

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 198/97

Date of Decision : 13th August 01

K.B.Bahirat Applicant

Shri R.C.Ravalani Advocate for the Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty Advocate for the Respondents

CORAM :

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

The Hon'ble Shri V.K.Majotra, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *no*
- (iii) Library *yes*

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.198/97

Dated this the 13th day of August 2001.

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

Hon'ble Shri V.K.Majotra, Member (A)

Khandu Baburao Bahirat,
Civilian Motor Driver Gr.I(Spl),
MT Section, Ordnance Factory,
Dehu Road, Pune.
R/at 189, Dapodi, Pune.

...Applicant

By Advocate Shri R.C.Ravalani

vs.

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, Pune.
4. Shri S.I.Jangira,
Chargeman Gr.II,
M.E.Section,
Ordnance Factory,
Dehu Road, Pune.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

R.K.Shetty —

O R D E R

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

The applicant seeks the direction to the respondents to consider him for the post of Chargeman Gr.II and promote him to the said post, if found fit, at par with his junior along with consequential benefits.

2. The applicant was promoted from the post of Civilian Motor Driver, Gr.I (CMD Gr.I) in the scale of Rs. 1150-1500 to the post of CMD Gr.I (Special) in the scale of rs.1320-2040 w.e.f. 1.1.1988. The respondents have published the Recruitment Rules, i.e. SRO-13(E) effective from 4.5.1989 and have regulated the method of promotion/recruitment etc. to the post of Chargeman Gr.II. The applicant has no promotional avenues. The respondents have effected the promotions/appointments of Draughtsman (1200-2040) and HS Gr.I (1320-2040) to the posts of Chargeman Gr.II (1400-2300), promoted junior to the applicant but have not considered the case of the applicant even though at the relevant times he had completed more than 3 years of regular service in the post. The applicant represented the matter vide his representation dated 9.8.1995 (Annexure-'A-5') which has been rejected vide impugned order 5.2.1996. Hence, this OA. for the above said relief.

S.L.Jain

3. The cause of grievance of the applicant is that in view of SRO-13(E) effective from 4.5.1989, as per Col.11 of the same, these posts are to be filled as under :-

"(a) 66-2/3% by direct recruitment after adjustment of surplus and transfers.

(b) 33-1/3% by promotion from panel prepared by relevant LPC for each category with transfers interse. In any category of supervisor cum operator (such as a new category of CNC Machine of Computer operator).
On failure or recruitment by promotion by transfer failing which by direct recruitment."

By Promotion :

Promotion from Draughtsman or equivalent in scale of rs.1200-2040 with 3 years service, and promotion from HS Gr.I with 3 years of regular service failing which from HS Gr.II with 6 years regular service in respective category.

By Transfer : On passing trade rest.

By Transfer interse of Draughtsman in scale of Rs.1400-2300 and Supervisor (Technical) of equivalent in scale Rs.1400-2300 in respective category.

As per Note 4, the "transfer" shall include the transfer in public interest of persons (already holding posts in the same or identical or nearly equivalent scale of pay)... The transfer in public interest, will include transfers from one grade, interse promotions from another grade, where posts in Col.1 are to be filled in by transfer and by promotion from two different grades.

The transfer in public interest will also include filling of posts by transfer of persons holding posts from which there is no promotion to any other post or grade, whether, or not, such posts are declared equivalent posts and such appointment by transfer may be made prior to filling of posts by promotion from other grades or by direct recruitment."

(Emphasis supplied by us)

A. S. 12 -

..4/-

The Note appended to the Recruitment Rules. Note No.4, 8 and 9 are as under :-

Note 4 : Wherever the word "transfer" occurs in Col.11 or Col.12 of this schedule it shall include transfer in public interest by the Management, of persons (already holding posts in the same or identical or nearly equivalent scale of pay) to posts in the same factory or office in the Ordnance factories Organisation and also transfer within the same factory or office at the request of the person concerned where agreed to by the Management. The transfers in public interest will include transfers from one grade, interse promotions from another grade, where posts in Col1 are to be filled in by transfer and by promotion from two different grades. The transfer in public interest will also include filling of posts by transfer of persons holding posts from which there is no promotion to any other post or grade whether or not such posts are declared equivalent posts and such appointment by transfer may be made prior to filling of posts by promotion from other grades or by direct recruitment.

Note 8 : Promotion indicated in Col.12 of this schedule will normally be from feeder(s) grade indicated in Col.12. But where two or more feeder grades are declared to be "allied grades" by the General Manager of the factory or Ordnance Factories Board, selection or promotion will be made from common seniority list of eligible persons in the allied grades.

Note 9 : The words in "equivalent posts" and its variant in these rules will mean any post in same or identical scale of pay as another post in the same or another category and which posts the ordnance Factories Board or general manager of factory may declare as equivalent posts and they will be considered to be interchangeable or stroke(/) appointments."

4. The claim of the applicant is resisted by the respondents on the ground that the post of C.M.D. Gr.I (Special grade) is not a feeder grade for consideration to the post of Chargeman Gr.II as per the relevant SRO 13-E dated 4.5.1989. The claim of the

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applicant is debarred the Recruitment Rules. The Government has not thought it fit to provide any further promotional avenues to CMDs. The applicant is represented by Association at JCM level and his case cannot be considered in isolation. There are many Civilian Motor Drivers in all the 39 Ordnance factories and Recruitment Rules governs all such Civilian Motor Drivers. The respondents submitted the details in respect of the applicant since the date of appointment till his promotion as Civilian Motor Driver in para 2 of written statement which is as under :-

" i) Appointed as Lab (US) w.e.f. 24.1.63 (Industrial Estt.) (Rs.70-85/-)

ii) Promoted to battery Truck Driver w.e.f. 7.2.67 (Industrial Estt.) (Rs.75-95/- revised Rs.210-290/-).

iii) Promoted on appointment as Civilian Motor Driver Gr.II w.e.f. 1.10.74 (Rs.260-350/-).

iv) Promoted to Civilian Motor Driver Gr.I w.e.f. 30.1.82 (Rs.320-400/-).

v) Promoted to Civ.Motor Driver Gr.I (Spl.Grade) w.e.f. 1.1.88 (Rs.1320-2040/-).

vi) Consequent on revised structure of CMDs, Shri K.B.Bahirat is at present holding the post of Civilian Motor Driver Gr.I in the pay scale of Rs. 1320-2040/- w.e.f. 30.7.1996."

The Recruitment Rule SRO 13-E was promulgated on 4.5.1989 laying down the method of recruitment to the posts belonging to the Supervisory and Non-gazetted cadre in the Ordnance Factory Organisation. According to which the applicant is not eligible to be considered for promotion to Chageman Gr.II (Tech). The term "adjustment of surplus" given under Note 3 below SRO 13-E

ACB

..6/-

relates to appointment in public interest of a person already holding the post in the same or identical or nearly equivalent scale of pay and it does not relate for promotion from lower grade. As the scale of the applicant was Rs.1320-2040 cannot be considered for promotion on transfer to the post of Chargeman Gr.II (Tech). The function of Chargeman Gr.II and CMD Gr.I are different. The post of CMD Gr.I (Spl.Grade) has not been declared equivalent post by the OF Board. Hence prayed for dismissal of OA. along with cost.

5. The facts not in dispute are that the applicant has been promoted as Civilian Motor Driver in the scale of Rs.1320-2040 w.e.f. 1.1.1988 having no promotional avenues. SRO 13-E mentions the educational and other qualifications required for direct recruitment in respect of Chargeman Gr.II (Tech.) and also mentions in Col.9 age, qualification and trade test prescribed for direct recruitment will not apply in case of promotion. Thus, it is clear that age, educational qualifications and trade test prescribed for direct recruitment will not apply in the case of promotion as argued by the learned counsel for the respondents.

6. SRO 13-E Col.11 mentions method of recruitment whether by direct recruitment or by departmental transfer and percentage of vacancies to be filled by various methods which is as under :-

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" By promotion from panel prepared by relevant DPC for each category after adjustment of surplus and transfer."

SRO 13-E, Note 4 the portion emphasised by us makes it clear that the transfer in public interest will also include filling up of posts by transfer of person holding post from which there is no promotion to any other post or grade whether or not such posts are declared equivalent posts and such appointments by transfer may be made prior to filling up of posts by promotion from other grades or by direct recruits. Thus, the applicant has a priority in matter of consideration regarding promotion.

7. Note 8 : Promotion indicated in Col.12 of this schedule will normally be from feeder(s) grade indicated in Col.12. But where two or more feeder grades are declared to be "allied grades" by the general Manager of the factory or Ordnance Factories Board, selection or promotion will be made from common seniority list of eligible persons in the "allied grades". The said note gives power to the General Manager of the factory or Ordnance Factories Board to declare the "allied grades". The applicant's case cannot be considered in this grade for the reason that he is not claiming the relief in view of the said Note and he is claiming the relief in view of Note 4 where he has priority claim.

Agree —

8. Vide Note 9 appended to SRO 13-E equivalent posts the declaration thereof also rest with General Manager of factory of Ordnance Factories Board as stated above. The claim of the applicant is not under Note 8 and 9 but the claim is under Note 4 where he has priority claim.

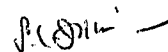
9. As discussed above, the age, educational qualification etc. meant for direct recruits are not necessary for promotion to Chargeman Gr.II (Tech) and the claim of the applicant is made out in view of Note 4, therefore, the defence of the respondents that the applicant is not eligible even for consideration for the post of Chargeman Gr.II (Tech) is not sustainable. It is worth mentioning that in case of promotion, the applicant has to pass the trade test.

10. In the result, the order dated 5.2.1996 is hereby quashed and set aside. The respondents are directed to consider the applicant for the post of Chargeman Gr.II as on the date when his juniors have been considered and promoted. The applicant shall be entitled to cost amounting to Rs.1,000/payable by the respondents within one month from the date of receipt of a copy of the order.



(V.K.MAJOTRA)

MEMBER (A)



(S.L.JAIN)

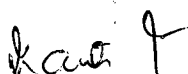
MEMBER (J)


26.02.2002

ORDERS ON M.P. NO.102/2002

By the present M.P. a prayer is made for grant of extension of time to comply with the directions issued by this Tribunal on 13th August, 2001 in OA No.198/97. By this order ~~order~~, the respondents have been directed to consider the applicant who is CMD Grade-I for promotion to the post of Chargeman Grade II as on the date when his juniors have been considered and promoted. It is ~~stated~~ ^{now submitted by the Ld Advocate for respondents} that the post of Chargeman Grade II is not a promotion post to that of CMD Grade I. Direction issued in the circumstances, could not be implemented so far. According to the ^{Ld. Advocate of the} respondents Law Ministry has advised filing of writ petition against the aforesaid order of the Tribunal and respondents have already filed the same on 30th November, 2001.

2. In our view, respondents cannot be permitted to blow hot and cold, they cannot, on the one hand, be permitted to take steps to impugn the order and at the same time, make a prayer here for extension of time to comply with the directions. We have absolutely no reservation of ~~any action on~~ respondents taking steps to impugn the orders of the Tribunal. They however, cannot be permitted at the same time to seek extension of time for compliance. In case respondents have filed a writ petition and that too way back on 30th November, 2001, nothing prevents them from applying for interim relief from the High Court. Present petition, in the circumstances is rejected in limine.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN