

Central Administrative Tribunal, Mumbai Bench

OA No.1188 of 1996

Mumbai this the 12th day of September, 2001

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

G.A. Chainulu
Assistant Foreman (Chemist)(T)
High Explosives Factory,
Kirkee, Pune-411 003.
(Residing at 11/1, Type IV Siporex,
Range Hills, Pune-411 020)

..Applicant

By Advocate Shri S.P. Saxena.

Versus

1. Union of India
through the Secretary,
Department of Defence Production,
Ministry of Defence, DHQ PO.,
New Delhi-110 011.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta-700 001.
3. The General Manager,
High Explosives Factory,
Kirkee, Pune-411 003.
4. Shri S.M. Kathuria, JWM,
Ordnance Factory,
Muradnagar.
5. Shri D.C. Bagchi, JWM,
High Explosives Factory,
Kirkee, Pune-411 003.
6. Shri V.S. Harlakar, JMW,
Ordnance Factory,
Dehu Road, District Pune.
7. Shri S.C. Biswas, JWM,
Ordnance Factory,
Bhandara, Nagpur.
8. Shri M. Muthukrishnan, JWM,
Ordnance Factory,
Chanda.

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9. Shri K. Chandrachudah, JWM,
Ordnance Factory,
Chanda.
10. Shri P.L. Nagappan, JWM,
Heavy Vehicle Factory,
Avadi, Madras.
11. Shri K.N. Kasomuthu, JWM,
Cordite Factory,
Aruvankadu, Nilguries.
12. Shri T.K. Rao, JWM,
Ordnance Factory Project,
Medak (Hyderabad)
13. Shri A. Nandakumaran, JWM,
Heavy Vehicle Factory,
Avadi, Madras.
14. Shri S.P. Sharma, JWM,
Ordnance Factory,
Muradnagar.

..Respondents

By Advocate Shri R.K. Shetty.

ORDER

By Hon'ble Mr. Kuldeep Singh, Member (J)

The applicant by this OA has impugned a seniority list of Assistant Foreman (Chemist) circulated vide letter dated 22.6.1994, Annexure A-1 issued by respondent No.2. He has also assailed another letter issued by respondent No.2 on 22.10.1996 (Annexure A-2) vide which certain promotions have been made on the basis of seniority list issued on 22.6.94 vide Annexure A-1.

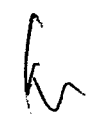
2. The main grievance of the applicant is about his seniority. It is stated that he had joined the respondents' organisation in the High Explosives Factory, Kirkee, Pune, i.e., respondent No.3 as Technical Supervisor 'B' Grade (Chemist) on



28.7.1962. He was promoted to the grade of Technical Supervisor 'A' (Chemist) w.e.f. 28.1.1964. He was further promoted as Technical Chargeman Grade-II (Chemist) w.e.f. 1.1.1972.


3. It is claimed by the applicant that promotion upto the level of Technical Supervisor 'A' Grade (Chemist) was based on local unit seniority but promotion to the grade of Chargeman Grade-II (Chemist) is made only on the basis of all India seniority list of Technical Supervisors 'A' Grade and this promotion is also ordered by selection method on the basis of merit-cum-seniority. Thereafter, he was further promoted as Chargeman Grade-I (Chemist) w.e.f. 1.3.79 which post falls in between the grades of Chargeman Grade-II and Assistant Foreman and promotion to the grade of Chargeman Grade-I (Chemist) is also on all India basis by selection method as per the relevant rules. On 15.5.1981, the applicant was further promoted to the post of Assistant Foreman (Chemist).

4. The applicant further claims that the seniority in the grade/posts of Chargeman Grade-I (Chemist) has to be reckoned from 1.3.1979 in the case of applicant as he was promoted to the post of Chargeman Grade-I (Chemist) on 1.3.79. The private respondent Nos.4 to 14 were promoted to the post of Chargeman Grade-I (Chemist) in August, 1979, i.e., much after the applicant was promoted to the said post. Hence the applicant is



senior to respondent Nos. 4 to 14 in the grade of Chargeman Grade-I (Chemist) and the applicant on the basis of the said seniority was to be further promoted as Assistant Foreman and then as Foreman and when the applicant was promoted as Assistant Foreman he was given seniority in the post of Assistant Foreman (Chemist) w.e.f. 15.5.81, i.e. the date when he was promoted in the said post. He was listed at S.No.280 in the seniority list dated 22.6.1994.

5. It is further submitted that the respondent No.2 issued a revised seniority list for the post of Chargeman Grade-II (Chemist) showing position as on 1.1.1977 and also revised the seniority list on 22.6.1994 for the post of Assistant Foreman (Chemist). In that list the respondent No.2 had brought down the position of the applicant in the post of Chargeman Grade-II (Chemist) as he was listed at S.No.429 in the said list and this revision is stated to have been done by respondent No.2 on the basis of a judgment of the Hon'ble High Court of Bombay in Writ Petition No.1871/1979 whereby the principle for ^{assigning} ~~arising~~ seniority and preparing seniority list was declared by the court to be the date of continuous officiation and even by following the principle of continuous officiation the applicant claims that he is senior and is entitled to be placed above respondent Nos.4 to 14 in the seniority list of Chargeman Grade-I (Chemist).



6. The applicant further claims that he had made certain representations to the respondents for correcting the seniority list but the respondents have not assigned proper seniority, hence it is prayed that the respondents be directed to assign proper seniority to the applicant in the grade of Assistant Foreman (Chemist) by placing him above Shri S.M. Kathuria, respondent No.4 and respondent No.2 be further directed to consider the applicant for promotion to the post of Junior Works Manager on the basis of his corrected seniority.

7. The respondents by filing their reply are contesting the OA filed by the applicant. The respondents in their written statement submitted that the applicant alleges to be aggrieved by his supersession by respondent Nos.4 to 14 and states that they are not junior to the applicant by virtue of holding the post of Assistant Foreman (Chemist) on or after 15.5.1981.


8. The respondents further submitted that in pursuance of the judgment of the Hon'ble High Court in the case of S.P. Saxena Vs. Union of India and the judgment of the Tribunal in OA No.646/1988, a review DPC had been conducted in the grade of Chargeman Grade-II as on 1.1.1977 which has resulted in granting of notional seniority to the applicant w.e.f. 2.4.82 in the post of Asstt. Foreman but the grievance of the applicant is that he should have been assigned seniority w.e.f. 15.5.81

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whereas respondent Nos. 4 to 14 have been granted notional seniority w.e.f. 15.5.1981 resulting in their being senior to applicant in the grade of Assistant Foreman (Chemist) as well as the higher grade of Junior Works Manager. Thus in a way the applicant is actually challenging the decision of the High Court of Bombay in Writ Petition No. 1791/78 as well as of the Tribunal in OA 646/88. The respondents tried to justify the supersession of seniority ~~by~~^{by} respondent Nos.4 to 14 by virtue of letter issued by the department vide which the mode of fixation of seniority in the Chemical Trade, was provided. The said letter is dated 16.3.93, Annexure R-IV. The respondents had also issued another letter dated 22.6.94, Annexure R-V wherein it is stated that these two letters have been issued in pursuance of the judgment of the High Court of Bombay and of the Tribunal in OA 646/88 and the seniority of the applicant as well as the respondent Nos.4 to 14 has been fixed accordingly.

9. We have heard the learned counsel for the parties and given our thoughtful consideration to the issue involved.

10. Before taking up the case on merits, the learned counsel for the respondents submitted that the OA is hit by limitation as the main prayer of the applicant is with regard to the assailing of the seniority list issued by the department as on 22.6.94 whereas the OA has been filed on 14.11.1996, which is



much beyond the period of limitation, as prescribed under Section 21 of the Administrative Tribunal's Act, 1985, which prescribes that a person aggrieved of an order should assail the same within a period of one year from the date of passing of the order and the second relief sought by the applicant is a consequential relief and is based on the fact that if seniority list is quashed and the applicant is given further seniority only then the applicant can claim promotion to the post of Junior Works Manager on the basis of his corrected seniority. Thus, the main relief remains to be adjudicated is with regard to correction of the seniority list which was issued on 22.6.94 and since the OA had been filed much after a lapse of period of one year, as provided to the applicant to challenge the same under the AT Act, as such the case of the applicant is liable to be dismissed. Moreover no application for condonation of delay has been filed so delay cannot be condoned now.

11. The learned counsel for the respondents has also referred to a judgment of the Hon'ble Supreme Court in the case of Ramech Chand Sharma Vs. Udham Singh Kamal and Others, 2000 SCC (L&S) page 53 wherein it was held as follows:-

" Administrative Tribunal's Act, 1985-Sc.21(1)(a), 21(3) and 19(1) - Limitation - Time-barred application for which condonation of delay not sought under S.21(3) - Held, in view of S.21(1)(a), the Administrative Tribunal could not admit the application and dispose it of on merits - Departmental representation against non-promotion rejected on 2.7.1991 Application under S.19(1) of the Tribunal filed on 2.6.1994, i.e., after three years - Held, the application being beyond limitation, could not be considered on merits Delay sought to be covered by pleading some new facts but the Supreme Court not entertaining them because no foundation for them had been laid

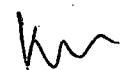
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before the Tribunal - The application filed before the Tribunal therefore dismissed as beyond limitation - Limitation - Limitation Act, 1963, Ss.3 and 5 - Practice and Procedure - New Plea - Plea for which no foundation laid before lower court or tribunal, not entertained by Supreme Court".

12. After referring to the above citation, the learned counsel for the respondents submitted that on the basis of above ruling, the OA should not be entertained.

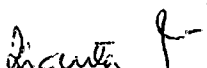
13. In reply to this, the learned counsel for the applicant submitted that though the seniority list was issued on 22.6.94 but the applicant thereafter had made a representation but no reply has been received by the applicant so far. Even reminders to the representation have also been stated to be made, but no reply has been received to the same, so the counsel for the applicant submitted that the OA should be treated as if within time. To our mind, this contention of the learned counsel for the applicant has no merits because first of all the applicant could have made objections at the time when the 'Draft seniority' list was issued and if the same were not decided or decided against him, then immediately after the issue of the final seniority list he could have approached the Tribunal within the time limit provided under the Administrative Tribunal's Act, 1985. There was no scope for making any representation after the issue of the final seniority list. Representation even if made will not extend the time of limitation.

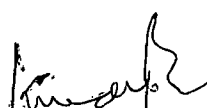
14. As far the departmental remedies are concerned, the applicant could have made a representation seeking



departmental remedies, if available under the Statute or under the rule. Since after the publication of the final seniority list no remedy is available, so the applicant was not obliged to wait for the decision on his representation and then to come to the court and in this case it is crystal clear from the record as well as admitted on facts that seniority list was issued on 22.6.94 and the OA had been filed on 14.11.1996 which apparently is barred by time under Section 21 of the AT Act. Hence, we feel that the OA has to be dismissed on the ground of limitation alone.

15. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.


(Mrs. Shanta Shastri)
Member (A)


(Kuldip Singh)
Member (J)

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