

(J)

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.258 of 2005

Jabalpur this the 5th day of October, 2006.

**Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member**

1. Gopal Pawar, S/o late L.J.Pawar, aged about 40 years, R/o Village- Togra, P.S.Sonpur Khamariya, Jabalpur.
2. Bhagwan Singh Gond, S/o Shri Halke Singh Gond, aged about 33 years, R/o Block No.2, Patel Nagar, Maharajpur, Jabalpur.

-Applicants

(By Advocate – Shri V.Tripathi)

V E R S U S

1. Union of India through its Secretary, Ministry of Defence (Defence Production), New Delhi.
2. The Chairman/ Director General, Ordnance Factory Board, 10-A, SK Bose Marg, Kolkata.
3. The General Manager, Ordnance Factory, Khamariya.

-Respondents

(By Advocate – Shri M.Chourasia)

O R D E R

By Dr.G.C.Srivastava,VC.-

This Original Application, has been filed by two employees of the Ordnance Factory Khamaria, Jabalpur against order dated 11.2.2005 (annexure A-1) whereby it was decided to count the seniority of the first applicant with effect from 4.3.2002 instead of 29.5.2000. The second applicant, namely, Bhagwan Singh Gond,

(J)

has furnished his particulars in annexure A-2, claiming seniority with effect from 25.1.2001 instead of 19.1.2004.

2. A miscellaneous application filed by them (MA No.256/2005) for filing joint application was allowed on 28.3.2005 and the applicants were permitted to join together.

3. Through this Original Application, the applicants have prayed for the following main relief :-

"(ii) Set aside the orders dated 11.2.2005 Annexure A-1.

(iii) Direct the respondents to count the services of the applicants from the date they were appointed as Wireman (Semi-skilled) for all practical purposes.

(iv) Direct the respondents to consider the applicants for the promotion of Electrician (High Skilled) from the date Shri Ajay Kumar Shrivastava was promoted as Electrician (High Skilled)".

4. The undisputed facts are that the applicants were appointed as wireman (semi-skilled) in the pay scale of Rs.2650-4000 on 9.1.1998. After passing the competency test of wireman (skilled), they were promoted to the post of wireman (skilled) in the pay scale of Rs.3050-4590 on 29.5.2000 and 25.1.2001 respectively. Thereafter, the applicants passed the competency test of electrician (skilled) on 16.5.2001 and 1.2.2003 respectively and were re-designated as electrician (skilled) with effect from 4.3.2002 and 19.1.2004 respectively. Subsequently, the applicants appeared for competency test of electrician (highly skilled) and passed the same on 11.8.2004. The applicants claim that their seniority as electrician (skilled) should be counted from the date they were promoted as wireman (skilled) and not from the date they were re-designated as electrician (skilled). Their claim is based on the ground that they were re-designated as electrician (skilled) in

(3)

public interest (vide annexures A-3 and A-4) and since the two posts carried the same scale/grade, this should not affect their seniority.

5. Opposing the contention of the applicants, the respondents submit that when an individual appearing in a trade test is promoted, in his own interest to a different trade, he would not have the benefit of his seniority in earlier trade/grade.

6. We have heard the arguments advanced on behalf of both the parties and have gone through their pleadings.

7. We find that the orders by which the applicants were re-designated as electrician (skilled) clearly states that this has been done in public interest, that it will not affect their existing scale and that their seniority would be reckoned from the date they were appointed as wireman (skilled). An exactly identical issue came up for consideration before this Tribunal in O.A.No.855/2004, which was decided by an order passed on 16.9.2005. In the said OA, the Tribunal held as follows:

“8. We have given careful consideration to the arguments advanced on behalf of both the parties. We find that after passing the competency test of Wireman (Skilled), the applicants were working as Wireman Skilled from 29.5.2000. They were re-designated as Electrician (Skilled) w.e.f. 2.12.2003/ 4.3.2002. They were allowed the seniority of Wireman (Skilled) in the grade of Electrician (Skilled) from 29.5.2000. They have also passed the competency test for promotion to Electrician (Highly Skilled) in 2003 and have also been promoted to the post of Electrician (Highly Skilled) vide order dated 24.12.2003. We further find from the recruitment rules dated 28.7.1989 (Annexure- A-9) that the posts from semi-skilled to H.S.Gr.II are filled up after holding the trade test and oral examination. Column 12 of these recruitment rules provide as under :

“Promotion: By Departmental Promotion Committee from persons in the Skilled grade in the pay scale of

(G)

Rs.950-20-1150-EB-25-1500 in the same trade with a minimum regular service of 3 years in the grade on passing trade test".

We also find that the applicants have been re-designated in public interest. This fact, has also been mentioned by the respondents themselves in para 3 of their short reply. In para 3 the respondents have stated that "the petitioners have again passed the Competency Test of Electrician (Skilled) and the petitioners were again re-designated to Electrician (Skilled) on public interest. Petitioner No.1 was accordingly re-designated from Wireman (Skilled) to Electrician (Skilled) w.e.f. 02.12.2003 and the petitioners No.02 and 03 were re-designated from Wireman (Skilled) to Electrician (Skilled) w.e.f. 04.03.2003". Thus, it is an admitted fact that the applicants have been re-designated as Electrician (Skilled) in public interest after passing the requisite competency test, and possess all requisite qualification. They have also passed the required competency test for promotion to HS Grade-II and they have been considered and were eligible in accordance with the recruitment rules. There is no ground to cancel their promotion order. The respondents have failed to produce any document whereby it could be established that the applicants were not eligible for promotion to HS Grade-II or were promoted out of turn or were not in the zone of consideration and did not possess the requisite qualification. In the conspectus of these facts, the impugned orders passed by the respondents are not sustainable in the eye of law.

9. In the result, the Original Application is allowed. The impugned orders dated 15.9.2004 (Annexure-A-1) and 28.9.2004 (Annexure-A-2) are quashed and set aside. The respondents are directed to grant all consequential benefits to the applicants within a period of three months from the date of communication of this order. The interim order passed earlier is made absolute. No costs".

8. Following the decision of this Tribunal in the aforementioned OA, we are of the considered opinion that the seniority of the applicants as electrician (skilled) should be reckoned from the date of their appointment as wireman (skilled). Since they have completed three years of service in the skilled grade, they are eligible to be considered for promotion to the post



of electrician (highly skilled) in accordance with the relevant rules and regulations.

9. The applicants have also claimed that they should be considered for promotion to the post of electrician (highly skilled) from the date Shri Ajay Kumar Shrivastava was promoted as electrician (highly skilled) on the ground that although the latter had also passed the competency test for electrician (highly skilled) together with the applicants only, he has already been promoted. The respondents in their reply have stated that Shri Ajay Kumar Shrivastava had passed the competency test for electrician (skilled) on 29.1.2001 whereas the applicants passed this test on 16.5.2001 and 1.2.2003 respectively. It is, however, an admitted fact that Shri Ajay Kumar Shrivastava as well as the applicants passed the competency test for electrician (highly skilled) together at the same time (vide annexure A-6) in August, 2004 by which date all of them had completed three years of service in the skilled grade as required under SRO 18-E for promotion to the post of electrician (highly skilled). In view of this fact, the applicants were also eligible to be considered for promotion as electrician (highly skilled) by the DPC which recommended promotion of Shri Ajay Kumar Shrivastava as electrician (highly skilled). The applicants are, therefore, entitled to be considered for promotion to the post of electrician (highly skilled) from the date Shri Ajay Kumar Shrivastava was promoted, subject to availability of posts.

10. In view of the above, the impugned order dated 11.2.2005 (annexure A-1) is quashed. The respondents are directed to count the seniority of the applicants as electrician (skilled) with effect from the date they were promoted as wireman (skilled) and consider them for promotion to the post of electrician (highly skilled) by holding a review DPC for the vacancy/vacancies that existed in 2005 when Shri Ajay Kumar Shrivastava was promoted,



along with all consequential benefits. The respondents are further directed to complete this exercise within a period of three months with effect from the date of receipt of this order. With these directions, the O.A. is allowed. No costs.

[Signature]
(A.K.Gaur)
Judicial Member

[Signature]
(Dr.G.C.Srivastava)
Vice Chairman

rkv

पृष्ठांतरन अंग ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अवृंहित:-
(1) रातिव, उक्त व्यायामलय बाट एसोसिएशन, जबलपुर
(2) अद्यतन श्री/श्रीमती/व्यु.....के काउंसल
(3) प्रस्तावी श्री/श्रीमती/व्यु के काउंसल
(4) वंशपाल, क्लेप्सा, जबलपुर नवायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

[Signature]
Dhr/203
[Signature]
Dhr/203

Desend
on 16.10.01
[Signature]

बाबू राजदार

6/10/01

CIV

in accordance with the provisions of the recruitment rules and availability of vacancies. The applicants will be entitled to get promotion with retrospective effect if found fit by the review DPC along with all consequential benefits. The respondents are further directed to complete this exercise within a period of three months with effect from the date of receipt of this order. With these directions, the O.A. is allowed. No costs.

Jain
(A.K.Gaur)
Judicial Member

Gaurav
(Dr.G.C.Srivastava)
Vice Chairman

rkv

पृष्ठांकन से ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अवृंदितः—

- (1) सतिल, उक्ता नगरायलय बार एसोसिएशन, जबलपुर
- (2) अधिकारी श्री/भ्रीमती/व्यु.के काउंसल
- (3) प्रसारी श्री/भ्रीमती/व्यु.के काउंसल
- (4) वांथपाल, ए.प.डी., जबलपुर नगरपाली

सूचना एवं आवश्यक कार्यवाली हेतु

V.T. Pathak
D. 25/3/35
M. Chaudhary
D. 25/3/35

Issued
on 6.10.01

D

6/10/01
न्यरजिस्ट्रेशन