 32 candidates, who were selected along with the applicant. These papers have also been taken note of.

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The prayer of the applicant in this petition is to quash Annexure-A/8 which is the seniority list of Fitter/General Grade where his position has been shown at Sl.No.35. According to him, his seniority in the grade of DB Worker, later on redesignated as Fitter General from the date of his appointment as DB Worker, should have been determined on the basis of his position in the merit list alongwith 32 candidates and according to him his position should have been '7'. It is further stated that the Pump Attendants were wrongly absorbed as Fitter General on the same date i.e. on 29.9.93, when dt.29.9.1993 in another order, he was promoted to the level of Fitter General Skilled. It is further stated that he was wrongly not called to the trade test when Shri M. Budek was called and had he been called to the trade test, he would have been selected and placed to Fitter Skilled Grade earlier to the date when Pump Attendants were promoted to the Post of Fitter Skilled Grade. In support of his contention, the petitioner has relied upon the decision of the Hyderabad Bench of the Central Administrative Tribunal, in Original Application No. 730/1993 (V. Shankaraiah and another Vrs. Ordinance Factories Board and others) - copy of which has been filed by the applicant.

5. We have gone through this decision carefully. The issues involved in that decision are totally different from the points at issue in this case. There the applicants were placed below the private Respondents 4 and 5 in the merit list when applicants were selected to the posts of Millwright trade alongwith private respondents 4 and 5 but the applicant joined earlier and respondents 4 and 5 joined later because of delay in police verification report for them.

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Because applicants' joined earlier, they completed the necessary period of two years earlier for appearing the trade test for the next promotion. Respondents 4 and 5 appeared at another trade test, after completion of the necessary period of two years. In the promotional grades, seniority of Respondents 4 and 5 were placed above the applicants, even though they entered the grade later. Because of their seniority, above the applicants in the lower grade. This was challenged by the applicants and their contention was upheld by the Tribunal. The facts of the above case are totally different from the facts here and therefore, the above decision of Hyderabad Bench of the Central Administrative Tribunal does not provide any support to the contention of the present applicant.

The first point of the applicant is that the Pump Attendants should not have been recruited at all in 1990, their trade having been abolished in order dated 28th of July, 1989, Annexure-A/13, accepting the recommendation of the of the Guha Committee. But the fact of the matter is that 33 Pump Attendants were actually recruited by the Departmental Authorities in 1990 and according to the order at Annexure-A/13, the "trade" Pump Attendants, semi skilled, have been absorbed and merged with Fitter General mech. Therefore, having recruited Pump Attendants in 1990, Respondents were right in absorbing them as Fitter general in order dated 29.9.93. In any case, these 33 Pump attendants were absorbed as Fitter general in order dated 29.9.93 and the applicant has come up in this petition only in 1998. Therefore, it is not open for him now to question the absorption of these

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pump attendants as Fitter General Skilled in order dated 29-9-1993. Respondents have stated that having absorbed the Pump Attendants as Fitter General, Semi-skilled, they were placed above the applicant because they had completed longer period in the lower grade and as such, they were shown above the applicant. No fault can be found with this also. In any case, as earlier stated, it is not open for the applicant to challenge this after passage of more than four and half years when he has ^{not} challenged this earlier.

The second point of the applicant is that confirmation list at Annexure-4/7 is the merit list and in this he should have been shown against Sl.No.7. We have already dealt with the case of Pump Attendants and have held that they have rightly been shown above the applicant. Coming to the applicant's position amongst the 32 persons, who were selected alongwith him to the post of DB worker later on redesignated as Fitter general from the date of their joining as DB Worker. We find from the mark list annexed by the Departmental Respondents that there are eight persons above the applicant strictly in accordance with the marks in the interview and therefore, the applicant can not say that his position should have been No.7 or No.1 in the merit list.

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As regards the question that the applicant was illegally not called for the ^{trade} test, when M. Budek was called the Departmental Authorities have explained that Budek belongs to SC community and he was called for the trade test to fillup a post of Fitter General Skilled in the SC category. That being so, the applicant can have no grievance about the

calling of Shri Budek to the Trade Test. We find from the order dated 20.10.92, at Annexure-A/4 that only one Fitter General was called to the Trade test and i.e. Shri M.Budek and he was called for the purpose of filling up of ~~an~~ ^{the} post. No general category candidate belonging to Fitter General Mechanical Gr. was called in the trade test, in the letter dated 20.10.1992 and therefore, the applicant can not have any grievance with regard to the same.

To sum up, therefore, we see that the contention of the applicant that confirmation list is the merit list is not correct. Respondents have not enclosed the merit list of 32 candidates but have provided the complete interview sheets of all the candidates and by seeing the marks therein it is seen that there were eight persons, above the applicant on the basis of marks. Therefore, his position even amongst the 32 could not have been seven. Secondly absorption of Pump Attendants as Fitter General Skilled has been rightly done because it is in accordance with the circular dated 28.7.89 at Annexure-A/13 and since these persons who were originally Pump Attendants and later on absorbed as Fitter General had put in longer period than the applicant. They have been rightly shown above the applicant in the seniority list.

6. In the result, therefore, we hold that the applicant has not been able to make out a case for the reliefs claimed by him in this Original Application. The application is accordingly dismissed but in the circumstances, there would be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

(SOMNATH SOM)
VICE-CHAIRMAN
31.3.99