

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 650/92

Date of Decision: 16-10-97

P.S.Srirangan

Applicant.

Shri S.R.Atre.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty.

Advocate for
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 x
other Benches of the Tribunal?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 650/92.

pronounced, this the 10th day of October 1997.

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

P.S.Srirangan,
C/o. Shri S.R.Atre,
15, First floor,
Pehalajrai Building,
Shivaji Path Cross Lane,
Chendani, Thane (West)
PIN # 400 601.

... Applicant.

(By Advocate Shri S.R.Atre)

V/s.

1. Union of India, through
the Secretary, Ministry of
Defence, Government of India,
South Block,
New Delhi.
2. The Chairman & Director General
of Ordnance Factories, Ordnance
Factory Board, Government of
India, Ministry of Defence,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Machine Tool Prototype Factory,
Ambernath. ... Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

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

In this O.A. the facts are as below. By the
order No.344/10/A/NI dt. 10.5.1978 from Director
General, Ordnance Factories on the subject of 'Lines
of promotion - change of Personal Assistant to
General Manager in the scale of Rs.425-700 could be
considered for promotion to the grade of Chargeman

Gr.I (NT) Scale Rs.550-750 and this was done by way of laying down the revised line of promotion. It appears that the applicant who was appointed as Stenographer on 3.7.1968 was promoted as P.A. on 1.1.1980 and was further promoted as Chargeman Gr. I w.e.f. 30.3.1984 in terms of the above revised line of promotion.'

2. In T.A. No.30/1986 decided on 14.4.1987 by the Jabalpur Bench of the Central Administrative Tribunal, it was held that the Circular referred to above was ultra vires of Indian Ordnance Factories (Recruitment and conditions of service of Class II Personnel) Rules, 1956. The Tribunal further directed that the past actions including the question of promotion of respondents 4 to 14 and the promotion of the petitioners shall be reviewed in the light of the principles laid down in paras 5 & 6 under Part XV of Appendix 29 of Civil Service Regulations. It was further directed that the respondents should not be reverted, but their inter se seniority will be reviewed. It appears that the Respondents amended the Recruitment Rules by issuing SRO 14-E dt. 4.5.1989 and incorporated the provisions of Circular dt. 10.5.1978 therein. The SRO was further amended by Notification dt. 26.7.1991 as a result of which the provision for promotion of P.A. with three years' regular service in the grade to the post of Chargeman Gr.I was deleted. The present position, therefore, is

as settled by Jabalpur Bench of the Tribunal viz.
that the Circular dt. 10.5.1978 has no effect.

3. The grievance of the applicant, however, is that the P.As. promoted to the post of Chargeman Gr.I (NT) were given option whether they would be willing to become Senior P.A. or otherwise whenever the post^s of Senior P.A. became vacant and were to be filled in. According to the applicant, such an option was given to one Shri J.B.Mhatre, now working as Foreman (N.T.) at Ordnance Factory, Ambernath, at the time when his juniors were promoted to the post of Senior P.A. vide O.F. order dt. 13.12.1985 and 26.5.1986.

According to the applicant, similar "jumping promotions" were given to other Chargeman Gr.I. However, the applicant was not allowed such an option even when he represented in the matter. The relief sought by the applicant, therefore, is to direct the respondents to allow the applicant to exercise his option for reverting to his ^{own} line of promotion as Senior P.A. (Senior Scale) and consider him for such promotion and if found suitable, to promote him from the date from which his immediate junior has been so promoted. In this connection, the applicant wants to compare his case with one Shri K.Srinivasan. The applicant further wants his case to be considered by application of "Next Below Rule" (NBR).

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4. The respondents have opposed the O.A. According to the respondents, the applicant got the promotion to the post of Chargeman Gr.I which was a supervisory cadre. The question of permitting him to exercise a fresh option to go back to the original line of promotion does not arise. Such a representation was made, but the same was regretted. So far as the Jabalpur Bench Judgment is concerned, it no doubt struck down the Circular dt. 10.5.1978, but so far as the past actions are concerned, the same were not disturbed. The applicant was promoted much before the date of the said Judgment and the Tribunal itself had stated that those who had already been promoted as Chargeman-I (N.T.) need not be reverted. So far as the case of Shri Mhatre is concerned, he worked as P.A. from 11.8.1975 to 30.6.1980. He was promoted as Chargeman Gr.I on 1.7.1980. He was promoted as Asstt. Foreman on 26.9.1983 and he is working as Foreman from 4.5.1969 till date. Therefore, the allegation that some option was allowed to Shri Mhatre to come over to the original line of promotion viz. SPA is entirely baseless. In the Rejoinder, the applicant has referred the case of one Shri Chella Shivaji and it appears that Shri Chella Shivaji, temporary P.A. was appointed to the post of Temporary Chargeman by the order dt. 6.7.1985. By the order dt. 21.6.1991 he was permanently transferred to the Ordnance Factory Board, Headquarters and also to

to the DGOF Stenographers Service. The precise circumstances of transfer of Shri Chella Shivaji to a post in Stenographers Service in DGOF are not clear. The order is stated to have been issued in public interest. Therefore, such an isolated example does not substantiate the allegation of discrimination. The applicant has not been able to show any Circular by which the respondents had called for options to be exercised by the Chargeman Gr.I (N.T.) originally belonging to P.A. cadre to switch over to the post of Senior P.A. by way of promotion. In our view, therefore, the applicant has not made out any case that the rejection of the representation of the applicant by the respondents to switch over to the post of Senior P.A. was illegal and discriminatory.

5. The counsel for the applicant has next relied on the "next below rule" and the Judgment of the Supreme Court in D.D.Suri V/s. Union of India (1979 SCC L&S 320).

6. The next below rule is contained in Government of India order No.29 under F.R. 22. This Rule reads as below :

"When an officer in a post (whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs he may be authorised by special order of the appropriate authority pro forma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade if that be more

advantageous to him, on each occasion on which the officer immediately junior to him in the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade then the officer next junior to him not so passed over) draws officiating pay in that scale or grade :

Provided that all officers senior to the officer to whom the benefit under the substantive part of this rule is to be allowed are also drawing, unless they have been passed over for one or other of the reasons aforesaid, officiating pay in the said or some higher scale or grade within the cadre:

Provided further that, except in cases covered by any special orders, not more than one officer (either the seniormost fit officer in a series of adjacent officers outside the ordinary line, or if such an officer either forgoes the benefit of his own volition or does not require the benefit in virtue of his holding a post outside the ordinary line which secures him atleast equivalent benefits in respect of pay and pension than the next below in the series) may be authorised to draw the pay of the higher scale or grade in respect of any one officiating vacancy within the cadre filled by his junior under this rule."

The contention of the counsel for the applicant is that the applicant was prevented from officiating in his turn in the post on a higher scale viz. in the post of Senior P.A. and that he compares his case with one Shri Srinivasan .K. in the context ~~of~~ ^{under} "one for one principle" under NBR.

6. It is difficult to see how the NBR applies to the instant case. The applicant has availed of the opportunity of getting promoted in the revised line of promotion. Having availed of such an opportunity,

he has to seek further promotions in the revised line of promotion viz. the grade of Chargeman. It cannot be stated that he was prevented from officiating in his original cadre. It was entirely his ^{by} voluntary choice that he switched over to the supervisory post of Chargeman. Secondly, it is also a condition of the rule that all officers senior to the officer are required to be shown as drawing officiating pay in the higher scale. Although the applicant compares his case with that of Shri Srinivasan, ^{He} is not able to show that all officers senior to him are drawing the officiating pay in the higher scale of SPA. This is not the way in which "one for one" principle in regard to "next below rule" can be invoked. In our view, therefore, the question of giving any benefit in terms of NBR does not arise. So far as the reliance on D.D.Suri's case is concerned, that was a case of an I.A.S. Officer and the question involved there was whether the promotion to the Super Time-scale of I.A.S. can be claimed by invoking the NBR and the reply of the Hon'ble Supreme Court was in the negative. In para 41 of the said Judgment, the Hon'ble Supreme Court has held that the benefit of NBR is available at the time of appointment in the Selection Grade, but not at the time of promotion to the Super Time-Scale. In any case, the Judgment bears on interpretation of All India Service Rules and has no bearing on the facts of the ^{present} case and in any case does not help the applicant.

7. In our view, therefore, the O.A. has no merit and the same is therefore dismissed with no orders as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S.HEGDE)
MEMBER (J).

B.