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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 638/89. 199.
~~T.A. NO:~~

DATE OF DECISION 4.2.92

SHRI R.P. DHOBAI & ORS. Petitioner

SHRI M.M. SUDAME, Advocate for the Petitioners

Versus

UNION OF INDIA & ORS. Respondent

SHRI RAMESH DARDA. Advocate for the Respondent(s)

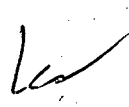
CORAM:

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN,

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A)

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

mbm*


(U.C. SRIVASTAVA)
V/C

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH

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Registration D.A.No. 638 of 1989

R.P.Dobhal & Others

Applicants

Vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Di. 4/2/92

Hon'ble Mr. M.Y. Priolker, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants who started their service career as Supervisor-B between the period from 1955 to 1959, after intervening promotion were given promotion to the post of Chemical Apprentice between the period from 1961 to 1963. Feeling aggrieved from the letter dated 17th January, 1988, by which the seniority of the Foreman has been amended and the position of the applicants who claim themselves to be the seniors to the respondents have been placed below them. This seniority has been prepared in pursuance of the judgment and direction given by the Bombay High Court in the case of S.P. Saxena and others, have approached this Tribunal claiming the relief against the same. The applicants who have jointly made this application, as their cause is common have prayed that the amendment of the seniority list of the Foreman (Chemical) issued vide letter dated 7.1.1988 be quashed, and the respondents be directed to restore their seniority, and be directed not to effect any promotion to the next higher post pending finalisation of this petition.

2. The applicants who were appointed as Chemical Apprentice between the period from 1961 to 1963 on completion of the apprenticeship were recruited, trained and were graded as Chargeman Grade-II between the period from 1963-1965 and were categorised as departmental promotees by virtue of Rule 7 read with Rule 8 of the S.R.O. 4 dated

4.1.1956, fully known as Indian Ordnance Factories (Recruitment & Conditions of Service of Class III Personnel) Rules, 1956. The applicants who have filed this application are working as Foreman in Ordnance Factory, Bhandara. The respondents entered in services prior to the entry of the applicants, as they were appointed as Supervisor-B between the period from 1955 to 1959. In pursuance of the advertisement for the post of Chargeman-Grade-II, Grade-I and Assistant Foreman. The respondents who applied for the same were selected and were appointed as Chargeman Grade-II between April to December, 1963. This appointment was made as per Rule 11 read with rule 13(ii) of the SRO 4 dated 4.1.1956. and they were categorised as direct recruits. At this stage ^{it is} ~~we are~~ relevant to point out that the rules of 1956 were amended on 6.1.1961 known as 1961 rules and these rules provides for seniority on the basis of quota i.e. 80% promotees and 20% direct recruits.

3. The appointments, promotions, transfers etc of the employees are controlled by the Director General/Chairman Ordnance Factories. The cadre of Non-gazetted officers (Class-III) consists of the following posts:

1. Foreman, Staff Assistants, Store holder.
2. Assistant Foreman, Senior Technical Assistant, Assistant Store holder.
3. Chargeman Grade-I, Junior Technical Assistant.
4. Chargeman Grade-II.

While the cadre of Non-Industrial employees (class III) consists of the following:

1. Supervisors Grade-A.
2. Supervisors Grade-B.

The posts of Chargeman Grade-II under Rule 6 of 1956 provided that 80% promotion of Supervisor-A in accordance with the provisions of Rule-8 or by appointment of selected qualified apprentice recruited and trained in

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accordance with the provisions of appendix-B and 20% by direct recruitment. Thus even under old rules of 1956 there was a quota system which was maintained in the rules of 1961.

4. It appears that in 1962-63 during the Chinese aggression the technical personnel in different categories including 19 persons as Chargmen Grade-I and 73 persons as Chargeman Grade-II were recruited. The grievance of the applicants is that while making this recruitment no reference to the quota system was maintained, i.e. 20% posts be given to the direct recruits and 80% posts to the promotees. If the same rule would have been held only 15 persons would have been promoted and only 15 persons would have gone to the promotees. A seniority list of Chargeman Grade-II was prepared on 31.10.1977 by the Director General/Chairman, Ordnance Factories. Similar list of seniority was issued on 1.1.77 in respect of Assistant Foreman. In the seniority list the applicants were shown above the respondents in general and were holding the charge of Assistant Foreman earlier than the respondents.

5. The respondents have filed a writ petition in the Bombay High Court challenging the seniority list of Chargeman Grade-II (Chemist) and Assistant Foreman (Chemist) as prepared in the year 1977 and 1978. The applicants were also party to the same. It appears in the meantime a few persons have approached the Supreme Court in the year 1971 making a grievance of the promotions which were granted to the applicants from the post of Chargeman Grade-II to the post of Assistant Foreman. The Supreme Court dismissed the said writ petition on 20.11.75, holding that there were no illegality in the supersession of the claims of the respondents in favour of the applicant, but observed

that some of the present respondents were unable to establish that they had been denied their seniority in violation of the constitution or that the seniority list had been prepared in violation of any rules or principles of natural justice. The High Court concluded that continuous officiation of the respondents entitled them to be shown in the impugned seniority list above the applicants, and the earlier judgment of the Supreme Court did not address itself to the facts, and as such the observation of the Supreme Court would not stand in the way of deciding it. The Bombay Court directed that the seniority list dated 31.11.1977 and 33.3.1978 be quashed and fresh seniority list be prepared giving seniority to the present respondents on the basis of continuous officiation, and the respondents would be entitled to all consequential relief such as adjustment of the dates of their promotions to the higher posts on the basis of recasting list. The Government of India had challenged the said judgment of the Bombay High Court before the Supreme Court and filed special writ petition which was dismissed on 3.2.1984.

6. The applicant's grievance is that the respondents have not implemented the judgment of the High Court. The respondents are not only re-casting the seniority of Chargeman Grade-II and Assistant Foreman but also the Foreman. Although there is a controversy between the judgment of Bombay High Court and Supreme Court of India regarding the post of Foreman, No direction was given in respect of the Foreman by the Bombay High Court. Their plea is that they having been appointed as Foreman from the post of Assistant Foreman between the years 1977-1980

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prior to the appointments of the respondents and their officiation for having been circulated on 9.7.1987 depicting the position of Foreman. The applicants were holding the said post continuously and their seniority as Foreman could not be disturbed for the implementation of the judgment of the High Court.

7. The respondents have resisted the claim of the applicant pleading inter-alia that the seniority of the respondents has been fixed under rule 10 S.R.O. on the basis of continuous officiation. In case the applicants would have been promoted earlier to the promotion of respondents as Assistant Foreman then they can claim benefit of the judgment of the Bombay High Court which not only issued direction in respect of the seniority present before it but also for consequential benefit which also included promotion to the higher post. The applicants were the party before the Bombay High Court but they did not take any interest in the case and they have no right to agitate against the judgment in this manner by filing any application and claiming the relief in such manner which may not result in certifying the judgment of the Bombay High Court though upheld by the Supreme Court of India. According to the respondents they were selected and appointed as Chargeman Grade-II as direct recruit and their appointments were not temporary and they were duly selected by the Selection Board appointed by the D.G.O.F. The seniority list of the Chargeman Grade II was not as per the seniority rules containing in SRO (4) of 1956 and the applicants have been given individual higher ^{seniority} ~~authority~~ to which they were entitled to. The Bombay High Court upheld verdict given by the Allahabad High Court which upheld the validity of 1961 rules and also that the

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the present respondents are entitled to be shown in the impugned seniority list of Chargeman Grade II and Assistant Foreman. Accordingly, the seniority list was struck down and further seniority list was prepared with the direction given by the Bombay High Court. The respondents were selected and were appointed to the post of Chargeman Grade II as direct recruit under rule (6) of SRO and in the exercise of said power the respondents 3 to 22 were appointed. There was no contention or stipulation ~~in~~ ^{at} any time before the Government that it was temporary or adhoc. In view of the relief granted by the Bombay High Court obviously the seniority in all the grades did not include ~~with~~ that of Foreman. The applicants have challenged the promotion of all these persons and as a result of this the present applicants have also been benefitted officially because they were promoted earlier, but the benefit of the seniority will not be available to them. IN case they would have been passed against them, their further contention ~~would~~ have been regarding claiming the post ~~as~~ as continuous officiation of this higher post. But in view of the facts that the judgment is binding on them it loses its force and weight. In view of the facts ^{that} the respondents were direct recruits, their promotion to the higher post was made in accordance with law. The applicants could not claim promotion over the respondents even ^{though} they may have been appointed subsequent to their appointments as direct recruits. As such the applicants' claim is not sustainable and application got to be dismissed and accordingly ~~it~~ is dismissed. There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN.