

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1345.94

DATE OF DECISION: 30th August 2000

Shri P.G. Somnathan Applicant.

Shri R.G. Ravlani. Advocate for
Applicant.

Versus

The Union of India and others. Respondents.

Shri R.R.Shetty for Shri R.K.Shetty. Advocate for
Respondents

CORAM

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

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library. Yes

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1345/94

the 30th day of AUGUST 2000

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

Hon'ble Shri S.L.Jain, Member (J)

P.G. Somnathan
Master Craftsman,
QCP-5/DP-107
Ordnance Factory
Dehu Road.

...Applicant.

By Advocate Shri R.C. Ravlani.

V/s

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Chairman
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager
Ordnance Factory,
Dehu Road.

...Respondents.

By Advocate Shri R.R.Shetty for Shri R.K. Shetty.

O R D E R

{Per Shri S.L.Jain, Member(J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for a direction to the respondents to consider the applicant for promotion from the post of Master Craftsman to Chargeman Grade II or alternatively redesignate the applicant as Chargeman Grade II, to grant the consequential benefits, as admissible under the relevant Rules i.e. seniority, pay fixation, arrears of pay etc. declare the relevant Rule/administrative instructions, which bar the further promotional avenue as illegal/unconstitutional alongwith costs.

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2. The applicant joined the Ordnance Factories Organisation as 'Trade Apprentice', on completion of training appointed as Examiner-'C' with effect from 27.9.1976, then promoted to the post of Examiner 'B' on 21.10.1980, Examiner 'A' June 1983 Examiner Highly skilled Grade I with effect from 1.9.1986 in the scale of Rs. 380 - 560 (Revised Rs. 1320 -2040) in accordance with IVth Pay Commission. While functioning as H.S.I. was eligible for promotion to the post of Chargeman Grade II. The respondent No.3 vide his R.N. No. 1913/LB/Promotion/MCPH dated 9.7.1993 informed the applicant that his name is in the panel for the post of Master Craftsman and the promotion will be offered, if he was willing to accept the same. The willingness or otherwise to be communicated by 28.6.1993. The applicant vide his application dated 28.7.1993 sought certain information/clarification regarding his future promotional prospects, advantages, disadvantages etc. but the respondents kept silent over the issue and did not furnish any information. The applicant submitted his willingness vide his letter dated 17.9.1993 and was promoted to the post of Master Craftsman. On occurrence of the vacancies in the post of Chargeman Grade II, the other persons 'junior' to the applicant were asked by the respondent to submit their willingness but no such willingness was asked from the applicant. The applicant, on his own requested the respondent No.3 for his consideration for the post of Chargeman Grade II vide his application dated 2.7.1994, which was replied by respondent No.3 vide R.N. No.1913/LB/Promotion dated 6.7.1994 that as per existing rules he cannot be considered for promotion or redesignation to the post of Chargeman Grade II vide R.N. 1913/LB/MC dated 14.9.1994. Being aggrieved, the applicant preferred an appeal to the Appellate Authority Respondent No. 3.

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The respondent No.3 vide his R.N. No. 1913/LB/MC dated 14.4.1994 informed the applicant that the respondent No.2 has confirmed that option for promotion to the post of Master Craftsman once exercised is final and irrevocable and the employee cannot seek promotion to Chargeman Grade II or any other Supervisory line.

3. The grievance of the applicant is that as Examiner H.S. grade I after promotion to the post of Master Craftsman he was eligible for promotion to the post of Chargeman Grade II. The respondents have not published the Rules / regulations / administrative instruction laying down the eligibility criteria, future promotion prospects etc. for the appointment / promotion to the said post of Master Craftsman, and at least he has not come across any such publication. Hence, he sought information / clarification but the respondent kept silence over the issue and did not furnish the information to the applicant. The applicant made enquiries in other sister organisation and came to know that the said post of Master Craftsman was created as an intermediary post for further promotion to the grade of Chargeman Grade II and also came across the relevant orders. The said was also followed in case of one Master Craftsman. In view of the above, the applicant in good faith submitted his willingness. As the respondents have concealed the vital information, the willingness of the applicant is not legal as obtained by 'Fraud'. The willingness cannot be treated as option, particularly when it was time barred. The similarly situated persons with same Ministry can be promoted to the post of Chargeman Grade II, then refusal to the applicant is violative of Article 14 and 16(1) of the Constitution of India as it

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offends principle of 'equality', resulting the impugned orders as discriminatory and unconstitutional. The provision, if any, in the rules /regulations / administrative instructions which totally bars the further promotional avenues are unconstitutional, illegal against principles of natural justice. Hence this OA for the above said relief.

4. The respondents have resisted the claim and alleged that Recruitment Rule 18 E was notified /communicated on 6.7.1989 under Article 309 of the Constitution of India, laying down the method of Recruitment to the posts of Industrial employees in Group 'C' and 'D' in Ordnance Factory Organisation. According to which the post of Master Craftsman is to be filled by promotion from eligible persons in Highly Skilled Grade I with pay scale of Rs.1320 - 2040 with minimum of three years of service in the grade of Rs.1320 - 2040 and total service of 7 years in the Grade of Rs.1200 -1800. The Recruitment Rules 13 E was notified / communicated on 4.5.1989 regulating the method of Recruitment to the post belonging to the Supervisory and Non-Gazetted cadre in Ordnance Factories Organisation. The said Rule provides that post of Chargeman Grade II (Technical) should be filled - 33-1/3% by promotion from Data Entry Operators with three years, Draughtsman or equivalent in scale of Rs. 1200 -2040 with three years service and promotion from Highly skilled Grade I with three years service, failing which from Highly Skilled Grade II with six years regular service in respective category.

5. The post of Master Craftsman was created under Ministry of Defence letter No. 1(2)/80/D(Civ.I) dated 21.9.1982 in the Defence Establishment. The said order also provided a condition

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to the effect that incumbents selected for these posts were to forego the normal promotion to the Supervisory Grade. Under the Recruitment Rules, Instructions and orders, the applicant had two channels for promotion namely:

(i) to continue in Highly Skilled Grade I and seek promotion to the post of Chargeman Grade II (Technical) in Non Industrial Establishment as and when vacancy in such post occurred.

or

(ii) to get promoted to Master Craftsman and forego promotion to Chargeman Grade II (Technical).

The respondents had explained fully prospects, the advantages and dis-advantages of promotion to Master Craftsman Orally as well as through Trade Union channel. The applicant thereafter, considering all the aspects gave his unconditional/unqualified willingness/written consent for promotion to the post of Master Craftsman. After lapse of some time, on or about 2.7.1994 and 8.7.1994 the applicant made a request to the respondents to consider for promotion to the post of Chargeman Grade II (Technical), cited a similar case of promotion from the post of Master Craftsman to the post of Chargeman Grade II (Technical) in the Quality Assurance Establishment (Military Explosives), Dehu Road under Director General Quality Assurance Organisation (and not Ordnance Factory Organisation under which the applicant is working). The applicant claimed that a similar consideration should be given to the applicant. The request of applicant was found to be not tenable as the Recruitment Rules are very clear and specific and do not allow such a promotion. The rest of the allegations made by the applicant are not denied by the respondents.

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6. The applicant had filed rejoinder affidavit contesting the allegations of the respondents by stating that the respondents have annexed the relevant SROs and have kept behind the 'Notes' which are explanatory and play an important role so as to appreciate the effect of the Rules embodied in the SROs. The Recruitment Rules to the post of Master Craftsman were explained orally and through the Trade-Union Channel is denied. The promotion of the applicant to the post of Master Craftsman ordered vide Factory Order No. 579 dated 4.10.1993 with effect from 1.10.1993 is arbitrary, illegal and against the Statutory Service Rules, SRO 18 E, framed under Article 309 of the Constitution of India, the promotion to the post of Master Craftsman can be made, if the eligible candidates satisfy the following conditions. (Clause 12 of SRO)

"Promotion: By Departmental Promotion Committee, from eligible persons in the Highly Skilled Grade I in the pay scale of Rs. 1320-30-1560-EB-40-2040 and passing the trade test."

In fact passing of trade test is pre-requisite condition for the promotion to the post of Master Craftsman from the eligible persons in HSG 1. The Competent Authority /Appointing Authority has neither prescribed any trade test nor asked the applicant to appear for any trade test. As such the applicant has not passed the requisite trade test, he is not qualified to be promoted to the said post of Master Craftsman. In the result the promotion order is void in law. Option of eligible persons and promoting the eligible persons on the basis of such option without passing the trade test is immaterial having no effect in law. The power to relax any of the provisions in the SRO rest with the

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Central Government and accordingly the Appointing Authority cannot deviate from the Rules and choose its own course to make appointments/promotions to suit the convenience. Any relaxation regarding the condition of holding the trade test and exercise the power of appointing/promoting on the basis of an option which is not even specified in the SRO. Clause 11 and 12 read with Notes 3 and 4 (Annexsure AJ-1) prescribe the conditions for recruitment and the said conditions are as under:

- i) holding posts in the same or identical or nearly equivalent scale of pay and
- ii) holding posts from which there is no promotion to any other post or grade whether or not such posts are declared equivalent posts.

In view of the above provisions in the SRO the applicant is eligible to ^{be} considered ^{for} appointment/re-designation by transfer as he is in the post/grade having the identical pay scale and holder of the post having no promotional avenues. The contentions of the respondents is not tenable in law as the same are based on instructions contained in Ministry of Defence letter No.1(2)/80/D(civ-I) dated 21.9.1982. The said letter is prior to the framing of the Service Rules SRO - 18 E notified on 6.7.1989. Hence the administrative instructions cease to operate with effect from 6.7.1989. Hence the respondents cannot rely on these administrative instructions in particular, the administrative instructions which over ride the Service Rules which is say SRO - 18 E and 13 - E framed under Article 309 of the, Constitution of India.

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7. On perusal of the relief claimed by the applicant, We find that the applicant has nowhere claimed a declaration that his promotion for the post of Master Craftsman be declared illegal. The said promotion was with effect from 1.10.1993. The applicant has filed this OA on 1.12.1994. As the applicant has not claimed the relief of declaration that his promotion is illegal one, we decline to entertain the said plea, particularly when this plea is barred by time.

8. The plea that the respondents have committed fraud by not intimating/replying the information/clarifications sought by him vide letter dated 28.7.1993 is not sustainable as the rules regarding recruitment called 'Ordnance Factories Group 'C' and Group 'D' Industrial Posts Recruitment Rules, 1989' vide S.R.O. 18-E dated 6.7.1989 and Rules 'Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and Condition of Service Rules, 1989' vide S.R.O. 13-E dated 4.5.1989 were notified. Further, merely non replying¹ does not amount to a 'fraud', when after notifying the same, it was not the duty of the respondents to reply the same. 'Fraud' is an active concealment of a fact and / or assertion of a fact otherwise which leads the person concerned to act on the said assertion in the said way, which otherwise he must have not acted. The applicant was already in service since 1976 and if he was not aware of his Service Conditions/Rules, it may be a case of ignorance of Rules but not a 'fraud' and such ignorance of law/Rules is no excuse.

9. The allegations in the OA and rejoinder are relevant facts to decide the prayer sought. if there exists the allegations in the OA and rejoinder but no relief relevant on the

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basis of the same is sought in the OA, then those allegations itself becomes irrelevant, immaterial having no consequence and relief on the basis of the same cannot be granted. Now, coming to the allegations of 'fraud' in the OA and allegations of there being no trade test, as required by Rules in the Rejoinder loses it's relevance when the relief for declaration of his posting as Master Craftsman being illegal is not sought and which is not a minor relief.

10. We agree to the submission of the applicant that after coming into force the S.R.O. 13-E and 18-E referred above, Annexure R-3 dated 21.9.1982 by which the creation of grade of Master Craftsman in the Defence Establishment was intimated alongwith the procedure of terms stands superseded as S.R.O. 18-E is in supersession of the "Ordnance Factories and Ordnance Equipment Factories (Group 'C' and 'D' Industrial Post) Recruitment Rules, 1979" resulting thereby that any instruction under the said Rules is also superseded.

11. The learned counsel for the applicant also relied on (1989) 10 ATC 378 Paluru Ramkrishnaiah V/s Union of India and another alongwith other Writ Petition. On perusal of the same we agree with the ratio that administrative instructions cannot override the Rules framed under Article 309 of the Constitution of India but where the instructions are not in conflict with the Rules the same may be given effect to.

12. Vide SRO 18-E dated 6.7.1989, the existence of the post of Master Craftsman was made in the said Rules and the said post is now governed by "Ordnance Factories, Group 'C' and Group 'D' Industrial Posts' Recruitment Rules, 1989. The applicant who is

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in the job since 1976, has secured 'four' promotions till the stage of Master Craftsman, cannot complaint that there exists no promotional avenue in the cadre.

13. Regarding discrimination, it is suffice to state that though it is under the same Ministry, i.e. 'Ministry of Defence' but this cannot be a criteria to have the same Rules, particularly when their service conditions are not similar one.

14. After notifying the Rules, whether they are explained orally or through trade union which is a fact in dispute between the parties, whatsoever may be the truth, it has not material bearing as the Rules were notified.

15. The learned counsel for the respondents relied on 2000 SCC (L & S) 313 Suneeta Aggarwal V/s State of Haryana and others and argued that the applicant's case in this respect cannot be considered in view of the proposition/theory of Acquiescence and waiver. On persual of the facts of the case we find that the applicant in the said case has appeared for selection in a re-advertised post, while he was selected in earlier advertisement. His name was recommended by the Selection Committee but the Vice-Chancellor not approved the same. The applicant applied for re-advertised vacancy in which he was earlier selected without any protest. Though he filed on the same day a Writ Petition challenging the order of Vice Chancellor, the Apex Court has held that applicant stood estopped by the conduct from filing such a writ petition. In the present case the applicant has served the respondents as Master Craftsman from 1.10.1993 till 2.7.1994 without any protest. In such circumstances the applicant is estopped to challenge the same on the ground of acquiescence and waiver.

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16. The post of Chargeman Grade II(Technical) being a selection post is to be filled by Direct recruitment, by promotion from panel prepared by relevant DPC for each category after adjustment of surplus and transfer in any category of supervisor cum Operator (such as a new category of CNC Machine or computer operator) on failure of recruitment by promotion, by transfer failing which by direct recruitment. Promotion from Data Entry Operators with 3 years, Draughtsman or equivalent in scale of Rs. 1200 - 2040 with 3 years service and promotion from Highly Skilled Grade I with 3 years regular service failing which from Highly Skilled Grade II with 6 years regular service in respective category. The learned counsel for the applicant tried to built up his case on the ground that ^{but} as the applicant has the requisite qualification for HSG I with 3 years of regular service he was entitled to be considered. We are not inclined to agree with the learned counsel for the applicant for the reason that at the time of consideration the applicant was not holding the post of HSGI. Hence he was not eligible for consideration for the post of Chargeman Grade II (Technical).

17. The learned counsel for the applicant relied on Full Bench Judgement (CAT) Vol. III 680 Bajrang Ssitaram Wanjale and others V/s Union of India and others. We have carefully perused the said judgement and we are of the considered opinion that the said authority has no relevance to the present case for the reason that the question decided in the said case is in respect of fixation of pay on promotion.

18. In the result, we do not find any merit in the OA, it is liable to be dismissed and is dismissed accordingly with no order as to costs.

(S.L.JAIN)
Member(J)

(D.S.BAWEJA)
Member(A)