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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NO.534 OF 2008
Cuttack this the 07th day of September, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Jaya Krishna Baghel, aged about 43 years, Son of Late Bamdev Baghel at present working at Badmal Ordnance Factory in the sub trade Fitter Instrument residing at Qr.No.311441/4, Ordnance Factory, Badmal, At/Po.Badmal, Dist. Bolangir.

...Applicant

By legal practitioner: Mr.G.Rath, Sr. Counsel
M/s.S.Rath, B.K.Mishra,
Counsel

-Versus-

1. Union of India represented by the Secretary to the Government of India, Department of Defence Production, New Delhi-110 001.
2. Ordnance Factory Board, Ayudh Bhawan, 10A, Khudaram Bose Road, Kolkata-700 001.
3. General Manager, Ordnance Factory, Badmal-767770, Dist. Bolangir.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC

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ORDER

Per- MR.A.K.PATNAIK, MEMBER (JUDL.):

The prayer of the Applicant in this Original Application filed under section 19 of the


A.T. Act, 1985 is as under:

- (a) To prepare the common seniority list as per the law;
- (b) To fix the seniority position of the applicant;
- (c) To promote to the High Skilled Grade from the date from which his juniors are got promotion with consequential benefits;
- (d) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice
- (e) To order and direct that the cost of litigation be paid to the applicant by the respondents."

2. The Applicant claimed the aforesaid relief on the foundation that he was appointed as Danger Building Worker (Semi Skilled) [in short 'DWB'] on 19-07-1990 which post was subsequently re-designated on 13.12.1991 as Fitter/Instrument (Semi Skilled). While the matter stood thus, on 03-12-1992 the Applicant appeared at the trade test and after being successful in the said test was promoted to Fitter (Skilled) grade. Thereafter, on 27.7.1993 he was promoted to higher grade of Fitter (Skilled) and then on 07-08-1999 to the post of High Skilled Grade-II.

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Recruitment Rules, 1994 in shape of SRO No.185 of the Ordnance Factories Group C and D Industrial Post came into existence w.e.f. 01-11-1994 which was amended on 28.1.1997. Further case of the Applicant is that in pursuance of the aforesaid two notifications, Director General, Ordnance Factory Board issued clarification under Annexure-A/8 dated 24-12-2002 clarifying there under that the seniority of the employees will be counted from the date of promotion to Skilled grade and not from the date of induction/entry/promotion to Semi Skilled grade and that only one trade wise seniority list will be maintained and there is no question of maintaining two separate trade wise seniority lists one for promotees and one for direct recruited/inducted ITI/NCTVT pass/Diploma or Certificate holder/Ex-Trade Apprentices. Thereafter, vide Annexure-A/9 dated 20-05-2003 the Govt. of India, Ministry of Defence issued direction for restructuring of cadre in defence establishment and the Director General, Ordnance Factory Board has again reiterated in circular under Annexure-A/10 dated 12.7.2003 that seniority will be counted from the date of holding the High Skilled Grade. But, it is the case of the Applicant that the Respondent No.3 in violation of the provision of SRO published the seniority list under Annexure-A/11 dated 10.12.2003 sub trade wise among the employees continuing in the Fitter Trade. The employees who were affected by such publication of seniority list sub trade wise agitated their grievance by making representation through their union and the applicant also agitated his grievance by making representation individually on 16.02.2004. In consideration of the representation of the Employees Union so also of the Applicant, the Director General, Ordnance Factories Board in letter under Annexure-A/14 dated 28-10-2004 directed the Respondent No.3 to look to the grievance of the Applicant. Before any reply is received on the representation, Respondent No.3 again published seniority list in fitter trade sub trade wise in Annexure-A/15 dated 11-03-2005 and after publishing the seniority list in a manner contrary to the provisions of the Rules, Respondent No.3 in letter under Annexure-A/17 dated 27.4.2005 issued instruction to the Secretary Section A/1 Ordnance Factory to settle the grievance of the Applicant. The Applicant in his representation under Annexure-A/18 dated 11.08.2008 reiterated his grievance. Alleging no action on his grievance he has approached this Tribunal seeking the aforesaid relief.



3. Respondents filed their counter in which besides opposing the grievance of the applicant, on merit, raised the preliminary objection on the very maintainability of this OA being hit by limitation and nonjoinder/misjoinder of necessary party. Despite adequate opportunity, no rejoinder has been filed by the Applicant.

4. We have heard the Learned Counsel appearing for both sides and perused the materials placed on record.

5. The contention of the Learned Counsel for the Applicant is that Respondent No.3 in gross violation of the provision of SRO No.185 and the administrative instructions issued thereto, published the seniority list in Fitter Trade sub trade wise although as per the provisions a common seniority list in the Fitter Trade taking into consideration the date of joining in the trade ought to have been published. It was contended that despite the order of the Director General, Ordinance Factories Board to settle the grievance of the applicant as raised in his representation, Respondent No.3 kept silent on the matter and on the other hand issued the seniority list in deviation of the provisions of the Rules. According to the Learned Counsel for the Applicant for such inaction of the Respondent No.3, some of his juniors in fitter trade got promoted to the next higher trade and as such, it was contended by the Learned Counsel for the Applicant since preparation of seniority list in the fitter trade sub trade was de hors the Rules, the Applicant is entitled to the relief claimed in this OA.

On the other hand, relying on the averments made in the counter, it was contended by Mr.Mohapatra, Learned Senior Standing Counsel appearing for the Respondents that each trade/grade has separate sanctioned strength having separate seniority list right from the inception of the factory and this has not been challenged at any point of time by any employee of the Department. In terms of the foot note of the schedule to SRO-18 E of 1989 the number of posts as indicated in Column 2 in the schedule is subject to work load and need based as per trades prescribed at Annexure-A&B and not as allied trade or sub trade. Column 11, 12 & 15 of the schedule to SRO 18 E of 1989 provides that promotion shall normally be from the feeder grade indicated in Col.12. But where two or more feeder grades are declared to be allied trades or allied grades the General Manager is fully competent to maintain the trade wise and grade wise seniority

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list on faire quire and not common seniority because there are two types of workers e.g. Direct Workers who are carrying out work in Production Units and (b) Indirect workers who are engaged in maintenance/Service Section. The Applicant is coming under the category of indirect worker and is holding the post of Fitter/Instrument/Highly Skilled. His nature of job is totally indirect and not directly linked with Production. Through notification dated 28th January, 1997 they have highlighted the amendment Recruitment Rules (SRO-185), 1994 but the appointment of the applicant as DBW/SS through erstwhile SRO 18E, 1989 which provides maintenance of seniority list trade wise and as such any deviation at this stage may generate discontentment among the industrial direct workers. If amalgamation of several trades is done in one trade, trade test specifications of the elongated trade is required to be changed by merging the various trades apart from incorporating the job requirements of merged trades. So far as trade specification is concerned, there are listed trades at Annexure A&B of SRO-18 E and subsequent SRO 185 also, trade wise job requirements are different. Therefore, common seniority is not relevant for different trades as they are to be trade tested for different skills as per the requirement in their own streams. Besides the above, learned Senior Standing Counsel has also reiterated the stand of non-joinder/misjoinder of necessary party and delay in filing this OA. By stating so, he has sincerely prayed for dismissal of this OA.

6. In course of hearing, we wanted to ascertain from Mr. Rath, Learned Counsel appearing for the Applicant whether any so called junior to the applicant has been promoted meanwhile and if so why he has not challenged the said order of promotion by making the promotee(s) as party to this OA and also did not mention the name of any such person in the OA. But Mr. Rath, was not able to substantiate such stand either by producing copy of the order of promotion of any such junior or showing us the name of any such promotion. He has also not challenged any such promotion order of his so called junior making any of them as party to this OA. In this context, it is worthwhile to mention that compliance of principle of natural justice is sine qua non in every action either of the executive or before passing order by the Tribunal. The Applicant in this OA claims promotion to the next grade/trade when his so called juniors were

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16 -5- promoted to the said higher grade/trade but without making any such person as party to this OA or even challenging the order in which his so called junior was allowed promotion.

7. The Applicant's prayer in this OA to direct the Respondents to prepare the common seniority list as per the Law without citing any such law application of which seniority list in the grade/trade would be fixed commonly. Besides in case such direction is issued the employees whose interest would be affected has not been made as party. Similarly his second prayer is to direct the Respondents to fix his seniority position without mentioning in which grade/trade and without making the persons over whom his name in the seniority list would be fixed as a party to this OA.


8. Besides, it is seen that Applicant was re-designated as Fitter/Instrument (SEMI Skilled) by the order under Annexure-A/2 dated 13.12.1991. Even according to the Applicant in Annexure-A/11 dated 10.12.2003 seniority list of Fitter trade in sub trade wise was published by the Respondent No.3 which was again repeated under Annexure-A/15 dated 11-03-2005. The Applicant filed this OA on 31st December, 2008. On our specific query about the inordinate delay in approaching this Tribunal without any application seeking condonation of delay, there was no satisfactory answer except reiterating that he was legitimately expecting a reply from the concerned authority.

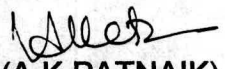
9. In view of the above, we find no force in any of the submissions of the Learned Counsel for the Applicant for grant of any of the reliefs claimed in this OA.

10. However, last but not the least, it is observed that on the representations submitted by the applicant and the Union under Annexure-12 and 13 order has been issued by the Director General, Ordnance Factory under Annexure-A/14 dated 28.10.2004 to the Respondent No.3 and the Respondent No.3 under Annexure-A/17 dated 27.4.2005 to the Secretary, Section A/1 Ordnance Factory to settle the grievance of the Applicant which are still pending unsettled and, therefore, we hope and trust the Respondents would do well ^{to consider} on the pending representations of the applicant and communicate the decision to the applicant in a well reasoned order at an early date preferably within a period of three months from the date of receipt of copy of this order.

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11. With the aforesaid observation this OA stands disposed of by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

