

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1235/92

Transfer Application No.

Date of Decision

6-9-95

S. K. Chadda

Petitioner/s

Shri. S.P. Saxena

Advocate for
the Petitioners

Versus

Union of India & 7 Others

Respondent/s

Shri. R.K. Shetty

Advocate for
the Respondents

CORAM :

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

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

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.KOLHATKAR
(M.R.KOLHATKAR)
MEMBER (A)

J*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 1235/92

S.K. Chadda

.. Applicant

Vs.

1. The Union of India)
through Secretary to)
the Government of India)
Ministry of Defence,)
New Delhi.)
2. The Master General Ordnance)
Services, Army Headquarters)
New Delhi.)
3. Director of Military)
Regulations and Forms)
New Delhi.)
4. The Officer in Charge)
Army Ordnance Corps Records)
Secunderabad.)
5. The Major General Army)
Ordnance Corps, Southern)
Command, Pune.)
6. Shri. Munees Swamy,)
Chargeman,)
Kanpur Ordnance Depot.)
7. Shri. Gianchand Sharma,)
Chargeman)
F.O.D, Jodhpur.)
8. The Officer Commanding)
Southern Command, ())
Stationery Depot, Pune.) .. Respondents

CORAM : Hon'ble Shri. B.S.Hegde, Member (J)
Hon'ble Shri. M.R.Kolhatkar, Member (A)

Appearances

1. Shri. S.P. Saxena
Advocate
for the applicant.
2. Shri. R.K. Shetty,
Advocate
for the respondents.

J U D G M E N T

DATED : 6-9-95

(Per. M.R. Kolhatkar, Member (A))

The applicant was appointed as a typewriter
mechanic Grade 'D' on 25.8.1952 under Respondent No.8,
namely, Officer Commanding, Southern Command,
Stationery Depot, Pune. He superannuated on 31.8.93.

His grievance is that the Department did not project his case properly for promotion; and when the record was called-for, the same was not sent. In 1978 re-grouping of tradesmen was done by *M.C.R. Han* Master General of Ordnance Branch, Army Hqrs, New Delhi for promotion to the post of Chargeman as per letter dated 30.5.78, at Annexure 'A1'. According to this, cadre of typewriter mechanic was grouped with (1) Watch Maker, (2) Typewriter Mechanic and (3) Polisher. Thereafter, he applied on 1.7.80 for considering his case for promotion and sent several representations. It was only on 19.5.92 that a clear-cut reply was received rejecting his case and the applicant mainly relies on this reply which is reproduced below :

"Major LMK Murthy,
Senior Record Officer Army Ordnance Corps Records
Trimulgherry P.O
Secunderabad - 500 015 (A.P)

19 May 1992

29860/B/Tech/Vol-75/CIV/CAS

Dear Colonel,

1. Please refer to your DO letter No.504/EST/CIV/IND/SKC/ dated 09 May 92.
2. The case of Shri SK Chadha for promotion as Chargeman Part II cadre has been examined.
3. As per Recruitment Rules SRO 120/80 the tradesmen having 8 years of service and passing the prescribed tradetest are eligible for promotion to Chargeman Part II cadre. As per ROI C/3/82 the service particulars of eligible tradesmen should forward to this office for enlistment of the seniority list each year by 30 Jun. The same has been explained vide this office letter No.29860/B/Tech/VOL-72/Civ/CA6/22 dated 14 Jul 88 and the service particulars in respect of the above individual called for have not been received so far in this office.
4. It is also seen from the service particulars mentioned in your DO letter, the individual crossed the age of 58 years on 09 Aug 91 hence he is not eligible for promotion to Chargeman Part II cadre.
5. As regards para 2 of your DO letter the case of individual has not been processed before DPC alongwith Shri. Munnu Swamy due to non-receipt of service particulars. As such his

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case cannot be considered for promotion as Chargeman Part II Cadre.

With warm regards,

Yours sincerely

Lt.Col HM Sachdeva
Southern Command
Stationery Depot
Pune - 411001. "

2. The applicant says that this letter makes it clear that the service particulars in respect of the applicant were called-for which were not received and subsequently on 9.8.91 the individual crossed the age of 58 years and hence he was no longer eligible to be considered for promotion to the post of Chargeman Gr.II. The applicant points out that however in 1986, a person junior to him by name Shri. Munnu Swamy was promoted as Chargeman Gr.II. The promotion order of Shri. Munnu Swamy appears at page 45 of the O.A. Shri. Munnu Swamy appears as Respondent No. 6 and Shri. Gianchand Sharma appears as Respondent No. 7. Shri. G.C. Sharma and hence not material. refused promotion. The applicant invited our attention to the correspondence at page 51, which is a letter dated 8.09.87. This letter concedes that the problem of the individual is genuine. A letter dated 14.7.88 is at page 56 in which particulars of employees who have completed eight years of service as a trademan were called-for. At page 64 is the letter dated 7.12.88 in which there is an intimation that such cases are being progressed. At page 90 is the letter dated 5.4.90, enclosing a letter dated 13.3.90 in which it is stated that the proposal was initiated to merge the staff of stationery depots with the AOC staff but the same could not make any headway in the face of stiff resistance from the Federations/Associations of the AOC Civilian personnel.

All these culminated in the letter at page 100 which we have quoted above. Thus, the applicant contends that his case has gone by default and the department has failed to do its duty under Union pressure and frame proper rules in the absence of which the applicant could not get promoted before attaining the age of 58 years.

3. In the O.A., the applicant had claimed relief of being considered for promotion with effect from June 1978 when the orders relating to regrouping of tradesmen were issued. At the argument stage, however, the learned counsel for the applicant prayed that he confines his relief to issuing a direction to the Department to consider the applicant for promotion from the same date as the date on which Shri. Munnu Swamy was promoted, namely 15.10.1986 & the applicant being superannuated, he may be considered for payment of arrears and other consequential benefits, if he is found fit for promotion prior to his superannuation.

4. The respondents have opposed the prayers of the applicant. According to them, the cadre of typewriter mechanic is a locally controlled cadre by the respective Commandant of the depot. So far as the case of Shri. Munnu Swamy is concerned, his case cannot be compared with that of the applicant because he belongs to Army Ordnance Organisation. According to the respondents, the regrouping which was effected in May 1978, was

Mr. Kothiyal
14/12/85
confined only to the Ordnance Depots. In this connection, in their subsequent written statement, the respondents have filed an authentic copy of the circular dated 30.5.78 which clearly shows that it has been issued by the "Ordnance Services Directorate, M.G.O's Branch, Army Headquarters, New Delhi." and...5

clearly does not apply to Stationery depots. They have also enclosed Annexure 'R3' to their written statement, dated 3.9.92 - "Brief of interview : Typewriter Mechanic Shri. SK Chadha" in which the position was fully clarified to the applicant namely how a locally controlled stationery depots are outside the purview of MGs/AOC and how the efforts are being made to relieve stagnation among the staff of the locally controlled depots. They have also enclosed copies of orders since issued, namely orders dated 3.2.93, i.e. about 7 months prior to the superannuation of the applicant, on the subject of "Central Roster on the employees of stationery depot." These orders say that the government has agreed to the proposal to place the staff on central roster subject to their being liable for all India transfer and their seniority in the new unit will be reckoned from the date of reporting and their service seniority in the previous unit not to be considered. These instructions direct on undertaking in this regard to be obtained from the employee and it has been indicated that the applicant in question had sent such an undertaking on 18.2.83 agreeing to All India transfer liability but not agreeing to loss of seniority. Thus, the undertaking given by the applicant was conditional and not in accordance with the Rules and in any case, the applicant, by that time having crossed 58 years of age was not eligible to be considered for promotion by the D.P.C.

5. We have considered the matter. We observe that there is much force in the grievance of the applicant that he was stagnated in the organisation for over

40 years without any promotion whatsoever and without there being available even a selection grade to borne. the scale in which he was. However, on going through the correspondence, we notice that the applicant was fully aware of the fact that he belonged to a locally controlled category vide his representation dated 1.7.80. We are unable to accept the contention of the applicant that in view of the letter dated 19.5.92 giving ^a reference to the request for sending records in 1988, he should have been considered for promotion atleast from 1988, if not from 1986. Here we observe that an employee has no right for promotion. He can only be considered for promotion but this right ~~to be~~ considered for promotion is also required to be governed by rules. Nothing has been brought before us to show that the applicant was deprived of his promotion in spite of there being rules to the contrary or that a discrimination has been practiced against him in implementation of the rules vis-a-vis Shri.Munnu Swamy (Respondent No. 6) or vis-a-vis Shri.Gianchand Sharma (Respondent No. 7). The learned counsel for the applicant would contend that the respondents have from time to time, amended the reply and that the Tribunal should take into account only the original reply and not the additional replies filed by the respondents. We are unable to entertain this contention. It has come before us ^{that} the rules were amended only in February 1993 and that the applicant failed to give unconditional undertaking as required by the Rules. In any case, by that date, he was too old to be considered for promotion. We, therefore, are unable to grant any relief to the applicant, howsoever sympathetic we may be to the hard case like his, namely the ~~fact~~ of rules being amended only when he was no longer eligible to be considered

under the amended Rules. We, therefore, dispose of this Original Application by passing the following order :

O R D E R

O.A. is dismissed. There would be no order's as to costs.

MR. Kohatkar

(M.R. KOHATKAR)
Member (A)

B. S. Hegde

(B.S. HEGDE)
Member (J)

J*