

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(13)

Original Application No. 39/91
Transfer Application No.

Date of Decision : 28-02-96

C.T.Oommen and 29 ors.

Petitioner

Mr.S.R.Atre for Smt. P.R.Shetty

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Mr.S.S.Karkera for Shri P.M.Pradhan

Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri M.R.Kolhatkar, Member(A)

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

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

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 39/91

Proounced this the 28th day of February 1996

HON'BLE SHRI B.S. HEGDE, MEMBER(J)

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

C.T. Gommen and 29 Ors.

(By Advocate Shri S.R. Atre
for Smt. P.R. Shetty)

.. Applicants

-versus-

Union of India & 14 Ors.

(By Counsel Shri S.S. Karkera
for Shri P.M. Pradhan)

.. Respondents

O R D E R
(Per M.R. Kolhatkar, Member(A))

In this O.A. 30 UDCs of Ordnance Factory, Varangaon, Dist. Jalgaon, Maharashtra have challenged the Factory Order No. 2524 dt. 7-9-90 at page 74 of the O.A. This O.A. gives the list of 26 Supervisors 'A' and 3 Security Asstt. 'A' and states that w.e.f. 1-1-86 Supervisor 'A' (NT) would be redesignated as Chargeman Gr. II and the three Security Assistants would be redesignated as Chargeman Gr. II and places them enblock below those who were Chargeman Gr. II (NT) in the scale of Rs. 425-700 on 31-12-85 subsequently revised to the scale of Rs. 1400-2300 w.e.f. 1-1-86. Respondents 3 to 15 who are private respondents figured in the order of redesignation. The main grievance of the applicants is that they were recruited as LDCs

on the Non Technical side from 30-5-66 to 2-5-74 and they were promoted as UDCs during 1-1-72 to 1-4-81 and have been denied promotion. Prior to the IVth Pay Commission, the pay scale of LDC was Rs.260-400 and the pay scale of UDC was Rs.330-560. The pay scale of Security Assistant 'B' was Rs.330-480 and of Security Assistant 'A' was Rs.425-640. The pay scale of Supervisor 'B' was Rs.330-560 and of Supervisor 'A' was Rs.425-640. Thus the pay scales of UDC and Supervisor 'B' were identical. The grievance of the applicants is that some of the respondents who started as labourers in a lower scale of Rs.196-232 were allowed to opt for posts on the security side as a result of which they became Security Assistants 'B' in the scale of Rs.330-480 and they have stolen a march over the applicants by becoming Chargeman Gr. II after 1-1-86. Therefore the applicants claim the benefit of notional seniority and promotion based thereon w.e.f. 5-1-81, 4-5-81, 1-3-83 and 2-9-85 which are the dates on which various private respondents 3 to 15 have been promoted. The contention of the applicants is that respondents ought to have maintained a dovetailed seniority of LDC and Security Asstt. 'B' from the date of induction into LDC instead of granting promotion from Security Asstt. 'B' to Security Asstt. 'A'. Secondly the respondents should have maintained dovetailed seniority of UDC, Supervisor 'B' (NT), Security Asstt. 'B' / Security Supr. 'B' (NT) from the date of induction of persons in the capacity of UDCs / Supervisor 'B' (NT / Security) and Supervisor 'B' (NT / OTS) who are in the panel for

promotion in the identical pay scale of Rs.330-560 and based on the seniority, persons should have been promoted as Supervisor 'A' (NT/Security), Supervisor 'A' (NT/OTS) in the pay scale of Rs.425-640. According to the applicants the respondents have violated statutory rules by issue of executive instructions and in this connection they rely on the judgment of the Calcutta Bench of the Tribunal in TA 1361 of 1986 and TA 1248 of 1986.

2. Respondents have raised a preliminary objection that the O.A. is barred by limitation.

The Factory Order No.2524 dt. 7-9-90 which is challenged merely redesignates ~~Supervisors~~ Supervisors 'A' grade and Security Assistants 'A' as Chargeman Gr.II(NT) w.e.f. 1-1-86 In the guise of challenging this Factory Order they are asking for relief of notional seniority and promotion w.e.f. 5-1-81, 4-5-81, 1-3-83 and 2-9-83 together with consequential pay fixation and arrears, these being the dates on which private respondents were earlier promoted. The applicants ought to have challenged these promotions at that time before the appropriate forum which they have failed to do. In this connection respondents have relied on Supreme Court judgment in the case of K.R.Mudgal and Others vs. R.P.Singh and Others 1987 SCC(Lab)6 in which the Supreme Court referred in para-9 to the observation made by a Constitution Bench of the Supreme Court in Malcom Lawrence Cecil D'Souza v. Union of India, AIR 1975 SC 1269, as follows:

"Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its various aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

The respondents have contended that these observations of the Supreme Court were followed by the Principal Bench of the C.A.T. in K.K.Govil and others vs. Union of India & Ors., 1990(2)SLJ(CAT)488 which has also referred to similar observations of the Supreme Court in Yashbir Singh and Others v. Union of India and Ors. 1987(2)SCALE 371.

3. Secondly the respondents contended that the essential issue involved in this O.A. is the perceived stagnation in the rank of UDCs. Promotion from LDC is to the post of UDC and the UDC can become an Office Superintendent Gr.II after five years and Office Superintendent Gr.I after further 5 years.

According to the respondents there are more vacancies

on the security side and when the private respondents together with some of the applicants who were LDCs at that time were asked to give willingness to accept the post of Security Asstt. 'B'. Some of the applicants expressed their unwillingness to accept the post and respondents No. 3, 5, 8, 9 and 10 though juniors to the applicant accepted the post of Security Asstt. 'B' and they were promoted as Security Asstt. 'B' after selection by the DPC.

4. Respondents further contended that by the letter dt. 28-12-79 the UDCs are getting one more channel of promotion to the post of Supervisor 'A' (Non-Technical/Other than stores) in addition to their normal channel of promotion to 'S' Gr.II. In this connection reference may be made to the letter dt. 28-12-79 on which applicants have also relied. This appears at Ex. 'C' to the written statement and may be reproduced in full to appreciate rival contentions of the parties.

"All Factories
(including OEFs.)

Sub: Promotional avenues of ASKs.

Ref: Member(Per)'s D.O.No.8/79/A/NI
dt. 30-1-79

The data furnished by the factory in response to para 3 of the aforementioned D.O. has been examined and the following decisions have ~~not~~ been taken :-

(i) In modification of the orders issued on the subject earlier the following will be taken as the approved line of promotion in the different streams in the N.T. supervisory grades and the

W.M.

feeder lines in these streams will be as under :-

1. Stores	- <u>Supr. 'B'</u> ASK	<u>Supr. 'A' (Stores)</u> <u>Supr. 'B' (Stores)</u>
2. NT(Other than Stores)	<u>Supr. 'B'</u> LDC	<u>Supr. 'A' (N.T. other than Stores)</u> <u>Supr. 'B' (other than Stores)</u> UDCs, Cashiers, Asstt. Cashiers.
3. Security:	The lines of promotion already indicated in circulars No.520/77/A/NI dt. 17/21-11-78 & 18/22-11-78 will be followed.	
4. Fire Brigade	<u>Supr. 'B' (NT) FB</u> Driver(FB)/LHF	<u>Supr. 'A' (NT) FB</u> <u>Supr. 'A' (NT) F.B</u>

(ii) Accordingly, it has been decided that the actual distribution of Supr. 'B' (NT) and Supr. 'A' (NT) deployed in the Stores, Non-Technical-other than Stores and Security Sections as on 1-10-79 will be deemed as approved distribution for the purpose of working out the strength required to be sanctioned in the respective streams.

(iii) In the event of a sizeable imbalance in the career progression of individuals arising out of segregation of the posts on the above basis, the same should be viewed and the concerned factory should take corrective measures in consultation with the Board.

2. The office circular No.344/A/NI dt.10-6-63 may be treated as modified to the extent as indicated above.*

5. The applicants whose main plank is that there should be a combined seniority list of LDCs and Security Asstt. 'B' and UDC and Security Asstt. 'A'

relied on instruction at (iii) which envisages that in cases of sizeable imbalance in the career progression of individuals concerned, factory should take corrective measures in consultation with the Board. According to the applicants whereas such corrective measures included preparation of dovetailed seniority list, according to ~~respondents~~ this is not so. UDCs could be considered for the post of Supervisor 'A' N.T. other than stores as an additional channel provided they were able to get selected through the DPC.

6. At the stage of arguments the counsel for the applicants placed heavy reliance on the decision of Jabalpur Bench of CAT in T.A. 30/1986 Shashi Kant & Ors. vs. Union of India. In this T.A. Supervisory employees of the Vehicle Factory Jabalpur had challenged executive instructions which made personal staff eligible for lateral promotion to the post of Supervisor. In the judgment there is a reference to the recommendation of JCM. In para 10 of the judgment the following decision of the JCM has been upheld:

"To correct anomalies of Senior becoming junior in course of higher promotion and neutralise the resultant disparity in their career prospect, a dovetailed list would be prepared reckoning seniority with reference to the dates of holding the post of UDC/ Stenographer/Supr. 'B' (NT) without disturbing integrated seniority in each grade. However, the directly recruited Chargemen Gr. II (NT)/ Supr. 'A' (NT) would be placed in the dovetailed list with reference to the date of holding the post of Chargeman Gr. II (NT)/ Supr 'A' (NT)."

The counsel for the respondents submitted that the reference to the JCM in Jabalpur decision does not show that the decision was a national level decision but the decision related only to the factory level JCM. In any case the basic issue raised before the Jabalpur bench was a different one viz. the ~~objection~~ of the Supervisory employees of the Vehicle Factory, Jabalpur to the chances given to the personal staff for lateral promotion. Ultimately the Jabalpur Bench struck down the executive instruction of the Ordnance Board dt. 10-5-78 relating to the above issue but so far as the instructions dt. 28-12-79 which have been implemented by respondents the Jabalpur decision does not say anything. We are handicapped in appreciating ~~applying~~ the ratio of Jabalpur decision because the Jabalpur Bench had before it all the statutory orders and executive instructions and on the basis of the pleadings before it the Jabalpur Bench gave this decision in relation to the applicants. However, para-8 of the Jabalpur Bench judgment does contain the following sub para which brings out clearly that the claim of the applicants ~~for a dovetailed seniority~~ is not in accordance with the rules.

"Applain ~~and~~ simple reading of these two rules, referred to above, clearly shows that the line of promotion for Stenographer is to Chargeman Gr.II and ~~then~~ to Chargeman Gr.I. A stenographer who opts to become P.A. can not be promoted to the rank of Chargeman Gr.II or Gr.I(NT). A lower Division Clerk, who becomes UDC can become supervisor A(NT) or Chargeman

Gr.II(NT) only if he is specially selected, If a L.D.C. becomes U.D.C. after five years in that grade he can become office superintendent (O.S.) Gr.II and after another five years O.S. Gr.I, Such office superintendents can not come in the supervisory rank of Supervisor 'A'(NT) or Chargeman Gr.II and Gr.I(NT)."

From this it is clear that the rules do not envisage UDCs to become Supervisor 'A'(NT) or Chargeman Gr.II (NT) except through special selection. It is not the claim of the applicants that they have been denied the opportunity of redesignation inspite of clearing through the selection. They are claiming the benefit of promotion and redesignation as Chargeman Gr.II on the strength of seniority in rank of LDC/UDC. The Jabalpur decision does not substantiate the claim of the applicants. The counsel for the respondents also stated that while the O.A. was pending, most of the applicants have already been promoted as O.S. Gr.II or as Chargeman Gr.II, the latter promotion evidently through special selection. In this connection the counsel for the respondents gave us the following data:

Sr.No.1 promoted as O.S. Gr.II on 14-7-92

Sr.No.2 promoted as O.S. Gr.II on 3-9-93

Sr.No.3 promoted as Chargeman Gr.II on 11-1-93

Sr.No.4 promoted as O.S. Gr.II on 31-12-93

Sr.No.6 promoted as O.S. Gr.II on 31-12-93

Sr.No.7 promoted as O.S. Gr.II on 31-12-93

Sr.No.8 promoted as O.S. Gr.II on 31-12-93

Sr.No.9 promoted as Chargeman Gr.II on 4-4-94

Sr.No.10 promoted as Chargeman Gr.II on 19-5-94

Sr.No.11 promoted as Chargeman Gr.II
on 29-7-94

Sr.No.12 promoted as O.S.Gr.II on 29-7-94

Sr.No.13 promoted as Chargeman Gr.II
on 29-7-94

Sr.No.14 promoted as Chargeman Gr.II
on 29-7-94

Sr.No.15 promoted as Chargeman Gr.II
on 29-7-94

Sr.No.16 promoted as Chargeman Gr.II
on 29-7-94

Sr.No.17 promoted as O.S.Gr.II on 23-1-95

Sr.No.18 promoted as Chargeman Gr.II
on 2-5-95

7. We have considered the matter carefully.

We have no doubt that the applicants in the guise of challenging redesignation order dt. 7-9-90 have really challenged the selection and promotion of various respondents on various dates viz. 5-1-81, 4-5-81, 1-3-83 and 2-9-85 and keeping in view the ratio of

K.R.Mudgal and Others. vs. R.P.Singh and Others followed ⁱⁿ K.K.Govil and others, the O.A. is liable to be dismissed on the point of laches. ~~alone. However,~~ even on merits we have referred to the various executive instructions and office rules as relied upon in Jabalpur Judgment and we do not see that there has been any violation of office rules by executive

cited before us instructions nor are we able to read a direction to maintain dovetailed seniority in the executive instructions dt. 28-12-79. So far as the reference to the Calcutta Bench decision in T.A. 1361 of 1986 and TA 1248 of 1986 is concerned the main ground on which the relief was granted was that seniority was introduced by the respondents by executive instructions without amending

the recruitment rules. The Calcutta Bench judgments therefore also do not help the applicants.

8. We are therefore of the view that O.A. has no merit and ^{is} therefore dismissed without any order as to costs.

M.R.K. Kolhatkar
(M.R. KOLHATKAR)
Member (A.)

B.S. Hegde
(B.S. HEGDE)
Member (J)

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