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THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO.115/92.

Date of Order: 28-8-1995

Between:

1. E.Kannan
2. S.Balakumaresan

.. Applicant

and

1. The Ordnance Factory Board, Ministry of Defence,
Government of India, 10-A, Auckland Road,
Calcutta-700 001. reptd. by the Director
General & the Chairman.
2. The General Manager, Ordnance Factory
Project, Government of India,
Ministry of Defence, Edumailaram,
Dist. Medak(A.P.)

Respondents.

For the Applicant :- Mr. P.Naveen Rao, Advocate.

For the Respondents: Mr. N.V.Ramana, Addl. CGSC.
Sr./Add. CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR.RARANGARAJAN : MEMBER(ADMN)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, V.C.)

Heard Sri P. Naveen Rao, learned counsel for the applicants and Sri N.V. Remana, learned counsel for the respondents.

2. These two applicants are working as Chargeman Grade-II(T) in Ordnance Factory at Yeddumailaram (R-2 is the General Manager of the same). In supersession of the Indian Ordnance Factory (Recruitment and conditions of services of Class III Manual) Rules 1956 vide No.SR.4141/1956 as amended from time to time, new rules were issued as per SRO.13(E) and the same were notified in the Gazette of 4-5-1989. These rules are called Indian Ordnance Factories Group(C), Supervisory and Non-Gazetted cadre (Recruitment and Conditions of Service) Rules, 1989. Para-2 of Rule IV States that the said rules are applicable to the Supervisor and non-gazetted cadres in the Ordnance and Ordnance Equipment Factories belonging to the Technical categories specified therein besides non-technical categories enumerated. It is not in controversy that these applicants belong to the Technical categories referred to in para-2 of Rule IV of 1989 Rules (for short 1989 Rules).

3. Note 16 to the above said rules lays down that selection for promotion from the Grade of Chargemen Grade I and equivalent and from higher grades will be made on the basis of common All India Seniority list of eligible persons in the relevant feeder grades. It further states that the incumbents in posts other than the posts above chargeman Gr.I are normally eligible for service in the same factory or office

in the Ordnance Factory Organisation but without prejudice to the right of the Management in the Public interest to transfer them to equivalent posts in any other factory or office in the Ordnance Factory Organisation.

4. While it was urged for the applicants that the note-16 makes it clear that the seniority of the posts upto and including Chargeman Gr.I is factory-wise, it is contended for the respondents that as they too are eligible for transfer from one factory to another, the contention for the applicant that the seniority is factory-wise is not tenable.

5. But there is force in the contention for the applicants. It is specifically stated in Note-16 that the posts above Chargeman Gr.I will be made on the basis of common All India Seniority list of eligible persons in the relevant feeder categories. It implies that the factory-wise seniority will be there for posts upto Chargeman Gr.I and equivalent. Merely because right is reserved with the Management, to transfer an employee from one seniority unit to another seniority unit due to exigencies, it cannot be inferred that they belong to All India Service.

6. The Recruitment Rules of 1989 stipulate that Chargeman Gr.II who completed three years of service are eligible for consideration for promotion to the posts of Chargeman Gr.I R-4 i.e. DG & Chairman of the Ordnance Factory Board gave direction to All the General Managers that those who had not been promoted as Chargeman Gr.II by the cut off date referred to cannot be considered for promotion to the posts of Chargeman Gr.I eventhough they were eligible on completion of three years of service as per the Recruitment Rules.

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7. The contention for the applicants is that when the Rules of 1989 were laid down in exercise of power under Article 309 of the Constitution, it is not open to R-1 to modify the same by executive instructions and hence direction regarding cut-off date has to be held as illegal. But the submission for the respondents is that the cut-off date is prescribed keeping in view the employees who are within the zone of consideration for promotion to the posts of Charge-man Gr.I in various Ordnance Factories in order to ensure that one who joined later in one or the other Ordnance Factories cannot be considered when one who joined even earlier in other ordnance factory is not within the zone of consideration.

8. But the point that has to be adverted to is as to whether the rules formulated under Article 309 of Constitution can be modified by executive instructions. It is well settled that the executive instructions can supplement the rules formulated under Article 309 but the executive instructions have to be held as illegal if they are inconsistent with the statutory rules framed under Article 309. It is evident from the Recruitment Rules that one who had completed three years of regular service as Chargeman Gr.II is eligible for consideration for promotion to the post of Chargeman Gr.I. Hence, if he is within the zone of consideration and if he is otherwise eligible he has to be considered for promotion in the unit in which he is working. But when he cannot be held as eligible on the basis of the executive instructions on the ground that he had entered into the feeder category on a date later to the cut off date, the said executive instructions have to be held as illegal as they are by way of modifications of the statutory rules. Rules formulated under Article 309 can be repealed / altered or modified by the concerned authority in exercise of the power

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under Article 309, and it cannot be by way of administrative instructions. Hence, direction from R-1 in prescribing the cut-off date for eligibility for consideration for promotion to the post of Chargeman Gr.I or below has to be held as illegal.

9. In the above view we do not wish to express as to whether the object in prescribing the cut off date is salutary or laudable or not and we leave it open for consideration as and when it arises.

10. The next contention that is urged for the applicants is that a direction should be given to the respondents to fill up all the vacancies in the post of Chargeman Gr.I to the extent the eligible candidates are available under R-2 unit. An employee cannot claim a right that the next promotion post should be filled up ^{even when} ~~merely that~~ it is vacant. It is for the concerned authority to determine and decide as to whether it is necessary to fill up the vacancies. It is not necessary to fill up a vacancy in a post merely because there is a sanction for the post. Keeping in view the future growth, the posts may be sanctioned for filling as and when necessity arises. But if the growth contemplated or visualised did not materialise, the question of filling up the vacancies in the sanctioned posts may not arise. Hence, it is not just and proper to give direction to the respondents to fill up all the vacancies in the posts of Chargeman Gr.I(T) in R-2 unit, even though the eligible candidates are available and it is for R-2 to consider as to whether all or any of the vacancies in the Grade of Chargeman Gr.I(T) have to be filled or not.

11. It is stated for the respondents that the ban imposed as per proceedings No.981/Ch.I/Tech/CEN-Traliation/A/NG dated 16-11-1989 on promotion to the post of Chargeman Gr.I(Tech) no longer exists.

Copy to:-

1. To the Director General & Chairman,
The Ordnance Factory Board, Ministry of Defence,
Government of India, 10-A,
2. The General Manager, Ordnance Factory Project,
Government of India, Ministry of Defence,
Eddumalilaram, Dist. Medak (A.P.).
3. One copy to Mr. P. Naveen Rao, Advocate, CAT, Hyd.
4. One copy to Mr. N.V. Ramana, CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One copy spare.

(Sd/-) (Signature)
Date: 10/10/54

10/10/54

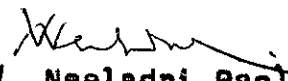
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12. No other point was urged in regard to this OA which was filed praying for quashing the proceeding dated 16-11-1989 herein referred to whereby the ban was imposed for consideration for promotion to Chargeman Gr.I from Chargeman Gr.II(T), and the consequential policy of directing promotions to Chargeman Gr.I (Tech) solely on the basis of date of joining in Chargeman Gr.II by holding ^{them} it as illegal and ultra vires of 1989 Rules and for a direction to R-2 to initiate steps to fill up the vacancies in the posts of Chargeman Gr.I by holding the procedure laid down in 1989 policy and to consider the case of the applicants alongwith other eligible candidates for promotion to Chargeman Gr.I(T).

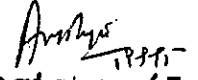
13. In the result the OA is ordered as under :

There is no need to quash the proceedings No.987/Ch.I/ TECH:DECENTRALISATION:ANG dated 16-11-1989 with reference to the ban as it is stated that the ban is not in force. The administrative instructions in fixing cut off date for promotion to the post of Chargeman Gr.I from Chargeman Gr.II are ~~quashed~~ as they are illegal. Hence, R-2 has to consider cases of the eligible Chargeman Gr.II of R-2 Organisation for promotion to the post of Chargeman Gr.I (T) in accordance with the 1989 Rules, published in SRO 13 E dated 4-5-1989 as and when vacancies in the posts of Gr.I in this unit are required to be filled up. No costs.//


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : August 28, 95
Dictated in Open Court


Dy.Registrar(Judl)

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