

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

~~O.A. No.~~

T. A. Nos 255/87 & 301/87

198

DATE OF DECISION 22-3-1991

Vijai Bahadur Saxena & 42 Ors. Petitioners in Tr.255/87

D.K.Nandi & 11 others Petitioners in Tr.301/87

Mr. J. L. Bhot

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. Ramesh Darda

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. A. P. Bhattacharya, Member (J)

The Hon'ble Mr. P. S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

No

(P. S. CHAUDHURI)
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

(14)

Tr.255/87 & Tr.301/87

1. Vijai Bahadur Saxena
and 42 others.

.. Applicants in
Tr.255/87

vs.

1. Union of India,
through
Secretary,
Ministry of Defence,
New Delhi.

2. Chairman cum Director General,
Ordnance Factory Board,
6, Esplanade East,
Calcutta.

3. General Manager,
Ordnance Factory,
Ambazari, Nagpur.

.. Respondents

1. D.K.Nandi & 11 others

.. Applicants in
Tr.301/87

vs.

1. Union of India,
through
Secretary,
Ministry of Defence,
New Delhi.

2. Chairman cum Director General,
Ordnance Factory Board,
6, Esplanade East,
Calcutta.

3. General Manager,
Ordnance Factory,
Bhandara - 441 906.

.. Respondents

Coram: Hon'ble Member(J) Shri A.P.Bhattacharya
Hon'ble Member(A) Shri P.S.Chaudhuri

Appearances:

1. Mr.J.L.Bhoot
Advocate for the
Applicants

2. Mr.Ramesh Darda
Counsel for the
Respondents.

Date: 22-3-1991

JUDGMENT:
{Per P.S.Chaudhuri, Member(A)}

The two transferred applications were
heard together as common questions of law and facts are

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~~are~~ involved. The first, Tr.A.No.255/87, and the second, Tr.A.No.301/87, have come to the Tribunal by way of transfer from the Bombay High Court in terms of its orders dated 21-10-1986 on Writ Petitions No.2565/82 and 668/84 respectively filed before it on 20-12-1982 and 16-1-1984 respectively.

2. The applicants (petitioners) in both the transferred applications are working as Chargeman Grade II/Chargeman Grade I/Assistant Foreman—those in Tr.A.No.255/87 in the Ordnance Factory, Ambazari and those in Tr.A.No.301/87 in the Ordnance Factory, Bhandara. The prayer in both the applications is for a direction to the respondents to extend the application of letters dated 6-11-1962 and 29-6-1965 to the applicants by promoting them to higher promotional posts from the date they have completed two years satisfactory service and place them in appropriate grade with consequential benefits retrospectively.

3. The facts in brief: The applicants belong to the Class-III personnel of the Indian Ordnance Factories. Recruitment to Class-III personnel of the Indian Ordnance Factories is governed by the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956, (for short, the Rules) framed by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The posts occupied by such Class-III personnel consist of posts in the following grades:-

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Foreman (including Foreman/Design)
Storeholder
Assistant Foreman
Assistant Storeholder
Chargeman Grade I (including Chargeman Grade I/ Design).
Chargeman Grade II
Supervisor Grade 'A'

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Supervisor Grade 'B'

Vacancies in the posts of Supervisor Grade 'B' have to be filled up by appointment of qualified apprentices, recruited and trained, to the extent of 33 1/3%; by promotion; on the basis of selection list by the duly constituted Department Promotion Committees(D.P.Cs.), to the extent of 33 1/3%; and the remaining by direct recruitment. Vacancies in respect of other posts have normally to be filled up by promotion of the employees in the grade immediately below, on the basis of selection by D.P.Cs. All the applicants in both the transferred applications were recruited as Apprentices.

4. In the wake of the Chinese Aggression in 1962, the Government of India took steps to make the country self sufficient in the production of arms, ammunition and armaments in the various Ordnance Factories and accordingly it was decided to expand the capacities of the existing factories and to increase the strength of the personnel. With a view to attract persons with a technical background to the Ordnance Factories, the Director General Ordnance Factories, who is the appointing authority in respect of Class-III personnel, issued the following circular on 6-11-1962:

"Subject: Non-Industrial Establishment - Promotion.

D.G.O.F. has decided that Diploma holders serving as Supervisor 'A'(Tech)/ Supervisor 'B'(Tech) and in equivalent grades should be treated as follows:

(i) All those Diploma holders have been appointed as Supervisor 'B'(Tech) (and in equivalent grades) should on completion of one year's satisfactory service in ordnance factories be promoted to Supervisor 'A'(Tech) (and in equivalent grades)

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(ii) All those diploma holders who work satisfactorily as Supervisor 'A'(Tech) or in equivalent grades for 2 years in Ordnance Factory should be promoted to Chargemen.

Kindly acknowledge receipt."

5. By way of a clarification, the Director General Ordnance Factories, issued another circular on 11-3-1963, which is extracted hereunder:-

" Sub: Non-industrial establishment - treatment of Diploma Holders in matter of appointment/promotion.

Ref: This office No.673/A/NI dated 6.11.62.

So long the position was that Diploma Holders in Engineering were being recruited as Supervisor 'B' grade and were being promoted to Supervisor 'A' grade after satisfactory completion of one year's service as Supervisor 'B' grade.

It has now been decided by the Director General, Ordnance Factories that in future Diploma Holders in Engineering should be straightaway appointed as Supervisor 'A' Grade.

2. In view of the decision stated above all those Diploma Holders who are not yet promoted to Supervisor 'A' grade because they have not yet completed one year service as Supervisor 'B' grade may be promoted to Supervisor 'A' grade with effect from 6-3-1963, provided their work as Supervisor 'B' grade is satisfactory so that they do not stand at any disadvantage as compared with those Diploma Holders who are yet to be recruited as Supervisor 'A' grade in view of the Director General, Ordnance Factories decisions as stated in para 1 above.

3. Kindly acknowledge receipt."

6. Subsequently, on 29-6-1965, the Director General Ordnance Factories issued a letter, the relevant paras 1 to 3 of which are extracted hereunder:-

"Sub:- N.G.Establishment-Treatment of Diploma Holder and Ex-apprentice serving as Supervisor 'A' Grade or in equivalent Grades in the matter of Promotion.

Ref:- This Office No.673/A/NI dt.6.11.62

It has been decided by the D.G.O.F. that Diploma holders in Mech/Elec. Engg. serving as Supervisor 'A' or in equivalent Grades and Ex.supervisory Apprentices serving as Supervisor 'A' or in equivalent Grades should be promoted to Offg. Chargeman Gr.II after completion of two years continuous satisfactory service as Supervisor 'A' or in equivalent Grades except those who are declared as unsuitable to be Ch'man Grade-II.

2. To enable this office to examine the question of promotion of such persons to offg.C'man Grade II against existing vacancies of Chargeman or in higher grades, will you kindly furnish information with respect to Diploma Holder in Mech.Elec. Engg. in proforma-1 attached and with respect to Ex Supervisory Apprentices in all trades in proforma-11 ~~xx~~ attached in duplicate. Information with respect to individuals who have completed or will complete 2 years continuous service as Supervisor 'A' Gr. or will complete 2 years continuous service as Supervisor 'A' Grade or in equivalent grades during 1965 and 1966 should please be given in separate sheets of paper.

3. Details with respect to such of those who have been promoted to Ch'man Gr.II under the powers by GM on a stop-gap basis for a period not exceeding six months and whose promotions in long term basis have not been approved by this office should also be included in the respective proforma with a suitable entry in the remarks column indicating position in this regard."

7. Evidently, as these two circulars were repugnant to the Rules, the Government of India, Ministry of Defence by its letter dated 28.12.1965 intimated the Director General that a minimum period of three years' service in the lower grade, as is prevailing in other Ministries, should be fixed for promotion to the next higher grade. Thereupon, the Director General issued the following circular on 20.1.1966:

"Sub: N.G.Establishment - Treatment of Diploma holders as ex-apprentices service as Supr A Gr. in equivalent grades in the matter of promotion.

Ref: This office confidential No.673/A/NG dated 6.11.62 and 4416/A/NG dtd. 29.6.65

The question of promotion of Diploma holders in Mech/Elect Engineering and Ex-apprentices serving as Supr 'A' Gr or in equivalent grades has received further consideration of the D.G., O.F. who has decided that in future promotions of all such individuals will be effected in accordance with the normal rules i.e. on the basis of their listing by the relevant D.P.C. and not merely on completion of 2 years satisfactory continuous service as Supr.A Gr. or equivalent grades."

But, meanwhile, a number of Diploma-holders who were working in the grade of Supervisor 'A' acquired promotion to the grade of Chargeman-II before the issue of the above circular, based on the earlier circular dated 6.11.1962.

8. In the year 1983, some of the Diploma-holders who were appointed as Supervisor 'A' Grade between 1962 and 1966, filed writ petitions before the Supreme Court praying that they may be allowed the same relief that was allowed by the Supreme Court in Virendra Kumar and others v. Union of India and others - AIR 1981 SC 1775. Those writ petitions came up for hearing before a Bench of two Hon'ble Judges, when on the view that the judgment in Virendra Kumar's case may require reconsideration, the petitions

were directed to be placed before a 3-Judge Bench, and accordingly, the matter was considered by a 3-Judge Bench and was disposed of by the judgment dated 29-3-1989. The Writ Petitions were dismissed after a detailed consideration of the scope and legal effect of the circulars dated 6.11.1962 and 20.1.1966 as well as the letter from the Ministry of Defence, Government of India to the Director General, Ordnance Factories dated 28.12.1965, in the light of the Rules. The Judgment of the Supreme Court is P.Ramkrishnaiah & Ors. v. Union of India reported in 1989(1)SCALE 830.

9. The reliefs claimed by ~~the~~ present applicants in the present two transferred applications fall under two main heads:

- (i) To promote them to higher promotional posts from the date they have completed two years of satisfactory service.
- (ii) Consequential refixation of seniority in the different grades and monetary benefits.

10. Evidently, these reliefs are claimed on the basis of the circulars issued by the Director General, Ordnance Factories on 6.11.1962 and 11.3.1963 extracted earlier. The fact that such reliefs have been allowed to some other Supervisors by the judgment of the Supreme Court in Virendra Kumar's case (supra) has also been pressed into service for claiming these reliefs.

11. The reliefs came up for consideration in Abraham Titus and 25 others v. Union of India and Others (O.A. 169/87) and 13 other similar matters which were decided by a Full Bench of this Tribunal on 23.8.1990. After considering the issues involved in great detail, the Full Bench in paras 34, 35 and 37 of their judgment held:-

"34. It is clear from the judgment of the Supreme Court that the main plea which was put forward was that in **case** the same relief allowed to Virendra Kumar and others was not granted to the writ petitioners, they are likely to be junior to the former as well as the petitioners in the writ petitions decided by the High Court of Madhya Pradesh. Adverting to the circular issued by the Director General on 6.11.1962, after noticing that it is only an executive instruction, it was held by the Supreme Court that notwithstanding it the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed and it could not be abrogated. Reference was made to the orders contained in the letter from the Government of India dated 28.12.65 prescribing a minimum period of service of 3 years in the lower grade for promotion to the next higher grade and the circular issued by the Director General on 20.1.1966 doing away with the accelerated chance of promotion and relegating Supervisors 'A' in the matter of promotion to the normal position as it obtained under the Rules. Referring to the judgment in Virendra Kumar's case, it was pointed out that when that case was heard neither the order contained in the letter dated 28.12.1965, nor the circular dated 20.1.1966 and the legal consequences flowing therefrom was brought to the notice of the Court or was not properly emphasised. It was held:

" For aught we know, if the effect of the order dated 28th December, 1965 and the circular dated 20th January, 1966 had been properly emphasised at the time of hearing of Civil Appeal No.441 of 1981 its result may have been different."

It can be gathered from the judgment that about 1,175 Diploma holders were recruited during the relevant period due to the acute need of the Ordnance department, and that out of them 625 were promoted to the post of Chargeman-II based on the circular of 1962 and the remaining 550 were denied such promotions, since the instructions contained in the letter dated 28.12.1965 and the subsequent circular dated 20.1.1966 came into force by then. It was held that Supervisors 'A' who have been so promoted stood in a class separate from those whose promotions were to be

made thereafter and, as such, the fact of their promotion cannot constitute the basis for an argument that those Supervisors 'A' whose cases came up for consideration for promotion thereafter and who were promoted in due course in accordance with the Rules were discriminated against, as they apparently did not fall in the same category.

35. When the relief of accelerated promotion based on the 1962 circular was thus negated in the case of the Diploma holders holding the position of Supervisor 'A', it is idle to contend that the said benefit is to be allowed to the Science Graduates, who be it noted, were not covered by the circular at all.

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47. It follows that the application has to be dismissed, subject to the finding that the Rules cannot be treated as superseded by the administrative orders dated 6.11.1962, 11.3.1963 and 29.6.1965, so far as they are repugnant to the Rules. We do so. "

We are bound by this judgment and accordingly propose passing a similar order.

12. We accordingly dismiss the applications subject to the finding that the Rules cannot be treated as superseded by the administrative orders dated 6.11.1962 and 29.6.1965 so far as these are repugnant to the Rules. In the circumstances of the case there will be no order as to costs.

P. S. Chaudhuri
(P.S. CHAUDHURI)
Member (A)

22/3/91

A. P. Bhattacharya
(A.P. BHATTACHARYA)
Member (J)
22.3.91.