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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.520/96.

Date of order : 26.2.1997.

Between

N.Chandrasekharan Nair .. Applicant

And

The General Manager,
Ordnance Factory Project,
Yeddu-mailaram,
Medak Dist. - 502205 (A.P.) .. Respondent

Counsel for the Applicant .. Shri T.P.Acharya

Counsel for the Respondent .. Shri V.Rajeswara Rao,
Addl. CGSC

C O R A M

Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman

Hon'ble Shri H.Rajendra Prasad : Member(A)

Order

(Per Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman)

The facts in this case are not in dispute. The applicant who is an Ex-Serviceman was appointed as Semi-skilled Fitter (Electrical) on 2.3.88 and his probation was declared to have been completed by 1.3.90. He was thereafter promoted as Skilled Fitter (Electrical) from 30.4.90. The respondent published the seniority list of Skilled Workmen on 30.3.94. The applicant was shown at Sl.No.1. The next avenue of promotion for the applicant is to Highly Skilled Grade-II (HSK-II). The applicant was called for the Trade Test held by the Selection Board on 26.4.94 and the selection process is complete. There is also no dispute between the parties that the applicant has been selected at the Trade Test. The only formality that remained thereafter was to issue the order of promotion of the applicant to HSK-II. The respondent however has withheld that action and informed the applicant by the

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impugned letter dated 14.8.95 that since the question of maintenance of seniority is under litigation in the Central Administrative Tribunal promotion in certain trades including Fitter (Electrical) could not be ordered and necessary action will be taken to consider promotions once the dispute is resolved. In our opinion the respondent has decided the case of each individual as per prevailing rules and simply because a dispute is pending between some other parties the individual concerned in that proceeding cannot be deprived of the benefit of promotion by postponing the action till the litigation was decided. Where a litigation is pending and eventually ends in an order affecting others who are not parties to the litigation such an order would take care of the consequences and that cannot be a ground to refuse to act according to the rules. It is however necessary to elaborate on this aspect to some extent. We are informed by the learned ^{Senior} ~~Additional~~ Standing Counsel that there are 62 trades in the Ordnance Factory Project throughout the country covering about 1,60,000 workers. The scheme followed by the ~~Project in respect~~ ^{Project in respect} respondent in support of the employees is that there are six grades as follows:

| <u>Grade.</u> | <u>Pay Scale.</u> |
|--------------------------|-----------------------------|
| Unskilled. | Rs.750-12-870-EB-14-940. |
| Semi-skilled. | Rs.800-15-1010-EB-20-1150. |
| Skilled. | Rs.950-20-1150-EB-25-1500. |
| Highly Skilled Gr-II. | Rs.1200-30-1440-EB-30-1800. |
| Highly Skilled Gr-I. | Rs.1320-30-1560-EB-40-2040. |
| Master Craftsman. | Rs.1400-40-1800-EB-50-2300. |

The (pre-judged) - respondent and the respondent
The respondent had been following the method of assigning
seniority to employees in Semi-skilled Grade after they are
selected and promoted to Skilled Grade on the basis of entry
i.e., appointment in the Skilled Grade. Same principle was
followed for further promotions. In other words the seniority
in the Skilled Grade was maintained as per entry into that
grade and not as was the position in the Semi-skilled Grade.
This question fell for consideration before this Bench earlier
in O.A. No. 730/93 and 763/93 decided on 16.9.93. In those
cases the applicants and unofficial respondents were placed
junior to others in the seniority list by following the
interse seniority as obtained in the Semi-skilled Grade.
That was challenged. The learned Division Bench noted that the
post of Skilled Grade is a selection post and has to be filled
by promotion. They also noted that where promotions are
effected by selection on merit seniority has to be determined
in the promoted grade from the date of promotion and not
on the basis of seniority in the original cadre. Reliance
for this purpose was placed on the decision of the Supreme
Court in S.K.Ghosh & Anr. Vs. U.O.I. & Ors. AIR 1968 SC 1385.
The consolidated orders on seniority issued by the Govt. of
India, Dept. of Personnel & Training vide O.M.No.22011/7/8/
(Estt) (D) dated 3.7.86 were also considered. It appears that
in O.A.No.730/93 the applicants therein were promoted earlier
than the respondents 4 and 5. However, the official respon-
dents had given seniority to the said respondents on the basis
of their seniority in the Semi-skilled Grade. It was held
that the said action of the official respondents was arbitrar
It was also held that the applicants in that case who were
promoted earlier than the said respondents got vested with the
right with regard to the seniority which could not be
disturbed ^{under} in accordance with the law. The action of the
official respondents therefore to treat the applicants therei

as juniors to respondents 4 and 5 in the Skilled Grade was held to be discriminatory and violative. The official respondents were directed to treat the applicants therein as senior to the respondents 4 and 5. Following the aforesaid decision similar orders were passed in support of the applicants in the companion O.As No. ~~730/93 and 763/93~~.

2. One Shri V. Adisurya Durga Prasad also a Fitter (Electrical) working in the Ordnance Factory Project filed O.A. No. 539/94 on 28.4.94 only against the official respondents challenging the correctness of the seniority list of Fitter (Electrical) Skilled Grade dated 30.3.94 and sought a direction to the respondents to prepare a seniority list on the basis of the original merit seniority list dated 30.6.89 by promoting him to HSK-II with all consequential benefits. The case of the applicant therein appears to be that the seniority list prepared on 30.3.94 since was ^{stated} treated by the official respondents to be based on the decision of the Tribunal rendered in the abovementioned two applications was based on a wrong principle, namely fixing the seniority on the basis of the date of entry into the Skilled Grade and not fixing the seniority of those who were promoted to the Skilled Grade on the basis of their interse seniority in the Semi-skilled Grade. The applicant in that case did not retain the interse seniority position as was held in the Semi-skilled Grade on his promotion to the Skilled Grade and he went down in the seniority. In order to make his claim presentable realising that the seniority list had been prepared by the respondents in pursuance of the principles enunciated by this Tribunal the applicant seems to have raised the contentions that the judgements in O.As No. 730/93 and 763/93 should be regarded as per incuriam and as not binding either on the applicant or the official respondents to the extent of the applicant. It appears that the said O.A. alongwith two others was referred to the Full Bench by an earlier Division Bench without however taking view different than taken in O.As No. 730/93

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and 763/93 by an earlier Division Bench as it appeared that the arguments raised on behalf of the applicant in that case could not be said to be without substance. The Full Bench by its order dated 20.11.96 was pleased to return the reference to the Division Bench directing the Division Bench to consider the matter on merits leaving it open to the Division Bench to refer the matter to a Larger Bench, if required, after considering the merits of the case while observing that the contentions not raised in O.As No.730/93 and 763/90 will not be a ground to doubt the correctness of the said decision. Those matters, namely O.As No.539/94 and 7177/94 are separately pending for hearing. In our opinion the mere pendency of those two O.As which purport to raise contentions inconsistently with the decision in O.As No.730/93 and 763/93 cannot be held as a bar to proceed with the hearing of the instant O.A. or to decide the same on merits. We ^{were} required to refer to the facts relating to O.A.No.539/94 because the official respondents possibly envisaged some difficulty in giving ^{promotion} relief to the applicant because of the interim orders passed in those O.As and which are still pending.

3. Now the interim order in O.A.No.539/94 passed on 29.4.94 reads as follows:-

"In case any of the juniors of the applicant in the category of Fitter (Electrical) is being sent for Trade Test for promotion to the post of Highly Skilled Grade-II, the applicant also has to be sent for the Trade Test. But the result in regard to the applicant on the basis of the performance of the Trade Test should not be published until further orders."

It is abundantly clear that the order does not stay the operation of the seniority list. It also does not preclude seniors to the said applicant being sent for the Trade Test. It also does not stay the granting of appointment to the senior if he were selected at the Trade Test. All that the interim order contemplated was that if any junior was sent for the Trade Test but his result was not to be published until further orders which means that he could not be

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promoted. There is thus no bar in promoting the applicant implied in the said interim order.

4. A corrigendum was issued to the said order by which the words "merit list of semi-skilled" were added before the word "category" so that the complete order reads as follows:-

"In case any of the juniors of the applicant in the merit list of semi-skilled category of Fitter(Electrical) -----should not be published until further orders."

That does not alter the character of the interim order.

5. Turning to the merits of the instant case we ~~by~~ ^{see} no good reason, ^{to} take the view that the seniority of the applicant has not been correctly assigned in the seniority list dated 30.4.93. The learned Standing Counsel for the respondent as also the learned Senior Standing Counsel Shri N.R.Devaraj indeed submitted that the official respondents had followed the decision of the Tribunal in O.As No. 730/93 and 763/93 in various trades spread over the country and have prepared the seniority list and it is only in respect of 4 trades in Andhra Pradesh that by reason of the interim order in O.A.No.539/94 the position is held in abeyance. The learned counsel indicated that if the basis of the decision in O.As No.730/93 and 763/93 were not to be followed it will unsettle a huge number of employees all over the country. The learned counsel also supports the decision in O.As No.730/93 and 763/93. We entirely agree with the reasons adopted by the then Division Bench in deciding the correct method of fixation of seniority under the relevant rules and the view taken therein in support of which reliance was also placed on the decision of the Supreme Court. We are also inclined to take similar view even on independent consideration of the matter.

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We are thus in total agreement with the view taken in those decisions and we do not see any reason to differ therefrom. We therefore respectfully follow the said decision which is otherwise binding on us. Since we are not inclined to take a different view on the question decided therein and the principle enunciated, there is no question of our referring the matter once again to a Larger Bench and we will be satisfied with falling in line with the said decision.

6. The applicant in the instant O.A. stands at Sl.No.1 in the seniority list of Skilled Grade. That position is admitted by the respondents in their counter. It is true that the applicant was at Sl.No.8 in the seniority list of Semi-skilled category. That would not be a material consideration for determining his seniority in the Skilled Grade. Admittedly he being at Sl.No.1 there does not arise any question of the applicants in O.A.No.539/94 or other matters being junior to him in the Skilled Grade. The interi order in O.A.No.539/94 in no way affects the position of the applicant since the applicant has been duly selected after a Trade Test and is otherwise qualified to be promoted to Highly Skilled Grade-II and is also the seniormost, we hold that the action of the respondents in not issuing his promotion orders cannot be sustained nor there is any reason to withhold the same.

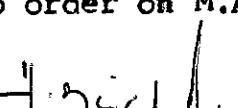
7. In the result, the following order is passed:-

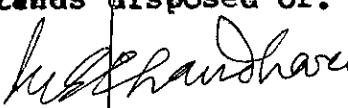
Order.

The respondents are directed to issue the order of promotion of the applicant to Highly Skilled Grade-II Fitter (Electrical) with effect from the due date i.e., 26.4.94 and grant him all consequential benefits on that basis.

8. The O.A. is accordingly allowed. No order as to costs.

9. No order on M.A.No.117/97 and it stands disposed of.

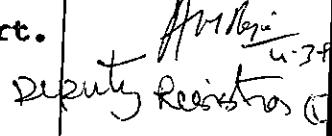

(H. Rajendra Prasad)
Member(A).


(M.G. Chaudhary)
Vice-Chairman.

Dated: 26.2.1997.

Dictated in Open Court.

br.


Deputy Registrar (W-78)

O.A.520/96

To

1. The General Manager,
Ordnance Factory Project,
Yeddumailaram, Medak Dist.205.A.P.
2. One copy to Mr.T.P.Acharya, Advocate, CAT.Hyd.
3. One copy to Mr.V.Rajeswar Rao, Addl.CGSC.CAT.Hyd.
4. One copy to Library, CAT.Hyd.
5. Copy to All Reporters. CAT.Hyd.
6. Copy to D.R.(A) CAT.Hyd.
7. One spare copy.

pvm.

~~6/3/97~~ TYPED BY

~~Done~~ I COURT

~~6/3/97~~ CHECHED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD
MEMBER(ADMN)

Dated: 26-2-1997

ORDER / JUDGMENT

M.A./R.A/C.A. No.

in
O.A.No.: 520/96

T.A.No. (W.P.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

pvm.

No order as to costs.

