

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 323/1992

Date of Decision: 28.11.96

Shri M.A. Shaikh

Petitioner/s

Shri S.P. Saxena

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri R.K. Shetty


Advocate for the
Respondent/s

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 ?


(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, FORT, MUMBAI 400006.

O.A. 32392.

Dated this 28th day of November 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A).

Shri M.A. Shaikh
Chargeman, Gd. II
Electrical Section
Ammunition Factory,
Kirkee, Pune - 411003

(By advocate Shri S.P.
Saxena)

... Applicant

v/s

1. Union of India
Through : Secretary
Department of Defence
Ministry of Defence
South Block
DHQ. P.O. New Delhi 110011

2. The Director General
Ordnance Factories
10-A, Auckland Road
Calcutta - 700 001.

3. The General Manager
Ammunition Factory
Kirkee, Pune 411 003.

(By advocate Shri R.K.
Shetty, Central Govt.
Standing Counsel)

... Respondents

O R D E R

[Per: B.S. Hegde, Member (J)]

Heard Shri S.P. Saxena for the applicant and

Shri R.K. Shetty for the Respondents. In this O.A. the applicant is seeking seniority in the grade of Chargeman Grade II with effect from 10-6-1974 and to consider him for the next promotion on the basis of revised seniority position etc.

2. The facts are undisputed. The applicant is at Kirkee presently working as Chargeman Grade II (Tech) and at the time of filing this application, he was working as Chargeman Grade II. He was appointed as Supervisor-A (Technical) in the scale of Rs. 205-280. While working, he acquired qualification of Diploma in Electronics and Radio Engineering in 1976. A direct advertisement was made by the Respondents for the post of Chargeman Grade II (Electronics); though he applied for the same, he was not selected. He made a request for inter-sectional transfer in view of his acquiring a fresh qualification; his request for transfer was rejected on the ground of man-power shortage in the Mechanical Section. Thereafter, all the Supervisor-A (Tech) were re-designed as Chargeman Grade II (Tech) w.e.f. 1-1-1980 as per the order of the Ordnance Factory Board, Calcutta. Thereafter, he applied for inter-sectional transfer on the grounds of being qualified for the post of Chargeman Grade II (Tech) (Electronics). He was accordingly transferred by the Respondents w.e.f. 16-11-1991 to the Electronics Section as Chargeman Grade II (Tech)(Electronics). Before transferring the applicant, the Respondents vide

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dated 14-5-1985 informed the applicant that there were instructions from the Ordnance Factory Board, Calcutta that the case of the applicant has to be assigned seniority in Electronics discipline and the same shall be done with effect from 16-11-1981, whereas in case the applicant wanted to be assigned seniority in the Mechanical discipline, he would be assigned it w.e.f. 10-6-1974. The applicant agreed to forego his seniority vide his letter dated 23-5-1985 and opted for seniority in the Electronics Section. The demand of the applicant now is that he should be given seniority in the Electronics discipline w.e.f. 10-6-1974 which has been rejected by the Respondents vide their letter dated 10-8-1990 on the ground that there is a separate seniority for various disciplines and the applicant has changed his discipline out of his own free will.

3. The learned counsel for the Respondents Shri R.K. Shetty draws our attention to the supplementary written statement filed by them in para 5 (8) stating that the applicant has compared with the seniority of one Shri M. Chandrasekharan who was initially appointed as Supervisor 'A' (Tech) with effect from 15-3-1979 after completion of 2½ years' training as Supervisor 'A' w.e.f. 15-9-1976. He was re-designated as Chargeman Gr. II (Tech) w.e.f. 1-1-1980. He was posted to Electrical Section based on his qualification D.E.E. as per requirement. His name is placed at Sl.No. 115

in the seniority list of the Chargeman Gr. II (Electrical) as on 1-1-1983 which is circulated by the Ordnance Factory; thereafter, the same was amended placing him at Sl.No. 61-A in the above seniority list vide their letter dated 3-8-1989. Shri Chandrasekharan has been assigned seniority in the Electrical trade w.e.f. 15-9-1976 i.e. from the date of his appointment as Supervisor 'A' and not from the date of his appointment as Supervisor 'A' (Tech) i.e. from 15-3-1979, thereby the contention of the applicant that by following two different standards and rules, the Respondents have resorted to discrimination between employees in similarly placed situation, is denied by the Respondents. It is true that seniority has been given to the applicant with effect from 16-11-1981 based on his willingness rendered by him vide his application dated 23-5-1985.

The contention of the applicant is that Shri Chandrasekharan has been given the seniority from 15-3-1979 i.e. the original date of his joining and the same thing should be given to the applicant otherwise it will create discrimination in gross violation of Art. 14 and 16 of the Constitution of India. The learned counsel for the Respondents Shri Shetty also draws our attention to various correspondence addressed by the applicant to the General Manager and which has been replied by the Respondents. The Respondents in their reply dated 14-5-1985 sought the option of the applicant whether he accepts the option for Electronics Section; in that case, he will have to

forgo his seniority in Mechanical trade for which the applicant has given his acceptance vide his letter dated 23-5-1985, thereby they contend that the question of re-opening the seniority at this belated stage after lapse of 15 years is not warranted.

Further, it is contended that the applicant has not joined the necessary parties as such the application is bad in law. If this contention is upheld then and if those who have already been promoted are not made parties to the O.A. will be affected and the Tribunal cannot pass any order without giving opportunity to the affected parties. Further, the applicant's transfer has been made on 16-11-1981 i.e. prior to the constitution of the Administrative Tribunal and this Tribunal cannot entertain the petition of the applicant in view of decision in V.K. Mehra v/s

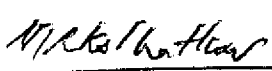
The Secretary, M/O I & B ATR 1986 (1) CAT 203 wherein it is held that 'The Administrative Tribunals Act, 1985 does not vest any power or authority in CAT to take cognizance of a grievance arising out of an order passed prior to 1-11-1982.' The limited power that is vested in the Administrative Tribunal to condone the delay in filing the application within a period is prescribed under section 21, provided the grievance is made within 3 years of the constitution of the Tribunal. The learned counsel for the applicant Shri Saxena urged that the applicant has made an application for condonation of delay; however, in view

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of the Tribunal's decision, discretion to condone the delay has to be exercised within the frame work of the Act.

4. After hearing the rival contentions of the parties, we are of the opinion that though there appears to be slight discrimination between the applicant and Shri Chandrasekharan; however, Shri Chandrasekharan's transfer was effected not on the request but in the interest of requirement and administrative exigencies, whereas the applicant made a request for transfer and he agreed for the condition imposed by the Respondents. Therefore, he cannot agitate that he should be given seniority right from the day of his appointment as Supervisor 'A'. Though the seniority list is published after 1990, the cause certainly arose on 16-11-1981 and the applicant is well aware of the same and on the basis of his willingness for transfer and seniority, the applicant's seniority is based in the Electronics Section.

5. In the result, we do not see any merit in the O.A. and the same is therefore dismissed with no order as to costs.


(M.R. Kolhatkar)
Member (A)


(B.S. Hegde)
Member (J)

ssp.