

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.94 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G. S. Maingi, Administrative Member

Shri Sudhir Kumar Mookherji, S/o Late
Amulya Bhusan Mookherjee residing at
82, Moore Avenue, Calcutta-700040,
Ex-Asstt. Foreman, Gun and Shell
Factory, Cossipore, Calcutta-2

... Applicant

VS

1. Union of India, represented by the
Chairman, Ordnance Factory Board,
10A, Auckland Place, Calcutta-1

2. The Member Personnel, O.F. Board,
10A, Auckland Place, Calcutta-1

3. The Dy. Director/General/
Personnel/OFB/Calcutta-1

4. The General Manager, Gun & Shell
Factory, Cossipore, Calcutta-2

5. Shri Ashok Dasgupta, Asstt.
Foreman, G.S.F., Cossipore, Calcutta

6. Shri Ranjit Das, Asstt. Foreman,
G.S.F., Cossipore, Calcutta-2

7. Shri Purnendu Mukherjee, Jr. Works
Manager, Ordnance Factory, Ambajhari,
Nagpur, Maharashtra

... Respondents

For the Applicant(s): In person.

For the Respondents : Mr. M. S. Banerjee, counsel

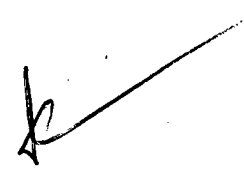
Heard on 19.8.1999

: : Date of order: 19.8.1999

O R D E R

D. Purkayastha, JM

Applicant, Shri S. K. Mookherjee now retired Asstt.
Foreman of the office of the respondents filed this application
before this Tribunal seeking correction of his seniority position
as Assistant Foreman (Technical) published in the year of 1994

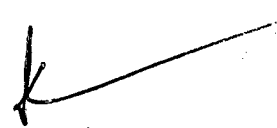


and also for promotion with retrospective effect in pursuance of the Ordnance Factory circular No.673/A/NI dated 6.11.62 which runs as follows:

"D.G.O.F. has decided that diploma holders service as Supervisor 'A' (Tech./Supp.'B') (Tech) and equivalent Grade should be treated as follows:-

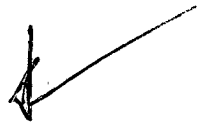
- (i) All those diploma holders who have been appointed as Sup.'B' (Tech) (and in eq.grade) would be on completion of 1 years' satisfactory service in Ordnance Factories be promoted to Supervisor 'A' (Tech) and in equivalent grades.
- (ii) All those diploma holders who work satisfactorily as Sup.'A' (Tech) or in equivalent grades for 2 years in Ordnance Factory should be promoted to Chargeman."

According to the applicant, he is a Diploma holder Engineer and he was selected by the respondents for the post of Supervisor 'A' in the year of 1964 with a verbal assurance given to him that he would be promoted to the post of Chargeman Gr.II on completion of two years of service in that grade, but the respondents before completion of two years service in that grade had withdrawn that circular by another notification dated 20.1.66. It is also alleged by the applicant that in the year of 1969 he was promoted as Chargeman Gr.II in the said office and posted to Ambhajhari, but he had forgone the said promotion for his personal reason. Thereafter the applicant's case was overlooked for promotion by the DPC from the years of 1970 to 1976 and till 1976 he has not been considered and he made a number of representations to the authorities but to no effect. Thereafter, in the year of 1977 he was selected by the DPC for promotion to the post of Chargeman Gr.II and thereafter he was again promoted to the post of Chargeman Gr.I in June, 1980 and Assistant Foreman in July, 1993 and thereafter the applicant retired from service on 30.11.95. After retirement the applicant filed this application before this Tribunal on 18.1.96. According to the applicant, many junior



persons were superseded during the period from 1970 to 1976 and he was denied promotion arbitrarily by the respondents. So, he is entitled to get promotion with effect from 1966 in pursuance of the circular issued by the Ordnance Factory.

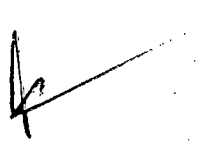
2. The respondents filed written statement denying the allegations of the applicant made in the application and in the written statement, the respondents raised the question of limitation stating that it is barred by limitation. It is stated by the respondents that the applicant a Diploma holder was appointed as Supervisor 'A' in the Mechanical Stream with effect from 28.1.64 in Gun and Shell Factory, Cossipore. He was posted as Pipe Line Inspector in Oil India Ltd. on lien with effect from 5.10.76. He was reverted back to Gun and Shell Factory on 25.4.77. He was transferred to Ordnance Factory, Dum Dum on promotion to Chargeman Gr.II (Mechanical) with effect from 9.5.77 and promoted to Chargeman Gr.I (Mechanical) with effect from 12.6.80 and Assistant Foreman (Mechanical) with effect from 1.7.83. He was transferred to Gun and Shell Factory as A.F. (Mech.) with effect from 11.1.89. It is stated that the applicant is not entitled to get promotion to the Chargeman Gr. II on the basis of the circular dated 6.11.62 which been subsequently withdrawn by another circular dated 20.1.66. As a result, the applicant could only be considered for Chargeman Gr.II in 1969 on transfer from Ambajhari. The applicant, however, had forgone his above promotion. In the next DPC for promotion to Chargeman Gr.II (Mech.) held in 12/71, the applicant was duly considered. Unfortunately, the applicant due to his merit classification as assessed by the relevant DPC couldnot find a place in the selected panel for promotion to Chargeman Gr.II. Thereafter, the applicant has been promoted to the post of Chargeman Gr.II with effect from May, 1977, Chargeman Gr.I with



effect from June, 1980 and Asstt. Foreman (Mechanical) with effect from July, 1983 and the applicant cannot claim promotion with effect from 27.1.66; July, 1970 and June, 1975 respectively and consequential promotions upto the post of Works Manager in March, 1993 in the present application. Such claim of the applicant has become barred under the provisions of the Administrative Tribunal Act, 1985. It is also denied that the applicant was given clear understanding that he would be promoted to the post of Chargeman Gr.II on completion of two years service as Supervisor 'A'. It is also stated by the respondents that the decision of the Hon'ble Supreme Court in the case of Virendra Kumar and others have no manner of application in the case of the applicant in view of the judgment passed by the Hon'ble Supreme Court in Palaru Ramkrishnaiah and others vs. Union of India and others, reported in AIR 1990 SC 166 and therefore, the application is devoid of merit and liable to be dismissed.

3. The applicant appears in person before us and the respondents are represented by the learned advocate, Mr. M. S. Banerjee. The applicant, firstly, contended that he had been given an assurance by the respondents at the time of selection that he would be promoted to the Chargeman Gr.II on completion of two years on the basis of the circular issued by the respondents in the year of 1962. But the respondents did not keep their promise for the purpose of promotion of the applicant to the post of Chargeman Gr.II. Therefore, he is entitled to get the benefit of the judgment of Virendra Kumar, reported in AIR 1981 SC 1775.

4. Mr. Banerjee, learned advocate, on the other hand, contended that before completion of two years service in the grade of Supervisor 'A', the said circular had been withdrawn by subsequent notification dated 20.1.66 which runs as follows:




"The question of promotion of Diploma holders in Mech/Elec Engg. and Ex-Apprentices serving as Supervisor 'A' Grade or equivalent grades has received further consideration of the DGOF who has decided that in future promotions of such individuals will be effected in accordance with the normal Rules i.e., on the basis of their listing by the relevant DPC and not merely on completion of two years service as Supervisor - A Gr. or equivalent Grades."

Mr. Banerjee further submits that that circular has been affirmed by the Hon'ble Apex Court in subsequent judgment reported in AIR 1990 SC 166 (Palaru Ramkrishnaiah and others vs. Union of India and others). So, the applicant is not entitled to get the benefit of that circular. The contention of the applicant is that he was still in service while the circular was in operation; so, he ought to have been given the benefit of the circular notwithstanding the fact that the circular of 1962 has been withdrawn in the year 1966.

5. In view of the divergent arguments of both the parties we have considered the submissions of both sides and we find that the Hon'ble Apex Court in the subsequent judgment reported in AIR 1990 SC 166 has considered the validity of the circular dated 6.11.1962 in the said judgment and the Hon'ble Apex Court in para 11 has held as below:

"It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule. Notwithstanding the issue of instruction dated 6th November, 1962, therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion the said procedure could not be abrogated by the executive instruction dated 6th November, 1962. The only effect of the circular dated 6th November, 1962 was that Supervisors 'A' on completion of 2 years' satisfactory service could be promoted by following the procedure contemplated by Rule 8."


It remains undisputed in this case that the circular dated 6.11.62 has been withdrawn before completion of the applicant's two years service as Supervisor Gr.'A'. Since the circular has



been withdrawn before completion of two years of service of the applicant in the grade of Supervisor Gr.A; therefore, he ~~was~~ not entitled to get the benefit of that circular. Regarding assurance of promotion of Chargeman Gr.II, as alleged by the applicant, we are of the view that the Government can act in writing only and no verbal assurance can be effective in the matter of Government ³ ~~sanction~~ sanction. The applicant failed to produce any written assurance except the circular dated 6.11.62 that he was given assurance for promotion to the Chargeman Gr.II on completion of two years. It is found that that circular dated 6.11.62 was found to be invalid by the Hon'ble Apex Court in the year of 1989. ~~We are not entering into the question how it has been decided by the Hon'ble Apex Court.~~ ^{So} But we are concerned with the fact that whether the applicant ~~is~~ entitled to get the promotion to the post of Chargeman Gr.II from the post of Supervisor Gr.'A' after completion of the two years' satisfactory service in the grade of Supervisor Gr.'A' on the basis of the said circular. Since the applicant did not complete two years service before withdrawal of the circular; therefore, that circular cannot be invoked for the promotion of the applicant. Therefore, we do not find any merit in the application for promotion of the applicant on the basis of the circular dated 6.11.62. But regarding allegation of supersession of the applicant by the juniors in the matter of promotion from the years of 1969 to 1977, we find that the applicant was sent on deputation for certain period for seven months and we also find that the applicant does not dispute the fact that he had forgone the promotion in the year of 1969, as stated by the respondents. But the grievance of the applicant is that the DPC took place every year from the year of 1972 to 1976, but his case was overlooked for promotion and ultimately, the DPC selected him for

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promotion to the Chargeman Gr.II in the year of 1977 and he has accepted it. On a perusal of the written reply, the respondents also could not explain why the case of the applicant was overlooked for consideration by the DPC from the year 1970 to 1976 except the year of 1971. We find that applicant had ~~no~~ grievance in respect of consideration for promotion from Chargeman Gr.II for the particular period from 1972 to 1976, since his case was considered in the year of 1971 and he was not found selected by the DPC. But we find that the applicant could not produce a single representation before us, if any made immediately after that supersession ^{by} overlooking his case, to the competent authority. He ^{produced} ~~includes~~ some representations in the application starting from the year of 1973 and the applicant also did not specifically mention who are the junior persons allowed to be superseded ignoring the claim of his promotion in the cadre of Supervisor Gr.'A' from the year of 1972 to 1976. It is found that after getting promotion to the post of Chargeman Gr.II, he got further promotion to the post of Chargeman Gr.I and thereafter to the post of Assistant Foreman, but he did not raise any objection and did not claim seniority. So, it would be a futile exercise on our part to direct the respondents to revise the seniority with retrospective effect after a lapse of more than two decades and no explanation could be forwarded by the applicant why he did not raise any objection, if there had been supersession in between the period from 1972 to 1976 and it is found that the applicant approached the Tribunal after having been retired on superannuation from service. The applicant has drawn our attention at the time of arguments that he filed another case before this Tribunal which was numbered as OA 99/91 and which was disposed of by this Tribunal and the applicant also produced one letter dated 24.2.1993 which may be kept on the



record. From the said judgment it is found that the said case was filed by the applicant for promotion from the post of Chargeman Gr.I to Asstt. Foreman. Whatever might be the fact in the judgment as referred to by the applicant in this case at the time of argument, we are of the view that the applicant's application is a belated one and ^{barred by limitation force} he did not approach the competent authority or the appropriate Court within a reasonable period when the grievance of the promotion ^{and course of action} arose in between the period of 1972 to 1976. Therefore, we find that the application is devoid of merit and liable to be dismissed. Accordingly the application is dismissed awarding no cost.

G. S. Maingi
(G. S. Maingi)

MEMBER (A)

19/8/99
(D. Purkayastha)

MEMBER (J)