

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :HYDERABAD BENCH
HYDERABAD

O.A. No. 9 OF 1992

Between

V.S. Bhagavan
and 32 others

... Applicants

Vs.

The Ordnance Factory Board
represented by Secretary
10-A, Auckland Road
CALCUTTA - 700 001

The General Manager
Ordnance Factory Project
Ministry of Defence, Govt. of India
Yeddu-mailaram, Medak District

... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS

I, K. Sampath, S/o Shri Krishnaswamy, aged about 52 years. Occupation - General Manager, Ordnance Factory Project, Yeddu-mailaram, Medak District do hereby affirm and state as follows

I am the Respondent No.2 and herein and as such I am fully acquainted with all facts of the case. I am filing this Counter Affidavit on behalf of all the Respondents herein as I have been authorised to do so. The material averments in the O.A. are denied save those that are expressly admitted herein. The applicant is put to strict proof of all such averments except those that are specifically admitted hereunder:

It is submitted that the respondent ~~Factory~~ had a scheme of training followed by journeymanship for IEs. The trainees were required to appear in a gradation test after training. Those of the trainees who obtained marks above a fixed percentage were graded as 'A' grade, and others as 'B' grade. The Staff Side leaders in the Consultative Forum called Joint Consultative Machinery (JCM) demanded that those who have been graded as 'B' grade should be given 'A' grade. A Committee was appointed by the JCM with both official side and Employees side representatives to examine the matter. Based on the recommendations of the Committee the DGOF Order No.571/A/I(General) Ex-journeymanship dt. 6.7.78 was issued which provided for the following relieves:

Umesh Rao
Attestor

K. Sampath
Respondent No.2

i) The concerned IEs should be promoted to 'A' grade by surrendering equal number of posts in the 'B' grade subject to their being otherwise fit.

ii) The promotions were to take effect from prospective date, but notional seniority was to be allowed to them w.e.f. the date six months later than the date of gradation by DGOF. The grant of notional seniority was only for promotion to Supr.B(T) and equivalent posts.

iii) These individuals were to be considered for promotion to Supr.B(T) and equivalent posts only if they were to go on transfer to other factories.

The transfers to other factories was incorporated in the orders, since after grant of notional seniority, some of the 'B' grade, who were hitherto working under erstwhile 'A' grade would have started supervising their jobs, and thus created serious administrative problems.

The clause regarding grant of notional seniority for promotion to Supr.B(T) could not be implemented, since the transfers to other factories could not materialise. The post of Supr.B(T) was to be filled by promotion of same factory IEs. As the transfers would have affected the promotional avenues of the existing employees, no factory was prepared to take the transferees.

In the meantime, some of the employees in RFI had gone to the Courts for getting the benefit of notional seniority. In the Civil Appeal No. 2555 of 1988, the Supreme Court vide their judgement dated 16.8.88 ordered the following:

" 1. That the management respondent herein be and is hereby directed to (i) issue orders of transfer in respect of the appellants herein indicating the posts and the factories to which they are transferred, and (ii) before transferring them to consider whether they are entitled to promotion to Supr.B posts and if they are entitled to that posts on transfer, they shall be posted to Supr.B posts within 8 weeks from this the 5th day of August, 1988."

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Attestor

u. S. Deo
Respondent No. 2

The present CAT Jabalpur judgement is based on the ratio of Supreme Court judgement quoted above. It also directs the respondents to implement the DGOF letter No.571/A/I(Genl)/Ex-journeymanship dt. 6.7.78 which *inter alia* provides for grant of notional seniority only on transfer. As the case was already adjudicated upon by the Supreme Court, the respondents had no other option but to implement the orders of the CAT, Jabalpur, and hence the transfers. The selection of the factories for transfer was done by the Respondent No.1 taking into consideration the administrative problems, availability of posts, and functional requirements. The choice of the factories for transfers cannot be a subject matter of adjudication, since the same falls within the exclusive executive functions of the respondents.

As regards grant of promotion in the same factory, the logic of 1978 order has been stated in above paragraphs. It has also to be appreciated that the clause of transfer was incorporated based on a committee constituted by the JCM III. According to the constitution of JCM III as accepted by the recognised unions and associations, the decisions in JCM are binding on both the parties.

In reply to para 4 it is submitted that:

b) This para is not relevant to the present case since the promotion and transfers are being effected back-dated under the provisions of the SRO No.13E of 4.5.89. However, the justification for adoption of cut off date for promotions to Chargeman Grade I is as follows:

In terms of the M of D order No.1(82)/78/D(Fy-1), dated 9.2.1979 Sl.No.5 (a) the 1st respondent is authorised to transfer posts between the factories, in the Non -Gazetted category. The Board is therefore competent to re-assign the posts of one factory to another on proper justification. Prior to promulgation of the SRO No.13 E of 1989, the promotions to the post of Chargeman Gr.I were centrally controlled. Further the availability of posts in Chargeman Grade.I is dependent on the overall vacancies from Chargeman Gr.I to Foreman. In many factories the No.of Foreman and Assistant Foreman are surplus and in some factories there are

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U. V. Rao,
Respondent No.2

large deficiencies. As a result the factories having surplus Foreman and AF are having less posts of Chargeman Gr.I and the deficient factories are having more posts. The anomoly will take some years for rectification. Till such time, the Ordnance Factory Board has decided in consultation with the representatives of the NGO's Association that the promotions for the time being should not wait for the correction of anomoly and made on the basis of a cut off date.

c) & d) The contents are partly correct so far as they pertain to the judgement of the CAT, Jabalpur. However, it is denied that all of them will be entitled to promotions to Chargeman Gr.I. The position will have to be reviewed by the department. In any case those of the employees whose juniors have been promoted to Ch. Man Gr.I will be getting promotion to Chargeman Grade I in whichever factory they are placed on the basis of cut off date principle. Further, these promotions are not going to affect the promotions prospects of the employees of the O.F. Medak as necessary no. of posts have been promised to be transferred to OF Medak.

e) The contents of this para are not relevant to the case since the transfers and promotions are being ordered as per a judgement of the CAT, Jabalpur. Further the promotions are with effect from a date prior to coming into existance of the SRO 13 E quoted in this para. The validity of promotions on transfer has already been upheld by the Supreme Court in its judgement in the Civil Application No. 2555 of 1988.

g) It is submitted that the contention that the applicants were not consulted before the above decisions taken by the administration is entirely wrong. The administration has implemented only the decisions arrived at the JCM. It is not possible for any organisation to consult or give notice to each individual. These decisions are always taken in

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R. A.
Respondent No. 2

Case or cause delay in filing
Counter-Affidavit for the
revised

1) There is no attestation stamp on
the bearing particulars
of the affector.
2) Memo of Appearance shall be filed
along with Affidavit.

P. 6/12 7/16 S.O.(T) 5/1/92
Dy. Regt. (T)

In the C.A.T.
Hyd Bench



Ort 7/92

Counter-Affidavit

R.C

6/1/92
C. P. Nareshwar

filed by—
N. R. Dewari
Addl. C.S.C

consultation with the representatives bodies and not with the individuals. It is further stated that the decisions of the CAT, Jabalpur cannot be assailed by filing another OA before this Honourable Bench as the CAT happens to be a single bench. Applicants will have to go to the Supreme Court by way of filing an SLP or reopen the matter before the Full Bench following the required procedure. It is therefore stated that implementation of the judgement of Jabalpur Bench of the CAT cannot be assailed before this Court, and O.A. has to fail on that ground.

In view of the above submissions, it is clear that the applicants has not made out any case and there is no merit in the O.A. For the reasons stated above the Honourable Tribunal may be pleased to dismiss the O.A. with costs and pass such other or further orders as it deems fit and proper in the circumstances of the case.

Leesha
Attestor

u/a
Respondent No. 2

Solemnly and sincerely affirmed this
5th ^{June} day of 1992 and he signed

his name in my presence.

Leesha
Attestor

Before me: