

Central Administrative Tribunal
Mumbai Bench, Mumbai
O.A.Nos. 718 & 719 of 99

Friday, this the 7th day of March, 2003

Hon'ble Shri Govindan S. Tampli, Member (A)
Hon'ble Shri K. V. Sachidanandan, Member (K)

OA-718/99

Shri B.S. Shiroor

Ex. Dy. General Manager

Ordnance Factory,

DEHU ROAD : (PUNE -) 412113

Residing at : 15/4, Pratik Nagar

Yerawada, PUNE - 411006

... **APPLICANT**

Vs

1. Union of India

Through: The Secretary

Department of Defence Production

SOUTH BLOCK: NEW DELHI : 110011

2. The Chairman

Ordnance Factories Board

10-A, Shaheed Khudiram Bose Marg

CALCUTTA : 700 001

3. The General Manager

Ordnance Factory

DEHU ROAD : PUNE : 412 113

4. The Chairman

Union Public Service Commission

Dhelpar House

NEW DELHI : 110 011

RESPONDENTS

| | |
|-----------------------------------|---------------------------------------|
| S/Shri | S/Shri |
| 5. CHAUDHURY L.C.,Addl.G.M. | 6. KHURANA P.C.,Addl.G.M. |
| Regional Training Inst. | Gun & Shell Factory, |
| <u>Ambajhari,(Nagpur) :440021</u> | <u>Cossipore(W.B.) :743144 700002</u> |
| 7. KUMAR SURENDRA,Addl.G.M. | 8. GHAI M.R.,Addl.G.M. |
| Field Gun | Gun Carriage Factory, |
| <u>Manufacturing Factory</u> | <u>Jabalpur(M.P)482001</u> |
| <u>Kanpur(U.P)208009</u> | |
| 9. BISWAS A.K.,Addl.G.M. | 10. PARAMSWAMY S.,Addl.G.M. |
| Ordnance Factory. | Ordnance Factory |
| <u>DEHU ROAD :PUNE :412113</u> | <u>CHANDA : (Mah) :442501</u> |
| 11. VIJAYADURAI B.,Dy.D.G. | 12. BASU TAPAS KUMAR,Addl.G.M. |
| Armoured Vehicles HQ | Metal & Steel Factory, |
| <u>AVADI,(T.N.) 600054</u> | <u>Ishapore(W.B.) 743144</u> |
| 13. BASU TAPAN KUMAR,Addl.G.M. | 14. SINGH B.B.,Addl.G.M. |
| Ordnance Factory. | Field Gun Factory, |
| <u>AMBERNATH(MAH) 421502</u> | <u>KANPUR(U.P)208009</u> |
| 15. BHASIN V.K.,Addl.G.M. | 16. KUMAR RAJNISH,Addl.G.M. |
| Ordnance Factory Proj. | Ordnance Clothing Factory, |
| <u>MEDAK(A.P) 502205</u> | <u>SHAHJAHANPUR(U.P) 242001</u> |
| 17. AGRAWAL RAMAUTAR,Addl.G.M. | 18. PRADHU U.D.,Addl.G.M. |
| Ordnance Factory. | Ammunition Factory, |
| <u>Ambajhari(Nagpur) 440021</u> | <u>Khadki,PUNE-411003</u> |
| 19. DHINGRA R.K.,Dy.D.G. | 20. NAHAR HEM RAJ,Addl.G.M. |
| O.F.Board, HQ. | Ordnance Factory |
| <u>CALCUTTA : 700 001</u> | <u>KHAMARIA(Jabalpur) 482005</u> |
| 21. KISHAN RAM,Addl.G.M. | 22. SUBRAHMANYAM A.,Addl.G.M. |
| Vehicle Factory | Metal & Steel Factory |
| <u>JABALPUR(M.P) 482009</u> | <u>Ishapore(W.B.) 743144</u> |
| 23. PRAKASH RATAN,Addl.G.M. | 24. KANDWAL M.D.,Addl.G.M. |
| Vehicle Factory | Heavy Vehicle Factory |
| <u>JABALPUR(M.P) 482009</u> | <u>AVADI(T.N.) 600054</u> |
| 25. BHUSHAN LAL,Addl.G.M. | 26. IYER V.H.,Addl.G.M. |
| Ordnance Factory | Controllerate of Safety |
| <u>CHANDA(MAH) 442501</u> | <u>AVADI(T.N.) 600054</u> |

... ADDITIONAL RESPONDENTS

OA-719/1999

Shri R.O. Rustogi
Ex. Joint General Manager
Ammunition Factory, Khadki, Pune - 411 003
Residing at : 7-C-1, Agrasen Nagar
Opp. Poona Bottling Co.
Dapodi, Pune-411 012

Applicant
(By Advocate: Shri R.C.Raviani in both OAs)

Versus

1. Union of India through the Secretary
Ministry of Defence
(Department of Def. Production)
South Block, New Delhi-11
2. The Chairman
Ordnance Factories Board
10-A, Shaheed Khudiram Bose Marg
Calcutta - 700 001
3. The General Manager
Ammunition Factory, Khadki
Pune - 411 003
4. The Chairman
Union Public Service Commission
Dholpur House
New Delhi-11

Respondents
(By Advocate: Shri Ravi R.Shetty in both OAs)

ORDER (ORAL)

Shri Govindan S. Tamai:

This combined order disposes of two OAs seeking similar reliefs and argued together by the same counsel.

2. Heard S/Shri R.C.Raviani, learned counsel for the applicant in both cases and Ravi R.Shetty, learned counsel for the respondents.

3.A Shri B.S. Shiroor, applicant (OA-718/99) joined Ordnance Factory Service as Assistant Manager (Class-I) on 4.4.1974 and through successive promotions, reached the Junior Administrative Grade (JAG) grade on 1.10.1991 and thus became eligible for promotion to the next higher post of Additional General Manager (AGM) in the pre-revised pay

scale of Rs.5900-6700/-. He also had a creditable record of performance and achievement in the Organisation. Though in terms of the instructions of the DOPT, contained in OM No.22011/7/86-Est(O) dated 19.7.1989 and OM dated 13.5.1991, the official respondents were expected to hold regular and periodical meetings of DPC every year for each category of posts and prepare the select panel well in advance, so that the posts do not remain vacancy for long, the respondents did not hold the meetings of DPC for many years, on account of which the applicant could not get the promotion he was eligible and entitled to get. The applicant was well within the zone of consideration for promotion to the post of AGM from 1995-96, 1996-97 onwards. Assailing the delay and inaction on the part of the respondents, the applicant filed OA-333/97 before this Tribunal seeking issuance of directions to the respondents for holding regular meetings of the DPC and preparing select panels. By order dated 25.7.1997, the Tribunal issued necessary directions to the respondents to hold regular DPC meetings within a period of three months. Following the above, the respondents held the meetings of the DPC on 14.8.1997 but did not consider the case of the applicant as he had, in the meanwhile, retired on superannuation on 31.5.1997. The applicant believes that if the DPC had considered his case for the relevant years, he would have been found fit. Being aggrieved by not having been considered, the applicant filed Contempt Petition No.33/98 but the same was dismissed on account of the limited scope of the contempt petition and the applicant was advised to seek other remedies. The applicant, therefore, approached the competent authority on 9.3.1998 seeking retrospective promotion and indicating

that on an earlier occasion one Shri M.L.Dutta was granted such retrospective promotion. The same had not been acted upon, leading to the filing of this OA.

3.3 The grounds raised in this OA are that:

- i) no regular DPC meetings were held for selecting candidates to fill the vacancies of 1995-96 and 1996-97;
- ii) the respondents had not considered his case on the ground of his having retired while, he was eligible for consideration at the relevant dates when the vacancies in fact arose and he was in service; and
- iii) decisions in the cases of **Union of India vs. N.R. Banerjee & Others** [1997 SCC (L&S) 1194], **S.R.Raju vs. Director General**, AIR [(1998) 37 ATC 268] and **N.K. Anand vs. Union of India** [(1991) 16 ATC 340] support his case.

In the above circumstances, the applicant pleads that the respondents be directed to convene a review DPC and consider his case for promotion against the vacancies of 1995-96 and 1996-97, and if found fit, promote him as AGM retrospectively with all benefits of arrears of pay and allowances and enhance the pension.

3.2 Shri R.P. Rustogi, applicant (OA-719/1999) joined as Assistant Manager (Engineer) Class-I on 14.8.1963 and reached JAG on 18.4.1986 and became eligible for consideration for promotion to the post of AGM. On account of certain bad blood, which, arose between himself and certain other officers, adverse entries were entered in his ACRs for 1987-88, 1988-89, 1989-90 but those of

1989-90 were expunged. On account of the above, the DPC did not consider his case for promotion in February, 1991 and few others were promoted. OA-1005/92 filed by him before the Tribunal at Calcutta Bench is still pending disposal. It is pointed out that in terms of DOPT's OM dated 19.7.1989 and OM dated 13.5.1991, the Organisations are expected to hold regular DPCs and select persons for filling up of the vacancies as and when they arose. As the respondents were guilty of inaction in not holding the DPC meetings in time, the applicant's case was not considered for promotion from 1993-94 onwards till 1996-97. The applicant had, therefore, approached this Tribunal in OA-332/97, which was disposed of on 25.7.1997 with directions to the respondents to complete the DPC proceedings with three months from the said date. The respondents accordingly held DPC meeting on 14.8.1997 but the applicant's name was not considered, as on 30.4.1997, he had retired on superannuation. As he was entitled for retrospective promotion, which was not granted on his not being considered by the DPC, on account of his superannuation, he filed Contempt Petition No.22/98 in OA-332/97, which was disposed of on account of the limited scope of the contempt petition, directing him to seek remedies on the original side. The applicant's fresh representation of 9.3.1998 to the competent authority for his retrospective promotion, keeping in mind similar benefit granted to Shri M.L. Dutta, has not been disposed of, leading to the present application.

3.2A. The grounds raised by the applicant in this OA are that inaction of the respondents in holding regular DPC meetings illegal refusal to consider his case on account of his retirement on superannuation, overlooking the fact

that he was eligible for consideration when he was in service and support he derived from the decision of the Hon'ble Apex Court and the Tribunal in the cases of N.R. Banerjee, S.R. Raju and N.K. Anand (supra).

4. During the oral submissions before us today, Shri Ravlani forcefully argued that the two applicants, in spite of their sincere and honest service of more than 25 to 30 years, had been denied the promotions merely on account of the inaction of the respondents. The instructions of the nodal Ministry, i.e., Department of Personnel & Training contained in OM dated 19.7.1989 and OM dated 13.5.1991 and the judgment of the Hon'ble Supreme Court in the case of N.R. Banerjee (supra) had made it incumbent on the part of the respondents to hold the OPC meetings annually, prepare the select panel of persons eligible and qualified for promotion, so that the responsible senior post do not remain vacant for long. It is in the interest of both the Organisation and the Officers concerned that the OPC meetings are held regularly and follow up action taken on the minutes of the recommendations of the OPC. It is only on account of the failure on the part of the respondents in these two cases the applicants have been denied the benefits due to them at the evening of their career. This has cost them the higher retirement benefits and pension. If the applicants had been considered in time and if found fit, given the benefit of promotion retrospectively, they could have enjoyed their retirement life in a more comfortable and better way. The respondents had in fact granted such a retrospective promotion to one Shri M.L. Dutta and there was no reason why the same action could not have been adopted in the cases of the applicants as well. In these

circumstances, Shri Ravlani pleads that the Tribunal should intervene and render the applicants justice by directing the respondents to hold a review DPC in respect of the applicants for the periods in which they had become eligible for consideration, and if found fit, give them the full consequential benefits, including the arrears of pay and allowances and enhance pensionary dues.

5. In the reply on behalf of the respondents, it is pointed out that on account of certain administrative difficulties, they could not hold the DPC meetings for few years but immediately following the orders dated 25.7.1997 in OA-332/97 and OA-333/97, the respondents had convened the meetings of DPC on 14.8.1997 and considered the cases of all persons, who were in the feeder cadre and were eligible, and prepared select panels for 1995-96 and 1996-97. The case of the applicants could not be considered as both of them had retired on superannuation on 31.5.1997 (applicant in OA-718/99) and on 30.4.1997 (applicant in OA-719/99). The applicants had come up in CP-33/98 (in OA-718/99) and CP-22/98 (in OA-719/99), which have been dismissed by the Tribunal as they found that the Department had acted in accordance with the directions of the Tribunal while disposing of the OAs and held the DPC meeting on 14.8.1997. The Tribunal had in fact given liberty to the applicants to come up on the original side once again if they were aggrieved but the present applications are strictly not in pursuance of the above liberty, as what is being challenged is not the denial of promotion or supersession but their non-consideration. The respondents point out that as the applicants were no longer in service, they could not claim as of right that they should have been considered for promotion to SAG.

The DPC meetings had been held fully in accordance with the instructions issued by the DOPT from time to time. Those instructions had indicated that, if on account of any administrative problems the meetings of the DPC cannot be held regularly, when such meetings are held, it should be done taking vacancies, consideration zone and select list on year to year basis and separately. These instructions have been carried out by the respondents and, therefore, the applicants cannot assail their action. The respondents also point out that in the case of Shri M.L.Dutta, relied upon by both the applicants, he was granted retrospective promotion only on account of a specific direction issued by the Tribunal. The same did not constitute any precedent. In the circumstances, the respondents have not committed any irregularity and there cannot, therefore, be any ground for Tribunal's intervention in the matter. The OAs should merit dismissal, plead the respondents, duly reiterated by Shri Ravi R. Shetty.

6. In response to a specific query from the Court, Shri Ravi R. Shetty pointed out that not even a single person, who was junior to either of the applicants, was given promotion on the basis of the DPC held on 14.8.1997 with reference to any of the vacancies of 1993-94 onwards till 1996-97, when the applicants were still in service. Therefore, no prejudice has been caused to them and they cannot challenge the order.

7. We have carefully considered the rival contentions of the parties and perused the decisions referred to above by the learned counsel for the applicants Shri Ravlani. The applicants in these OAs are similarly placed having been

appointed as Assistant Manager in Ordnance Factory Service and having reached JAG level after successive promotions. They had become eligible for promotion to the grade of Additional General Manager (SAG) on completion of the requisite period but on account of the respondents not holding the OPC meetings on time for few years, their cases could not be taken up for consideration. (Applicant in OA-719/99 had once been considered but on account of certain adverse remarks entered in his ACRs, he was not promoted in 1991). Therefore, the applicants were eligible for promotion with reference to the vacancies arising from 1993-94 onwards (in the case of applicant Shri R.O. Rustogi) and 1994-95 onwards (in the case of applicant Shri B.S. Shiroor). They came up in OAs before the Tribunal and obtained the orders for holding of the OPC, which was held in fact on 14.8.1997, by which time both of them had retired on superannuation. The respondents did not consider the cases of the applicants on account of their having retired from service on superannuation. CPs filed by both of them did not succeed, as the Tribunal did not agree to extend the scope of the contempt petitions and advised them to come up on original side, once again if they felt aggrieved, which had led to these OAs. The applicants' plea is that they had not been considered as they had retired on superannuation, which was incorrect, as, according to them, had the OPC considered the vacancies year-wise on the basis of the consideration list drawn up year-wise and prepared the select panel year-wise with reference to those years when they were still in service, they would have found the place in the select list and would have got promotions and consequential benefits. While conceding that the inaction on the part of the respondents is not

holding the OPC meetings in time has caused some loss and prejudice to the applicant, the Tribunal cannot hold its decision for the applicant as it has not been brought on record that any person junior to either of these applicants, who has been considered by the OPC held on 14.8.1997, has been promoted to the vacancies relating to the periods when the applicants were still in service. That being the case, the Tribunal cannot hold that the respondents had acted in a manner prejudicial to them. We recall that in the case of R.Venkatraman vs. Union of India & Others, decided by the Principal Bench of this Tribunal on same issue and in the same Organisation, the Tribunal granted the benefit to the applicant for retrospective promotion as it was found that the OPC, which met on a later date, following his superannuation, considered the cases of his juniors for vacancies which had arisen when he was still in service and promoted those juniors to the vacancies while in fact the applicant was still in service. Such a benefit would have been extended to these applicants had it been shown that any of juniors, who were considered by the OPC which met on 14.8.1997 and found fit, had been promoted to any of the vacancies relating to the periods 1993-94, 1994-95 and 1995-96 when the applicants were still in service. As such is not the position, the applicants' cases for retrospective promotion cannot be entertained. The respondents also cannot be faulted for not extending to the applicants the benefit of such retrospective promotion.

7. We have also perused the three decisions relied upon by the learned counsel for the applicants. In the case of N.K.Anand (supra), on the special facts, the Tribunal held that the applicants were entitled for regular promotions

from dates when the vacancies arose in 1978 as the delay in holding the OPC was not for reasons beyond control. In this case, the respondents have pointed out that administrative exigencies came in the way of holding the OPC in time. The case is, therefore, clearly distinguishable. The point for determination of the Hon'ble Supreme Court in the case of N.R.Banerjee (supra) related to the zone of consideration as well as the period upto which ACRs to be considered, in case of delay in holding the OPC. The same also is different from the subject matter of this OA. The Tribunal's decision in the case of S.R. Raju (supra) related to denial or the grant of benefits arising from retrospective promotion on the basis that the applicant had retired by time. This decision also would not assist the applicants.

8. In the above view of the matter, we are convinced that the applicants in both the OAs have not made out any case for the Tribunal's intervention. The OAs, therefore, fail and are accordingly dismissed. There shall be no order as to costs. However, before parting with these OAs, we would like to observe that the respondents, by not acting in time for holding the OPC meetings on regular basis, as directed by the instructions of the DOPT and the decision of the Hon'ble Apex Court, had not discharged their responsibilities as modal employers, as they were expected to do. They may note our observations for future guidance.

9. Let a copy of this order be placed in OA-719/99.

Member (J)

/sunil/

Member (A)

Yash