

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 735/87.

T.A. No.

198

DATE OF DECISION 29.8.90.

A.R.Waje and others Petitioner

Mr M.K.Dhar Advocate for the Petitioner(s)

Versus

Secretary Ministry of Defence Respondent
and others

Mr R.K.Shetty Advocate for the Respondent(s)

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The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? *yes*
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 ? ☒

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(G.Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH
NEW BOMBAY BENCH.

O A 735/87.

A.R.Waje and others Applicants.
versus
Secretary, Ministry of Defence
Government of India and others... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

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

For the applicants- Mr M.K.Dhar, Advocate.

For the respondents- Mr R.K.Shetty, Advocate.

Date of hearing - 27.8.90

Date of Judgment & Order- 29.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :-

The applicants were Junior Scientific Assistant Grade-II (JSA-II) under the Director General of Inspection (DGI). Consequent upon the transfer of inspection responsibility from the DGI to the Director General of Ordnance Factories (DGOF), the related personnel were transferred from the DGI to the DGOF. Accordingly, by the Movement Order dated 20.10.1984, the applicants were transferred on permanent basis to the Ammunition Factory, Kirkee, (Ordnance Factory Board) with effect from 22.10.1984. Their grievance is against their integration in the grade of Supervisor 'B' (Tech) in the DGOF Organisation. It is urged that while in the Organisation of DGI, the JSA-II can reach the officer grade of Junior Scientific Officer by crossing two levels of JSA-I and SSA, in the DGOF Organisation, the Supervisor has to cross ¹⁵four levels of Chargeman Grade-II, Chargeman Grade-I, Assistant Foreman and Foreman to become an officer in the grade of Assistant Works Manager. It is alleged that no weightage is given for the service rendered by the JSAs in the DGI Organisation. It is further alleged that since the DGOF has promoted 63 officers during the period 1983-84

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immediately prior to the merger, the JSAs of the DGI who are merged in the cadre of Supervisor in the DGOF are denied chances of promotion to the higher grade of Chargeman.

2. The applicants pray that they should not be equated to the post of Supervisor onwards, but be equated to the posts from Chargeman onwards. Their prayer is that JSA-II with less than 10 years service should be equated to Chargeman -II and JSA-II with more than 10 years to the post of Chargeman-I.

3. In the reply filed by the respondents, it is contended that the application is not maintainable as transfer and deployment is a management function. There is also the plea that the application is barred by limitation. It is pointed out that the seniority is determined with respect to the respective scales of pay and by the merger the seniority of the applicant is not affected. It is stated that the promotions prior to October, 1984 were not made by the DGOF, but was by the General Manager having regard to the exigencies of service.

4. It emerges from the records that a policy decision was taken to transfer the responsibility of inspection from the DGI to the DGOF. It was on account of the said decision that the persons engaged in the relevant activity were transferred from the DGI Organisation to the DGOF Organisation. It is clear from the letter of the DGI dated 4.10.1982(Annexure-A) that the decision was not for a total merger of the DGI establishment or the staff attached to the same with the DGOF, but only such jobs and connected staff were decided to be transferred in distinct phases. It is further clarified therein that before the transfer is made, option is asked for and normally only volunteers are

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to be transferred. The transfer is alongwith the post. It is based on the said scheme that the Movement Order dated 20.10.84 has been issued to the applicants and certain others consequent upon their transfer to the Ammunition factory, Kirkee, under the DGOF. Admittedly, the applicants were on the scale of pay of Rs. 380-560/- in the Grade of JSA-II in the DGI Organisation, and they have been fitted in the DGOF Organisation in the grade of Supervisor-II carrying the same scale of pay.

5. The prayer of the applicants that JSA-II with less than 10 years service have to be fitted in the grade of Chargeman-II and JSA-II with more than 10 years service are to be fitted in the grade of Chargeman-I cannot be allowed for more reasons than one. The fitment was done in the year 1984 as soon as they were transferred. It appears that the Ministry of Defence issued orders regarding fitment of the personnel so transferred and on 30.4.1985 the communication in respect of the same was sent to the DGOF. It is specified therein that the JSA-II from the DGI will be integrated in the Grade of Supervisor 'B' (Tech) in the DGOF Organisation and the inter seniority will be determined on the basis of respective ^{of} holding the post of Supervisor 'B' and JSA-II. The fitment that is prayed for by the applicants is against the post of Chargeman. By the aforesaid letter JSA-I has been integrated in the grade of Chargeman-II. In case the applicants were aggrieved by the aforesaid decision with respect to the fitment of the transferred personnel, they should have assailed that decision. The applicants have not done so, even in the present application. It is seen that during the ^{year} ~~period~~ 1986-87 certain representations were submitted by the applicants. The present application has been filed only on 15.10.1987. In the circumstances, there ^{is} force in the contention of the respondents with respect to the bar of limitation. It is to be noted that when

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the original application was admitted, it was so done " subject to the question of limitation".

6. On the merits too, the contention of the respondents has to be upheld. At the outset, it has to be pointed out that before the transfer, ^{provision is there} ~~policy is~~ to call for option. Though it was submitted by the counsel of the applicants that no such option was called for from the applicants; there is nothing on record to indicate that the applicants objected to the transfer on that ground. Secondly, in a case of this nature where certain posts are transferred from one Organisation to another under the same Ministry, and the persons holding the posts are transferred, the question of equation of the post in the organisation to which the transfer is made is essentially a matter of policy. It is on record that a decision was taken by the Government with respect to the fitment of the various categories, and it was also stipulated that the inter se seniority will be determined on the basis of the respective dates of holding the post. Prima facie the decision cannot be considered as arbitrary or unfair.

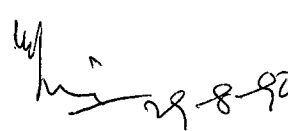
7. It was submitted by the counsel of the applicants that in the DGI Organisation, a JSA -II can reach the officer grade by crossing two levels while in the DGOF Organisation a Supervisor can do so only after crossing four levels. But the respondents have pointed out that the officer grade referred to in the DGI organisation is only a Class-II post while the officer grade in the DGOF Organisation is to a Class-I post. It was further submitted by the counsel of the applicants that as 63

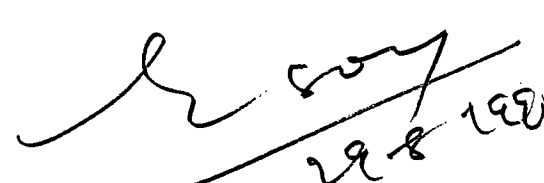
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Supervisors in the DGOF Organisation were promoted prior to transfer of these applicants, they have little chance of promotion to the higher grade of Chargeman. The respondents have stated that these promotions were made not by the DGOF but by the General Manager in accordance with the Rules, and having regard to the exigencies of service. As such, ^{the} reliance placed by the counsel of the applicants on the decision of the Madras Bench of this Tribunal in S.P.Madan v. DGOF, Calcutta / 1988(3) SLJ CAT 239), cannot be accepted. That was a case where prior to the merger, without following the prescribed procedure large scale promotions were made in the DGOF Organisation. There was also the fact that on account of those promotions, the applicants therein became junior, on merger, though they had longer service. The facts are entirely different in the instant case.

8. It follows that there is no merit in the application. It is accordingly dismissed.


(M.Y.Priolkar)
Member(Admn)


(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
28.8.90.