

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
CIRCUIT AT NAGPUR

Tr. No. 295 of 1987 ( W.P. 345/84)

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member  
Hon'ble Mr. P.S.Chaudhuri, Administrative Member

PHILLIP VERGHESE & ANR

VS

UNION OF INDIA & ORS

For the applicants : Mr. S.G.Mukdey, counsel

For respondents 1 to 3 : Mr. Ramesh Darda, counsel

For respondent No. 4 : Mr. M.M.Sudame, counsel

Heard on : 19.3.91 : Judgement on : 22.3.91

JUDGEMENT

A.P.Bhattacharya, J.M.:

Applicants Shri Phillip Verghese and Shri T.V.N.Poduval filed a writ application in the Nagpur Bench of the Bombay High Court against the Union of India, represented by the Secretary, Ministry of Defence and three others, numbered as WP 345/84, which was transferred to this Tribunal under sec. 29 of the Administrative Tribunals Act, 1985 for disposal.

2. The applicants after passing B.Sc examination joined service in the Ordnance Factory at Bhandara as Supervisor, Gr. B in 1963. Afterwards, they were promoted to the posts of Chargeman, Gr. II and Chargeman, Gr. I on 19.12.79. Applicant No. 1 was thereafter promoted to the post of Assistant Foreman on 2.4.82 whereas applicant No. 2 was promoted to that post on 1.7.83. The applicants have been working in the post of Asst. Foreman since then. It is their case that respondent No. 4, Shri R.N.Sharma was an employee in the Ordnance Factory at Hazarapatpur at Agra under the Ministry of Defence. In 1976/1977, the Govt of India

decided to close down the Ordnance Factory at Hazaratpur. After the said factory was closed down, it was decided to absorb the employees declared surplus there in other ordnance factories in India. Pursuant to that, respondent No. 4, who was working in the post of Sr. Scientific Officer at Hazaratpur Ordnance Factory, was accommodated in the Ordnance Factory at Bhandara as a Chargeman, Gr. II. He joined in the said post at Bhandara on 10.10.77. By an order issued on 31.1.84 by respondent No. 3, respondent No. 4 was regarded as a direct recruit for the purpose of seniority and was granted appointment to the post of Chargeman, Gr. I notionally without any benefit of arrears of pay and allowance with effect from the date he joined at Bhandara i.e. 10.10.77. The earlier order issued in favour of respondent 4 was modified in that light. In this writ petition, the applicants have challenged that order dated 31.1.84 on the grounds that it has affected their seniority and their chances of further promotion and it is contended by the applicants that the said order has affected their promotion to the post of Asst. Foreman and also their future promotions. In filing the application, they have prayed for setting aside the Factory Order dated 31.1.84, shown in Annexure-II to the application.

3. The application has been contested by respondents 1 to 3 and No. 4 separately by filing separate reply.

4. It is the contention of respondents 1 to 3 that respondent 4 on being declared surplus in the Ordnance Factory at Agra was appointed to the Ordnance Factory at Bhandara as a Chargeman, Gr. II w.e.f. 10.10.77. The post of Chargeman, Gr. II in which he was absorbed at that time was two grades lower than the post held by him at the Ordnance Factory at Agra. These respondents contend that before his absorption at the ordnance factory at Bhandara, respondent 4 was holding the post of Senior Scientific Assistant from 1.10.73 to 19.9.77 in the scale of pay

of Rs. 550-900/- whereas the petitioners were promoted to the post of Chargeman, Gr. I in the scale of Rs. 550-750/- So, these respondents contend that respondent 4 was correctly given the benefit of his past service by virtue of his holding the post of Sr. Scientific Assistant in the scale of pay mentioned above. After joining at Bhandara, respondent 4 had made several representations for counting his past service. On a consideration of his representations, it was decided by the competent authority that he should be given the benefit of notional seniority. These respondents contend that in modifying the order nothing illegal was done <sup>and</sup> to the detriment of the applicants.

5. In his reply, respondent 4 has adopted the contentions of respondents 1 to 3 and added something in support of his appointment as Chargeman, Gr. I with effect from 10.10.77 i.e. the date he joined the Ordnance Factory at Bhandara.

6. The only point for determination in this case is whether in giving an appointment to the post of Chargeman, Gr. I with effect from 10.10.77 in favour of respondent 4, the respondents 1 to 3 had done any wrong and had done anything detrimental to the interests of the applicants.

7. On a consideration of the materials on record, we are constrained to hold at the very outset that the applicants have no justiciable cause for which this Tribunal can intervene. At para 5 of the application, the applicants have stated that by giving an appointment to the post of Chargeman, Gr. I in favour of respondent No. 4, with effect from 10.10.77 i.e. the date he joined at ordnance factory at Bhandara, respondents 1 to 3 had affected their promotion to the post of Asst. Foreman and also their future promotions. It is the admitted position that respondent No. 4 was previously employed in the ordnance factory at Agra in the post of Sr. Scientific Officer in the scale of pay of Rs. 550-900/-. He held that post from 1.10.73 to 19.9 .77. It is also admitted that the said

ordnance factory was closed down and respondent No. 4 along with six others was declared surplus and a decision was taken by the competent authority to absorb them elsewhere. Respondent No. 4 was decided to be absorbed in the ordnance factory at Bhandara. While absorbing him at Bhandara he was given the post of Chargeman Gr. II i.e. a post two grades lower than the post he held at Agra ordnance factory. After joining at Bhandara, respondent No. 4 made several representations for counting his past service. His prayer was duly considered and accepted and by modifying the earlier order, he was appointed to the post of Chargeman, Gr. I from the date he joined at Bhandara i.e. 10.10.77. That the said appointment had not affected the promotion of the applicants to the post of Assistant Foreman can be had from the fact that applicant No. 1 was promoted to the post of Asst. Foreman with effect from 2.4.82 and applicant No. 2 was promoted to the said post with effect from 1.7.83. The order under challenge by which respondent No. 4 was appointed to the post of Chargeman, Gr. I with effect from 10.10.77 was passed on 31.1.84. It is clear that long before that date, both the applicants were promoted to the post of Asst. Foreman. Naturally, therefore, the impugned order had not affected in any way their promotion to the post of Assistant Foreman.

8. It would not be out of place to mention in this connection that the applicants have no grievance against the absorption of respondent No. 4 in the ordnance factory at Bhandara. We have already mentioned that he was absorbed here in a post two grades lower than the post held by him at Agra factory. It is not the case of the applicants that as per instructions issued by the Govt. of India about absorption of surplus employees, respondent No. 4 should <sup>not</sup> have been absorbed as Chargeman, Gr. II at the ordnance factory at Bhandara. From their side, no rule or instruction has been shown to us as to how and in what way the absorption of an employee declared surplus should be done. It is patent that the applicants feel aggrieved as the said respondent had at a subsequent stage been <sup>interpolated</sup> ~~posted~~ over them making their

chances of promotion bleak.

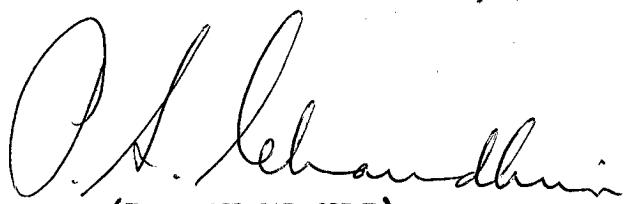
9. Now comes the question whether the impugned order had affected their future promotions. Admittedly, both the applicants and respondent No. 4 have still been continuing in the post of Asst. Foreman. It is also admitted that ~~the~~ promotion is made from the post of Asst. Foreman to the post of Foreman i.e. the next higher post on the basis of All India seniority and through selection. It is not known to anybody as to when the applicants and respondent No. 4 would be considered for such promotion. In the present application the only relief the applicants have prayed is for quashing the Factory Order dated 31.1.84 by which respondent No. 4 was appointed to the post of Chargeman, Gr. I. It is well settled principle of law that mere chances of promotion are not conditions of service and there may be a reduction in the chances of promotion which is not tantamount to change in conditions of service. If we are to cite any decision on this point, we would at once refer to the decision of the Supreme Court passed in the case of State of Maharashtra -vs- Chandra Kant Anand Kulkarni reported in AIR 1981 SC p. 1990, and in the case of K.Jagadeesan -vs- U.O.I. reported in (1990) 2 SCC 228. So, we have no hesitation to hold that in this application, as it stands or as it has been framed, the applicants have no justiciable cause for which this Tribunal can intervene.

10. At the time of hearing of the case, Mr. Ramesh Darda, learned advocate appearing for the respondents 1 to 3, had argued that by an order issued on 30.4.85, the Govt. of India, Ministry of Defence, issued a direction to the effect that the post of Sr. Scientific Assistant should be converted to the post of Asst. Foreman and the transferee Sr. Scientific Assistants should be placed in the seniority list along with Asst. Foremen in the ordnance factories organisation, and that the inter se seniority should be determined on the basis of the respective dates of holding the post of Sr. Scientific Assistant and Asst. Foreman.

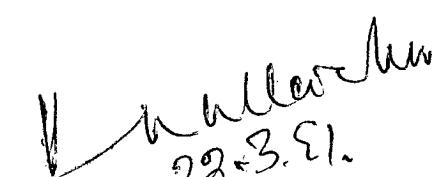
The learned advocate appearing for the applicants objected to the consideration of this circular. But the fact remains that such a circular was issued by the concerned authority on the strength of which respondent No. 4 was to be treated as senior to the applicants, who became Asst. Foreman long after the date of respondent No. 4's holding the post of Sr. Scientific Asst. <sup>important</sup>

This aspect of the matter is also ~~not~~ <sup>important</sup> for consideration to hold that the applicants have no justiciable claim.

11. In view of our findings made above, we hold that the present application being devoid of merits is liable to fail. Accordingly, we dismiss this application without making, however, any order as to costs.

  
(P.S. CHAUDHURI)  
MEMBER (A)  
22.3.91

22/3/91

  
(A.P. BHATTACHARYA)  
MEMBER (J)  
22.3.91