

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **419/93**

Date of Decision:

*13.6.93*

Shri Ashok Kumar Gupta .. Applicant

Shri S.P. Saxena .. Advocate for  
Applicant

versus

Union of India and others .. Respondent(s)

Shri R.K. Shetty .. Advocate for  
Respondent(s)

CORAM:

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 ?

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

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO:6  
PRESCOT ROAD, BOMBAY:1

Original Application No. 419/93

13 the Friday day of June 1997

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

Ashok Kumar Gupta  
Works Manager  
High Explosives Factory,  
Kirkee Poona. residing at  
22/1 Club Road,  
Ordnance Estate, Kirkee. .... Applicant.

By Advocate Shri S.P. Saxena.

V/s.

Union of India through  
the Secretary  
Dept. of Defence Production  
Ministry of Defence, DHQ P.O.  
New Delhi.

The Chairman  
Ordnance Factory Board  
10 A, Auckland Road  
Calcutta.

The General Manager  
H.E. Factory, Kirkee  
Poona.

The Secretary  
Union Public Service  
Commission, Dholpur House  
New Delhi.

.... Respondents.

By Advocate Shri R.K. Shetty.

O R D E R

¶ Per Shri B.S. Hegde, Member (J) ¶

In this O.A. the applicant has challenged the impugned order dated 17.11.92 and 28.2.92. He also prayed ~~that~~ the ~~officers~~ selected by UPSC in the Combined Engg. Services Examination of earlier year shall be senior to those selected in later years, and to quash and set aside the impugned seniority list of Senior Time Scale grade (Works Manager grade) issued on 28.2.92, so far it relates to the applicant and to direct the respondents to list the

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applicant in the seniority list as on 1.1.92 just below Mr. K.K. Pati which is in accordance with the applicant's name listed in the seniority list dated 1.1.89.

2. The applicant has been selected by the UPSC, Government of India, under Combined Engineering Services Examination in the year 1983. The applicant was selected and appointed as Asstt. Works Manager Prob/ Engineer (Electrical) in IOFS cadre in the Junior Time Scale. Although he has been selected by the UPSC against 1983 examination, the letter of appointment was issued by the respondents on 7.1.87. Persuant to that, the applicant has joined the duty in the respondents department on 10.2.87. It is stated, that the intervening delay is attributable to administrative delay involved from the stage of examination till appointment letter is issued to applicant, and the same delay is not attributable to any inaction on the part of the applicant. It is further stated, that the UPSC is conducting Combined Engineering services Examination every year, and persons selected by UPSC are posted to different departments/Ministries of Government of India in the Junior Time Scale grade. Therefore, it is pertinent to mention that since the above recruitment is done every year by UPSC, Officers appearing and selected in the Examination of earlier years are placed/considered senior to those selected in the examination of later year, without disturbing their inter se-seniority in the respective department/Ministry where they are posted after their joining. Therefore, since the

applicant being of 1983 batch of Combined Engg. Services Examination he has to be treated senior in IOFS cadre compared to those of subsequent batches of 1984 to 1987 in the IOFS cadre and in the same Junior Time Scale Post.

3# Subsequent to the joining of the applicant in the department, the respondents have issued seniority list in 1989 of all officers holding the post of Asstt. Works Manager (Engineer). The applicant was correctly shown at Serial No. 27 in that list. The seniority list is on the basis of select panel prepared by the UPSC on merit (Exhibit -3). The select panel prepared by the UPSC at the time of recruitment on year to year basis. Thereby the applicant has no case on the above seniority list. Thereafter, the applicant has promoted as Works Manager/Senior Time scale with effect from 27.3.91 without effect on seniority. The above promotion was made provisional and subject to confirmation of inter-se-seniority of officers (Exhibit A - 4). Thereafter, the respondents issued the inter-se-seniority list of IOFS officers as on 1.1.1992, for all officers in the senior time scale/Works Manager. While preparing the said impugned seniority list, the respondents did not prepare separate seniority lists of different trades, but have prepared a combined seniority list of all S.T.S. officers irrespective of trades. The preparation of the impugned seniority list is not on the basis of the statutory Rules, or any other Rules on the subject, and the same is prepared arbitrarily and not on any justified grounds, besides, contrary to Rules. Under this seniority list, the applicant's

name is shown at serial No. 373. This is contrary to S.R.O. issued by the department because many of his junior who appeared at the Combined Engg. Services Examination in the subsequent years are enlisted above the applicant for no justified reasons. A list of officers who are junior to applicant but enlisted above the applicant in the impugned seniority list (Exhibit A - 5). On receipt of the impugned seniority list, the applicant made representation on 13.4.92. The same was replied by the respondents on 17.11.92, stating that " the officer has mixed up his seniority in the grade of JTS with that of STS. The seniority in the grade of JTS is determined as per recommendation of the UPSC while seniority in the grade of STS is determined on the basis of the recommendation of the relevant DPC, therefore the seniority has been fixed correctly as per rules and instructions on the subject. Against that reply, the applicant made further representation on 10.2.93 bringing out the various discrepancies in the impugned order of seniority list, which has been replied by the respondents via their letter dated 26.3.93 stating that O.F. Board has nothing further to add to what has already been stated in letter No.401/A/G dated 17.11.92. Thereafter the applicant has filed this O.A. in the year 1993.

4. Shri R.K. Shetty counsel for the respondents submitted that the application filed by the applicant is hopelessly barred by time in view of section 21 of the Administrative Tribunals Act. The respondents states that the question of non-appointment of applicant in the year 1983 is reflected in the seniority list on 28.2.1992. There is a direct connection between the non-appointment of the applicant in the year 1983 and

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the seniority list of 1992. The connection is that the non-appointment of the applicant in the year 1983 is the cause and the effect is that the position at serial No 373 is the effect. It is further stated, that the seniority position given to the applicant in STS at serial No.373 is in accordance with law. In para 9 the respondents have stated that the applicant has himself admitted that he has no grievance about assignment of his seniority in the entry grade i.e. Junior Time Scale of IOFS as circulated vide IOFS Seniority list as on 1.1.89, according to which, the Junior Time Scale Officers selected by UPSC in the direct recruitment vacancies earlier have been assigned en-block seniority over officers selected in the subsequent examination. This is as per the seniority Rules and the petitioner has also accepted his seniority in the Junior Time Scale of IOFS. Till 1989, seniority in IOFS was Trade-Wise Upto Junior Administrative Grade and from JASG onward it used to be devetailed seniority list. However, on the basis of an amendment made in the IOFS Recruitment Rules in September 1989, the seniority list of IOFS officers from the entry grade i.e. Junior Time Scale onwards have been prepared on the basis of devetailed seniority. It is contended that Note 4 to SRO 8 of 1973 has not been violated in the case of the petitioner. It is also stated that STS in IOFS though as per recruitment Rules a Non-selection post, promotions are dependent on eligibility, recommendation of DPC availability of post etc. Officers recommended by a DPC for promotion to STS retains their inter-se-seniority position as recommended in the panel in the order indicated.

5. The learned counsel for the applicant has drawn our attention to recruitment Rules 1973 wherein it is stated that the relative seniority of direct recruits will be determined in accordance with the order of their selection for appointment to the grade, whether by the UPSC or any other selecting authority. Note 4 to SRO 8 of 1973 which reads as below:

" If an officer appointed to any posts in the service is considered for the purpose of promotion to the higher post all persons senior to him in the grade shall also be considered notwithstanding, that they may not have rendered the requisite number of years of service."

Therefore, the applicant urged that the delay in appointment is not due to the applicant's inaction, but delay in issue of appointment order is solely on the part of respondent's inaction, and in view of the rules referred to above, the applicant should be given seniority from 1983 onwards. It is true that the promotion to Senior Time Scale (STS) requires 4 years qualifying service, in the Junior Time Scale, as per recruitment Rules. It is also not in dispute that promotion to the post of STS, shall be made on the basis of seniority cum fitness.

6. We heard the counsel for the parties and carefully considered the pleadings and oral arguments. On perusal of the pleadings and argument, we find that, the reasons adduced by the respondents is not at all satisfactory and the seniority given to the applicant is not in accordance with rules. Therefore, in our view the said impugned seniority list is not sustainable.

7: The learned counsel for the applicant in support of his contention relied upon the decision of Madra Bench (1994) 27 ATC 374 in the case of S.P.Saxena v/s. Union of India and others, a similar issue was decided. The Tribunal held that the applicant, a direct recruit Junior Time Scale (JTS) officer of Indian Ordnance Factory Service. His Juniors were in service in 1983 while the applicant could join in February 1984 - Promotion to the Senior Time Scale (STS) admissible after completing 4 years service in JTS. A DPC meeting held on 25.3.87 wherein the candidates who would be completing 4 years service upto 31.12.87 were considered. The applicant's exclusion on the ground that he was yet to complete prescribed service on the cut off date. It is also stated that the applicant should have been provisionally included in the panel but promoted only when he completed four years service. His seniority, however to remain unaffected due to his late promotion vis-a-vis his juniors. Therefore, the applicant submits that the facts of the case decided by the Madras Bench is same to that of the present case. Accordingly, the seniority list is required to be quashed and set aside.

8: The respondents have taken a plea that the O.A. filed by the applicant is barred by limitation because the impugned order are on 17.11.92 and 10.2.93 respectively. Thereafter the applicant has filed the O.A. in 1993. Therefore, the question of application being barred by limitation does not arise. This is nothing but non-application of mind on the part of the respondents. Till 1992 the applicant has been shown senior according to the rank given by the UPSC. It is

stated in the recruitment rules for the 1989, that the promotion post to Senior Time Scale shall be made on the basis of seniority cum fitness smongst suitable officers from the lower posts. The post of STS was based on the recommendation of the DPC. This Rule shall be applicable only prospectively. Those who were selected under the then existing Rules, their seniority will have to be decided under the then existing Rules. Even amended Rules does not help the respondents. In the pleadings the respondents have relied upon the case of R.Prabha Devi V/s. Union of India 1988(7) ATC 633 wherein it is held that seniority alone is no criteria for promotion to the next higher grade. Eligibility is the first and foremost consideration for promotion having regard to the provisions of the recruitment Rules. If a senior is not eligible, the junior, if eligible, would be considered for promotion. However in view of the instructions in SRO 1973, it is incumbent upon the respondents to consider the case of the applicant alongwith his juniors. According to applicant, the promotion after completion of the required number of years of service but they do not have the right to change the seniority which is based on recruitment Rules and as was directed by the UPSC.

9. In the light of the above, since there is no dispute about the selection of the applicant in 1983. The seniority given in the impugned seniority list of 1992 is not based on any genuine ground and also contrary to the recruitment Rules. The respondents themselves concede that the seniority

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will not be effected and at the same time it is open to the competent authority to give promotion after completion of the required number of service.

10. In the result, we allow the O.A. and direct the respondents to re-cast the seniority of the applicant in the seniority list as on 1.1.92 at appropriate place i.e. just below Shri K.K.Pati. The D.P.C. ought to have considered for the post of STS when his juniors of 1984 to 1987 batch were considered and promoted to STS and his seniority should have been fixed accordingly. The applicant is not entitled to any arrears of pay but only to seniority and notional fixation of pay in the post of STS. The Impugned orders dated 28.2.92 and 17.11.92 are hereby quashed and set aside. This order shall be complied within a period of three months from the date of receipt of this order. No order as to costs.

*M.R.Kolhatkar*  
(M.R. Kolhatkar)

Member(A)

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Contempt Petition No.14/98  
in  
Original Application No.419/93

Dated this 20th Day of April, 2000.

Coram : Hon'ble Shri D.S. Bawej, Member (A)  
Hon'ble Shri S.L. Jain, Member (J)

Shri A.K. Gupta .. Applicant.  
(By Advocate Shri S.V. Marne)

45.

Union of India & Ors. .... Respondents.  
(By Advocate Shri R.K. Shetty)

O R D E R  
( Per : Shri D.S. Baweja, Member (A) )

This contempt application has been filed by the applicant alleging non implementation of the order dated 13.6.1997 in O.A. 419/1993.

2. The applicant has filed OA 419/93 seeking redressal of his grievance with regard to his seniority in Senior Time Scale. The O.A. was allowed as per order dated 13.6.1997 with the direction as under in para 10:-

"10. In the result, we allow the O.A. and direct the respondents to re-cast the seniority of the applicant in the seniority list as on 1.1.92 at appropriate place i.e. just below Shri K.K. Pati. The D.P.C. ought to have considered for the post of STS when his juniors of 1984 to 1987 batch were considered and promoted to STS and his seniority should have been fixed accordingly. The applicant is not entitled to any arrears of pay but only to seniority and notional fixation of pay in the post of STS. The Impugned orders dated 28.2.92 and 17.11.92 are hereby quashed and set aside. This order shall be complied within a period of three months from the date of receipt of this order. No order as to costs".

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3.....The respondents were allowed twice extension of time for implementation of the above referred order and the last extension was upto 25.3.98. The applicant has filed the present Contempt Application on 23.3.98 alleging that though the time for implementation of the order is getting over, the respondent has not taken any steps to implement the order. The applicant therefore contends that the respondent have committed Contempt of Court and Contempt Proceedings should be initiated against him.

4..... Notice was issued to the respondent in the Contempt Application and he has filed two written statements. The respondent has explained the reasons for delay in implementation of the order namely (a) In the similar matter in OA 23/1997 involving the applicant belonging to same year of Engineering Services Examination, the Principal Bench had taken a different view (b) Writ Petition was filed before the High Court against the order dated 13.6.1997 which has been rejected as per order dated 16.4.1999 and on the advice of Law Ministry, SLP before Hon'ble Supreme Court is being filed. As regards the compliance of the order dated 13.6.1997, the respondent states that as per bonafide understanding of the order, a review DPC has been held on 3.11.1999 to consider the applicant for promotion to Senior Time Scale when Shri K.K. Pati, junior to the applicant in batch was considered by the DPC on 30.9.1988. The review DPC has not found the applicant fit for promotion and recommendations of the review DPC have been accepted by the Competent Authority. In view of this action, the respondent pleads that the directions of the Tribunal have been complied with. Further if any unintended

delay has been caused in implementing the direction in the order dated 13.6.1997, the respondent express unconditional apology for the same.

5. The applicant has not filed any rejoinder reply for the written statements.

6. We have heard the arguments of Shri D.V. Gangal alongwith Shri S.V. Marne for the applicant and Shri M.I. Sethna alongwith Shri R.K. Shetty for the respondents.

7. The applicant has not filed any rejoinder reply to controvert the submissions of the respondent in the written statements. However, during the arguments, the Counsel for the applicant submitted that as per the directions in para 10 of the order dated 13.6.1997, no review DPC is to be held and the name of the applicant is required to be interpreted at the appropriate place just below Shri K.K. Pati by recasting the seniority list as on 1.1.1992. The Counsel for the respondents on the other hand referring to the averments in the written statement stated that as per 'understanding of the order, name of the applicant ought to have been considered when juniors of 1984 to 1987 batches were considered. It is further submitted that consideration is to be done by the DPC and since the applicant had not been considered at that time by DPC, a review DPC is required to consider the case of the applicant for promotion. Accordingly the review DPC has been held on 3.11.1999 and based on the available <sup>confidential</sup> report of one year only, the DPC has not found the applicant fit for promotion. With this action the respondents's stand is that the order of the Tribunal has been complied with.

8. From the rival submissions, we find that there is serious dispute between the parties with regard to interpretation of the directions in the order dated 13.6.1997. It is not scope of the Contempt application to go into interpretation of the order. In a contempt application it is to be seen whether there is any wilful disobedience. In the present case, we find that respondents have taken action as per their understanding of the order. There is some delay in implementation of the order. The reasons for delay have been explained and we are satisfied with the same. Once it is noted that there is compliance of the order and there is no wilful obedience, then no case of Contempt of Court arises. If the applicant is still aggrieved by the order passed by the respondent, then that is altogether a different issue. In such a situation, a fresh cause of action arises for which the legal remedy if so desired can be sought as per the law. Merits of the compliance of Court orders cannot be examined in the Contempt of Court proceedings. In this connection, we refer to the law laid down by the Apex Court in its two judgements in the case of J.S. Parihar vs. Ganpat Duggar & Others 1996 SCC (L&S) 1422 and V. Kanakrajan vs. G.M. S.E. Railway JT 1996 (7) SC 517.

9. In view of the law laid down by the Hon'ble Supreme Court and the facts obtaining in the present Contempt Application, we restrain to interpret the scope of the directions in the order dated 13.9.1997. We are of the review that there is no case for taking Contempt of Court proceedings. For any non

satisfaction of the action of the respondents, gives a fresh cause of action for which remedy does not lie in an application of Contempt.

10 In the result of the above, we do not find merit in the Contempt Application and the same is dismissed accordingly. No order as to costs.

*Jain*  
( S.L. Jain )  
Member (J)

*Bawej*  
( D.S. Bawej )  
Member (A)

H.