

(B)

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

O.A. Nos. 889/88 & 235/89

1. G H Peshave

..Applicant
(in OA NO.889/88)

2. D G Pande & 30 ors.

..Applicants
(in O.A. No. 235/89)

V/s

Union of India & 8 ors.

Respondents

Coram: Hon. Shri Justice M.S. Deshpande, Vice Chairman
Hon. Shri V. Ramakrishnan, Member(A)

Appearance:

Mr. B. Marlapalle
Counsel for the applicants

Mr. P.M. Pradhan
Counsel for the respondents nos. 1 to 4

JUDGMENT:
(Per: M.S. Deshpande, Vice Chairman)

DATED: 29.07.1994

1. It would be convenient to decide these two cases by a common judgment as the facts in both the cases are similar and common questions of law have been raised. It would suffice to state only the facts in OA NO. 889/88 for the purpose of deciding these two cases. The applicants were appointed on 2.1.1953 or thereabout as Viewer 'C' grade in non-industrial post carrying grade Rs. 50-160. The post came to be converted into industrial establishment without any change in the pay scale and the applicant was promoted in 1962 as Viewer Gr.B industrial establishment in the grade of Rs.60-3-100 and thereafter promoted as Viewer Gr.A in the pay scale of Rs.150-205. He became Supervisor-III in 1963 in the non-industrial post in the pay scale of Rs.150-205 and was further promoted as Supervisor Gr.II in April 1970. In pursuance of the recommendations of the IIIrd pay commission, the pay scale came to be revised with effect from 1.1.1973 and thereafter a

further revision also came to be ordered to Rs.425-700. The scale was equivalent to the post of Chargeman Gr.II and was effective from 1.3.1977. This position was communicated to the applicants by the Respondent no.4's letter dated 4.3.86, Annexure B.

2. The Respondents nos. 5 to 9 joined as Supervisor Gr.III after the applicants and were directly recruited as Chargeman Gr.II while the applicants were redesignated as Chargeman Gr.II and their seniority was fixed from 1.3.1977. According to the applicants, if the orders were to have been communicated to them immediately after redesignation, they would have been benefited and promoted and they should not be made to suffer in the seniority, promotions and consequential benefits by virtue of the belated communication.

3. The question of seniority between the Direct Recruits and Promotees was agitated before the Bombay High Court, Nagpur Bench, in Writ Petition No.3130/1979 and by its judgment dated 26th April 1984 the following observations were made in para 31:

31. The net result of the above discussion is that there would be no question of considering any backlog in making appointment of direct recruits in preference to the promotees on the ground that from the date of ban on direct recruitment in 1970-71 till the date the direct recruitment was made pursuant to the advertisement dated 14.2.1977 there were appointments made by promotion in excess of the quota for promotees.

However, the appointments of direct recruits made pursuant to the advertisement dated 14.2.1977 are not to be disturbed even if they exceed the quota of direct recruitment since the said direct recruits are not made parties to this petition. But, so far as the question of determination of their inter-se seniority is concerned, the action of the respondents in granting notional seniority to the direct recruits appointed pursuant to the advertisement dated 14.2.1977, over the promotees appointed prior to 14.2.1977, with a view to place them at their proper places according to quota rule is illegal and is hereby quashed. The promotees appointed during the period of ban on recruitment from 1970-71 to 14.2.1977 are entitled to reckon their seniority from the dates of their appointment i.e., according to the length of their service, because the rotational rule of seniority i.e., seniority interlinked with quota, fails in their cases as there was no direct recruitment possible during the period of ban. The seniority of direct recruits appointed pursuant to the advertisement dated 14.2.1977 will have to be reckoned from the dates of their appointment."

4. The applicants rely on this decision and seek a direction to recast their seniority roll and refix the seniority of the applicants in the appropriate cadre where the applicants would have been placed and where the respondents nos. 5 to 9 have been placed at present and a direction to give seniority to the applicants

over the direct recruits with retrospective effect in the respective grades together with all the financial benefits which will be due and accrue.

5. According to the respondents nos. 1 to 4 the applicants were holding the post of Supervisor Gr.II which came to be redesignated from 1.1.1980 as per the scheme introduced by the Government and were subsequently promoted to the post of Chargeman Gr.I from 21.4.86. The respondents nos. 5 to 7 were promoted from Chargeman Gr.II to Gr.I from the panel of 31.12.1980, respondent no. 8 was promoted to the post of Chargeman Gr.I from the panel of 28.2.83 and the respondent no. 9 from the panel of 20.7.82. These promotions were made for the seniority rules known as "S.P. Rolls" (Syarrated Pyramid Roll) which were updated and revised from time to time for the purpose of D.P.C. The applicants were holding a different subject S.P. Roll No.5 (Gauges) whereas the respondents were holding S.P. Roll No.4 (Ammunition) till their merger which took place on 23.9.82. According to them the comparison made by the applicant is that though the respondents nos. 5 to 9 were indicated as Chargeman Gr.II as Direct Recruits in S.P. No.4 in 1978-79 is not relevant because the applicants were holding S.P. No.5 prior to the merger ie., before 21 September 1982. The applicants represented against the S.P. Roll which was prepared on 18.1.1985 based on the judgment of the High Court dated 26.4.1984. But as the S.P. Roll was correctly prepared as per the direction of the High Court suitable reply was sent to the applicants on 1.8.1988. Since the respondents nos. 5 to 9 had already been promoted to the higher grade of Chargeman Gr.I vide panels 1980-82 and 1982-83 prior to the pronouncement of the judgment of the High Court,

the question of comparison of the seniority of applicant in the grade of Chargeman Gr.II with respondents nos. 5 to 9 in the grade of Chargeman Gr.I as on 26.4.84 does not arise. Moreover the respondents nos. 5 to 9 were inducted as Chargeman Gr.II in 1978-79 as direct recruits under the quota rota rules pursuant to the advertisement dated 19.2.1977 whereas the applicants were holding the post of Supervisor Gr.III and were redesignated as Chargeman Gr.II from 1.1.1980. The applicants are, therefore, junior to the respondent nos. 5 to 9 in the grade of Chargeman Gr.II on the basis of length of service. It was submitted that this question came to be decided by this Tribunal in OA No. 46/1986 S.B. REPALE V. THE SECRETARY, GOVERNMENT OF INDIA, MINISTRY OF DEFENCE on 10th November 1986.

6. The only point in issue is whether by virtue of the merger of the cadres of Supervisor Gr.II and Chargeman Gr.II retrospective effect could be given in the manner which would entitle the applicant to seek further promotions. The matter is no longer resintegra in view of the decision in S.B. REPALE's case. It was observed in para 6 of that judgment as follows:

"The learned counsel for the respondents pointed out that in fact there was no merger as such for the cadres of Supervisors Gr.II and Chargeman Gr.II until 1980. What was done with effect from 1.3.1977 was a step taken to remove any anomaly ensuing from the Third Pay Commission Report vis-a-vis the two separate scales of Supervisors Gr.II and Chargeman Gr.II. These scales were equated and persons in both the cadres started

getting equal pay. Prior to this, the avenue for promotion for Supervisor Gr.II was the post of Chargeman Gr.II. It was only by certain orders issued by the Government on 8.4.1982 that the cadres of Chargeman Gr.II and Supervisor Gr.II were merged w.e.f. 1.1.1980. This necessitated the re-fixation of seniority according to the principles laid down in Government letter number 48333/DEI9(Adm.10) dated 8.4.1982. Consequently applicant and others got only notional seniority w.e.f. 1.3.1977. Had he been earlier promoted as Supervisor Gr.II along with some other incumbents he might have reaped the benefits of the scheme but the orders dated 8.4.1982 clearly said that those who were appointed prior to 1.3.1977 got that deemed date and seniority 'en block' while those who entered the cadres after that date got their seniority according to their dates of appointments. Thus those who were Supervisor Gr.II prior to 1.3.1977 could get seniority over those who came to be appointed as Chargeman Gr.II after that date."

7. It is apparent from the decision of this Tribunal that in the case of direct recruits, their date of actual appointment had bearing on their seniority and not any notional seniority and their placement in the seniority was properly arranged.

8. The questions which have been raised by the present Original Applications were considered in O.A. No. 46/1986 and we are bound by that decision. The applicants cannot, therefore, by virtue of the merger of the cadres to Supervisor Gr.II to Chargeman Gr.II w.e.f. 1.3.77 claim any notional seniority over the

respondents nos. 5 to 9.

9. We see no merit in both the petitions. They are dismissed. There would be no order as to costs.

(V Ramakrishnan)
Member(A)

(M.S.Deshpande)
Vice Chairman