

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1436 of 1995.

Dated this 25th, the ____ day of July, 2000.

L. J. Fatnani & 5 Others, Applicants.

Shri R. C. Ravalani, Advocate for the
applicants.

VERSUS


Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for
the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).
Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.

Dr


(B.S. JAI PARAMESHWAR)
MEMBER (J).

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1. L. J. Fatnani, U.D.C.
2. S. N. Kale, UDC/S.
3. C. V. Verghese, UDC/Bills.
4. K. D. Vitekar, UDC/LB.
5. Ramesh Kumar, UDC/QC/MC.
6. M. H. Rajguru, UDC/ZEI.

... Applicants.

All working at Ammunition Factory,
Khadki, Pune - 411 003.

(By Advocate Shri R. C. Ravalani)

VERSUS

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,
Ammunition Factory,
Khadki, Pune - 411 003.

... Respondents.

(By Advocate Shri R. K. Shetty)

O R D E R

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard Mr. R. C. Ravalani, the Learned Counsel for the
applicant and Mr. R. K. Shetty, the Learned Counsel for the
Respondents.



2. There are six applicants in this O.A. They are working as Upper Division Clerks under the Control of Respondent No. 3. The U.D.Cs. are in the feeder category for promotion to the grade of Chargeman Grade-II (Non-Technical) in accordance with the rules.

3. The applicants are governed by the Indian Ordnance Factories, Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 (in short - the Rules, 1989). The Rules, 1989 came into effect from 04.05.1989. By S.R.O. 13(E) a copy of the Rules, 1989 is at Annexure A-2 to the O.A.

4. Chargeman Grade-II (NT) is filled in the following manner :

"By promotion : Promotion from the grade of Supervisory (Non-Technical/Stores)/U.D.C. equivalent and Telephone Operator Gd-I with 3 years of regular service in the grade.

By Transfer : On passing trade test.

By Transfer of Supervisor 'A' (Non-Technical/Stores) including Security Assistant 'A'".

However, the respondents by letter dated 08.11.1995 indicated the manner of promotion to Chargeman Grade-II (NT).. We feel it proper to reproduce the letter dated 08.11.1995.

"2. Promotions to the post of Chargeman Grade-I (NT-Stores) and Chargeman Grade-I (Other than Stores) will be effected by the factories after holding D.P.C. at the factory level against the factory vacancies as per SRO 13-E of 04.05.1989 as amended. Hence, the system of cut off date as used to be intimated in the past by OFB will be discontinued. The seniority list of Chargeman Grade-II (Stores) and Chargeman Grade-II (Other than Stores) will be maintained at the factory level in accordance with rules of seniority and will be circulated to the concerned staff members with a copy to Branch Associations of AINGOs.

3. The number of vacancies of Chargeman Grade-I (Stores) and Chargeman Grade-I (NT-Other than Stores) against which promotions may be ordered by the factories are indicated in Appendix "A". The vacancies have been arrived at on the basis of sanctioned strength of the factories and existing strength as intimated by the factories.
 4. The Government orders regarding reservation for SC/ST will be followed.
 5. The promotions will be effected in accordance with the provisions of SRO 13-E of 4.5.89 and Govt. Orders regarding holding of DPCs and effecting promotions will be followed.
 6. Action for holding of DPC will be completed by 27th November, 1995 and promotions will take effect from 30th November, 1995.
 7. The future promotional vacancies in the grades of Chargeman Grade-I (NT-Stores) and Chargeman Grade-I (NT-Other than Stores) will be filled on the last working day of November each year by holding DPC well in advance. The vacancies/posts allotted to the factories will be intimated by OFB Hqrs. well in advance.
 8. Information in the proforma enclosed as Annexure "B" may be forwarded by 15.12.1995 to OFB Hqrs. separately for Stores and Other than Stores.
 9. With the issue of the above orders the Central Seniority List of Chargeman Grade-II (NT_Other than Stores) is cancelled."
5. The applicants are aggrieved by the manner of promotion to Chargeman Grade-II (Non-Technical) as indicated in the impugned letter dated 08.11.1995. They rely on the order dated 09.06.1995 passed in O.A. No. 1067/93 and 582/95 by the Madras Bench of this Tribunal.
6. Hence, the applicants have filed this O.A. for the following reliefs :

"Quash and set aside the impugned order as arbitrary, ultra-venes and contrary to SRO 13(E) and direct the respondents to maintain only 'one' common seniority list in respect of Chargeman Gr.I(NT/Stores), and, 'one' common seniority list in respect of Chargeman Gr.II (NT)."



7. The applicants have challenged the impugned letter dated 08.11.1995 on the following grounds. The Rules, 1989 caters only for one grade in each post i.e. Chargeman Grade-I (Non-Technical/Stores) and Chargeman Grade-II (NT) only and not for two grades. Chargeman Grade-I (NT/Stores) and Chargeman Grade-I (NT/Other than Stores) and Chargeman Grade-II (NT/Stores) and Chargeman Grade-II (NT/Other than Stores). Hence, bifurcation of one category into two categories by administrative instructions is arbitrary and ultra vires.

8. The respondent No. 2 has directed for effecting promotion to Chargeman Grade-I (NT/Stores) and Chargeman Grade-I (NT/Other than Stores) and for maintaining a separate seniority list of Chargeman Grade-II (NT/Stores) and Chargeman Grade-II (NT/Other than Stores). They submitted that these directions are inconsistent with clause no. 12 read with Note 8 of the Rules, 1989.

9. They submitted that the administrative instructions issued in the impugned letter dated 08.11.1995 cannot over-ride the rules framed under Article 309 of the Constitution of India. They rely upon the decision in the case of Palaru Ramkrishniah V/s. Union of India reported in 1989 (10) ATC 378 (SC).

10. Even though the Madras Bench of this Tribunal had directed them to treat the four feeder categories as one by preparing a common seniority list for the purpose of promotion, they have issued the impugned letter. Thus, they submit that the attempts made by the respondents to prepare separate seniority list is against the Rules, 1989.



11. The respondents have filed a written statement. They submit that as per the letter dated 08.11.1995 it has been directed that promotions to the higher grade w.e.f. 30.11.1995 will be on the ground that there was alleged bifurcation of the post of Chargeman Grade-I and Chargeman Grade-II into Chargeman Grade-II and II Non-Technical (Other than Stores) and Chargeman Grade-I and II Non Technical (Stores). They submit that the decision of the Madras Bench of this Tribunal has been modified in M.P. No. 55/96 dated 23.04.1996, exhibit R-1 to the reply. They submit that a separate seniority list have been maintained since very long and even before they ~~noted~~ commencement of the Rules, 1989. The two streams are existing separately even prior to 1989. The column no. 12 of the Rules, 1989 is clear that under the post Chargeman Grade-II, two sets exists i.e. Chargeman Grade-I (Non-Technical) and Chargeman Grade-I(Non-Technical Stores). It is, therefore, obvious that the post of Chargeman Grade-I (Non-Technical) on the one hand as a Class other than the class of Chargeman Grade.I (Non-Technical) and that the post of Chargeman Grade-I are to be filled from Chargeman Grade-II or equivalent post with three years of service in the grade in their respective categories. These two distinctions exists even prior to the Rules, 1989. The highest post in the hierarchy of Stores is Store Holder and whereas the highest post in the hierarchy other than Stores is Foreman (Non-Technical). These posts are also shown at Column no. 12 of the Rules, 1989.

12. The applicants are confusing and misrepresenting the facts with two distinct posts of Chargeman Grade-II (Non-Technical) and Chargeman Grade-II (Non-Technical other than Stores) which do not exists. There is only one category of Chargeman Grade-I and Chargeman Grade-II is further bifurcated

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into Stores and Other than Stores. They submit that maintaining a separate seniority list was in existence even earlier to the commencement of the Rules, 1989. There is no question of supersession as they cannot compare their seniority ^{with other} ~~over~~ eligible persons. They have relied upon the order of the Madras Bench of this Tribunal. Further, they submitted that maintenance of separate seniority list was in practice even earlier to the Rules, 1989. Thus they submit that there is no substance in the O.A. and the O.A. be dismissed.

13. The applicants in their additional affidavit filed on 13.06.2000 have produced the seniority list of Chargeman Grade-II (Non-Technical/Stores) and Chargeman Grade-II (NT/OTS) and also persons working in Stores who are in the cadre of Other than Stores. They are at Annexure A-1 to A-5 of the Additional affidavit. The applicants have produced these documents to show that the seniority list of the feeder categories were not maintained separately, as contended by the respondents.

14. The respondents submit that the Madras Bench of this Tribunal in order dated 23.04.1996 on M.P. No. 55/96 had disallowed the applications of the applicants in O.A. No. 1067/93. On the other hand, it is not so. The Madras Bench of this Tribunal in its order dated 23.04.1996 had ⁸observed as follows :

"7. Paragraph 12 as rectified will read as follows :

'12. We have heard the counsel and have gone through the records. We have perused the Recruitment Rules which have been submitted by the respondents. We find that as per the rule the post of Chargeman Grade-II, Gr.I (NT/Security)



for which the applicants are aspiring form part of the cadre of Chargeman Grade-II (NT) under the Recruitment Rules, for which promotions are provided from 4 different feeder categories viz.,

1. Supervisor (NT).
2. Photographer.
3. UDC; and
4. Telephone Operator Gr.I.


Therefore, the respondents are bound to treat the four feeder categories as one by framing a combined seniority list for the purpose of promotion'".

● From this it is clear that the respondents are required to form a common seniority list of the feeder categories to the post of Chargeman Grade-II (NT/Stores) and Chargeman Grade-II (NT/OTS).

15. In fact, the above view was in a way indirectly approved by this Tribunal in O.A. No. 33/96 (V. V. Damle V/s. Union of India & Others) decided on 19.07.2000. In that case, the promotion of the Respondent No. 4 was held not according to the rules and that the applicant was in the feeder category and his case should have been considered.

16. Considering the decision of the Madras Bench of the Tribunal and also the decision of this Tribunal in O.A. No. 33/96 and also minutely examining the Rules, 1989, we are of the opinion that the respondents are required to frame a common seniority for all the feeder categories to the post of Chargeman Grade-I (NT/OTS).

17. The respondents have issued the letter dated 08.11.1995. It has caused an apprehension in the minds of the applicants that they are attempting to bifurcate the seniority list.



18. The impugned letter cannot be said to be in accordance with the Rules, 1989. The respondents cannot issue administrative instructions which are likely to ^{be} ~~be~~ contrary to the Rules, 1989. The administrative instructions may be issued to fill up the gap in the recruitment rules. The administrative instructions cannot be inconsistent with the Recruitment Rules. In case the respondents feel it proper to maintain a separate seniority list, then they must amend the Rules, 1989. In the absence of such an amendment, administrative instructions, as the one issued in the impugned letter dated 08.11.1995, cannot be sustainable in law.

19. In that view of the matter we feel that the impugned letter dated 08.11.1995 is inconsistent with the Recruitment Rules, 1989.

20. Hence, we pass the following order :

- (a) The application is allowed.
- (b) The impugned letter dated 08.11.1995 is hereby set aside.
- (c) So long as the Recruitment Rules remain unchanged, the respondents are required to maintain a common seniority list in the feeder categories to the grade of Chargeman Grade-I (NT) and Chargeman Grade-I (Non-Technical/Other than Stores) and Chargeman Grade-II (Non-Technical) and Chargeman Grade-II (Non Technical/Other than Stores).

(d) No order as to costs.


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


(B. S. JAI PARAMESHWAR)
MEMBER (J).

Central Administrative Tribunal

Madras Bench

Friday, the Ninth day of June One Thousand
Nine Hundred and Ninety Five.

PRESENT

Hon'ble Mrs. Justice Padmini Jesudurai, Vice-Chairman

and

Hon'ble Shri R. Venkatesan, Administrative Member

O.A.Nos. 1067 of 1993 & 582 of 1995

And C.A.No.72 of 1995 in OA 1067/93

....

1. S. Rajan

2. K.G. Yohanan

3. G. Somasundaram

4. V. Ramani ... Applicants in OA 1067/93

V. Ramani ... Applicant in OA 582/95
and CA 72 of 95.

... ..VS....

1. Union of India rep, by
Chairman Ordnance Factories
Board, 10-A Auckland Road
Calcutta.

2. General Manager
Heavy Vehicles Factory
Avadi, Madras-54.

3. The General Manager
Engine Factory Avadi
Madras-54.

Respondents in OA
1067/93 and CA
72/95.

Respondents in
OA 582/95.

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M/s. S. Sadasharam & ___ ... Applicants Counsel
V. Kannan

Mr. M. Veluswami — ... Respondents' Counsel

ORDER: Pronounced by the Hon'ble Shri R. Venkatesan,
Administrative Member.

....

The OA No. 582/95 has been filed by one
Shri V. Ramani, challenging an order dated 15.4.1993
transferring him from Supervisor(Security) to Labour
bureau (LB).

2. The OA 1067/93 has been filed by the same
V. Ramani and 3 others, all working as Supervisors
(Security) Challenging an order dated 26.5.1993 of the
first respondent to the effect that incumbents of posts
in the security wing with more than 5 years service in
that wing should be transferred to other sections like
LB, Establishment, etc. and vice versa.

3. The impugned order of transfer in OA 582/93 is
the consequence of the above said order of 26.5.1993.

..3..

..3..

Interim order was issued in OA 1067/93 staying the operation of the order dated 26.5.1993. The contempt application 72/95 has been filed following the issue of an order dated 15.4.95 transferring the applicant, V. Ramani from Security Section to LB (IR Section), ^{along with} and three others who are applicants in OA 1067/93. R

4. The prayer of the applicants apart from the quashing of the impugned orders is for being retained in the Security Wing and being given further promotion therein.

5. The facts of the case are that the applicants have all been working as Supervisors in the Security Section under the second respondent, having been inducted into the Security Wing ~~xxxx~~ from the lower category of LDC.

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6. There are three level of posts in the security wing which are as follows:

- (i) Security Assistant 'B'
- (ii) Supervisor (Security)/
- (iii) Chargeman, Grade -II (Security)

7. Recruitment Rules were framed in 1989 covering these posts and certain others and termed as "Indian Ordnance Factory Group 'C' Supervisory and non-gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989, notified on 4.5.1989."

8. It is the applicants contention that prior to the framing of the recruitment rules, there were orders dated 22.12.1966 which had been followed by the department and according to which the non-gazetted staff in the security section having been specifically selected and found fit for security work based on their aptitude and suitability for the work, should not be transferred to

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equivalent non-technical posts other than security as this would defeat the very purpose of the careful procedure of selection . It would also result in unjust supersession of staff in other non-technical departments. Therefore, the security staff would seek promotions only in ^{the} security wing. It is the contention of the applicants that even after the Recruitment Rules of 1989 had come into force, the first respondent had, by a letter dated 7.12.1990, clarified that posts of Supervisor 'B' (Security) would be filled by Security Assistants 'B' and Supervisor posts in other non technical categories ~~will be filled by~~ like Fire Brigade and Stores would be filled by appropriate feeder categories in those wings. In other words, Security Staff were not eligible for promotion in the other non-technical categories and would have to seek promotion only on the security side.

..6..

..6..

has been further reiterated by order dated 15.5.1991 of the first respondent and it was ~~for~~ stipulated that Supervisor (NT/Security) ^{could} only be considered for promotion to Chargeman, Grade-II (NT/Security) and that Supervisor (NT other than Security) cannot be promoted to Chargeman, Gr.II (NT/Security). Thus the first respondent has repeatedly ~~being~~ emphasised the existence of the distinct ^{streams} ~~schemes~~ of promotion for security and other Non-Technical categories. The applicants, who are Supervisors ^(Security), have been aspiring for promotion as Chargeman Grade-II (Security) and are aggrieved that they are now being transferred to other disciplines, whereby they contend that the benefit of their seniority in the Security Wing would be lost.

9. The orders of transfer have been issued pursuant to an order dated 26.5.1993 ^{of the first respondent} which reads as follows:-

..7..

"

In order to bring-in greater flexibility in administration and to enable persons to acquire knowledge in different sections of the Administration Wings of the Factories, it has since been decided that persons working in the posts of Supervisor (Security), Chargeman Gr.II/I (Security) Foreman/HT (Security) for more than five years should be transferred to other sections like LB, Establishment etc. and Supervisors (NT), Chargeman Gr.II/I (NT) and Foreman (NT) working in Sections like LB, Establishment should be posted to the Security Sections.

The General Managers are requested to comply with the instructions as above and send a compliance report to the undersigned for the first phase of transfer by 30.6.1993. "

10. The learned counsel for the applicants contended that the impugned order dated 26.5.1993 and the ^{subsequent} orders of transfer were contrary to the existing instructions which has been followed all along and were illegal.
11. A reply affidavit has been filed on behalf of the respondents. Learned counsel for the respondents reiterated the pleadings therein and submitted that the instructions contained in the letter dated 22.12.1966 were in force only till such time as revised instructions were issued. The orders dated 26.5.1993 have been issued with the idea of strengthening the security set up and

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the administration within the factory,
so as to make it more flexible and to give opportunity
to persons in various divisions to have more knowledge
about the work in other divisions. There would be no
loss of seniority in the case of transfer to other
sections, especially when such transfers are made purely
on administrative grounds. The seniority would be
maintained strictly in accordance with the rules. In
this connection, the learned counsel for the respondents
made available a copy of the recruitment rules issued in
1989 for perusal and pointed out that there was no
separate categorisation of the security staff according
to the rules as Supervisor (Security) or Chargeman, Gr-II
(Security). ~~They were included~~ the Security Personnel in
the grade of chargeman Gr.II ~~and Supervisor~~ were part of
the categories of Chargeman. Gr.II (NT) and Stores). The
avenue of promotion ^{to the post of} ~~for~~ Chargeman, Gr.II (NT/Stores) has been
prescribed by notification dated 26.7.1991 amending the
Indian Ordnance Factory Group (C^o Supervisory and Non-

Gazetted Cadre (Recruitment and Conditions of Service

Rules) 1989 reads as follows:-

" By Promotion:

Promotion from the grade of Supervisor (Non-Technical/Stores)/UDC or equivalent and Telephone Operator Gd.I with three years of service in the grade."

whether working in Security or other NT/Stores
All Supervisors (NT/Stores)/UDC ~~xxx~~ or equivalent and Telephone

Operator Gr.I would be eligible for being considered for promotion against Chargeman Gr.II posts (NT/Stores.) If they fulfil the prescribed conditions of three years of regular service. The learned counsel for the respondents further submitted that the seniority list in accordance with the recruitment rules was being prepared. The executive instructions ~~may be~~ ^{may have} issued from time to time treating the security staff as a ^{separate} wing. Now, it has been superseded by the Board circular dated 26.5.1993 which was in accordance with the Recruitment Rules, and it was proposed to follow the recruitment rules strictly. There was nothing illegal in the order in as much as it was not violative of the recruitment rules

and on the other hand was strictly in conformity with it.

12. We have heard the counsel and have gone through the records. We have perused the recruitment rules which have been submitted by the respondents. We find that as per the rules ~~as that~~ ^{the} posts ~~those~~ of Chargeman-Gr.II, Gr.I (NT/Security) for which the applicants are aspiring, form part of the cadre of Chargeman, grade-II (NT/Stores) under the recruitment rules for which promotions ^{are} provided ~~from the feeder~~ ^{are} ~~categories~~ from 4 different feeder categories viz.,

1. Supervisor(NT)
2. Supervisor(Stores)
3. UDC; and
4. Telephone Operator Gr-I.

Therefore the respondents are bound to treat the four feeder categories as one by framing a combined seniority list for the purpose of promotion.

CT. Sharma
P. S. Sharma
19.10.00

13. The applicants have not shown that the procedure followed hitherto of treating the security staff as a separate cadre within a cadre with its own distinct avenue of promotion confine only to security staff is covered ^{by any} ~~in~~ separate Rules. It is open to the administrative authority to issue executive instructions to fill up the gaps in the recruitment rules. But ^{it} ~~we~~ cannot amend or modify the recruitment ^{rules} ~~by~~ executive instructions. This is settled law. The respondents have resorted ^{to} the issue of executive instructions from time to time ^{in the past} to carve out the security wing from within the NT cadres covered by the Recruitment Rules. Such action cannot find support in law, ^{and no rights are created by such orders.} Therefore the applicants have not acquired any vested rights for promotion to the post of Chargeman Grade-II (Security) ^{under} the recruitment rules.

14. The applicants have not established that the impugned order ^a dated 26.5.1993 has affected any of

their vested rights including the rights for being considered for promotion.

15. We note and record the assurance of the respondents conveyed by the counsel that revised seniority lists will be prepared for the feeder categories to the posts of ~~Chargman~~, Grade-II (NT/Stores) and that the applicants will be duly included therein and considered for promotion strictly in accordance with the recruitment rules. The applicants can have no grievance in the event ^{of} ~~over~~ the respondents' action as above and ^{can} ~~in~~ ^e ~~aspiring~~ for promotion not only in the Security Wing ^{but} ~~and~~ also in other wings of the non-technical category as well.

16. We accordingly dismiss this applications ~~and~~ as well as the CA No.72/95. No order as to costs.

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