

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Application No. 368 of 1986

Shri Balchandra Shivaraya Shiroor,
23, Overseer Road,
Khadaki,
Pune-3.

.. Applicant.

V/s.

1. The Union of India, represented
by the Secretary, Department of
Defence Production, Govt. of India,
Ministry of Defence,
New Delhi-110 001.
2. The Chairman & D.G.O.F.,
Ordnance Factory Board,
6, Esplanade East,
Calcutta-700 069
3. Shri M.D.Kandewal,
Deputy General Manager,
Ordnance Factory Project,
Hyderabad-500 001
4. Shri Bala Bhushan,
Deputy General Manager,
Heavy Vehicle Factory,
Avadi(Madras).
5. Shri V.H.Iyer,
Deputy General Manager,
Ordnance Factory Project,
Hyderabad-500 001

.. Respondents.

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil
Hon'ble Member(A), Shri J.G.Rajadhyaksha

Appearance:

1. Smt. N.N.Aphale,
Advocate
for the applicant.
2. Shri J.D.Desai,
Advocate(for Mr.M.I.Sethna)
for the Respondents.

JUDGMENT:-

Date: 4.2.1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

Regular Civil Suit No.2298 of 1984 of the file of

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the Civil Judge, Senior Division, Pune is transferred to this Tribunal for decision.

2. The applicant is an employee in the Ammunition Factory, Khadaki, Pune. He has a service dispute as mentioned below:

3. The applicant was directly recruited and appointed as Assistant Works Manager(Junior Time Scale) on 4.4.1973. Similarly, Respondents Nos. 3, 4 and 5 were also so appointed on 26.7.73, 1.10.73 and 28.6.73 respectively. These appointments are made in terms of the recruitment rules known as Indian Ordnance Factories Service (Group-A) Recruitment Rules, 1972. There are in all 9 categories of officers in the service. Appointments are made to these various categories first in the Junior Time Scale. It is not necessary to enumerate all these categories. Suffice it to say that 'Engineer' & 'Chemist' are two of them. The applicant was appointed in the Junior Time Scale in the 'Chemist' category while Respondents Nos. 3, 4 and 5 were appointed in the 'Engineer' Category. It is not in dispute that respondents Nos. 3, 4 and 5 entered service subsequent to the applicant joining it and as such they are in that manner junior in service. The next promotional post is that of Senior Time Scale. The applicant and the respondents were promoted to this Senior Time Scale on the same day i.e. 22.4.1978. From these posts an employee can aspire to get the promotional post known as Junior Administrative Grade (Ordinary Grade) (hereafter referred to as JAG(OG). (The designation would be Deputy General Manager). On 30.6.1984, respondents Nos. 3, 4 and 5 were promoted to this grade of JAG(OG). The applicant filed the suit in question challenging these promotions and also making a grievance that his case

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for promotion to the grade of JAG(OG) was not at all considered. Of course, the applicant was promoted to that grade subsequently on 31.7.1986 i.e. after the suit was filed. The grievance of the applicant is that respondents Nos.3, 4 and 5 were promoted in disregard of the applicants' claim though he was much senior to these respondents. It was contended that this action of the department is unlawful, illegal and unjustified. The applicant, therefore, prayed that the promotions of respondents Nos. 3, 4 and 5 be declared null and void and that it be also declared that applicant is entitled to that promotion with effect from 30.6.1984.

4. The respondents have resisted the claim by filing written statement in the suit. The dates of appointments and promotions of the applicant and respondents Nos.3, 4 and 5 are not disputed. They, however, contended that upto the level of Junior Administrative Grade (OG), promotions are made category-wise, and that in the year 1984 there were certain posts in the JAG(OG) in both the categories namely 'Engineer' and 'Chemist'. The cases of the applicant as well as the respondents were considered for promotions category-wise and that more posts in the 'Engineer' category were available while those in the 'Chemist' category were lesser in number and naturally were allotted to the Senior Time Scale Officers from the 'Chemist' category. Similarly, promotions were made to the grade JAG(OG) from the "Engineer" category in available vacancies and as the posts in that category were larger in number respondents Nos. 3, 4 and 5 were appointed in 1984 according to their own placement in the Seniority List in the "Engineer" category. It was contended that the

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seniority list is maintained category-wise and that, therefore, the fact that the applicant had joined the initial service in "Chemist" category earlier than the respondents Nos. 3, 4 and 5 who joined the service in "Engineer" category would not be relevant for the purposes of deciding the seniority for promotions to the JAG(OG) which are made category-wise. It is in this way that the respondents contend that the promotion of respondents Nos. 3, 4 and 5 earlier to that of the applicant is quite legal and proper.

5. During the course of the hearing, at our directions the respondents have produced the recruitment rules and the seniority lists. The recruitment rules are dated 3.1.1973. The term "Service" is defined to mean and ~~the posts consist~~^{post or station} of grades/scales mentioned in Appendix-1; and it comprises of 9 categories of officers such as Engineers, Chemists, Metallurgists, Psychologists, Physicist etc. The posts are to be filled in by selection from amongst the Senior Time Scale officers with five years regular service in the grade. Appendix-I shows in all eight designations with number of posts and scales of pay. For our purpose the grades at Serial No.6 and 7 are relevant. They are JAG(OG) and Senior Time Scale respectively. The Senior Time Scale officers with five years service are eligible for promotion to JAG(OG). We have already mentioned that the contention of the applicant is for selection to the grade of JAG(OG), the department cannot distribute such posts category-wise and that they should fill in the posts on the basis of seniority irrespective of the question as to whether a particular candidate belongs to one category or the other. As against this, the respondents' contention is that the

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posts of JAG(OG) are required to be filled in category-wise and that this is specifically so mentioned in the recruitment rules. There is much substance in this contention. Rule 26(1) of the recruitment rules reads as follows:-

"Promotion in the posts of grades or time scales in serial number 1 to 6 of Appendix-I annexed to these rules shall normally be made by selection on merit. Promotion to the post of serial number 7 shall be made on the basis of seniority-cum-fitness, from among suitable persons from the corresponding lower posts indicated therein on the recommendation of a duly constituted Departmental Promotion Committee; Provided that in the posts mentioned in serial number 6 & 7 care is taken to ensure that vacancies belonging to each of the categories specified in Clause(h) of rule 2 are normally filled by persons of the respective category in lower posts..."

Thus, the above mentioned proviso states that in filling posts mentioned at Serial No.6 & 7 care should be taken to ensure that vacancies belonging to each of the categories specified in Clause(h) of rule 2 are normally filled by persons of the respective category in lower posts. The posts mentioned at serial No.6 & 7 in the above mentioned rule are the posts of JAG(OG) and Senior Time Scale posts respectively. It is thus clear that the posts of JAG(OG) are normally to be filled in by persons of the respective category in the lower posts. This is exactly what has been done by the department while making promotions in 1984 when respondents Nos. 3, 4 and 5 were promoted as JAG(OG) in the "Engineer" category. Similarly, some employees who were senior to the applicant in "Chemist" category were also promoted to the promotional posts in that category. We may also observe that ^{The Respondents have} produced the seniority list of the various officers which is prepared category-wise upto JAG(OG). Thus, the seniority list of Junior Time Scale, Senior Time Scale and

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JAG(OG) is prepared category-wise and this is consistent with Rule 26(1).

6. Smt. Aphale contended that there is nothing to show category-wise distribution of the JAG(OG), and that in the absence of such distribution it will not be open for the department to say that particular number of posts of JAG(OG) may be ear-marked for "Engineer" category and some other particular number of posts for "Chemist" category. When we asked Mr. Desai as to how the category-wise distribution of the posts of JAG(OG) is made, he told us that the distribution is made on the basis of the needs of the Department. According to him, the Ordnance Factory Board Calcutta, decides the functional requirements of the posts of JAG(OG) in various categories and that on that basis the names of the eligible candidates from concerned categories are placed before the DPC and the DPC, thereafter, makes the selection. It was urged by Smt. Aphale that this procedure is illegal. According to her all the posts of JAG(OG) should go by seniority in lower posts and that there should not be any nexus in the selection with the category in which a particular employee is working. This contention of Smt. Aphale is against the specific provisions in Rule 26(1) mentioned above. It is true that the rules themselves have not distributed the various posts of JAG(OG) category-wise. However, absence in the recruitment rules of such distribution would not make any difference. The fact that there are in all 9 categories in which the appointments are made of the various officers cannot be lost sight of. Obviously upto a certain stage

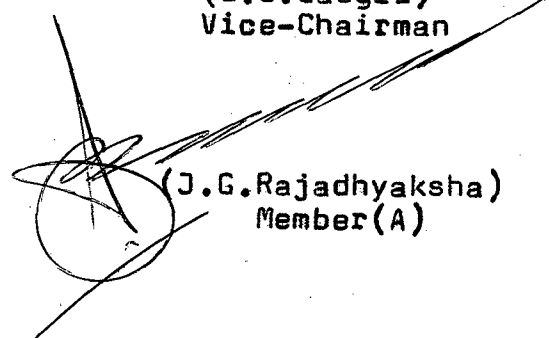
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the promotions should ordinarily be category-wise only and the question as to how many posts should be allotted to each category will depend upon the various circumstances which may change from time to time. Such change may arise on account of increase in work load in particular category or decrease of work load in another category. This aspect is required to be dealt with by the department and the latitude of category-wise distribution of promotional post should in the fitness of things rest with the needs of the department. The recruitment rules have provided for category-wise promotion. Thus, the administration would have power to fix such distribution of posts so as to give proper effect to Rule 26. The said distribution would not be running counter to the recruitment rules. On the contrary the decision in that respect would be supplementary to the recruitment rules. In view of this position, we do not think that the applicant can make any valid grievance that the department in 1984 arbitrarily decided that particular number of JAG(OG) posts were required and should be filled in from the "Engineer" category and from the "Chemist" category. the selection of respondents Nos. 3, 4 and 5 on the basis of such requirement is quite legal.

7. In view of the above discussions, the application fails and is dismissed. There are, however, no orders as to costs.



(B.C. Gadgil)
Vice-Chairman



(J.G. Rajadhyaksha)
Member (A)