

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA Nos. 7 & 8 OF 2011
Cuttack this the 30th day of August, 2013

IN O.A.No.7/2011

Sri Jagdadish Chandra Subudhi Ray

IN O.A.N.8/2011

Nabaghana Behera

...Applicants


-VERSUS-

Union of India & Ors

....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *No*
2. Whether it be referred to CAT, PB, New Delhi or not ? *No*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA Nos. 7 & 8 OF 2011

Cuttack this the 30th day of August, 2013

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HON'BLE SHRI A.K.PATNAIK, MEMBER(j)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

IN O.A.No.7/2011

Sri Jagdadish Chandra Subudhi Ray
Aged about 50 years
S/o. Dasarathi Subudhi Ray
Resident of Village-Devinagar,
PO-Chasapara
PS-Choudwar
Dist-Cuttack
At present working as Fitter General Ordnance Factory
At-Badmal,
PO-Badmal
Dist-Bolangir

IN O.A.N.8/2011

Nabaghana Behera
Aged about 55 years
S/o/ late Iswar Behera
At/PO-Brahmabarada
District-
At present working as Fitter General
Ordnance Factory, At-Badamal
Dist-Bolangir

...Applicants

By the Advocate(s) – Mr.P.K.Khuntia

-VERSUS-

Union of India represented through

1. The Secretary to Government of India,
Ministry of Defence
DHQ Post Office
New Delhi-110 011
2. Director General
Ordnance Factory Board
10-A, Saheed Khudiram Bose Road,
Kolkotta-700 001

3. The General Manager(J.L.Mishra)
Ordnance Factory
At/PO-Badamal
PS-Saintala
Dist-Bolangir-767 770

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

The facts and circumstances urged and the point to be decided being the same and similar, this common order will govern both the above mentioned O.As.

2. Applicants in both the OAs are presently working as Fitter General in the Ordnance Factory, Badamal in the District of Bolangir. They have approached this Tribunal aggrieved with the order dated 20.3.2010(Annexure-A/1) passed by the Respondents wherein the notional seniority/promotion granted to them vide Order No.245 dated 9.7.2008 has been cancelled and in the circumstances, they have prayed for quashing the said impugned Annexure-A/1 dated 20.3.2010 and ^{also that} in effect the notional seniority accorded to them by virtue of the orders at Annexures-A/7, A/9⁸ and A/9 should be allowed to continue in force.

After filtering out the unnecessary details, the facts of these OAs in short are mentioned below.

3. The Director General, Ordnance Factory, Board, Kolkatta (Respondent No.2) had formed a Committee to study the discrepancies in the seniority list as alleged in the various grievance petitions given by the

employees including the applicants. This Committee, after inspection of the relevant documents and records, studying the Recruitment Rules and various other rules and orders and also after holding discussion with various Unions and Welfare Associations submitted its report with necessary recommendations dated 7.2.2008 to the Respondent No.3, the General Manager, Ordnance Factory at Badamal in the District of Bolangir, which is placed at Annexure-A/3 of the O.As. In the said report, the Committee had come to a finding that the claims of the applicants for their seniority over one M.Budek in different grades was justified and recommended accordingly. The General Manager of the Ordnance Factory, by his letter dated 25.2.2008 submitted the findings of the Expert Committee to the Ordnance Factory Board, Kolkatta and in the said letter it was mentioned that the claim of the applicants for their seniority over Shri M.Budek in different grades is justified. On the basis of the recommendations made by the General Manager, Ordnance Factory, Badamal, Ordnance factory Board sanctioned additional posts by their letter dated 18.6.2008 comprising six posts in CM-II(Technical/Mechanical), eight posts in High Skilled Grade and seven posts in Skilled Grade to facilitate implementation of the Expert Committee's recommendations. After the posts were sanctioned, the General Manager, approved the applicants' seniority and promotion vide Office Note dated 30.6.2008. It was mentioned by the General Manager that the benefits of promotion and seniority in accordance with the Expert Committee recommendations over their junior Shri M.Budek with effect from 9.10.2002 was approved notionally without financial benefits. After the approval of the General

Manager, the concerned authorities published the applicants' notional seniority in Skilled Grade on 27.7.1993 and H.S. Grade on 27.7.1996 vide Factory Order dated 9.7.2008. This order has been filed as Annexure-A/8 in this O.A.

4. In the meantime, three other employees, S/Shri P.K.Mohanty, S.N.Paikray and M.K.Acharya, who were similarly placed as ²that the applicants herein and whose cases were recommended by the Expert Committee for promotion and thus had been promoted by order No.249 dated 14.7.2008, but their promotions were cancelled on 28.7.2008 had approached this Tribunal in O.A.Nos.285 and 286 of 2008, ²respectively. This Tribunal vide order dated 16.2.2009 allowed the claims of the applicants. This order of the Tribunal was challenged by the Respondents before the Hon'ble High Court of Orissa in W.P.(C) Nos. 78 and 79 of 2010. The Hon'ble High Court of Orissa having confirmed the orders of this Tribunal, the applicants therein were given promotion by order No.195 dated 21.4.2010.

5. Coming back to the case of the present applicants, after the orders of notional seniority in respect of the applicants were issued in the Factory Order No.245 dated 9.7.2008 (Annexure-A/8) of the O.A., vide Factory Order No.130 dated 20.3.2010 the earlier order of seniority and promotion given to six Fitter General which included the applicants was cancelled by the General Manager of the Ordnance Factory at Badamal. This gave rise to the present litigations filed by the applicants before this Tribunal.



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6. In support of their case, the applicants have pleaded that the issuance of order dated 20.3.2010 cancelling their notional seniority/promotion is not only arbitrary but also based on no justifiable reasons. They have also pleaded that the employees under similar circumstances had approached the Tribunal in O.A.Nos.285 and 286 of 2008. The Tribunal had directed for restoration of their seniority and promotion and this order was confirmed by the Hon'ble High Court of Orissa. According to applicants, since they are similarly circumstanced, they are entitled to similar relief as has been granted by this Tribunal to the applicants in O.A.Nos. 285 and 286 of 2008.

7. The Respondents in their counter affidavit have admitted that the order of granting notional seniority/promotion to six employees including the applicants was published vide order dated 9.7.2008. However, on a subsequent date this case was reviewed and it was found that due to insufficient and incomplete information, the Expert Committee overlooked the fact that the erstwhile senior employees were being superseded because of their recommendations and therefore, it was decided by the authorities that such recommendations could not be accepted or implemented. On account of this review by the authorities, the notional seniority and promotion conferred vide order dated 9.7.2008 was cancelled vide order No.130 dated 20.3.2010 to enable a thorough investigation for maintaining proper seniority and to avoid litigation. In the counter affidavit it has been further pleaded that there is no ill intention behind the action taken by the Respondents. It is further submitted in the counter affidavit that the Expert Committee report on seniority was found to be

contradictory, because from the existing position, one Shri Budek is senior to all the 33 Pump Attendants. But 8 Fitter General of 23.4.1990 panel having been recommended for seniority and promotion with respect to Shri Budek, again the Pump Attendants have been made senior to 10 Fitter General of 23.4.1990 panel. The competent authorities felt that the implementation of the said Expert Committee report will invite industrial unrest. Therefore, the factory authorities requested the Ordnance Factory Board, Kolkatta to sanction additional posts in different categories. The Respondents have admitted that some additional posts were sanctioned by the Ordnance Factory Board and those posts were ^{not} operated because of the apprehension that there would be far reaching consequences which may lead to unsettling of the settled seniority in the various grades. Later on the said posts have already been withdrawn. Further in the counter affidavit it has been submitted that the case of S/Shri P.K.Mohanty, S.N.Paikray and M.K. Achaya is related to another trade, i.e., DBW in which case, suitable action has been taken to implement the orders of the Courts. However, the present applicants belong to the trade of Fitter General and therefore, the seniority in the DBW trade and the seniority in Fitter General trade are different from each other. As such, according to Respondents, the decision of the Tribunal in O.A.Nos. 285 and 286/2008 as upheld by the Hon'ble High Court of Orissa would not be applicable to the present O.As. A specific mention has been made that the averments made by the applicants that Shri M.Budek is junior to them is not a correct one. Shri Budek was junior to the applicants in the semi- skilled grade, but got promoted to the Skill ^{ed} Grade with effect from 27.7.1993 on completion of

the qualifying service and after coming out successful in the required trade test earlier to the applicants and hence became senior to the applicants in the ~~semi~~²¹ skilled grade. Respondents have, however, admitted that the order regarding notional seniority and promotion was issued in respect of the applicants. However, the same was cancelled by the issuance of the order dated 20.3.2010 mainly on account of the fact that the implementation of the recommendations of the Expert Committee would unsettle the settled position and will lead to industrial unrest.

8. The applicants have also filed rejoinder to the counter more or less urging the same standpoint as in the OAs.

9. Having heard the learned counsel for both the sides, we have also perused the records. It is pertinent to see the orders of this Tribunal dated 16.2.2009 in O.A.No.285 and 286 of 2008. The applicants in O.A.Nos. 285 and 286 of 2008 were Danger Building Workers(in short DBW). They were also given promotion based on the recommendations of the Expert Committee of the Ordnance Factory Board. In their cases also, the orders of promotion were cancelled vide an order dated 28.7.2008 issued by the factory authorities. The applicants in the previous OAs had taken a plea that the Respondents, before cancelling the order of notional seniority/promotion having not issued any show cause notice to them, ~~they~~²² had violated the basic principles of natural justice. It was also alleged that the authorities yielded to the pressure put by the Trade Unions. The Respondents in ~~that~~^{those} cases had argued that they were trying to settle the seniority issue by granting notional seniority to the applicants and similarly affected persons. However, the Respondents on the basis of the letter

dated 17.7.2008 of the local Trade Union had to cancel the promotion and notional seniority granted to the applicants. The Respondents in the earlier OAs had pleaded that the Ordnance Factory which is an Industrial Unit of Defence production is primarily responsible for providing large scale of medium high caliber ammunitions to the armed forces of India. It was cautioned by the Union that if the promotion orders of the applicants were not cancelled there would be industrial unrest. Considering this a sensitive case the Respondents without issuing any show cause notice to the applicants cancelled their orders of promotion and seniority, which was issued earlier. The Tribunal in the previous cases had quashed orders cancelling the grant of notional seniority/promotion to the applicants with direction that the applicants should be restored to their earlier order of promotion and seniority. In the fitness of things, the relevant portions of the orders of this Tribunal in O.A.Nos. 285 and 286/2008 are quoted below.

“From the record as also from the arguments advanced by the parties it is revealed that the promotion of the Applicants to the posts of High Skilled DBW was in no way irregular nor they were given promotion in superseding the claims of their seniors. It was also not the case of the Respondents that both the applicants were ineligible to be promoted to the said post. Rather it is revealed from the record that the names of the Applicants were not properly placed in the seniority list for which they were ignored while giving promotion to their juniors and on rectification of such mistake, the Applicants were given promotion to High Skilled with effect from the date their juniors were promoted. This promotion was also effected after the recommendation of the Expert Committee of the OFB duly constituted for consideration of the case of some of the left out employees. As such, the Respondents ought not to have surrendered their discretion on the pressure of the Union that too without giving the Applicants any

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 opportunity before cancelling their order of promotion as provided in various judge made laws which needs to emphasis. However, by the order of stay granted by this Tribunal while issuing notices to the Respondents calling for their counter, both the Applicants are continuing in the higher post but not getting their salary. no 2

In view of the above, while deprecating the action of the Respondents in cancelling the order of promotion on the pressure of the Union, we hereby quash the impugned order dated 28.7.2008 in both the OAs and as a consequence restore their order of promotion to the posts of DBW, HS and direct the Respondents to calculate and grant the differential pay by way of salary in the High Skilled Grade within a period of 30 days from the date of receipt of copy of this order.

In the result, both the OAs stand allowed".

10. Aggrieved with the above decision, the Respondents moved the Hon'ble High Court of Orissa in W.P.(C) Nos. 78 of 2010. The Hon'ble High Court vide order and judgment dated 31.3.2010 disposed of the said Writ Petition as under.

"...Considering such statement made in the counter affidavit, we find that the said order of reversion having been passed under the pressure of the Trade Union and without service of notice to show cause is unsustainable under law and the Tribunal was justified in setting aside the said order of reversion.

For the reasons stated above, we do not find any justification to interfere with the impugned orders.

The Writ Application being devoid of merit is dismissed".

11. It is quite evident from the earlier decision of the Tribunal as upheld by the Hon'ble High Court of Orissa that similar cancellation order was issued by the authorities in respect of the other employees belonging to a different trade, who had got promotion on the basis of the Expert

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Committee's recommendations. The said order of cancellation was quashed by this Tribunal since that action was resorted to under pressure put by the Trade Union and no notice was served on the applicants who were to be affected by that order. The order of this Tribunal was also confirmed by the Hon'ble High Court vide order dated 31.3.2010 in W.P.(C) No.78/2010. The Hon'ble High Court has also made a very clear observation that the order of cancellation having been issued without notice to show cause is unsustainable under the law and that the Tribunal was justified in setting aside the order of reversion.

12. The order of cancellation of the earlier ^{order} of notional seniority dated 9.7.2008 was issued on 20.3.2010. A perusal of the order dated 20.3.2010 reveals that in view of incomplete information, arriving at decision by the Expert Committee/Ordnance Factory Board and anticipating exodus of representations from the ~~from the~~ senior employees getting superseded the factory order under reference sanctioning notional seniority and promotions to 06(six) Fitter/General namely(1) S/Shri JCS Roy, (2) K.S.Nanda, (3) S.Behera, (4) Ananda Bhoi (5) N.G.Behera and (6) B.Bhua is hereby cancelled. This letter has been issued with the approval of the General Manager. This letter itself clearly indicates that no show cause notice has been served on the employees who were likely to be affected thereby and thus, there was no opportunity provided to them of being heard. However, the Expert Committee was admittedly appointed by the Ordnance Factory Board and its recommendations were duly accepted for implementation. The factory office requested for sanctioning additional posts with a view to implementing the recommendations of the Expert

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Committee and in fact those posts were sanctioned by the Ordnance Factory Board. In order dated 20.3.2010, the Respondents have challenged the recommendations of the Expert Committee by mentioning the reason "incomplete information". They have also mentioned that anticipating exodus of the representations from the senior employees getting superseded and that is the reason why they have to cancel the order of notional seniority granted to six employees. A plain reading of this order also indicates that no notice was issued to those employees before the said order adversely affecting their interests could be issued. At the same time, the reasons for cancellation are neither convincing nor cogent. In the counter affidavit, it has been argued that a good number of administrative instructions have been received and the cadre restructuring of the industrial employees has come into operation twice and by virtue of cadre restructuring operation seniority of various employees have been maintained. It is further argued that any order of this Tribunal granting seniority to the applicants will now obviously put the administration into trouble and therefore, the seniority situation should not be disturbed. This is a very unacceptable and indefensible plea made in the counter affidavit. The principles of natural justice ^{are} sine qua non in such matters and there is no reason why the same could not be applied to the cases in hand. When the action is prima facie unreasonable and arbitrary, the Tribunal is bound to come to the aid of the applicants in consonance with the principles of natural justice. The Respondents cannot take a plea that an order will put the administration into trouble and therefore, it should not be passed. Another submission made by the Respondents is that in case the notional

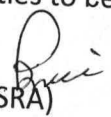
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seniority is granted the same will lead to far reaching consequences. We fail to appreciate this plea extended by the Respondents. It is not understood what exactly they mean by far reaching consequences. In the earlier OAs decided by this Tribunal the applicants no doubt belonged to a different trade, but in our considered view, they were subjected to the circumstances which are quite akin to the circumstances under which the applicants have approached this Tribunal in the present O.As. The Hon'ble High Court of Orissa has also confirmed the orders of this Tribunal and made an observation that the order of reversion having been passed under the pressure of the Trade Union and without service of notice to show cause was unsustainable under law and was liable to be set aside. Although in the OAs under consideration, the plea of pressure by Trade Union has not been taken by the Respondents, yet, they have mentioned about the far reaching consequences and industrial unrest as well as inviting a lot of representations from the senior employees. However, the fact remains that the Respondents have not complied with the principles of natural justice before cancellation of the order of promotion/seniority granted to the applicants. Instead, they have been swayed by the extraneous consideration. Therefore, the ratio laid down by this Tribunal in O.A.Nos. 285 and 286/2008 as confirmed by the Hon'ble High Court of Orissa in W.P.(C) No.78/2010 is squarely applicable to this case.

13. In view of the foregoing discussions, the impugned order No.130 dated 20.3.2010(Annexure-A/1) of both the OAs is quashed. Consequently, the Respondents are directed to restore the position of the applicants as was granted to them by virtue of order No.245 dated 9.7.2008 and allow

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them the consequential benefits . Thus both the O.As are allowed, leaving
the parties to bear their own costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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