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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 896/88

~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION 24-12-83

Namdeo Nago Sawkare Petitioner

Mr. D.V. Gangal Advocate for the Petitioners

Versus

U.O.I. & Ors. Respondent

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

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri M.R. Kolhatkar, Member (A)

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

M.R. Kolhatkar
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, Bombay-1

OA No. 896/88

Namdeo Nago Sawkare
Pipe Fitter High Skilled
2514 New Area Ward
Near Pandurang Talkies
Bhusawal (Maharashtra State)

..Applicant

Versus

1. Union of India
through Chairman
Ordnance Factory Board
10 A Auckland Road
Calcutta
2. General Manager
Ordnance Factory
Bhusawal
3. Shri M P Singh
Deputy Director General(MNC)
Ordnance Factory Board
10-A Auckland Road
Calcutta

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.
Hon. Shri M.R. Kolhatkar, Member (A).

APPEARANCE:

Mr. D.V. Gangal
Counsel
for the applicant

Mr. R.K. Shetty
Counsel
for the respondents

JUDGMENT:

DATED: 24.12.1993
(Per: M.R. Kolhatkar, Member(A))

This is an application under Section 19 of the Administrative Tribunals Act 1985. The case of the applicant is that he belongs to the Scheduled Caste community (Note: the reference to "S.T." community appears to be a mistake and the caste status is also confirmed in Annexure VIII, vide Sr.No.12) that he joined the respondents Ordnance Factory on 27.11.1967 as a Labour Gr.B, that he was

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promoted to the post of Pipe Fitter(C) in the year 1980, which post subsequently was upgraded as skilled grade in the pay scale of Rs. 260-400 and thus he has been working in the skilled grade since 1984. In the year 1986 a vacancy of Highly Skilled Gr.II reserved for S.C. occurred and the applicant applied for the same, but the applicant was informed that since he had not completed three years in the skilled grade he cannot appear for trade test for promotion to the vacant post of highly skilled grade II. The vacancy was carried forward. In January 1988 the respondents held a trade test for general candidates, announced the result thereof on 24.1.1988 and promoted one Shri V.L. Patil to the post from 25.1.1988. The applicant represented against this ^{25.1.1988} and requested that ^{be} he promoted against the roster point vacancy. The applicant was informed that his case for promotion would be considered in due course. Subsequently on 13.8.88 the applicant was granted promotion to the post of Fitter (Pipe) High Skilled Gr.II and thereafter by order ^{was granted the} dated 31.08.1988 the applicant benefit of promotion with effect from 25.1.1988, the date from which Shri V.L. Patil was promoted. The applicant prays for being promoted with effect from October 1987 i.e., immediately after completion of three years of service in the skilled grade and consequential benefits, that he should be reckoned as senior to Shri V.L. Patil and that action

should be taken against Respondnt no.3 who was Deputy Director General Ordnance Factory Board at the relevant time and who is alleged to have acted malafide to deny the rightful promotion due to the applicant.

2. This Tribunal by its order dated 27.2.89 permitted the amendment of the application which had the effect that the application was treated as an individual application by Shri N.N. Sawkare in place of Scheduled Castes/Tribes and Minority Employees Association, which was deleted.

3. The respondents have filed a written statement. Basically the contention of the respondents is that there were two vacancies of Fitter Gr. II Highly Skilled in the year 1988 and the first vacancy was given to Patil who was senior to the applicant in the Skilled category of Fitter (Pipe) and that Shri Patil was promoted to that grade on 25.1.88 after following the prescribed procedure. The applicant was promoted as Fitter Gr. II Highly Skilled against the reserved post reserved for Scheduled Caste Community and was also given a notional seniority with effect from 25.1.1988. The applicant was not promoted with effect from 25.1.1988 and was also not paid the wages of higherpost as he was junior to Patil in the earlier post of skilled grade fitter. According to the respondents this action was in accordance with para 12.3 (iv) of Chapter of the Brochure on Reservation for Scheduled Castes & Scheduled Tribes in Services. According to the respondents the real claim of the applicant is for the wages from 25.1.88 to 12.8.88 but the same cannot be allowed since the promotion has to be made on the basis of functional requirement. It being a management function, it cannot

be claimed as a matter of right. It is further stated by the respondents that while reviewing the production position for the year in January 1988 it was observed that certain vacancies in the post were required to be filled in immediately to meet the requirement of targets and so it was decided to fill up one vacancy of Fitter (Pipe) Highly Skilled Gr.II out of two along with other threads and since Shri Patil was enblock senior to all others including the applicant and since only one vacancy was required to be filled in, action to fill in the post for the general vacancy was taken accordingly. The applicant was also promoted to the post reserved for Scheduled Caste in the month of August 1988 and in the same recruitment year, and this is also in accordance with the foot note to the roster as well as para 12.3(iv) of the Brochure referred to above which is well within the frame work of rules and regulations. Hence the applicant is not entitled to any of the reliefs claimed by him.

4. We have heard the counsel for both the parties. The case turns on the interpretation of rules relating to maintenance of roster and the rights of the applicant flowing therefrom. Para 12.3(iv) to which a reference has been made by the respondents reads as below:

"When the Select lists of officers in the general category and those belonging to Scheduled Castes and Scheduled Tribes have been prepared by the Departmental Promotion Committee, these should be merged into a combined select list in which the names of all the selected officers, general as well as those belonging to the Scheduled Castes and Scheduled Tribes, are arranged in the order of their inter-se seniority in the original seniority list of the category or grade from which the promotion is being made. This combined select list should, thereafter, be followed for making promotions in vacancies as and when they arise during the year".

So far as foot note to the roster proforma is concerned, the foot note quoted by the respondents is as below:

- "1. In every third cycle of the above roster the 37th point will be treated as unreserved.
2. If there are only two vacancies to be filled in a particular year not more than one may be treated as reserved and if there be only one vacancy, it should be treated as unreserved. If on this account, a reserved point is treated as unreserved, the reservation may be carried forward to the subsequent three recruitment years."

It is not clear whether the respondents extracted the relevant foot note correctly. We have consulted Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services, issued by the Ministry of Home Affairs, Sixth Edition, 1982 and the foot note given to the roster proforma appearing in the Appendix 2, page 305 thereof is as below:

- (1) In every third cycle of the above roster, the 37th point will be treated as unreserved.
- (2) If there be only one vacancy, in a particular year which falls on the reserved point in the roster, it will be treated as unreserved in the first instance and filled accordingly but the reservation should be carried forward to subsequent year(s). In the subsequent year(s) of recruitment the reservation should be applied by treating the vacancy arising in that year as reserved even though there might be only a single vacancy in that subsequent year(s)."

This appendix 2 relates to 'Model Roster for posts filled by direct recruitment on all-India basis otherwise than by open competition. The expression open competition is defined in para 2.2 of the Brochure, ^{meaning} recruitment by U.P.S.C. etc. We are, therefore, satisfied that this is a non-UPSC selection. Therefore, it is this foot note which is

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relevant. The point which has been pressed by the applicant and which is not satisfactorily clarified by the respondents is as to what happens to the Scheduled Caste vacancy which occurred in 1986 which was denied to the applicant by the respondents on the ground that he had not completed three years of service in the skilled grade which he admittedly did on 14.10.1987. The foot note clearly says that when a vacancy is carried ^{forward} ~~(L)~~ to the subsequent year(s) of recruitment, the reservation should be applied by treating the vacancy arising in that year as reserved even though there might be a single vacancy in the subsequent years. When, therefore, the respondents in exercise of the management function and on the basis of an assessment of the production requirements, assessed one vacancy in January 1988 that vacancy ought to have been treated as reserved. Respondents, however, instead of doing so ~~have~~ taken recourse to the argument of seniority which has no relevance in this particular case. This being so, the paragraph 12.3(iv) is not applicable in this particular case. The action of the department in inducting the vacancy of a general candidate on 8.1.88 and selecting and appointing a general candidate was clearly in violation of the instructions relating to maintenance and carryforward of roster. The very fact that the respondents amended their original order dated 13.8.88 on 31.8.88 and gave notional seniority to the applicant with effect from 8.1.88 indicates that the respondents became belatedly aware of the irregularity which they tried to correct.

5. Under the circumstances we are required to consider as to what relief should be granted to the applicant. The applicant has not ~~made~~ Shri V.L.Patil

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the general category candidate who was promoted on 8.1.88 a party although he has prayed for grant of seniority over Shri V.L. Patil. We also note that Shri Patil has worked in the Skilled Category post for about 5 years and any action to interfere with his promotion after a lapse of five years would be too drastic and in any case cannot be taken without hearing Shri Patil. We also note that the respondents in their wisdom held that there was a need for two posts and accordingly took action to promote the applicant in August 1988, though giving him a notional seniority from ^{25.1.88} 25.1.88. Therefore, Shri Patil could certainly claim a general post on the basis of this assessment of the vacancies. At the same time if the foot note below the roster was strictly followed, the applicant would have been eligible for being considered for a carried forward vacancy from a much earlier date and had a prior claim to the first vacancy occurring.

6. The respondents have stated that the applicant's basic claim is to the grant of promotion and benefit of wages from a ^{prior} date i.e., 25.1.88 and they have suggested that the applicant cannot be considered for such a benefit. This contention must be negatived by applying the reasoning mentioned by the Supreme Court in the case of UNION OF INDIA Vs. K.V. JANKIRAMAN AIR 1991, S.C. 2010. Although that case, in terms, related to "Sealed Cover Procedure", the Supreme Court has made universally applicable observations in relation to an employee's right to the promotion. The Supreme Court in para 7 of the judgment has stated as below:

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"The normal rule of 'No work no pay' is not applicable to cases such as the present one where the employee though he is willing to work is kept away from work by the authority for no fault of his".

We, therefore, respectfully follow the reasoning of the K.V. JANKIRAMAN and hold the applicant entitled to promotion with retrospective effect from 15.10.87 and also to the arrears of pay for the period from 15.10.87 to 13.8.1988. We, however, do not consider it a fit case for grant of interest thereon. The inter se seniority of Shri Patil and the Applicant should be decided keeping in view the fact that Applicant will be deemed to have been promoted from 15.10.1987.

7. We, therefore, dispose of this case by passing the following order:


ORDER

The application is allowed.

The respondents are directed to give to the applicant the deemed date of promotion strictly as per rules viz., 15.10.1987 and arrears of pay and allowances for the period from 15.10.1987 to 13.8.88 and should also fix the inter-se seniority between Shri Patil and the Applicant on this basis.

There would be no order as to costs.


(M.R. Kolhatkar)
Member(A)


(M.S. Deshpande)
Vice Chairman