

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~  
NEW BOMBAY BENCH

O.A. No. 190/87  
~~TAxxNo.~~

198

DATE OF DECISION 5.6.1989

Shri Jagat Bandhu Roy Petitioner

Mr. Babu Marlapalle Advocate for the Petitioner(s)

Versus

The Secretary, Dept. of Defence Prodn., Respondent  
and 3 Ors.

Mr. J.D. Desai for Mr. M.I. Sethna Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION No.190 OF 1987.

Shri Jagat Bandhu Roy,  
Works Manager,  
High Explosives Factory,  
Kirkee,  
Pune - 411 003.

... Applicant

V/s.

- 1) The Secretary,  
Deptt. of Defence Production,  
Ministry of Defence,  
New Delhi - 11.
- 2) The Director General  
of Ordnance Factories,  
10, Auckland Road,  
Calcutta - 700 001.
- 3) The Chairman,  
Departmental Promotion Committee(1),  
Ordnance Factory Board,  
10, Auckland Road,  
Calcutta - 700 001.
- 4) The General Manager,  
High Explosives Factory,  
Kirkee,  
Pune - 411 003.

... Respondents

Coram: Hon'ble Member(J), Shri M.B. Mujumdar  
Hon'ble Member(A), Shri M.Y. Priolkar

Appearances:

- 1) Mr.Babu Marlapalle,  
Advocate for the  
Applicant.
- 2) Mr.J.D.Desai for  
Mr.M.I.Sethna, Counsel  
for the Respondents.

ORAL JUDGMENT:

Dated: 5.6.1989

[Per: Shri M.B.Mujumdar, Member(J)]

The applicant was selected for the post of Assistant Manager in the Accelerated Freeze Drying Factory, (AFDF), P.O. Hazratpur, Agra. Under Secretary to the Government of India, Ministry of Defence, Department of Defence Production, by memorandum dtd. 7.5.1969 informed

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the applicant that the appointment would be subject to the terms and conditions mentioned in the memorandum. One of the conditions was that the post was temporary, but in the event of becoming permanent his claim for permanent absorption will be considered in accordance with the rules in force. Another condition provided that he will be required to serve anywhere in India. The applicant joined the post on 12.7.1969. By an order passed on 4.5.1974 the applicant was made quasi-permanent with effect from 12.7.1972. The factory was producing meat. But the production was stopped somewhere in April, 1977. By order dtd. 31.10.1977, passed by the Director General of Ordnance Factory, Calcutta, the applicant was transferred to the High Explosive Factory at Kirkee, Pune as Temporary Assistant Manager against an existing vacancy. The applicant joined that post on 9.12.1977.

2. The Directorate General of Ordnance Factories published a seniority list of Indian Ordnance Factory Officers as on 1.3.1983. In that seniority list the applicant was shown at Sr.No.55. The applicant objected to that seniority list by sending an appeal dtd. 25.5.84. The applicant sent a reminder also but no reply was sent to him. By following the same seniority list the Director General of Ordnance Factories published subsequent seniority list as on 1.4.1986. In that seniority list the applicant was shown at Sr.No.36. Thereafter also the applicant sent reminders of his previous objections dtd. 25.5.1984. As these objections/appeal were not heeded, the applicant has filed this application on 17.3.1987. It may be pointed out that in December, 1981 the applicant was promoted as Deputy Manager, which post

was subsequently redesignated as Works Manager. In July, 1987 he is transferred from the High Explosive Factory at Kirkee to Ordnance Factory at Bhandara.

3. The first prayer of the applicant in the application is for revising the seniority list on the basis of his initial date of appointment, viz. 12.7.1969 in the AFD Factory at Hazratpur, Agra. The second request is for directing the respondents to reconsider the promotion of the applicant to the next higher post of Works Manager from an earlier date. His third prayer is for directing the respondents to consider his promotion to the still higher post of Deputy General Manager from an earlier date. Lastly he has requested for all consequential benefits also.

4. The respondents have resisted the application by filing their exhaustive reply.

5. We have heard Mr. Babu Marlapalle, Advocate for the applicant and Mr. J. D. Desai for Mr. M. I. Sethna, Counsel for the respondents.

6. Admittedly the applicant joined the post of Assistant Manager in the AFD Factory at Hazratpur, Agra on 12.7.1969. As the production in that factory was stopped he was transferred to the High Explosive Factory at Kirkee against an existing vacancy as Assistant Manager. Respondents have fixed the seniority of the applicant by taking into consideration the date of 9.12.1977, i.e. the date on which he joined as Assistant Manager in the High Explosive Factory at Kirkee, and not on the basis of his initial date of joining as Assistant Manager in the AFD Factory at Hazratpur, Agra, i.e. 12.7.1969. It is the case of the applicant that the respondents should have taken into consideration the latter date, i.e. 12.7.1969 while fixing the seniority and give him further promotions on that basis, it is the case of the respondents that as the applicant had joined as Assistant Manager in the High Explosive Factory at Kirkee

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on 9.12.1977, they were justified in taking into consideration that date while fixing the seniority of the applicant. We have to consider the legality and validity of these respective contentions.

7. In this connection we may point out that though the production in the AFD Factory at Agra was stopped, the applicant's case was not referred to the surplus cell in the Ministry. But what was done was to transfer him to as Assistant Manager in the High Explosive Factory at Kirkee. The order of transfer was passed by the Director General of Ordnance Factories, in the Ministry of Defence. The order of transfer states "As approved by Ministry of Defence, the DGOF is pleased to order the undermentioned transfers of a permanent nature in public interest". Below that are mentioned the names of the applicant and one Shri B.S. Chaudhary. The movement order dtd. 8.11.1977 also shows that the applicant was to proceed on permanent transfer to High Explosive Factory, Kirkee. Hence it is clear that the applicant was transferred from AFD Factory to High Explosive Factory at Kirkee. The transfer was made by the Director General of Ordnance Factories in the Ministry of Defence, Government of India. Both the AFD Factory in which the applicant was working and the High Explosive Factory at Kirkee were under the same Ministry of Defence, Department of Defence Production. Hence we are of the view that while fixing the seniority of the applicant, the respondents should have taken into consideration the date of his initial appointment as Asstt. Manager in the AFD Factory at Hazratpur, Agra viz. 12.7.69.

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8. Mr.J.D.Desai, for the respondents submitted that the respondents had made a reference to the UPSC in this connection and it was as per the advice of the UPSC that they have decided the seniority of the applicant by taking into consideration the date on which he joined as Assistant Manager, High Explosive Factory at Kirkee. As the respondents have relied heavily on the letter of the UPSC dtd. 23.4.1980 we may quote it here:

" I am directed to refer to your letter No. 1(65)/78/D-(Fy-I) dated the 10th December, 1979 and to say that in the circumstances explained, the Union Public Service Commission accord the ex-post-facto approval to the appointment of S/Shri B.S.Choudhury and J.B.Roy to the Indian Ordnance Factories Service by transfer with effect from 10.12.1977 and 31.10.1977 respectively. The two officers will not be entitled to count towards seniority in Indian Ordnance Factories Service their past service rendered in the posts in A.F.D. Agra. Their seniority will count from their date of absorption to the I.O.F.S. i.e. 10.12.1977 in the case of Shri Choudhary and 31.10.1977 in the case of Shri J.B.Roy.

2. Copies of the notifications appointing Shri Choudhary and Roy may be sent to this office as and when issued."

9. We may point out here that this letter of the UPSC was a confidential one. It was never brought to the notice of the applicant nor he was informed of the advice given by the UPSC though he had objected to both the seniority lists. In fact it was not disputed before us

that the respondents have not replied to the objections/appeals made by the applicant to the seniority lists.

10. The letter of the UPSC quoted above also says that the applicant was transferred to the High Explosive Factory at Kirkee. But it further states that the applicant and one more officer Mr. Choudhary (with who we are not concerned in this case) were not entitled to count their seniority in Indian Ordnance Factories Service their past service rendered in the posts in AFD Factory, Agra, but the seniority will count from the date of their absorption i.e. 31.10.1977.

11. In our view the opinion given by the UPSC regarding the seniority of the applicant does not appear to be legal and correct.

12. In this connection we may refer to the Judgment of the Calcutta Bench of this Tribunal in Sumitra Kumar Basu & ors. Vs. Union of India, (1987) 3ATC 64. In that case the applicants who were quasi permanent government servants were transferred from one department of the government to the another department of the government in order to avoid retrenchment. The new department allowed the transfer only subject to loss of such employees' original seniority. The Tribunal held that such condition was unconscionable and violative of Article 14 of the Constitution of India. In result the Tribunal set aside the said impugned seniority list and directed it to be amended suitably. The Tribunal also directed that the applicants should be given their regular promotion and seniority calculated from the date of their original appointment.

13. The case before us is much better than the case before the Calcutta Bench of the Tribunal. There was no stipulation in the order of transfer of the applicant from the AFD Factory to High Explosive Factory, Kirkee. It was a simple transfer of a permanent nature in public interest. In view of this position and the judgment of the Calcutta Bench cited above we hold that the respondents should have fixed the seniority of the applicant from the date on which he joined as Assistant Manager in the AFD Factory at Agra i.e. 12.7.1969.

14. As regards consequential benefits, viz. promotion, etc., we find that the applicant is already promoted as Deputy Manager, which post is redesignated as Works Manager, on 31.12.1981. It is in view of the date given in the seniority list, obviously on the basis of the date on which he joined the High Explosive Factory at Kirkee and not on the basis of the date he joined at AFD Factory at Agra. Hence we propose to direct that the respondents may convene a special DPC for considering the date on which the applicant should be promoted as Deputy Manager/Works Manager.

15. We, therefore, pass the following order:

O R D E R


- i) The impugned seniority list as on 1.3.1983 (Annexure 'I') and 1.4.1986 (Annexure 'H') are hereby set aside so far as they relate to the applicant only. The respondents shall refix the seniority of the applicant by taking into consideration the date of his initial appointment as Assistant Manager in the AFD Factory at Agra, i.e. 12.7.69 and amend the seniority lists accordingly.
- ii) The respondents are further directed to convene a special Departmental Promotion Committee for deciding the date from which he should have been promoted as Deputy Manager/Works Manager by taking into consideration the period of his service from 12.7.69 in the AFD Factory at Agra.
- iii) If the respondents promote the applicant to the post of Deputy Manager/Works Manager from an earlier date than



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31.12.1981 on the basis of the recommendations of the special Departmental Promotion Committee, then they should also consider his case for promotion to the higher post of Deputy General Manager from due date as per rules.

- iv) All this process should be completed within period of 3 months from the date of receipt of a copy of this order.
- v) The application is disposed of on the above lines with no order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER(A)

  
(M.B. MUJUMDAR)  
MEMBER(J)