

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 93 of 2004

Jabalpur, this the 17th day of May, 2005.

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

Hon'ble Mr. Madan Mohan, Judicial Member

1. L.N. Rawat(Assistant Foreman)
S/o Late D.P. Rawat,
Aged 42 years
R/o H.No.131/1, Udy Nagar,
2 Near Vehicle Factory, Jabalpur
And 8 Others.

Applicants

(By Advocate – Shri R.K. Verma)

VERSUS

1. The Union of India,
Through the Secretary,
Ministry of Defence,
New Delhi.
And 31 Others

Respondents

(By Advocate – Shri P. Shankaran)

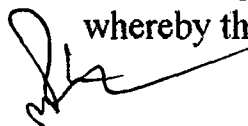
ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicants have sought the following main reliefs :-

“10.1 That an order in the appropriate nature may kindly be issued to quash the standing order/recommendation dt. 1.4.2003, contained in Annexure A-11 to the extent of including Assistant Engineers in the field of selection for promotion on the post of Foreman. Specific direction is to be issued that the Assistant Engineers are to be deleted from the standing orders dt. 1.4.2003 and the rest may be kept as it is.

10.2 That an order in the appropriate nature may also be issued to quash the order of promotion dated 9th of April, 2003 whereby the respondents No.6 to 27 have been promoted on the



post of Foreman from the post of Assistant Engineer contrary to law.

10.3 A writ in the nature of mandamus may also be issued directing the respondents to fill-up the post of Foreman from the Supervisory cadre(Assistant Foreman) and no Assistant Engineer be promoted on the post of Foreman in pursuance of the standing order of the UPSC dt. 1.4.2003”.

2. The brief facts of the case are that the applicants, 9 in number, are Assistant Foreman and posted at 506 Army Workshop, Jabalpur. Earlier there was no post of Assistant Foreman in the Corps of Electrical and Mechanical Engineering (for short 'EME'). The post of Foreman has been created on restructuring of the cadre on the recommendations of the 5th Central Pay Commission. As per restructuring of the cadre, a revised four grade structure for technical supervisory staff in EME has been created viz Chargeman Grade-II (Rs.5000-8000), Chargeman Grade-I (Rs.5500-9000), Assistant Foreman (Rs.6500-10500) and Foreman (Rs.7450-11500). The grievance of the applicants is that the Assistant Engineers have been provided the channel of promotion to the post of Foreman as per the recommendations of the UPSC as a one time measure and 27 Assistant Engineers have been promoted to the post of Foreman thus adversely affecting the promotional avenues of the applicants who are working as Assistant Foreman.

3. The respondents in their reply have stated that supervisory cadre under the respondents i.e. corps of EME had consisted of the following posts prior to 1998 :-

- (i) Foreman(Part I & II cadres) - Rs.1600-2660
- (ii)Senior Chargeman (Part I & II cadres) - Rs.1400-2300

The Senior Chargeman (Part I & Part II) were eligible for promotion to the post of Foreman (Part I & II cadre) and the next promotion for Foreman was to the post of Workshop Officer (Group-B) in the pay scale of Rs.2000-3500. The post of Workshop Officer was later on re-

designated as Assistant Engineer. The 5th CPC recommended a restructured cadre of Supervisory staff in the Corps of EME as under:

- (i) Proposed Foreman (Rs.2375-3750) Gp B Gazetted
- (ii) Proposed Assistant Foreman (Rs.2000-3500) Gp B Gazetted
- (iii) Proposed Chargeman I (Rs.1640-2900) Gp B Non- Gazetted
- (iv) Proposed Chargeman II (Rs.1600-2660) Gp C Non- Gazetted

The newly introduced four grade technical supervisory cadre in the corps of EME was distributed in the ratio of 45:25:25:5 for Chargeman Grade-II (both Part-I and Part-II cadre), Assistant Foreman/ Assistant Engineer and Foreman respectively vide letter dated 20.9.2002 (Annexure-R-2). The designation of Assistant Engineer would be applicable only in the case of existing incumbent of the post, who are in position as on the date of issue of the above letter. In partial modification to the above order, it was decided that the existing incumbents in the posts of Assistant Engineer in the scale of Rs.6500-10500 will on promotion to the next grade of Foreman in the scale of Rs.7450-11500 be designated as Assistant Engineer (Selection Grade). The re-designation will be personal to them and will stand abolished after their wasting out by way of retirement etc. vide letter dated 1.9.2003 (Annexure-R-3). The existing posts in technical supervisory cadre were, therefore, distributed as under as per the above ratio:

- | | |
|--------------------------------------------------|------|
| (i) Foreman (Gp B Gazetted) | -50 |
| (ii) Asst. Foreman (Gp B Gazetted) | |
| and Asst. Engineer existing gde. (Gp B Gazetted) | -248 |
| (iii) Chargeman Gde I (Gp B Non-Gazetted) | -248 |
| (iv) Chargeman Gde II (Gp C Non- Gazetted) | -447 |

The respondents have further stated that while distributing the cadre of Assistant Foreman, 48 posts of existing Assistant Engineers were also included in combined posts of Assistant Foreman and Assistant Engineers on the ground that Assistant Foreman and Assistant Engineers both are Group-B Gazetted posts and in the same pay scale of Rs.6500-10500 and as per the existing cadre, Foreman re-



designated as Chargeman Grade-I is the feeder post for Assistant Engineer whereas as per the revised cadre Chargeman Grade-I is to be made the feeder post to Assistant Foreman. As per the model recruitment rules, it is not feasible that a post becomes feeder post for two promotional posts. In view of these facts, it was decided by the respondents to club these cadres and provide necessary protection to existing Assistant Engineers to hold the post of Assistant Engineers. It was also decided that, in future, Chargeman Grade-I would be the feeder cadre for promotion to the post of Assistant Foreman.

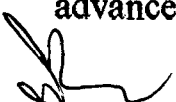
3.1 The respondents have further stated that in order to implement the order of Mumbai Bench of this Tribunal in OA No.243/1993 dated 31.1.2000, it was imperative for the department to hold DPC at the earliest and promote eligible individuals to newly created posts of Assistant Foreman and Foreman. The advice of the UPSC was sought on the line of the proposed recruitment rules and accordingly the UPSC conveyed its approval to fill up these posts vide impugned letter dated 1.4.2003 under the provisions of DOPT's OM dated 30.3.1988. Accordingly, in order to fill up the newly created posts of Foreman in the pay scale of Rs.7450-11500, a combined seniority list of Assistant Foreman and Assistant Engineers was drawn. The Assistant Engineers were holding the grade much earlier to the appointment of Assistant Foreman in newly created grade of Rs.6500-10500, therefore, they were placed enbloc senior and accordingly were considered for promotion to the post of Foreman and as per the recommendations of the DPC, they were promoted vide impugned order dated 9.4.2003. In view of the aforesaid facts, the respondents have contended that the present Original Application is liable to be dismissed.

4. The respondent-UPSC in their reply have submitted that the Ministry of Defence had approached the UPSC during January 2003 requesting the approval of the UPSC for determining the suitable method of recruitment for filling up the newly created post of



Foreman (Rs.7450-11500) and Assistant Foreman (Rs.6500-10500), owing to introduction of four grade structure for Technical Supervisory staff in the Corps of EME. After exchange of lot of correspondence with the Ministry of Defence, the UPSC was informed that the then existing post of Assistant Engineer (Rs.6500-10500) has been merged with another newly created post of Assistant Foreman (Rs.6500-10500). The then existing post of Assistant Engineers ^{is} ~~are~~ to be treated as a dying cadre. The administrative orders issued by the Ministry of Defence dated 20.9.2002 states that the post of Assistant Engineers (existing cadre) has been clubbed together and shown together as feeder posts for promotion to the newly created post of Foreman (Rs.7450-11500). The advice tendered by the UPSC to the Ministry for filling up the above post of Foreman as a one time measure pending framing/ amendment of the Recruitment Rules for the post, was based on the issue of the above administrative orders of the respondent-Ministry. However, in view of the apprehension expressed by the Ministry that sufficient number of officers in the feeder grade may not be available possessing the required qualifying service for appointment on promotion basis, a combined service in two grades was also recommended in UPSC's advice letter dated 1.4.2003 approving the method of recruitment. The advice tendered by the UPSC for filling up the above post is to be used only for one occasion. The Recruitment Rules for the post as and when finalized may have a changed provision in regard to method of recruitment, eligibility conditions etc. The UPSC has since approved the Recruitment Rules for promotion to the post of Assistant Executive Engineer (Rs.8000-13500) in which both Assistant Engineers and Foreman have been made eligible for appointment on promotion basis against the 30% quota fixed.

5. Heard the learned counsel of parties and carefully perused the pleadings. We have also given careful consideration to the arguments advanced on behalf of both the sides.



6. We find that earlier there were only two grades of Senior Chargeman Part-I and Part-II (Rs.1400-2300) and Foreman (Part I and Part-II) (Rs.1600-2660). In pursuance of the recommendations of the 5th CPC, the cadre of supervisory staff has been restructured in four category of posts viz. Chargeman Grade-II (Rs.5000-8000), Chargeman Grade-I (Rs.5500-9000), Assistant Foreman (Rs.6500-10500) and Foreman (Rs.7450-11500). In other words, the posts of Assistant Foreman, in the pay scale of Rs.6500-10500, and Foreman, in the pay scale of Rs.7450-11500, have been newly created and thus new promotional avenues have become available to the erstwhile Senior Chargeman and Foreman. Earlier the Foreman in the scale of Rs.1600-2660 were eligible for promotion to the post of Assistant Engineer which was in the pay scale of Rs.2000-3500. Since the post of Foreman has been upgraded to the pay scale of Rs.7450-11500, these Assistant Engineers have been clubbed with the ^{holders of} newly created ^{post of} Assistant Foreman having the same pay scale, for promotion to the post of Foreman, as a one time measure pending finalization of the recruitment rules. It is clarified by the UPSC that the cadre of Assistant Engineer is a dying cadre and in future only the Chargeman and Assistant Foreman will be in the feeder cadre for promotion to the post of Foreman. It is further clarified by them that in the new recruitment rules, the Assistant Engineer and Foreman have been made eligible for further promotion to the post of Assistant Executive Engineer to the extent of 30% quota. We also find that the UPSC vide its order dated 1.4.2003 have advised the respondent-Ministry that the field of selection for promotion to the post of Foreman, pending finalization of the recruitment rules, will be "Assistant Engineers/ Assistant Foreman in the pay scale of Rs.6500-10500 with two years regular service in the grade, failing which Assistant Engineers/Assistant Foreman with five years combined service as Assistant Engineer/Assistant Foreman in the pay scale of Rs.6500-



10500 and Chargeman-I (Part-I & Part II cadre) in the pay scale of Rs.5500-9000”.

7. During the course of arguments the learned counsel for the applicants has contended that although the applicants^{were} ~~were~~ not eligible for promotion to the post of Foreman, as per the requirement of two years service as Assistant Engineer/ Assistant Foreman, but they were eligible under failing which clause i.e. Assistant Engineer with combined five years service. Thus, by promoting the Assistant Engineers, their promotional avenues have been adversely affected. Thus, they have challenged this order dated 1.4.2003. However, we find that the advice of the UPSC to fill up the post of Foreman as well as Assistant Foreman was rendered to the department on 1.4.2003. On that day, none of the applicants was eligible for promotion to the newly created post of Foreman either under the 1st clause or even under the failing which clause, as they were not holding the newly created post of Assistant Foreman on that day. Therefore, the contention of the applicants is totally frivolous and is, therefore liable to be rejected. We do not find any irregularity in the action taken by the respondents on the advice given by the UPSC and, therefore, there is no ground for our interference.

8. In the result, the O.A. is without any merit and is accordingly dismissed, however, without any order as to costs.

9. The Registry is directed to always supply a copy of memo of parties along with this order while issuing a copy of the same to the concerned parties.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman.

Rkv.