

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.46/86.

Shri S.B.Repale,
C/m II,
Controllerate of Inspection(Amn),
KIRKEE, PUNE-3.

... Applicant

V/s.

1. The Secretary,
Govt. of India,
Ministry of Defence,
New Delhi.
 2. The Secretary,
Govt. of India
Ministry of Defence Production,
New Delhi.
 3. The Director General of Inspection,
Department of Defence Production,
Ministry of Defence,
New Delhi.
 4. The Director of Inspection(Armaments)
Deptt. of Defence Production,
Ministry of Defence,
New Delhi.
 5. The Controller,
Controllerate of Inspection(Ammunition)
Kirkee PUNE.411 003.
 6. The Senior Inspector,
Inspectorate of Armaments,
Vikhroli,
Bombay.400 083.
 7. The Senior Inspector,
Inspectorate of Armaments,
Khamaria,JABALPUR.480 005.
 8. Shri S.VENKATESWARAN,C'man I,
Inspectorate of Armaments,
Bombay Quality Assurance Wing
C/O C.I.A.Kirkee Pune.411 003.
 9. Shri S.Sikarwar C'man I,
Inspectorate of Armaments,
KHAMARIA JABALPUR 480 005.
- ... Respondents.

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

Appearances:

1. Applicant in person.
2. Shri Atre for P.M.Pradhan
Counsel for the Respondents.

JUDGMENT:

Dated: 10.11.1986

¶ Per J.G.Rajadhyaksha, Member(A) ¶

This application is primarily directed
against an order dated 8.4.1982 passed by the
Director General of Inspections, New Delhi and other
officials, as well as against two employees of that

Directorate General namely Respondents Nos.8 and 9 Shri S.Venkateswaran and Shri S.Sikarwar respectively. What is challenged is the appointment and promotion of Respondents Nos.8 and 9 as Chargeman Grade.I.

2. The dispute actually can be reduced to a short point as to whether applicant is entitled to seniority as Chargeman Grade.II and consequent promotion to Chargeman Grade.I on the basis of his deemed date of seniority namely 1.3.1977.

3. Applicant came to be appointed a Supervisor Grade.III(Technical) on 19.12.1963 in the erstwhile Chief Inspectorate of Armaments, Kirkee, in the scale of Rs.150 - 240. He was promoted Supervisor Grade.II (Technical) on 25.1.1971 in the pre-revised scale of Rs.205 - 280. As a sequel to the recommendation of the Third Pay Commission the pay scales came to be revised w.e.f. 1.1.1973 and as a result of representations by the Association of Ordnance Factory Supervisors further revision was ordered by Government in the scale of Supervisor Grade.II making it Rs.425 - 700, this scale was equivalent to the scale of Chargeman Grade.I and since effect was given to the scale from 1.3.1977 Supervisors Grade.II and Chargeman Grade.II came to be on the same footing. It appears that there was a merger of the cadres of Supervisors Grade.II and Chargeman Grade.II sometime in April, 1980 but effective from 1.1.1980. Applicant it seems became Chargeman Grade.II w.e.f. 1.1.1980. Respondent No.3 who joined service as Supervisor Grade.III in 1964 was promoted Supervisor Grade.II in November, 1971, whereas the applicant was promoted in January, 1971. At the same time there was direct recruitment to the posts of Chargeman Grade.II and Respondent No.3 was selected for direct recruitment

to that post on 12.10.1978. Respondent No.9 joined as Supervisor Grade.III on 14.7.1969, but he was also directly recruited as Chargeman Grade.II on 19.1.1979. Both Respondent No.8 and 9 have been shown as senior to the applicant in the gradation list of Supervisor Grade.II/Chargeman Grade.II and hence the dispute, Incidentally Respondent No.8 Venkateswaran is reported to have expired sometime in 1983-84.

4. It is the applicant's case that this question of seniority between direct recruits and promotees had been agitated in the Bombay High Court, Nagpur Bench in Writ Petition No.3130 1979. The High Court, giving its decision in 1984, gave two important directions. One was ^{that} the direct recruits appointed pursuant to an advertisement dated 14.2.1977 could not be given notional seniority over such promotees appointed prior to them on the ground that "according to the quota rule they should be placed above ^{them at} ~~the~~ ^{the} ~~mat~~ their proper places in the seniority list". Here the High Court followed the Supreme Court ~~Ruling~~ in Janardhan's case. The second directive was that the appointments of those who were appointed as per the interim orders of the High Court would be subject to the results of the Petition, at the same time direct recruits so appointed would not get notional seniority and it would have to be fixed on the basis of the rotational rule vis-a-vis the promotees. It was further clarified that 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. Though, therefore, the High Court decided that there should be no interference with the 75 persons already appointed, by consent the future 44 vacancies advertised on 27.3.1979 would be filled in the proportion of 80% promotees and 20% direct recruits without any ~~considera-~~

consideration of backlog, It is applicant's contention that the Government should have followed these directives of the High Court and extended benefit thereof to the applicant and others similarly placed. He relies upon the stay granted by an injunction by the High Court, Nagpur Bench, and argues that since he has been given the deemed date in the cadre of Chargeman Grade.II as on 1.3.1977, any one who entered that cadre after him should be considered Junior to him depending upon his date of appointment and would have no right to be promoted as Chargeman Grade.I over the applicant's head. He particularly challenged the promotions of Respondents Nos.8 and 9 and prayed that he should be given a promotion on a date prior to that of Respondents Nos.8 and 9 on the basis of his deemed date of seniority namely 1.3.1977.

5. The Respondents' reply is that there has not been any mis-carriage of justice or violation of principle laid down either by the Bombay High Court, Nagpur Bench or directives given by Government in the present case. It is their contention that according to the orders issued the interse¹ seniority between Supervisors Grade.II and Chargeman Grade.II would be determined by the category-wise seniority which existed as on 1.3.1977 and that those who are already Chargeman Grade.II would, in any case, rank senior to those who were only Supervisors Grade.II or got a notional date of seniority on 1.3.1977, Any appointment or promotions after 1.3.1977 would be bestowing a junior rank to such appointees.

6. We have heard the applicant in person and Shri Atre for the Respondents. The applicant's contention is merely this, that since he has been

given notional seniority w.e.f. 1.3.1977 in the cadre of Chargeman Grade.II he must be promoted ahead of any one else who came to be a Chargeman Grade.II after him, He therefore seeks promotion as Chargeman Grade.I with retrospective effect on the date on which he was due to be promoted. The learned Counsel for the Respondents pointed out that in fact there was no merger as such for the cadres of Supervisors Grade.II and Chargeman Grade.II until 1980, What was done w.e.f. 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 Grade.II and Chargeman Grade.II. These scales were equated and persons in both the cadres started getting equal pay, Prior to this, the avenue for promotion for Supervisor Grade.II was the post of Chargeman Grade.II. It was only by certain orders issued by the Government on 8.4.1982 that the cadres of Chargeman Grade.II and Supervisor Grade.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 45333/DG1 (Adm10) 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 Grade.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 bloc' while those who entered the cadres after that date got their seniority according to their dates of appointments, Thus those who were Supervisor Grade.II prior to 1.3.1977 could get seniority over those who came to be appointed as Chargeman Grade.II after that date, The principle was that interse seniority in the two categories was not to be

disturbed. Producing a seniority list showing interse seniority of erstwhile Chargeman.II and erstwhile Supervisors.II, he explained that Respondent No.9 Sikarwar who joined as Supervisor Grade.II on 24.7.1969 became Chargeman Grade.II by direct recruitment on 17.2.1979, being qualified for such direct recruitment. The Respondent No.8 had like-wise been recruited as Supervisor Grade.II in 1964, promoted Supervisor Grade.II on 15.11.1971 and being qualified applied for and got directly recruited as Chargeman.II on 12.9.1978. Further referring to one K.P.Ghosh whose serial number ^{is} 16 in the said seniority list, the learned Counsel points out that admittedly Ghosh is senior to applicant having become Supervisor Grade.II on 11.10.1963 and Chargeman Grade.II only on 26.2.1979 that is later than Respondent No.9 Sikarwar who became Chargeman.II on 19.1.1979, Since Ghosh is admittedly senior to the applicant and Respondent No.9 is established as being senior to Ghosh, applicant cannot possibly claim seniority over Respondent No.9. Even if for the sake of argument it is conceded that the instructions issued by the Department on 8.4.1982 were bad, and had to be ignored, the applicant could not, by any stretch of imagination, be senior to Respondent No.9. All persons from Sl. No.9 to 95 in the seniority list had been given one notional seniority w.e.f. 1.3.1977 in terms of the orders dated 8.4.1982, but their category-wise seniority had not been disturbed and, therefore, the applicant had no case.

7. Having heard both the sides and ^{on} perusing the record which has been brought to our notice we come to the conclusion that the applicant has no case for claiming promotion on the basis of notional seniority as on 1.3.1977. We feel that the date of actual appointment into a cadre cannot possibly be relegated

to a lower position on the basis of deemed date of seniority in that cadre. In the instant case, we find that in the case of direct recruits their date of actual appointment has dictated their seniority and not any notional seniority by virtue of appointment to posts lying vacant in the interregnum. We find that the seniority has been properly arranged and, therefore, we cannot find fault with the department and its action, because the applicant's claim to promotion according to his deemed date of seniority has not been granted. It will be significant to note that 1.3.1977 is the deemed date of seniority granted even to Respondents Nos. 8 and 9. Therefore what seems to have been taken into account is their inter¹se seniority as Chargeman Grade.II or Supervisors Grade.II. It would be too far fetched a contention that not only applicant but several others who were given 1.3.1977 as the deemed date of seniority may be *promoted* over so many others, there would be neither justice nor equity either towards direct recruits who by virtue of their date of appointment get a place over the applicant and others, nor of other promotees who have got a notional date of seniority.

8. It will be interesting to mention here that applicant has filed another application claiming benefits in pay and allowances on the basis of this deemed date of seniority, That application was granted by this Bench of the Tribunal as it appeared that there was justification for claiming arrears w.e.f. the notional date of promotion to a particular cadre. The same however, cannot be stretched to the question of promotions from that cadre to a higher cadre of Chargeman Grade.I.

9. In the result the application fails.

10. We therefore, order that the application be dismissed but in the circumstances there will be no order as to costs.

B.C. Gadgil
(B.C. GADGIL)
VICE - CHAIRMAN

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER (A).