

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 821/1993

Date of Decision 18-11-96

Ram Nath Sharma

Petitioner

Shri M.M.Sudame.

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri M.G.Bhangde.

Advocate for the Respondents.

Coram:

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

The Hon'ble Mr. 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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI,
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 821 / 1993.

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

Pioneered this the 18th day of Nov. 1996.

Ram Nath Sharma,
Ordnance Factory,
Jawahar Nagar,
Bhandara Estate,
Jawahar Nagar P.O.

... Applicant.

(By Advocate Shri M.M.Sudame).

V/s.

1. Union of India,
through its Secretary,
Ministry of Defence,
Defence Production,
South Block,
New Delhi.

2. Chairman/DGOF,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory,
Jawahar Nagar,
Bhandara.

... Respondents.

(By Advocate Shri M.G.Bhangde, CGSC).

O R D E R

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

The applicant started his service in the
A.F.D. Factory, Agra as Junior Scientific Assistant
Gr.II from 29.3.1968. He was promoted as Junior
Scientific Assistant Gr.I on 3.3.1971 and Senior
Scientific Assistant on 1.10.1973. On closure of the
A.F.D. Factory, Agra, he was posted to Ordnance Factory,
Bhandara on selection by the Board as Chargeman Gr.II

w.e.f. 10.10.1977. The scale of pay of Senior Scientific Assistant was Rs.550-900 in which the applicant had worked from 1.10.1973 till 10.10.1977. The scale of pay of Chargeman Gr.II to which the applicant was appointed on closure of A.F.D. Factory, Agra was Rs.425-700 and the scale of pay of Chargeman Gr.I was Rs.550-750. Thus the scale of pay of Chargeman Gr.II was lower than the scale of pay of Senior Scientific Assistant and therefore the applicant made a representation for appointment as Chargeman Gr.I in the scale of Rs.550-750 from the date of joining the Ordnance Factory, Bhandara. Accordingly, by Notification dt. 31.1.1984 the appointment of the applicant was modified as Chargeman Gr.I notionally without the benefit of arrears of pay and allowances w.e.f. the date on which he assumed his duties viz. 10.10.1977.

~~XXXXXXXX~~ The said Notification dt. 31.1.1984 was challenged in Phillip Verghese & Anr. V/s. Union of India & Ors. in Tr. Application No.295/87 (W.P. 345/84), ^{but} the same was dismissed. During the pendency of the T.A., however, a stay was in operation initially granted by the High Court which had transferred the matter to the CAT, Bombay Bench. The applicant then represented for awarding him the monetary benefit of pay fixation and promotional benefit of the seniority of Chargeman from the date of joining the Ordnance Factory, Bhandara viz. 10.10.1977 and also subsequent deemed date of promotion as Assistant Foreman and Foreman with retrospective dates. According to the applicant there

has been no decision on this representation of his. The relief claimed by the applicant is the grant of benefits consequential to the implementation of the order of dt. 31.1.1984 and grant/deemed date of promotion to the post of Assistant Foreman in the pay scale of Rs.700-900 w.e.f. 9.3.1979 and to the post of Foreman in the scale of Rs.2350-3500 w.e.f. 31.7.1989 by holding Review D.F.C. These deemed dates of promotion have been claimed by the applicant with reference to the dates on which his junior one Shri C.K.Balachandran was promoted to this post viz. Foreman w.e.f. 22.6.1979 and Foreman w.e.f. 18.9.1989.

2. The O.A. has been opposed by the Respondents. They have stated that consequential benefits of pay fixation in respect of the applicant have already been paid to the applicant as below :

- (i) Pay and allowances Rs.27,732/- payment made on 18.6.1992.
- (ii) Overtime allowances Rs.5,453/- payment made on 13.10.1992.
- (iii) Personal pay Rs.200/- payment made on 18.11.1992.

3. Regarding seniority in the grade of Chargeman Gr.I and in subsequent promotional grades viz. Assistant Foreman and Foreman it is stated by the Respondents that as per the seniority position in the seniority list of Chargeman Gr.I as on 1.1.1981 the position of the applicant would be above Sl.No.108 i.e. Shri C.K.Balachandran who was holding the post of Chargeman Gr.I w.e.f. 31.10.1977.

However, the further promotions as claimed by the applicant cannot be given to him because he is required to complete

three years of service in the Grade of Chargeman Gr.I before being considered for the post of Assistant Foreman. The respondents have further stated that in the light of the Bombay High Court Judgment dt. 1.12.1981 in the matter of S.P.Saxena and in the CAT Judgment in O.A. No.804/87 ^{relating} ~~to~~ Shri V.Chandrashekar Nair the entire seniority of Chargemen Gr.II as on 1.1.1977 and Assistant Foremen as on 1.1.1977 is being re-cast and the applicant would certainly be considered for further promotion in the light of the re-cast seniority.

4. In the additional written statement filed by the respondents on 4.3.1996 it has been submitted that on the basis of the Review DPC necessary orders in regard to promotion of the applicant to the higher grades have been issued. He has been promoted to the post of Assistant Foreman ^{and} notionally w.e.f. 1.4.1980/actually w.e.f. 28.3.1985. Further, he has been promoted to the post of Foreman notionally w.e.f. 24.3.1995 and actually w.e.f. 8.9.1995. According to the Respondents, therefore, nothing further remains to be done so far as the applicant is concerned.

5. We are, therefore, required to consider whether the applicant deserves relief as claimed by him of notional promotion as Assistant Foreman w.e.f. 9.3.1979 ^{and} as compared with Shri G.K.Balachandran ^{also} to the post of Foreman w.e.f. 31.7.1989/as compared with Shri C.K.

M Balachandran.

6. The Respondents have opposed the claim of the applicant because as earlier pointed out by them, the applicant is required to complete three years of service as Chargeman Gr.I before he could be considered for the post of Assistant Foreman. In this connection, the Respondents have referred to the Ministry of Defence letter dt. 28.12.1965 which is annexed to the Additional Written Statement dt. 4.3.1996. In terms of this Memo the period of service of three years in the lower grade is fixed for promotion to the next higher grade. Since the applicant's seniority as Chargeman Gr.I is to be calculated w.e.f. 10.10.1977 he could be considered for the post of Foreman only on and from 10.10.1980. Therefore, the question of comparing his case with that of Shri C.K.Balachandran does not arise. The respondents have stated that the DPC held in December, 1980 had given notional seniority as Assistant Foreman to the applicant w.e.f. 1.10.1980. According to the Respondents although he was eligible for promotion as Assistant Foreman actually from 10.10.1980 still he has been allowed notional seniority from 1.4.1980 on similar consideration as in the case of his juniors who were considered for promotion in the said DPC. So far as the case of Shri C.K.Balachandran is concerned the respondents have contended that Shri C.K.Balachandran was appointed as Chargeman Gr.II w.e.f. 15.7.1966 and promoted as Chargeman Gr.I w.e.f. 7.2.1978. He was promoted as Assistant Foreman from 22.6.1979. While considering his promotion as Assistant Foreman from that


date when he had not completed three years of service as Chargeman Gr.I, the fact that he had started working as Chargeman Gr.II from 15.7.1966 was kept in view and under the Rules, the service as Chargeman Gr.II plus Chargeman Gr.I can be considered at the time of promotion as Assistant Foreman.


7. In our view, the claim of the applicant to be considered for promotion as Assistant Foreman from 9.3.1979 is not made out on the basis of the service record of the applicant and the Rules applicable to him. The counsel for the applicant has stated that the Ministry of Defence Circular dt. 28.12.1965 on which the Respondents have relied applies only to the Graduate Apprentices and not to others is also not substantiated. We are, therefore, of the view that the claim of the applicant to be promoted as Assistant Foreman w.e.f. 9.3.1979 is required to be rejected.

8. For the same reason, the applicant cannot also claim to be promoted as Foreman w.e.f. 31.7.1989 by comparing his case with that of Shri C.K.Balachandran. As observed by us above, Shri C.K.Balachandran has a different career graph and the case of the applicant is not comparable with that of Shri C.K.Balachandran.

9. The counsel for the applicant would then rely on the Circular dt. 14.12.1979 (at Annexure - I with the Rejoinder filed by the applicant on 29.5.1996) in which it is stated that it has been advised by Ministry of Defence that as a special case the individuals

seniority as Chargeman Gr.I stands concluded and the applicant cannot claim ■ seniority prior to 10.10.1977. The respondents have acted on the Notification dt. 31.1.1984 and have given all the consequential benefits to the applicant including the promotional benefits. We are, therefore, of the view that the application lacks merit and is therefore dismissed with no order as to costs.


(M.R.KOLHATKAR)
MEMBER(A)


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

B.