

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 36 of 1996.

Dated this _____ the 19th day of April, 2000.

Kushaba Maruti Awasarmal, _____ Applicant.

Shri R. C. Ravalani, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri R. R. Shetty for _____ Advocate for
Shri R. K. Shetty, _____ Respondent Nos. 1 to 3.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 36 of 1996.

Dated this _____ the 19th day of April, 2000.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

Kushaba Maruti Awasarmal,
Office Superintendent Gr.II,
Stores Section,
Ordnance Factory, Dehu Road,
Pune - 412 101.

... Applicant.

(By Advocate Shri R.C. Ravalani)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.
2. The Chairman,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Ordnance Factory,
Dehu Road,
Pune - 412 101.
4. Smt. S. K. Joshi,
Office Superintendent Gr.I,
M.C.O. Section,
Ordnance Factory, Dehu Road,
Pune - 412 101.

... Respondents.

(By Advocate Shri R. R. Shetty for
Shri R.K. Shetty for Respondent Nos. 1 to 3)

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the
Administrative Tribunals Act. Respondents have filed reply. We

...2



have heard Mr. R. C. Ravalani, the Learned Counsel for the applicant and Shri R. R. Shetty for Shri R. K. Shetty, the Learned Counsel for Respondent Nos. 1 to 3. None appeared on behalf of Respondent No. 4 at the time of final hearing.

2. The applicant was working as an Office Superintendent Grade-II in the Office of the third respondent. He was promoted as O.S. Grade-II on 20.06.1991 and he was entitled to be considered for promotion to O.S. Grade-I after the expiry of three years from 20.06.1991. A vacancy of O.S. Grade-I arose on 20.05.1994 due to promotion of K.M. Joshi to the post of Foreman. Applicant should have been promoted to that post. The applicant is a Scheduled Caste candidate. But on 30.11.1995 respondent no. 4, Smt. S. K. Joshi, came to be promoted as O.S. Grade-I. According to the applicant, he should have been promoted, being a Scheduled Caste candidate, to that vacancy and the promotion of Respondent No. 4 is bad in law. He has, therefore, filed this application challenging the promotion of Respondent No. 4 against the reserved vacancy as O.S. Grade-I and it is liable to be quashed and he wants a further direction that the official respondents be directed to consider promotion of applicant to the said reserved vacancy.

3. The official respondents in their reply have explained that originally the promotion of O.S. Grade-I was on a centralised seniority list and it was on All India basis. In 1989 though it was decided to decentralise the promotion to the post of O.S.-I, still it was being operated on the basis of central seniority list. The Hyderabad Bench of the Tribunal deprecated this practice of cut off date and promotion on the

basis of central seniority list. Subsequently, in 1995 the administration decided to fully decentralise promotion to the post of O.S. Grade-I on the basis of local seniority of each factory. This was with effect from 09.11.1995 as per the order of the Ordnance Factory Board. In view of this decision of decentralisation, the applicant was promoted as O.S.-I with effect from 28.10.1996. It is, therefore, stated that applicant is not entitled to any ^{of the} ~~other~~ reliefs.

4. In view of the subsequent development of the applicant's promotion as O.S.-I with effect from 28.10.1996, the main relief of the applicant for quashing the promotion of Respondent No. 4, Smt. S. K. Joshi, does not arise. Similarly, the other prayer to direct the official respondents to promote the applicant as O.S. Grade-I also does not survive since he has already been promoted. As rightly argued on behalf of the official respondents, the question of seniority also does not arise even if the applicant is promoted with effect from 30.11.1995 when Smt. S. K. Joshi was promoted, since for next promotion the applicant cannot claim seniority, Since Smt. S. K. Joshi has already been promoted to O.S. Grade-I and she is above the applicant in general seniority list in view of the law declared by the Apex Court in the recent judgement reported in 1999 (2) SC SLJ 363 ..(Ajit Singh & Others V/s. State of Punjab & Others).

In view of this, the point that boils down into is, whether the applicant is entitled to the salary for the post of O.S. Grade-I from 30.11.1995 to 28.10.1996? This depends on the question whether the applicant is entitled to be promoted as O.S. Grade-I w.e.f. 30.11.1995 when Smt. S. K. Joshi came to be promoted.

...4
Rw

5. It is true that the vacancy of O.S. Grade-I arose in May, 1994 on the promotion of Mr. K. M. Joshi as Foreman. But in May 1994, the applicant was not due for promotion since he had not completed three years. According to respondents, the vacancy was filled up then itself. The applicant has not shown as to when the vacancy of Shri K. M. Joshi was filled up.

Even otherwise, if there was a vacancy reserved for S/C candidate, the applicant could not claim that post for the simple reason that the post had to be filled up on the basis of Central seniority list and applicant has not pointed out that he was the senior most Scheduled Caste candidate in the central seniority list in June 1994 when his promotion turn came.

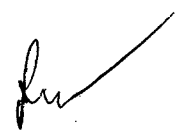
6. On the other hand, it is now established that the decision to decentralise the post and the appointment to be made factory-wise on the basis of ^{Factory} seniority list was taken and communicated to all the factories by letter dated 09.11.1995. Copy of the letter is exhibited as R-1 to the written statement. Annexure to R-1 is about distribution of the posts factory-wise. As far as Ordnance Factory at Dehu Road, with which we are now concerned, two posts of O.S. Grade-I are allowed, of which one is a reserved post. Therefore, the Ordnance Factory was given the right to fill up posts of O.S. Grade-I on local seniority basis from November, 1995 and onwards, and that is the first recruitment year at the factory level for filling the post of O.S. Grade-I. Both the sides are placing reliance on the Government instructions on the basis of O.M. dated 30.11.1981. The applicant has produced a copy of that circular at page 18 of the paper book and respondents have also produced a copy of the

...5
Rw


same at page 13 of their written statement. According to this circular or O.M., if in the initial recruitment year a vacancy arises and as per roster point it goes to a SC/ST candidate, then it should be treated as unreserved and filled as such and the reservation should be carried forward ^{to} in the next vacancy.

We have now seen that the Ordnance Factory at Dehu Road got this opportunity of filling up the post on local seniority basis as per decentralisation and therefore 1995 became the first recruitment year for filling up the post. Though it is meant for a reserved candidate, in view of the O.M. relied on both sides, it is to be treated as unreserved and filled by general candidate and the reservation must be carried forward. That is how after decentralisation decision on 09.11.1995 the vacancy has been filled up by promoting the fourth respondent, Smt. S. K. Joshi, as per the seniority list and the next vacancy has been filled up by promoting the applicant by carrying forward the reserved vacancy in November, 1996.

Therefore, in our view, the action taken by the respondents is fully as per the Government policy decision and, therefore, there is nothing irregular and illegality in the promotion of the fourth respondent. Hence, the applicant cannot claim that he should have been promoted from 30.11.1995. His promotion on 28.10.1996 appears to be fully justified and according to law. Hence, no further relief can be given to the applicant in the present O.A.



7. In the result, the applicant is disposed of as having become infructuous, since the applicant has already been promoted as Office Superintendent Grade-I with effect from 28.10.1996. The applicant's further prayer that he should be granted promotion retrospectively either from 20.06.1994 or from 30.11.1995 is rejected. No order as to costs.


(D.S. BAWEJA)
MEMBER (A).


19.6.2000
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*