

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

O.A. NO.1197/1996

O.A. NO.1199/1996

This the 17 day of October, 2001.

HON'BLE SHRI S. L. JAIN, MEMBER (J)

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

O.A. NO.1197/1996

Arun Laxmaan Mandhare,
working as Electrician (HSG-II),
T.No.EM/7, Machinery Prototype,
Toos Factory, Ordnance Estate,
P.ambarnath-421502.

... Applicant

O.A. NO.1199/1996

Phillip John S/O P.O.John,
Working as Electrician (HSG-II),
T.No.EM/68/M.P.T.F.,
Ordnance Estate,
Ambernath-421502.

... Applicant

(By Shri S.P.Kulkarni, Addvocate)

-versus-

1. Union of India through
General Manager,
Machine Prototype Tool Factory,
Ordnance Estate, Ambarnath,
Ambernath-421502, Distt. Thane.
2. Deputy General Manager (Admn.),
Machine Prototype Tool Factory,
Ordnance Estate,
ambarnath-421502.
3. Chairman (and Director General),
Ordnance Factory Board,
Indian Ordnance Factories,
Ministry of Defence, G.O.I.,
Calcutta (10-A Auckland Road).
4. Akash Girdhar Dhande,
P.No.865438, E.M.Section,
M.P.T.F., Ordnance Estate,
Ambernath-4215502, Distt. Thane.

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5. Vaishali D. Patil,
P.No.865439, MPTF,
C/O respondent No.1.

6. Mangesh V. Chaudhari,
P.No.865440, MPTF,
C/O respondent No.1.

... Respondents
(in both OAs)

(By Shri R.K.Shetty, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The facts and issues involved in these OAs being identical, they have been taken up for disposal by this common order.

2. The applicants have challenged the following orders :

(1) Annexure A-1(a) dated 28.9.1996 whereby their application for appointment as Chargeman Gr.II/T (Electrical) was stated to have not been considered as they did not possess the requisite qualifications;

(2) Annexure A-1(b) dated 13.4.1995 whereby appointments of private respondents have been made against the posts of Chargeman Gr.II (Electrical).

3. The applicants have claimed^{ed} that they have been working on the post of Electrician (Highly Skilled Gr.-II) in the grade of Rs.1200-1800 and have become eligible for the post of Chargeman Gr.-II as per the recruitment rules, namely, Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989, notified on 4.5.1989 (Annexure A-5). As per these rules, it is claimed that there is a quota of 33.1/3%

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and 66.2/3% for promotion and direct recruitment respectively for the post of Chargeman Gr.-II (scale Rs.1400-2300). It is alleged that the respondents have notified one post of Chargeman Gr.-II (Technical) (three years diploma in electronics), three years experience in CNC (computerised numerical controlled) machines for departmental candidates, vide order dated 27.11.1995. This is the only post which went to the departmental candidate, namely, promotee, as against five posts filled in by direct recruitment. The respondents have notified requirement of diploma in electronics with three years experience in CNC (computer) as the requisite qualifications against the provisions in the recruitment rules. According to the applicants, the respondents have arbitrarily filled up 5¹ vacancies by changing the criterion of trade specifications as 'electronic' instead of 'electrical', and that taking the plea of functional requirement, applicants' rights have been usurped by candidates possessing 'electronic' qualifications. The applicants have sought declaration of selection of Chargeman Gr.-II (Technical) as contrary to recruitment rules and to consider the applicants for the post of Chargeman Gr.-II(T) Electrical as per recruitment rules and as per the prescribed ratio between the promotees and direct recruits.

4. In their written statement, the respondents have stated that five posts of electronic engineering on account of specific work requirement were notified. They have maintained that the respondents are competent to make

and 66.2\3% for promotion and direct recruitment respectively for the post of Charwoman Gr.-II (scale Rs.1400-2300). It is alleged that the respondents have notified one post of Charwoman Gr.-II (Technical) (three years diploma in electronics), three years experience in CNC (computerised numerical controlled) machines for departmental candidates, vide order dated 27.11.1992. This is the only post which went to the departmental candidate, namely, promotee, as against five posts filled in by direct recruitment. The respondents have notified recruitment of diploma in electronics with three years experience in CNC (computer) as the requisite qualifications against the provisions in the recruitment rules. According to the applicants, the respondents have arbitrarily filled up vacancies by changing the criterion of trade specifications as 'electronic' instead of 'electrical', and that taking the plea of functional recruitment, applicants' rights have been usurped by candidates possessing 'electronic' qualifications. The applicants have sought declaration of selection of Charwoman Gr.-II (Technical) as contrary to recruitment rules and to consider the applicants for the post of Charwoman Gr.-II(T) Electrical as per recruitment rules and as per the prescribed ratio between the promotees and direct recruits.

4. In their written statement, the respondents have stated that five posts of electronic engineering on account of specific work recruitment were notified. They have maintained that the respondents are competent to make

recruitment on the basis of their functional requirements. They had prescribed the qualification of "Recognised 3 years Diploma or equivalent in Electronics with 2 years experience in CNC (Computerised Numerical Controlled) machines maintenance". The applicants do not fulfil the aforestated qualifications for the post of Chargeman Gr.-II(T) which were proposed to be filled by persons possessing the aforestated qualifications. According to the respondents, prescription of qualifications for a post is a management function and also a policy matter. The applicants are entitled for consideration for promotion to the post of Chargeman Gr.-II(T) from the feeder cadre and not by way of direct recruitment. The applicants do not have any experience to maintain/repair computerised numerical controlled machines. According to the respondents, SRO 13(E) dated 4.5.1989 was in force up to 28.11.1994, after which amended SRO 191 prescribed 25% by direct recruitment, 50% by promotion and 25% by limited departmental competitive examination. The private respondents have been recruited by way of direct recruitment against specific and emergent requirement for CNC machines. The respondents have also maintained that the number of promotees is much higher as compared to direct recruits and that they have not committed any violation of recruitment rules.

5. We have heard the learned counsel of both sides and considered the material on record.

6. The learned counsel of the applicants stated that the respondents have not filled up the post of Chargeman Gr.-II(T) as per the promotee quota of 50% and that the respondents have not provided facts and figures to establish that the promotees had exceeded their quota. He also contended that the prescription of electronic qualifications for filling up five posts of Chargeman Gr.-II has been against the provisions of the recruitment rules.

7. The learned counsel of the respondents contended that the quota of direct recruitment prescribed under the recruitment rules has not been exceeded by the respondents. He further stated that the qualifications prescribed for filling up the posts of Chargeman Gr.-II in the electronics field have been modified and introduced in the recruitment rules on the basis of which the candidates enumerated in Annexure A-1(b) were recruited. He further stated that the respondents are competent to increase or decrease the number of posts as per the work requirement and filling up of vacant posts is a policy matter falling within the exclusive powers of the Executive.

8. In the schedule against the post of Chargeman Gr.-II (Technical) in column 11 the following amendment was made vide SRO 191 dated 28.11.1994 :

"25 per cent by direct recruitment after adjustment of surplus and transfer. This 25 per cent direct recruitment quota shall be filled up from the open market, 25 per cent by Limited Departmental Competitive Examination from amongst persons in all categories of skilled
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workers or Draughtsman or equivalents with 2 years experience in the grade, 50 per cent by promotion from a panel prepared by relevant Departmental Promotion committee for each category with transfers inter se. In any category of Supervisor-cum-Operator (such as in new category of Computerised Numerical Controlled (CNC) Machine or Computer Operator) on failure of recruitment by promotion, by transfer failing which by direct recruitment."

9. As per SRO 101 dated 23.5.1994 vide note 15, it has been provided, "In the exigencies of the service within the total number of posts in the same scale of pay, the Ordnance Factories Board may add to the categories or sub-divide or merge any category mentioned in Rule 3(II) or add to and reduce number of posts in different categories on same scale of pay, from time to time, on the basis of changes in functional requirements".

10. The respondents have provided information about recruitment as per Ex. R-1 and R-2. Vide R-2 recruitment against five posts of electrical and five posts of electronics was to be made. The respondents have made recruitment against five posts of NGOs (electronics) and one post of NGO (electrical) was filled up by promotion. In our considered view, the respondents have made recruitment for the post of Chargeman Gr.-II (Technical) on the basis of their functional requirement of CNC machines within the provisions of recruitment rules as amended vide SRO 101 dated 23.5.1994 and SRO 191 dated 28.11.1994.

11. In the facts and circumstances of the case, we are not in a position to find any fault with the

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recruitment made by the respondents against the posts of Charge-man Gr.-II on the basis of qualifications in electronics as per Annexure A-4 and A-1(b). Accordingly, these OAs are dismissed being devoid of merit. No costs.

V.K. Majotra
(V.K. Majotra) 17.10.2001
Member (A)

S.L. Jain
(S.L. Jain)
Member (A)

/as/