

Central Administrative Tribunal
Jabalpur Bench

OA No.442/05

Indore, this the 17th day of November, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

R.S.Malviya
S/o B.L.Malviya
Machinist (Highly Skilled)
Section CMM
Ordnance Factory, Itarsi
District Hoshangabad (M.P.)

Applicant

(By advocate Shri S.Nagu)

Versus

1. Union of India through
Secretary
Ministry of Defence Production and Supplies
South Block, New Delhi.
2. DGOF/Chairman
Ordnance Factory Board
10-A, Shahid Khudiram Bose Road
Kolkata.
3. General Manager
Ordnance Factory, Itarsi
District Hoshangabad(M.P.)

Respondents

(By advocate Shri Manish Chaurasia)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) Direct the respondents to grant notional seniority to the applicant in H.S.Grade II (4000-6000) category with effect from 15.10.1984 as has been granted to identically placed junior personnel belong to other trades.



- (ii) Direct the respondents to grant all consequential benefits flowing out of the aforesaid relief including notional pay fixation, consideration of promotion of further higher posts of Chargeman Grade II (5000-8000) with effect from 19.7.1994 when junior persons of the like of Shri Pardeshi and S.K.Sawan were promoted as Chargeman Grade II (5000-8000) and consideration and promotion to further post of Chargeman Grade I (5500-9000) with effect from 3.5.2004 when Shri Pardeshi was so promoted with all consequential benefits.

2. Brief facts of the case are that the applicant is functioning as Highly Skilled workman in the trade of Machinist under respondent No.3. He was appointed as Machinist Semi Skilled at Vehicle Factory, Jabalpur on 25.10.72. One Shri Pardeshi was promoted with effect from 15.10.1984 from Grinder (skilled) to Grinder H.S. Grade (Annexure A3). Ordnance Factory, Itarsi had promoted one Shri Sudhir Kumar, Millwright, Highly skilled Grade to HS Grade I as per MoD letter dated 15.10.1984 taking his past service rendered in VFJ into account although he was transferred from VFJ on own interest after giving declaration for counting his seniority in the new unit from the date of joining. This individual was similarly situated like the applicant in respect of transfer and seniority. The applicant also requested for promotion like his counter part Sudhir Kumar to avoid hostile discrimination but he was replied that unless senior is promoted his case will not be considered for promotion. The applicant filed OA No.532/89 for counting his past service for promotion as done in the case of Sudhir Kumar. The Tribunal directed the respondents to consider the case of the applicant against the vacancy arising immediately after acquiring eligibility within a period of three months. He requested for implementing the court's orders. He then filed a CCP No.69/96, which was dismissed. He also filed an MA No.575/98, which was disposed of vide order dated 21.12.2000 directing the respondents to consider the matter within three months. Repeated representations and reminders thereafter yielded no results. Recently by order-dated 25.9.2004 the applicant has been awarded the higher scale of 5000-8000 with effect from 9.8.99 under the ACP



Scheme (Annexure A14). The applicant has filed this OA impugning the action of the respondents.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the respondents have considered the case of one Shri Pardeshi who was promoted with effect from, 15.10.1984 and another employee Shri Sudhir Kumar who is similarly situated like the applicant was promoted as H.S. Grade-I taking his past service rendered in VFJ into account. But the applicant was not all given the benefit. This is hostile discrimination. Once having been directed to decide the representation of the applicant by order dated 21.12.2000 in MA.No.575/98 the respondents are duty bound to comply with the directions. The respondents, because of their failure to implement their own policies, which bind them, have allowed infringement of the right of the applicant to be considered at the right time for upgradation/promotion, which should now be compensated by at least grant of notional seniority from 15.10.1984 in the H.S. Grade II with consequential benefits.

4. In reply, learned counsel for the respondents argued that the applicant had submitted a representation dated 16.1.2001 which was considered by the competent authority. But there was no vacancy existed at that time to give him promotion on sympathetic ground. However, his name was sponsored for a trade test to be conducted in the grade of Highly Skilled Grade II and he was issued with a reply to that effect. It was mentioned therein that his promotion to the post of HS Gr.II depends on the outcome of trade test result and seniority. Accordingly, as soon as vacancies arose in his trade, the applicant has been promoted to the post of Highly Skilled Grade II with effect from 20.5.2003 in the pay scale of 4000-6000. Further he has also been granted second financial upgradation under ACP Scheme in the pay scale of Rs.5000-8000 with effect from 9.8.99. The request of the applicant to give him benefit at par with Shri Sudhir Kumar is also not maintainable since both of them were not similarly situated as claimed by him. When Shri Sudhir Kumar came on transfer to



Ordinance Factory, Itarsi from sister factory, he was holding the post of Highly skilled grade II in Millwright trade and after joining at OFI, he was the senior most person in O.F.Itarsi in that particular trade and grade. The applicant had joined O.F.Itarsi in Skilled grade in Machinist trade and therefore he is not similarly situated. Hence the OA is liable to be dismissed.

5. After hearing learned counsel for both sides, we find that the argument advanced on behalf of the applicant that is that he is discriminated with two other employees S/Shri Pardeshi and Sudhir Kumar as they were similarly situated. The respondents have specifically mentioned in their return that the aforesaid two persons were not similarly situated in any way in comparison with the applicant as both the individuals were holding different trade and grade. When Sudhir Kumar had come on transfer to OFI from sister factory he was holding the post of Highly skilled grade II in Millwright trade and after joining OFI he was the senior most person in OFI in that particular trade and grade while the applicant had joined OFI in skilled grade in Machinist trade. In the case of Pardeshi, he was holding the post of Grinder (skilled) whereas the applicant was holding the post of Machinist (skilled). The applicant had submitted an application dated 16.1.2001 after the Tribunal passed the order dated 21.12.2000 in MA No.575/98. The competent authority of the respondents considered this application but at that time there was no vacancy and his promotion to the post of HS.Gr.II depends on the outcome of trade test result and seniority. And this fact was duly intimated to the applicant. As soon as vacancies arose in his trade, he was promoted to the post of Highly Skilled Grade II with effect from 20/5/2003 vide Annexure A13 with effect from 20th May 2003. Further he has also been granted second financial upgradation under ACP Scheme in the pay scale of Rs.5000-8000 with effect from 9.8.99 (Annexure A14). We have perused the aforesaid orders.



(M.P. Singh)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
 पतिविधि जाने विधान:-

- (1) सधिव, चरम जसका नाम था एनी एड्ज, अबलपुर
- (2) आर्सेनल को प्रिन्सिपल... के काउंसिल
- (3) फ्लोरी की प्रिन्सिपल... के काउंसिल
- (4) बंधुभाऊ, कानून, ...
सबना एवं आचार्य काउंसिल में

S. Kagan D.D. 198
M. Chouros
D.D. 198.

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Typed
22-11-05