

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:33/96

DATE OF DECISION: 19<sup>th</sup> July 2000

Shri V.V. Damle Applicant.

Shri S.P.Saxena Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri R.K. Shetty Advocate for  
Respondents

**CORAM**

Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L. Jain, Member(J)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *all*  
other Benches of the Tribunal?

(3) Library.

*yes*

*S.L.Jain*

(S.L.JAIN)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:33/96

the 19<sup>th</sup> day of JULY 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

V.V. Damle  
Residing at Block No.9,  
Savarkar Nagar, Manik Bag.,  
Vishnu Bldg., Sinhgad Road, Poona. ...Applicant.

By Advocate Shri S.P. Saxena.

V/s

1. The Union of India through  
The Secretary,  
Department of Defence  
Production and Supplies,  
Ministry of Defence, New Delhi.
2. The Chairman,  
Ordnance Factories Board,  
10-A, Auckland Road, Calcutta.
3. The General Manager  
High Explosives Factory,  
Kirkee, Pune.
4. Shri U. Kannaiyan  
Chargeman Gr.II/F.B.  
High Explosives Factory,  
Kirkee, Pune. ... Respondents.

By Advocate Shri R.K. Shetty.

ORDER

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 to quash and set aside the impugned order dated 21.8.1995, promotion order dated 1.7.1995 promoting respondent No.4 with direction to respondents to consider the applicant for promotion to the post of Chargeman Grade II (Non Technical/OTS) post presently held by respondent No.4 from the date, the vacancy has occurred with all consequential benefits including arrears of salary etc. and cost of the petition.

*ALM?*

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2. The applicant who was initially appointed as Lower Division Clerk in the office of respondent No.3 on 29.3.1966 was promoted to the post of Upper Division Clerk with effect from 1.1.1980 and continues to be in the said post till date. The next promotion from the post of UDC shall be to the post of Chargeman Grade II/ Non Technical (OTS) or Office Superintendent Grade II which carries pay scale of Rs. 1400 - 2300. The promotion to the post of Chargeman Grade II (Non-Technical/OTS) is done on local basis in each Ordnance Factory and the promotion is governed by the "Ordnance and Ordnance Equipment Factories Group 'C' and Group 'D' Non-Industrial Posts"(Recruitment and Conditions of Service) Rules 1989 published as S.R.O. 14(E) in the Gazette of India dated 4.5.1989. The vacancy for the post of Chargeman Grade II (Non-Technical/OTS) arose under respondent No.3 in the month of June 1995 and same was to be filled up from amongst the persons listed in the combined seniority list of UDC/Supervisor (NT/OTS), Supervisor (NT/Hygiene), Telephone Operator Grade I. The name of the applicant in the combined seniority list appears at serial No.2 and name of respondent No.4 appears at serial No. 29. Serial No.1 Shri N. Mathew in the combined seniority list has already been promoted to the post of Chargeman Grade II (Non-Technical/OTS) prior to the occurrence of the above vacancy in June 1995. When the applicant was senior most in the combined seniority list for being considered for the promotion to the post of Chargeman Grade II (Non-Technical/OTS) against vacancy occurred in June 1995, the respondent No.3 promoted respondent No.4 to the post as Chargeman Grade II (Non-Technical/OTS) F.B. by Draft Factory order Part II dated 1.7.1995 which is repeated in Regular Factory Order No.393 dated 3.7.1995 with effect from 1.7.1995.

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3. The applicant submitted a representation on 4.7.1995 to respondent No.3 (Exhibit A-4) reminder dated 13.7.1995 (Exhibit A-5) and further reminder on 16.8.1995 (Exhibit A-6) which was replied vide Exhibit A-1 dated 21.8.1995 rejecting the claim for promotion on the sole ground that "the post of Chargeman Grade II had fallen vacant in Fire Brigade Section and since the applicant did not fulfill the specified qualifications as per S.R.O. for the post of Chargeman Grade II (Non-Technical/F.B.), the D.P.C.(Fy) did not consider the applicant for the said post.

4. The grievance of the applicant is that he being the senior most in the combined seniority list was entitled for consideration to the post of Chargeman Grade II (Non-Technical / OTS), according to the Recruitment Rules framed under Article 309 of the Constitution of India. There are post carrying nomenclature as Chargeman Grade II (Non-Technical/OTS) and the vacancy which occurred in June 1995 was to be filled as per Rules. Respondent No.3 illegally sub-divided the category of Chargeman Grade II into category of (A) Chargeman Grade II - Stores and (B) Chargeman Grade II other than stores. This sub-division/sub-classification of the category of Chargeman Grade II (Non-Technical / Stores) is in violation of the Statutory Rules framed under Article 309 of the Constitution of India. Hence this OA for the above said reliefs. In the past many years respondent No.3 has been filling up the post of Supervisors / Chargeman/Assistant Foreman etc., in Fire Brigade Section from among the staff of the Factory and such staff are deputed for undergoing departmental training in Fire Brigade subsequent to their promotion/appointment etc.

*Agm*

5. The respondents resisted the claim of the applicant and stated that respondent No.3 is the High Explosives Factory, Kirkee, Pune engaged in manufacture of High Explosives and High grade Chemicals to meet the requirements of Indian Defence Forces under the Ministry of Defence. Respondent No.4, Shri U. Kannaiyan holding the post of Chargeman Grade II (Non-Technical (other than stores)) was appointed as Fireman Grade II with effect from 22.2.1971 and was holding the post of Supervisor 'B' in the scale of Rs. 1200 -2040 and was promoted to the post of Chargeman Grade II (Non-Technical (OTS)) Fire Brigade in the pay scale of Rs. 1400 - 2300 with effect from 1.7.1995. As per SRO No. 13(E) 4th May 1989 the post of Chargeman Grade II (Non Technical and Stores) in Civilian Defence Service Group 'C' is a Non-Gazetted post in the pay scale of Rs. 1400- 2300 and is also a selection post. As per the said SRO for promotion to the post of Chargeman Grade II, the feeder cadre of Supervisor (Non-Technical/Stores)/ Supervisor 'B' Hygine Cell or UDC or equivalent and Telephone Operator Grade I with three years of regular service in the grade are considered. Any number of the staff having the designation such as UDC cannot be promoted to the post of Chargeman Grade II/Fire Brigade unless he has the prescribed fire fighting qualification and experience in fire fighting. Thus the prescribed qualification and experience in the trades of Fire Brigadae is a must for aspiring to the post of Chargeman Grade II/Fire Brigade. The applicant does not posses either the prescribed qualification of Fire fighting or experience in fire fighting. The prescribed qualification for the post of Supervisor Fire Brigade in Col. 12 below in the Schedule to SRO 13(E)

*Signature*

4.5.1989. The category of Supervisor of Non-Technical/Stores is a general term which includes several trades including the trade of Supervisor/Fire Brigade. The post of Supervisor/Fire Brigade is filled by promotion of persons having the following prescribed qualifications:-

Promotion from grades of Security Assistant 'B' / Store Keeper/LDC or equivalent with 3 years of regular service in the grade and Leading Hand Fire/Driver Fire Brigade with 3 years of regular service in the grade having passed the:

- a) Senior Fire Supervisor Course from Defence Institute of Fire Research, Min. of Defence, New Delhi
- b) Sub Officer's National Fire Service College, Nagpur.
- c) Station Officer's Course/Asstt. Divisional Officer's/ Divisional Officer's course from National Fire Service College, Nagpur.
- d) BE Fire Engineering from Nagpur University.
- e) Graduateship from Institute of Fire Engineers UK or Graduateship from Institute of Fire Engineers India.

Thus only a Supervisor/FB alone will be able to discharge and function in the post of Chargeman Grade II /Fire Brigade and the applicant who does not have the aforesaid statutory prescribed qualification will not be eligible for consideration. The applicant would not be in a position to discharge the function of the post of Chargeman Grade II/Fire Brigade as he does not possess the prescribed qualification. Respondent No. 4 produced a certificate dated 4.10.1988 issued by the Defence Institute of

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7. Further it was clarified that distribution of post of Supervisor 'A' and 'B' (Non - Technical) in Fire Brigade, instruction contained in para 1(ii) and (iii) of letter dated 28.12.1979 will apply mutatis mutandis. Fire Advisor, Ministry of Defence has categorically emphasised vide letter No. 0727/Fire Advisor/79 dated 2.1.1979 (Exhibit R -6) that " No one who is below Class VIII Standard and not passed Senior Supervisory Course from Defence Institute of Fire Research should be allowed to be promoted as Supervisor 'B' (Fire). Further it is directed that any departmental candidate who is otherwise found very suitable but has done only General Fire Fighting course from Defence Institute of Fire Research having educational standard as Class VIII may be promoted to Supervisor 'B' (Fire) Purely on Adhoc basis and should be regularised only after being qualified in Senior Supervisory Course from Defence Institute of Fire Research. The Ordnance Factory Board vide No. 46/A/NI dated 3.4.1984 (Exhibit R - 7) specifically stated that qualification cannot and should not be waived irrespective of whether the incumbent for the post is a new recruit or departmental promotee and the following specification for promotion/appointment of Supervisor 'B' (NT/Fire Brigade) in all Ordnance and Ordnance Equipment Factories. Thus the vacancies in Fire Brigade specially sanctioned for exclusive services in Fire Brigade has to be regulated from the feeder cadre of Fire Brigade personnel only and supervising cadre in Fire Brigade should have minimum qualification of Senior Supervisory Course from Defence Institute of Fire Research, New Delhi. The President of India was pleased to re-designate the post of Supervisor 'A' and Security Assistant 'A' as Chargeman Grade II (Non - Technical) in Indian Ordnance

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and Equipment Factories with effect from 1.1.1986 vide MOD No. 41(4)/88/III/D(Fy-II) dated 19.7.1990 (Exhibit R - 8) and all Supervisors 'A' were re-designated as Chargeman Grade II (NT/OTS) vide factory order No. 583 dated 1.9.1990 (Exhibit R -9). Shri K.D. Galande and Shri D.B. Talekar who were holding the post of Supervisor 'A' Grade (Non-Technical/Fire Brigade) were also promoted vide Factory Order No. 584 dated 1.9.1990 (Exhibit A-9). Though both of them were holding the post of Supervisor 'A' these Fire Brigade personnel were promoted separately against the special additional sanction exclusively obtained vide OFB No.26/73/A/NI dated 13.5.1975 (Exhibit - 3) for exclusive functions in Fire Brigade. Though the Supervisor 'A' (Non - Technical) was re-designated enblock as Chargeman Grade II (Non - Technical) with effect from 1.1.1986, the functions, duties and responsibilities remained the same. The promotion channel for Chargeman Grade II (Non - Technical/ Other than stores) after re-designation of Supervisor 'A'/NT as Chargeman Grade II (NT/OTS) is as under:

Chargeman Grade II (Non - Technical/Other than Stores)

|  
|

Supervisor(NT/OTS)/UDCs/Telephone Operator Grade I

8. Note 8 below the Schedule to SRO 13(E) dated 4.5.1989 provides as under:

"Promotion indicated in column No.12 of this Schedule will normally be from feeder(s) grade indicated in Col.12. But where two or more feeder grades are declared to be 'allied grades' by the General Manager of the factory or Ordnance Factory Board, selection or promotion will be made from Common Seniority list of eligible persons in the allied grades."

*Sign*

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9. When a qualification has been prescribed in respect of a particular lower post, further promotion also from this grade to the higher grade from the same feeder cadre should obviously have the same qualification or higher qualification in the same trade for the reason that qualification prescribed for a post is a functional requirement without which the person cannot at all function in the higher post also. The applicant do not possess the prescribed statutory qualification. Hence prayed for dismissal of the OA alongwith costs.

10. The applicant has filed rejoinder affidavit copy of which has already been served on the respondents on 6.6.2000, which is taken on record. On perusal of the same it is noticed that the facts alleged in the OA are re-iterated without further details.

11. On 4.5.1989 Ministry of Defence has issued a notification SRO 13(E) which reads as under:

In exercise of the powers conferred by the proviso of 309 of the Constitution and in supersession of the Indian Ordnance Factories (Recruitment and conditions of service of class III personnel) Rules 1956 notified as SRO 4 of 4.1.1956 as amended from time to time except as respect things done or omitted to be done before such supersession, the President hereby makes the following Rules.

Regularly the method of recruitment to the posts belonging to the Supervisory and non Gazetted cadre covering Supervisors to Foreman in Ordnance and Ordnance Equipment Factories and other offices and establishment under the Ordnance Factories Organisation.

*Signature*

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12. The learned counsel for the applicant argued on the basis of the said SRD that (Non-Technical and Stores) (Including Personnel Management, Security, Fire Brigade, Material Management and Costing is one of the category as per Recruitment Rules. The post is a selection post and Non-Gazetted one which is not disputed even by the respondents.

13 On perusal of Col. 11 in respect of the said post it is found that the vacancy is to be filled up 50% by promotion and the feeder cadre is from the grade of Supervisors (Non-Technical/Stores)/ Supervisors 'B' (Hygiene Cell)/UDC and Telephone Operators Grade I with three years regular service..

14 On a careful perusal of the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment & Conditions of Service) Rules 1989, we find that in view of Rule 3 II(2) Non-Technical and stores (Including Personnel Management, Security, Fire Brigde, Material Management and costing) works<sup>m</sup> includes as above stated. Thus Fire Brigade is covered in the word Non-Technical and Stores. On a further perusal of the names of post it is clear that there is no post by the name Chargeman II (Non-Technical and Stores F.B.). Thus the vacancy arising from the superannuation of Shri D.B. Talekar Chargeman Grade II (NT/OTS) F.B. is to be filled by Chargeman II NT/OTS only. We agree to the submission of the learned counsel for the applicant that the respondents have created a cadre between a cadre without having an authority to do so.

15 Sanction of post vide Exhibit R-3 dated 13.5.1975 in the cadre of Supervisor 'A' (NT/OTS) and 'B' (NT-FB), the decision vide Exhibit R-4 dated 28.12.1979, a modification of the circular

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No. 344/A/NI dated 10.6.1963 with reference to D.O.No. 79/A/NI dated 30.4.1979, Exhibit R-5 -Line of promotion of Supervisor 'A' and 'B' (NT/Fire Brigade) in response of Ordnance Factory Board letter No 2/79/A/NI dated 28.12.1979, instructions vide Exhibit R-6 vide letter dated 2.1.1979, instruction regarding promotion/appointment to the post of Supervisor 'B' (NT/FB) are prior to the commencement of Indian Ordnance Factories Group 'C' Supervisory and Non Gazetted cadre (Recruitment and conditions of service) Rules 1989 which came in force on 4.5.1989.

16. Exhibit R-8 dated 19.7.1990 relates to redesignation of Supervisor 'A' (NT) and Security Assistant 'A' as Chargeman Grade II(NT) in the Ordnance Factories and in compliance of the same orders in respect of personnels were passed vide Exhibit R-9 on 1.9.1990. Suffice to say that Exhibit R -3 to R -9 are not relevant for the decision of the case.

17. On perusal of the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment & Condition of Service) Rules 1989 Note B empowers the General Manager of the Factory or Ordnance Factory Board to declare the 'allied grades' but no such order has been passed by the authorities competent to pass the same. Any order passed earlier to coming in force of the above stated Rules, cannot be deemed to have been passed under the Rules which came in force on 4.5.1989.

18. The learned counsel for the respondents argued that Supervisor (Non-Technical/Stores/Supervisor 'B' (Higine Cell) is also one of the category which is to be considered for the post of Chargeman Grade II (Non-Technical/Stores) who is in possession of better qualification particularly in Fire Brigade

*J. S. D. /*

which is required to be performed while performing the duties, hence the Senior post must also be deemed to have required the said qualification. We are constrained to hold that to add such qualification to the post of Chargeman Grade II (Non-Technical/Stores) would mean to amend the Rules, which is not permissible.

19 The learned counsel for the respondents relied on 1999 SCC (US) 1430 Nagpur Improvement Trust V/s Yadorao Jagannath Kumbhare and others which lays down the proposition that in the absence of Statutory Rules governing service conditions, executive instructions and/or decisions taken administratively operate. We agree to the said proposition of law but in the present case, we have the Recruitment Rules, hence the said authority does not apply to the present case.

20 The respondent No.1 and 2 are not entitled to add any further qualification of eligibility to the post of Chargeman Grade II which the Rules do not provide. The action of the respondents cannot be upheld to be correct and legal one, though they may be justified having selected the better personnel for the job. The Rule of the Law prevails and not the whims of the authorities. If the respondents feel that such a qualification is essential or desirable, they must have amended the Rules, without amendment to the Rules, their action cannot be upheld by the Tribunal.

21 The applicant was wrongly held to be ineligible for the post of Chargeman Grade II (NT and Stores). The result is that the selection of respondent No.4 is vitiated. The respondents are directed to hold the fresh selection considering the applicant eligible for selection as on date within a period of three months.

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22. In the result, OA is allowed. The selection of respondent No.4 is vitiated. The respondents are directed to hold fresh selection considering the applicant eligible for selection as on date i.e. in June 1995 when vacancy occurred within a period of three months. No recovery shall be made from respondent No.4 as he has worked on the higher post. No order as to costs.

*S.L. Jain*  
(S.L.JAIN)  
Member (J)

*B. N. Bahadur*  
(B.N.BAHADUR)  
Member (A)

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