

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1346/94.
ORIGINAL APPLICATION NO.561 /95.
ORIGINAL APPLICATION NO.329/96.

Dated: ~~02.5.2001.~~ 4.5.2001
B.B.

S.B.Kulkarni & Ors.

Applicants.

S/Shri R.C.Ravalani, D.V.Gangal

Advocate for
Applicants.

Versus

Union of India & Anr.

Respondent(s)

Shri R.K.Shetty.

Advocate for
Respondent(s)

CORAM :

Hon'ble Member (A) Shri B.N.Bahadur,
Hon'ble Member (J), Shri Kuldip Singh.

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

B.N.B.
(B.N. BAHADUR)
MEMBER(A) -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

- 1) ORIGINAL APPLICATION NO.1346/94,
- 2) ORIGINAL APPLICATION NO.561 /95,
- 3) ORIGINAL APPLICATION NO.329/ 96.

Friday this, the *4th* day of *MAY* 2001.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri Kuldip Singh, Member (J).

1. Original Application No.1346/94.

1. S.B.Kulkarni,
2. R.D.Bakare,
3. C.Doraiswamy.
Chargeman Gr.II,
High Explosive Factory,
Khadki,
Pune.

...Applicants

(By Advocate Shri R.C.Ravlani)

Vs.

1. Union of India through
the Secretary, Ministry of
Defence, South Block,
New Delhi - 110 011.
2. The Chairman,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
High Explosive Factory,
Khadki,
Pune - 411 003.

...Respondents.

(By Advocate Shri R.K.Shetty)

2. Original Application No.561/95.

1. S.K.Sarkar,
2. S.K.Das,
3. P.S.Krishnan,
4. V.R.Mangoli,
5. C.T.Alexander,
6. P.Thiagarajan,
7. S.G.Nair,
Chargemen Gr.II (Tech),
High Explosives Factory,
Khadki,
Pune - 411 003.

...Applicants.

B.B.

Vs.

1. Union of India,
through The Secretary,
Ministry of Defence,
DHQ P.O.,
New Delhi - 110 011.
 2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.
 3. The General Manager,
High Explosives Factory,
Khadki,
Pune - 411 003.
 4. The General Manager,
Machine Tool Prototype Factory,
Ambarnath - 421 502.
 5. M.B.Awachat,
 6. S.B.Choudhary,
 7. P.M.Kulkarni,
 8. M.K.Subhashchandran,
 9. M.G.V.Pillai,
 10. V.K.Rugmangathan,
 11. N.Venugopal,
 12. P.A.Khupse,
 13. M.K.Bansode,
 14. P.P.Angre,
 15. P.P.Jayaprakash,
 16. Y.R.Talekar,
 17. P.R.Nair,
 18. S.S.Bhatti,
 19. P.Satyanarayan,
 20. P.H.Jadhav,
Chargemen Gr.II (Tech),
M.T.P.F.,
Ambarnath - 421 502.
- (By Advocate Shri R.K.Shetty)
- ...Respondents.

...3.



3. Original Application No.329/96.

1. B.V.Bauskar,
2. A.K.Acharya,
3. T. Datta,
4. S.K.Das,
Chargeman Gr.II,
in Drum Shop, P&P Section,
Drum Shop and R & E Section,
Ordnance Factory,
Bhusawal.

(By Advocate Shri D.V.Gangal)

...Applicants.

Vs.


The Secretary,
Non-Gazetted Officials,
Ordnance Factory,
Bhusawal Branch,
Bhusawal.

1. Union of India through
the Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory,
Bhusawal.
4. P.R.Koshti,
5. P.T.Zambre,
6. S.T.Zope,
7. Y.K.Rane,
8. D.K.Banerjee,
9. D.K.Das,
10. S.B.Gholap,
11. D.T.Bodade.
Chargemen Gr.II,
Ordnance Factory,
Bhusawal.

(By Advocate Shri R.K.Shetty)

...Respondents.

...4.



: ORDER :

{Per Shri B.N.Bahadur, Member (A)}

We are taking up three OAs, bearing numbers 1346/94, 561/95 and 329/96 together, since the issues involved in them are similar. We have heard the Learned Counsels for the Applicants in the these OAs viz. Shri R.C.Raviani, Shri S.P.Saxena and Shri D.V.Gangal and have also heard the Learned Counsel representing the Respondents in the three cases, Shri R.K.Shetty.

2. Before considering the individual merits of the cases, it would be useful to record a few basic facts, which will help in understanding all the three cases before us. On completion of the training as Journeyman, in the Ordnance Factories, the incumbents were subjected to a trade-test and depending on their marks obtained in the tests they were placed either in Gr. 'A' or Gr. 'B' ^{and BoB} were provided appointment as Tradesman Gr. 'A' or Gr. 'B'. These two levels carried distinctively different pay scales, the former being higher at Rs.140-180 and the latter being Rs.110-155.

3. Subsequently, a committee called the Chellam Committee came to be appointed to consider grievances of Tradesman 'B' which recommended, inter alia, that a notional seniority should be provided to Gr. 'B' Tradesman from a date six months subsequent to the date on which they joined as such Group 'B' Tradesman. This, in fact, has become the cause of the problem/s that have resulted in the Applicants coming before us. It had also been decided (in 1978) that on this basis of notional seniority further promotions will be granted, but this would be done after transfer of incumbents to other Factories. However, this transfer arrangement could not materialise and the matter was again.

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discussed in the JCM, and as a result thereof publishing of revised seniority was undertaken, in terms of the Orders of the OFB dt. 18.10.1992.

4. The Applicants in the OA 1346/94, had been graded and appointed in the 'B' grade, in various trades. All the applicants in the other two OAs had been graded and appointed in the 'A' Grade. This is an essential difference in OA 1346/94. It is further averred by the applicants, that fresh seniority lists were drawn up and benefit was granted by promotion of Supervisor 'B' to Respondents Nos. 6, 7 and 8 (OA 329/96). Applicants representations of grievances have not yielded desired results.

5 a) Applicants in OA 561/95, seek the quashing of seniority list of HSG - I (A-2) and a declaration that the applicants are entitled for enlistment above Respondents 5 to 20 in HSG - I grade seniority list. Similarly, consequential benefits to Supervisor 'B' are sought.

b) The applicants in OA No.1346/94, seek the ante-dating of their promotions to the post of Chargemant Gr.II w.e.f. 1.4.1980 on par with their juniors and also seek promotion to the grade of Chargeman Gr.I w.e.f. 12.9.1991 i.e. at par with their juniors if found fit. Consequential reliefs are also sought.

c) applicants in OA 329/96 seek the relief for promotion to the grade of Supervisor B and Chargeman - II w.e.f. 1.3.1976 and 14.8.1984 respectively. Consequential financial benefits are also sought.

6. The written statement filed in the OA 1346/94 on behalf of the Respondents resist the claim of promotion with



retrospective effect. It is averred that all promotions have been made as per Rules, and upon recommendations by the Departmental Promotion Committee/s. The point is also taken that applicants had failed in the test during Journeyman'ship prior to year 1976, and the matter cannot be reopened after 18 years. Thus, it is contended by respondents that the cases suffer badly from delay and laches.

7. Respondents further state that Applicants have been given promotion and benefits of Chargeman Gr.II and Chargeman Gr.I w.e.f. 1.4.1980 and 12.9.1991 respectively. The recommendations of the Chellam Committee have been discussed and it is stated that these recommendations have been implemented after discussions with JCM (IIIrd level) and that these are binding. Respondents seek support of decision in OA 217/87 decided by Jabalpur Bench of this Tribunal on 14.2.1991 and state that the seniority list of Chargeman Gr.I was redrawn by Respondents after continuous litigations for fifteen years. The applicants having not qualified for Gr.A were put in Gr.B and no detailed names of Journeyman who were graded higher later have been mentioned. Parawise comments are then made.

8. Arguing the case on behalf of the Applicants (OA 1346/94) Learned Counsel Shri R.C.Ravani, first made the point that the policy was changed in 1968 and Journeyman came to be placed in higher grade. He contended that the orders of 1978 giving seniority with retrospective effect and the consequent publication of the seniority list dt. 18.12.92 (Ex. A-4) have prejudiced the applicants and these have put respondents who were below the applicants as seniors. Learned Counsel Shri Ravani



took support from the case-law cited by him viz. matter of Gangadhar Khar Vs. Panda reported in 1995 (30) ATC 549 SC. He also, made the point that notional service should count for seniority and taken into account for promotion in terms of ratio decided in the case of Subramanian reported in 1987 ATC (3) 598 (CAT Madras), two other cases were cited for similar contentions.

9. Arguing the case in OA 561/95, the Learned Counsel Shri S.P.Saxena made the point that the Private Respondents in the case were in 'B' Grade even in July, 1971 while some of the Applicants were in 'A' grade. The 'B' grade employees went up because of the decision taken in 1978 even though no amendment of Rules was undertaken. The decision of JCM cannot be held to be binding in law. Shri Saxena further alleged that promotion could be given by change of policy, but seniority could not be changed and it was not legal to approve applicants after 22 years. Similarly, retrospective promotion by DPC was bad (Supervisor grade) and a similar adverse effect came in the promotion beyond Supervisor level. It was stated that the change in Rule came only on 4.5.1989.

10. Shri Saxena then went on to relate the facts of how the Applicants in that particular OA were prejudiced in view of the various promotion orders and how representations were not answered or decided. Shri Saxena referred to the Jabalpur Bench decision made in OA 217/92 decided on 23.10.1992 (copy on page 104). Winding up the arguments, Shri Saxena pleaded that at least protection as far as juniors in Ambernath, on notional basis, should be provided to the Applicants.

11. Shri Marne argued the case in regard to Applicants in OA 329/96 stating at the outset that he adopted the argument made by Learned Counsel Shri Saxena. One difference he stated was that applicants whom he represented were in one Factory throughout and not transferred. Shri Marne further referred to the communications at R-1 and R-2 dt. 19th December, 1992 and 19th January, 1993 and made the point that the entire case revolves around Shri P.P.Jamre and benefits given to Shri Jamre should be provided to the applicant.

12. Shri Marne made the point that even though the application was delayed, it was a case where condonation of such delay was justified and that the case be decided on merits by condoning the delay.

13. Arguing the case on behalf of the Respondents, their Learned Counsel Shri R.K.Shetty first recapitulated the factual position and referred to the Supreme Court case and the Jabalpur case as pleaded in their written statement at para 8. It was stated that the Tribunal at Jabalpur had allowed the applications of applicants in 'B' Grade following the ratio of the Supreme Court Judgment dt. 11.1.1991 (R-3). Therefore, the case of applicants in 1346/94 failed immediately. It was also argued that in the second Jabalpur Judgment dt. 23rd October, 1992 should also be considered important and after JCM had approved the course of action, a protest cannot be made. Learned Counsel asserted that in some cases some 'B' Grade personnel could supercede 'A' Grade personnel. but

14. Learned Counsel for the Respondents specifically referred to the relief sought by the Applicants in OA 561 and made the

but


point that the orders of 1992 were issued because of the Chellam Committee Report. It was emphatically stated that while seeking reliefs, no specific claims are made by giving any details of juniors etc. and mere declarations seeking enlistment in different seniority lists were being sought. The point regarding limitation, delay and laches, as also regarding maintainability were strongly taken up. Learned Counsel cited the case decided in the matter of Bajwa reported at 1998 SC L&S 611 for support. Shri Shetty also referred to the minutes of the 10th meeting of DGOJ JCM meeting held at Dehradun, and said that the 1978 Circulars issued as a consequence thereof. He questioned as to why the Applicants in 561/94 did not come up to protest at that time. In the case of Shri Bauskar and Ors. (329/96) the plea of delay and laches were strongly taken up. Shri Shetty wound up his discussion by stating that any change given in contravention of what has already been done pursuant to the Chellam Committee's Report, would create a havoc in the administrative set up and give rise to endless litigation. He reiterated to point about the need to follow the Judgments of the other Benches referred to.

15. Let us first set out the hierarchy that is relevant in the present case proceeding from the level of Tradesman Gr.'B'. The hierarchy is as follows:

Tradesman Gr.B> Tradesman Gr. A> H.S. Gr.II> H.S.Gr.I>

Chargeman Gr.II> Chargeman Gr.I.

Another fact to be recapitulated is in the case is that

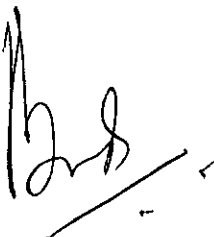


on completion of training-cum-test, the Journeymen were appointed to Gr.B or Gr.A depending on their performance being above or below a certain cut off level. The grades of pay for these two grades were distinctly different. Tradesman - A carrying a higher pay scale compared to the pay scale of Tradesman - B. In the present three OAs before us, the Applicants in OA 1346/94 were appointed in Gr.B, whereas, the Applicants in the other two OAs were appointed in Gr.A.

16. The genesis of the problem comes according to the applicants with the implementation of the Chellam Committees' report by the Government. It is important to note that the decisions and orders made for implementation of the charge in policy came very long back indeed even with regard to the filing of the three OAs filed in December 1994 (OA NO.1346), April 1995 (OA 561) and February, 1996 (OA 329). The Chellam Committee recommendations were accepted by Government in 1978.

17. In the context of this factor of timing, it is also important to recapitulate & focus attention on the dates from which reliefs are sought and the years from which claims are sought to be enforced. In OA 1346/94, the relief sought seek antidating of promotion in the rank of Chargeman Gr.II w.e.f. 1.4.1980, promotion to Chargeman Gr.I w.e.f. 12.9.1991 and consequential benefits w.e.f. 23.12.1992. Importantly, the basic benefit is sought with effect from 1980. Now, Learned Counsel took the plea that rules were not amended and that JCM

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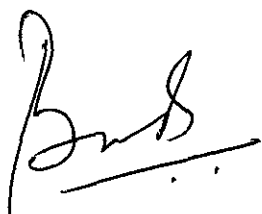
decision is bad. There is, however, force in the contention of Counsel for Respondents that these grounds are raised after much delay/laches and will have a massive unsettling affect in the administrative hierarchies.

18. Similarly, in OA 561 filed in 1995, the relief sought are for interpolations of names of applicants in seniority lists (Annexure A-1 and A-2) which are issued in November, 1992. True, representations were made, but the law required applicants to come up after six months. Here the delay of almost two years would be considered inordinate in view of the fact that a very unsettling affect would follow in view of the large number of persons involved.

19. The facts of delay and laches as described for the two OAs above, are even worse in the case in OA 329/96, which came to be filed in February, 1996. In fact, Shri Marne, Learned Counsel in this case (OA 329/96) referred to the delay and argued that the case deserve condoning of the delay. When large scale implications on the seniority and that too over periods not insignificant are involved, the condonation of delay does not become such a simple matter.

20. We now come to the Judgments of the Jabalpur Bench of this Tribunal and the orders of Hon'ble Supreme Court. These came up for reference by both sides. Both Judgments of the Jabalpur Bench have been seen, as also the Judgments in SLPs on record (especially in OA 561). In view of the first Judgment

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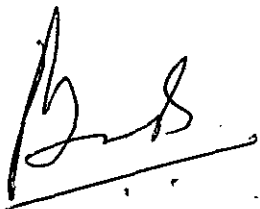
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it is clear that the case of applicants in OA 1346/94 fails, straightaway. The issues have been discussed in detail in that Judgment and it is applicable to the case in this OA. Reasons and discussions need not be repeated. We have considered the Judgments referred to by Shri Ravlani strenuously during arguments viz. the case of Gangadhar Kar (1995 30 ATC 549), the case of P.V.Subramanian (1987 (3) ATC 598) and the case of V.S.Raghavan (1987 (3) ATC 602). These Judgments do not provide any support to the applicants in view of the Judgment of Jabalpur Bench.

21. Shri Saxena's arguments in OA 561/95 challenges the legality of JCM decisions. In fact, it has to be accepted as argued by Respondents, that the grounds being agitated by Shri Saxena stood settled in view of the two Judgments of the Jabalpur Bench. We agree with these decisions. Also, it has to be accepted that delay on the part of the applicants in the three OAs has really been fatal to any cause or ground that may exist in individual cases. This is also true in the case in OA 329 where the claim vis-a-vis seniority of one Shri Jamre was strenuously contended and where the plea for condonation of delay was specifically raised during arguments by the Learned Counse.

22. It is clear from a perusal of the very relief sought in the three OAs that the provisions of these reliefs would create large scale cascading effect on a number of people and give rise to avoidable problems. When delay admittedly exists on the part of the applicants, such unsettling of seniority is even less

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justified. We are convinced about the force in the arguments made in this regard by Learned Counsel for Respondents.

23. We are supported in the above view by the principles laid down by the Apex Court in the case of K.R.Mudgal Vs. R.P.Singh (1986 (4) SCC 531) in that seniority/promotions should not be disturbed after a long time. Even in several other judgments of the Apex Court, the importance of not treating delay/laches/limitation lightly has been emphasised.

24. In view of the discussions made above, we are not convinced that there is justification for any interference or for providing reliefs sought in any of the three OAs. These OAs viz *10B* OAs 1346/94, 561/95 & 329/96 are, therefore, dismissed, with no orders as to costs.

Kuldip Singh
(KULDIP SINGH)
MEMBER(J)

B. Bahadur
(B.N. BAHADUR)
MEMBER(A) 04/5/2001

B.