

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 921/93

1.12.98
Date of Decision:

C.G.Kadam

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

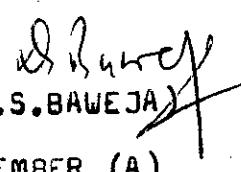
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

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


(D.S.BAWEJA)

MEMBER (A)


(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 921/93

pronounced this the 1st day of December 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

C.G.Kadam,
Chief Draughtsman,
CQA (EE), Aundh Camp,
Poona 411 027.

By Advocate Shri S.P.Saxena

... Applicant

V/S.

1. Union of India through
the Director General of
Quality Assurance (Adm 10),
Ministry of Defence,
DHQ P.O., New Delhi.
2. The Controller,
CQA (EE), Aundh Camp,
Poona 411 027.
3. Shri S.K.Jaggi,
Chief Draughtsman,
CQA (FE), Aundh Camp,
Poona 411 027.

By Advocate Shri R.K.Shetty

... Respondents

ORDER

(Per: Shri D.S.Bawej, Member (A))

This application has been filed seeking quashing of the orders dated 16.1.1991 and 30.1.1991 as per which the seniority of the applicant as Chief Draughtsman has been changed and Respondent No. 3 has been shown senior to him with a prayer that applicant is entitled to be placed above Respondent No. 3 in the seniority list of Chief Draughtsman.

2. The applicant was appointed as 'Tracer' on 3.12.1963 in Research & Development (Engrs) Office at Dighee, Pune. He was promoted as Draughtsman Gr.III on 1.9.1964. He was further promoted as Draughtsman Gr.II from 11.6.1968. From 1.11.1968, the Office of Research & Development (Engineering) was bifurcated into two units :-
(a) Chief Inspector of Engineering (Equipment) which is presently renamed as Controllerate of Quality Assurance (EE), and (b) Research & Development (Engineering) Pune. The applicant was transferred to the unit of Controllerate of Quality Assurance. The applicant was further promoted as Draughtsman Gr.I as per the panel notified in 1978. In this panel, the applicant was at S.No. 1 while the Respondent No. 3 was at S.No. 3 and accordingly, the applicant was promoted from 3.7.1978 while the thereafter. Respondent No. 3 was promoted/ The applicant was further promoted as Chief Draughtsman u.e.f. 14.7.1987. However, as per the order dated 30.1.1991, a review DPC was held for promotion from Draughtsman Gr.II to Draughtsman Gr.I and Respondent No. 3 was shown above the applicant. The applicant submits that this order has been passed illegally with malafide intention with the intention to favour Respondent No. 3 without giving any show cause notice or any opportunity to make a representation to the applicant. The applicant made representation against the same on 4.3.1991 which was rejected by the order dated 24.4.1991. Thereafter, he submitted another representation on 15.5.1991 which was also rejected by order dated 29.11.1991. Feeling aggrieved, the present application has been filed on 2.8.1993.

3. ^{official} The respondents have filed a written reply opposing the relief claimed by the applicant. The respondents submit that the Respondent No. 3 was appointed as Tracer on 21.7.1961 and was promoted as Draughtsman Gr. III from 21.7.1964. In comparison, the applicant was appointed as Tracer on 3.12.1963 and was promoted as Draughtsman Gr. III on 1.9.1964. It is further submitted that from 1.11.1968 the Research & Development Establishment at Pune was bifurcated. Respondent No. 3 was retained in the Research & Development Organisation while the applicant was transferred to the Controllerate of Quality Assurance. The Respondent No. 3 was posted at Delhi in the unit of Technical Committee (Engineering Stores) of Research & Development Establishment, Pune. However, subsequently, a decision was taken to transfer the establishment of Technical Committee (Engineering Stores) under the Directorate of Engineering, New Delhi alongwith the staff under the Directorate of Production and Inspection (D) (Now Director General of Quality Assurance (D)). The respondents have further brought out that as per the recommendations of the 3rd Pay Commission, the Draughtsman Gr. II were allowed two scales, 50% in the scale of Rs.330-560 and 50% in the scale of Rs.425-700. The Respondent No. 3 was placed in the scale of Rs.330-560. Subsequently, he was placed in the scale of Rs.425-700 from 24.8.1974. The applicant, however, was allowed the scale of Rs.425-700 from 1.1.1973. In view of this, even though Respondent No. 3 had been transferred back to the original seniority unit, he was shown below the applicant in the seniority list of Draughtsman Gr. II. However, subsequently by Government of India, Ministry of Defence's order dated 27.10.1987 all the

Draughtsman Gr. II were allowed the scale of Rs.425-700 w.e.f. 1.1.1973. Accordingly, Respondent No. 3 was entitled to the scale of Rs.425-700, i.e. the same date on which the applicant was allowed this scale. In view of the implementation of the scale of Rs.425-700 for all the posts of Draughtsman Gr.II, it became necessary to review the seniority of Draughtsman Gr.II. The Headquarters' Office therefore as per letter dated 18.1.1988 called for the revised SP Roll of Draughtsman Gr.II to hold a review DPC for promotion to Gr.I from Gr.II. Accordingly, the revised SP Roll was prepared and sent to the Headquarter and copy of the same was also circulated for the information of all the staff. In the revised SP Roll, Respondent No. 3 was placed senior to the applicant in view of the fact that he had been promoted as Draughtsman Gr.II earlier to the applicant. Keeping this in view, the panel for promotion from Gr.II to Gr.I had been modified as per order dated 16.1.1991 whereby Respondent No. 3 had been shown above the applicant. Keeping this in view, the promotion in the grade of Chief Draughtsman has been also reviewed and the Respondent No. 3 has been placed above the applicant. The Respondents submit that the transfer of Respondent No. 3 back to the original seniority unit was on the administrative ground and therefore he was entitled to regain his seniority. The respondents plead that the action has been taken as per the rules and the allegations of malafides and favouritism made by the applicant are strongly refuted.

4. The applicant has filed a rejoinder reply controverting the contentions of the respondents and maintaining that the applicant was senior to the Respondent No. 3 and action of the respondents in placing the Respondent No. 3 above the applicant is arbitrary and illegal.

5. The respondents have filed a rejoinder reply to the rejoinder of the applicant reiterating the averments made in the original reply.

6. We have heard the arguments of Shri S.P. Saxena, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents. The Respondent No.3 has neither filed reply nor was represented through counsel.

7. The applicant had filed a Misc. Application praying for condoning the delay in filing the OA. The respondents had also taken a plea that the application is barred by limitation. This issue was considered at the time of admission and as per order dated 31.1.1994, the delay in filing the OA. was condoned.

8. From the facts brought out, it is noted that Respondent No. 3 was appointed as Tracer on 21.7.1961 and was promoted as Draughtsman Gr.III on 21.7.1964 and Draughtsman Gr.II on 29.8.1967. On the other hand, the applicant was appointed as Tracer on 3.12.1963 and was promoted as Draughtsman Gr.III on 1.9.1964 and Draughtsman Gr.II on 11.7.1968. Thus, it would be seen that Respondent No. 3 was senior to the applicant and both were working in the same seniority unit of Research and Development Establishment

at Pune. From 1.11.1968, the Research & Development Establishment was bifurcated into two units. The Respondent No. 3 was retained in the same unit while the applicant was transferred to the bifurcated unit of Chief Inspector of Engineering, which is presently named as Controllerate of Quality Assurance. Both units were designated as separate seniority unit. The applicant was posted at Delhi in the Technical Committee (Engineering Stores) unit of Directorate of Engineering, New Delhi under the Research & Development Establishment, Pune. This unit was, however, transferred along with the staff back to the Research & Development Establishment under the Directorate of Production and Inspection Establishment, now Directorate General of Quality Assurance (Equipment) as a policy decision u.s.p. 1.2.1976. The Respondent No. 3 was transferred in terms of policy decision as per order dated 1.4.1976. With this transfer, the applicant was restored to the original seniority unit and both the applicant and the Respondent No. 3 therefore belong to the same seniority unit. Though the Respondent No. 3 was initially kept below the applicant as Draughtsman Gr. II on account of his being allowed the scale of Rs.330-560 from 1.1.1973 but subsequently, the Respondent No. 3 was also allowed the same scale from 1.1.1973. With this background, the short question which requires to be determined is whether the change in seniority which has been effected by placing the Respondent No. 3 above the applicant in the seniority of Gr. I and subsequently as Chief Draughtsman is as per the extant rules and is legally sustainable. There

is no doubt that the Respondent No. 3 was senior to the applicant when both of them were in the same seniority unit of Research & Development Establishment. The whole issue hinges on the point whether the transfer of Respondent No. 3 in 1976 was on the administrative ground and whether he was entitled to protection of his seniority. The applicant has based his case on the premise that Respondent No. 3 was transferred on his own request and there was no question of his getting protection of seniority. On the other hand, the respondents submit that the transfer was in the administrative interest and therefore Respondent No. 3 was entitled for his original seniority. In this connection, we have gone through the documentary evidence brought on record ^{by the official respondents} to support their stand. It is noted from the letter dated 8.1.1976 at page 31 of the written reply that a policy decision had been taken to transfer the staff of Technical Committee (Engineering Stores) at Delhi to the Directorate of Production and Inspection (Engineering Equipment) in the Director General of Inspection. On the considerations indicated in this letter, the staff was directed to be transferred along with the posts and the order was to be effective from 1.2.1976. In pursuance of this, order dated 1.4.1976 at page 26 had been issued transferring the staff. The respondent No. 3 was covered in this order. From this order, it is quite clear that the transfer was in the interest of administration. These two documents have clearly established that the transfer of the Respondent No. 3 was in the interest of administration. The applicant has not produced any counter document to establish that the transfer of the Respondent No. 3 was not in the

interest of administration. We have, therefore, no hesitation to conclude that the transfer of Respondent No. 3 was in the interest of administration. Once this is established, the action taken by the respondents to allow correct seniority to the Respondent No. 3 after he was allowed the same scale of Draughtsman Gr.II as allowed to the applicant from 1.1.1973 was natural. We are, therefore, unable to agree with the contention of the applicant that the respondents have acted with malafides intention with a view to favour the Respondent No. 3.

9. The applicant has raised the issue that his seniority has been changed after a period of 13 years without giving any show cause notice and without giving any opportunity to represent on the matter. The respondents have counter/^{ed} this stating that the change in the seniority list of Draughtsman Gr.II was notified to all concerned in 1989 and have brought a copy of the order dated 13.4.1989 at page 16 in support thereof. The respondents have submitted that the revision of seniority of Grade II became necessary in view of the implementation of the Govt. of India's orders for allowing the scale of Rs.425-700 to all the Draughtsman in Gr.II. This revision/ⁱⁿ seniority was accordingly done and revised by the order. After holding a review DPC, the seniority list of Draughtsman Gr.II was revised and the same was notified as per order dated 13.4.1989. On going through this letter, it is seen that endorsement has been made that the revised seniority list may be circulated among all the concerned individuals and amendments/additions to the seniority list may be advised. The respondents have also indicated that the applicant had noted the revised S.P.Roll and

there was no representation from him at that time. These submissions have been made by the respondents in Para 12 of the written statement and the applicant in the rejoinder reply has avoided to give any specific reply to this para and only has stated that the respondents have not come with any supporting documents for allowing seniority to Respondent No. 3. This clearly shows that the applicant was aware of change in seniority in 1989 and what has subsequently followed with regard to promotion as Gr.I and Chief Draughtsman is only on account of revision of seniority as Draughtsman Gr.II. Being in know of his change in seniority in 1989 when Respondent No. 3 was shown senior to him, the applicant cannot plead that his seniority as Chief Draughtsman has been altered by the impugned order without any notice to him. In the background brought out, we are unable to find out any merit in his contention.

10. In the result of the above discussion, the applicant has no case and the OA. is devoid of merit and the OA. is accordingly dismissed with no order as to costs.

(S. S. Bawali)
(D.S. BAWALI)
MEMBER (A)

(R. G. Vaidyanatha)
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.