

Central Administrative Tribunal
Calcutta Bench

MA 802/01 &
OA No.528/96

Dt. of Order: 4th Feb.
2.2002.

Present: Hon'ble Mr. S. Biswas, Member(A)

Hon'ble Mr. Kuldip Singh, Member(J)

1. Gour Chandra Das, son of late Kashinath Das, aged about 55 years residing at P-40, Tagore Park Dr. R.N. Tagore Road, Cal-56.
2. Sujoy Mukherjee, son of Late Ashutosh Mukherjee, aged about 38 years residing at Chunaipara, Khanthadar, PO. Ichapur Nawabganj, Dist. 24-Pgs,
3. Kalidas Banerjee, son of Late N.C. Banerjee aged about 55 years, residing at 23, Chander Mondal Lane, Cal-700 026.
4. Soumendra Kumar Sur, son of Late Bhupendra Nath Sur aged about 48 years, residing at Kamalpur (Patla Para), PO. Shyambagar, 24-Pgs.(N), Pin-743 127.
5. Samir Kumar Majumder, son of Late A.K. Majumder aged about 47 years, residing at Ashirbad Housing Complex, P.S. Barasat 24-Pgs.(N) -

-all are working for gain as Chargeman Gr.II(T)
in Rifle Factory, Ishapore, Dist.24-Parganas(N)

-versus-

1. Union of India service through the Secretary, Ministry of Defence, Deptt. of Defence Production, New Delhi.
2. Ordnance Factory Board Service through the Chairman, 10-A, Auckland Road, Calcutta-1.
3. The General Manager, Rifle Factory, Ishapore, P.O. Ishapur, Nawabganj, Dist.24-Pgs.(N)
4. Sri M.S. Roy
5. * P.K. Choudhury
6. * S.K. Nandi
7. * D.K. Koley
8. * S.N. Ghosh
9. * S.N. Chakraborty
10. * S.K. Das
11. * D.K. Ghosh
12. * J.P. Das
13. * S.C. Nandi
14. * B.K. Sinha

...respondents contd.

15. Sri S.K. Das
16. * A.K. Saha
17. * N.K. Bhattacharjee
18. * A.K. Brahmachari
19. * B.R. Sur
20. * B.K. Ghosh
21. * A.K. Ghosh
22. * B.K. Paul
23. * J.C. Seal
24. * S.C. Paul
25. * A.K. Ghosh
26. * S.K. Dhar
27. * K.K. Bhattacharyya
28. * A. Ganguly
29. * I.N. Laha
30. * P.K. Bhattacharya
31. * S. Chakraborty
32. * J.L. Gupta
33. * S.K. Singha Roy
34. * T.K. Ghosal
35. * A.K. Saha
36. * J.L. Samaddar
37. * S.K. Bhattacharjee
38. * A.K. Chatterjee
39. * G.C. Sikder
40. * N.K. Ghosh
41. * S.K. Malakar
42. * S.K. Bhattacharjee
43. * S.N. Banerjee
44. * P.K. Bhattacharjee
45. * S.K. Biswas
46. * S.K. Dey
47. * A.K. Chakraborty
48. * P.K. Banerjee

...respondents contd....

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49. Sri S.K. Barik
50. * S.K. Chakraborty
51. * S. Das
52. * A.C. Paul
53. * P.C. Saha
54. * J.C. Mondal

....Respondents.

For the Applicants : Mr. Samir Ghosh, Counsel
For the Respondents : Ms. U.Sanyal, Counsel.

ORDER

KULDIP SINGH (JM)

This is a joint OA filed by five applicants who have challenged the orders of promotion dated 18.1.96 to the post of Chargeman, Gr.II(T) from the post of Supervisor-B(T) and another order of promotion dated 20.1.1996 to the post of Chargeman, Gr.I(T) from the post of Chargeman, Gr.II(T). They have also challenged the combined provisional seniority list dated 6.6.95 for the post of Supervisor(T). Besides that, they also say that the action of the department for non-extension of benefit of the judgement and order dated 3.1.95 to the applicants as delivered by this Tribunal in OA 1219/92, in spite of representations made by the applicants.

2. The facts in brief are, all the applicants are working as Supervisor-B(T), applicant No.1 was initially joined as Turner-C and gradually promoted to the post of Supervisor-B(T). Applicant No.2 was initially appointed as Supervisor-B(T) after completion of Trade apprenticeship and D.M.T.course. Applicant No.3 was directly recruited to the post of Supervisor-B(T). Applicant No.4 was promoted gradually from the post of Grinder-C to the post of Supervisor-B(T). Similarly, applicant No.5 was also promoted from the post of Turner-A to the post of Supervisor-B(T).

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3. The respondents had issued a seniority list of Supervisor-B(T) on 3.8.92 wherein the position of the applicants were shown at Sl.Nos.21, 28, 30, 31 and 41 respectively. The position of the private respondents were shown at Sl.Nos. 23 to 25, 33,34, 36, 37, 38, 39 and 44.

4. The applicants further alleged that similarly circumstanced employees, namely, Swapan Kr. Halder & Ors had filed an application before this Tribunal vide OA No.1219/92 whereby they had challenged the validity and legality of the orders issued by the Factory dated 21.3.92, 25.3.92, 11.4.92 and 11.6.92 through which promotion to the post of Chargeman, Gr.II(T) from the feeder post, which also included the post of Supervisor(T) was given on the basis of the review DPC held in 1992 over the DPC initially held in 1982 as a result thereof the applicants therein were superseded by their juniors and the Tribunal disposed of the said matter by passing the following order:

*15. In view of what has been discussed above, we dispose of this application with the following orders:

- i) The proceedings of review DPC held in 1992 are held to be illegal. Consequently, the promotions given on the basis of the recommendations of such review DPC with retrospective effect are also liable to be quashed.
- ii) Accordingly, we quash the impugned orders dated 21.3.92, 25.3.92, 11.4.92 and 11.6.92 as shown in Annexure-E to the application.
- iii) The official respondents shall now take urgent steps to fill up the vacancies arising after holding of the original DPC including the newly created vacancies in the post of Chargeman, Gr.II(T) by holding a fresh DPC or DPCs strictly in accordance with relevant rules.*

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4. After the judgement in the OA 1219/92, the respondents had issued a combined seniority list. But in the said seniority list, the name of the applicants have been depressed and the name of the private respondents have been shown as senior to the applicants No.1 whereas the other applicants though had their seniority but had not been considered for inclusion in the combined seniority list dated 6.6.95. The applicants made representation also to the authorities but no vail. Based on the seniority list dated 6.6.95, the impugned promotion orders dated 18.1.96 and 20.1.96 to the post of Chargeman, Gr.II and Chargeman Gr.I also had been issued.

5. The applicants further submit that in doing so, the respondents have counted the seniority from the date of entry into the feeder grade or from the date of appointment in the feeder grade but the authorities concerned did not follow the principles of assigning inter-se-seniority position between the employees whether they may be direct recruitee or promotee nor did the respondents apply the law as has been laid down by the Apex Court and promotions had been given in violation of the Statutory Rules for favouring certain set of employees to the exclusion of the genuine persons who are eligible to get promotion in terms of S.R.O.

6. It is also stated that similarly circumstanced employees had filed OA 1219/92 and this Tribunal had allowed their OA and the department had accepted the same and the said judgement had become final, the department ought to have given the benefit to the present applicants also but the same has not been given. The applicants have prayed for quashing of the seniority list dated 6.6.95 as well as the orders dated 18.1.96 and 20.1.96

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7. The OA is being contested by the respondents. The respondents have denied the allegations levelled by the applicants.

8. While the OA was pending, the applicant made MA No.802/01 wherein they alleged that during the pendency of this OA, similarly circumstanced matter was decided by the Hon'ble Supreme Court in their judgement dated 13.9.2000 in Civil Appeal Nos.5003-04 of 1990 in the matter of Union of India ' Ors. Vs. A.P. Sarathe ' Ors. and after the judgement given by the Hon'ble Supreme Court, this Tribunal has also given another judgement in the case of employees of Cossipore Factory in OA 794/92 which was also allowed by this Tribunal vide an order dated 26.2.01 and the Court directed the authorities to apply the law as laid by the Hon'ble Supreme Court.

9. Today, when the case was taken up for hearing, the learned counsel for the applicant submitted that this OA can also be disposed of in the same terms as OA 794/92 as has been disposed of.

10. The learned counsel for the respondents also agreed that Civil Appeal No.5003-04 as decided by the Hon'ble Supreme Court has to be implemented and no contentions have been raised with regard to the applicability of the said judgement as given by the Hon'ble Supreme Court to the present facts of the case.

11. In this circumstances, we also find that the law as declared by the Hon'ble Supreme Court in Civil Appeal No.5003-04 has also to be applied in this case as it has also been applied in OA 794/92.

12. Accordingly, we hereby quash the impugned orders i.e. order of promotion dated 18.1.96 and 20.1.96 and direct the respondents to consider the case of the applicants in

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accordance with the judgement of the Hon'ble Supreme Court and also to give consequential benefits, after consideration of the case for the purposes of promotion as prayed for in the application and in this process if any candidate, who has been given erroneous promotion has to be reverted. For that purpose, the matter is with the respondents in the light of the observations given by the Hon'ble Apex Court for consideration for ~~justifying~~ ^{adjustment of} any such candidated ^{which may be needed for} without affecting the eligible candidates for promotions in accordance with the rules. The OA stands disposed of, alongwith the MA 802/01.

13. We further direct that the exercise for complying with the directions given in this OA shall be made within three months from the date of communication of this order and ~~and~~ the consequential benefits would be given to the applicants in accordance with the rules within another two months from the date of decision pursuant to the judgement of the Hon'ble Supreme Court. No order as to costs.

Kuldeep Singh
KULDIP SINGH
MEMBER (J)

mb.

S. Biswas
S. BISWAS
MEMBER (A)