

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH

Original Application No. 727 of 2004

Bilaspur, this the 10th day of May, 2005

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Manik Chand Ram
S/o Deenbandhu Ram
Mill Wright Highly Skilled
Grey Iron Foundry
Jabalpur.

Applicant

(By advocate Shri K.Dutta)

Versus

1. Union of India through
The Secretary
Defence Production
Ministry of Defence
New Delhi.
2. The General Manager
Grey Iron Foundry
Jabalpur.
Respondents.

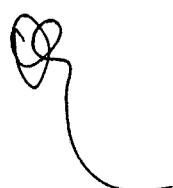
(By advocate Shri P.Shankaran)

O R D E R

By Madan Mohan, Judicial Member

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

- (i) To allow the applicant in the appropriate grades and ranks as placed by Shri S.K.Dey who is General Category candidate by placing in the post of Highly Skilled Grade II with effect from 1.2.82 and further be placed at par with Shri S.K.Dey in all higher grades.



2. The brief facts of the case are that the applicant who belongs to 'Gond' community and Scheduled Caste, was appointed as labour in general quota on 12.12.1974 in Grey Iron Foundry, Jabalpur. He was promoted on 1.2.1978 as Mill Wright 'C' (semi skilled) in the pay scale of Rs.210-290. Vide Factory Order dated 31.1.1984, the respondents revised the pay scale of Mill Wright 'C' (semi skilled) from Rs.210-290 to Rs.260-400 (Annexure A4). This revision was effective from 16.10.1981. Accordingly the applicant has to be awarded the skilled category pay scale. The respondents promoted the applicant as Mill Wright 'C' in general category and upgraded the pay scale to Rs.260-400. The applicant did not receive any accelerated benefit of promotion being Scheduled Caste in his service. The respondents in 1991 issued a charge sheet to the applicant, alleging that the caste certificate submitted by the applicant in the year 1974 on the basis of his ordinary residence of Tehsil Sihora, District Jabalpur was wrong, as he had declared the permanent residence of village Birbhanpur, District Gajipur (U.P.). Thereafter the respondents imposed on the applicant a penalty of reduction to the post of semi skilled from highly skilled II i.e. 15.1.93 permanently with the proviso that he would be considered for further promotion in future in normal course after a period of 3 years and that he would be treated as a general candidate in future (Annexure A6). The challenged this penalty by filing OA No.133/94 which was decided on 26.11.1997 (Annexure A7). The Tribunal gave certain directions in favour of the applicant, against which the respondents preferred a W.P. No.3207/98, which was decided vide order dated 4.4.02 upholding the order of the Tribunal. Hence the applicant should have been placed in proper rank as due to him as a general candidate from the date of his appointment. The applicant submitted a representation on 24.10.2003 to the respondents to place the applicant at par with



one S.K.Dey who is a general candidate having the same date of appointment as Mill Wright 'C' grade as the applicant and promoted as Mill Wright 'B' grade i.e.2.1.1984. The respondents have not considered the claim of the applicant. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the applicant had filed an OA earlier against the inaction of the respondents and that OA (No.133/94) was decided on 26.11.1997. Against the order of the Tribunal, the respondents filed a W.P. No.3207/98, which was decided by the Hon'ble High Court. Paras 6 &7 of the judgment of the Hon'ble High Court are reproduced below:

- “6. To appreciate the ~~various~~ rival submissions raised at the Bar, we have bestowed our anxious consideration and scrutinized the order passed by the Tribunal. It is not disputed at the Bar that the punishment has spent its force and Mrs. Nair, learned senior Counsel for the petitioner has no objection to treat the respondent No.1 from the very beginning as a general category candidate and be given due seniority keeping in view his general category status. Learned counsel has also submitted that the Department has no objection to abide by the mandate of the Tribunal so far as recovery part is concerned.”
- 7. Mr.Datt, learned counsel for the respondent No.1 has submitted that the seniority can be counted for all purposes. To this, Mrs. Nair, has no objection.”

The applicant had submitted a representation on 24.10.2003 to the respondents. Though the Hon'ble High has decided the W.P. accepting the contentions of the applicant, the respondents have discriminated against the applicant vis-à-vis one S.K.Dey who is also a general candidate having same date of appointment.. Even if the applicant is treated as a general category candidate from the date of his joining, even then he is legally entitled for the claim but the respondents have not granted the relief so far.



4. In reply, learned counsel for the respondents argued that a charge sheet about misconduct was issued against the applicant and he was imposed with the penalty of reduction to the post of semi skilled from highly skilled Grade II vide order dated 15.1.1993. This order was challenged by him by filing OA No.133/94 which was disposed of vide order dated 26.11.97. After expiry of the penalty period in 1996, the applicant was called for trade test and on having passed the trade test; he was promoted to skilled grade on 22.11.96 i.e. next promotional grade of semi skilled. He was accordingly granted seniority in the skilled grade from original date i.e. from 16.10.1981 notionally by treating as a general candidate from the date of original appointment in compliance with the direction of High Court. He was also subsequently promoted to highly skilled from 20.5.2003 based on the notional seniority in skilled grade and on availability of vacancy. The penalty imposed on the applicant remained in force nullifying the order of the Tribunal only with regard to quashing the punishment order dated 15.1.1993. While imposing the punishment, he was holding the highly skilled grade II and after expiry of the penalty period, he is entitled to get promotion only in the normal course, which means all those who got promotions in between will stand senior to him and because of punishment, he cannot march over all of them. An employee is entitled to get seniority on a grade only from the date he is regularly appointed. Applicant lost his seniority in the highly skilled grade from 16.8.1981. When he faced the penalty of reversion and subsequently he is entitled to get seniority only from the date he was again promoted after completion of penalty. As on 16.10.1981, the applicant was holding the post of Mill Wright Grade 'C' which was upgraded on the recommendation of Expert Classification Committee and brought at par with Mill Wright Grade B, and subsequently he was promoted to next higher grade of Highly Skilled Grade II



on 1.6.82. Therefore he was benefited by way of his promotion to Highly Skilled Grade II.. The Hon'ble High Court has clearly stated that the penalty imposed on the applicant has spent its force, which means it remained in full force for the period it was imposed. Therefore, during this period, the applicant lost all his promotional benefits and he was entitled to get further promotion, seniority etc. only from the date of further promotion to skilled Grade subsequent to expiry of the penalty period. He cannot claim further seniority from 16.10.1981 i.e. the original date because of penalty imposed in 1993. Therefore, he was given all further promotional benefits consequent to expiry of the penalty. Therefore, he is entitled to all consequential benefits based on the order of the High Court. The action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for both parties and perusing the records, we find that it was noticed that the applicant had declared his permanent residence at Birbhanpur, Dist.Gajipur (UP), but produced the caste certificate from Tehsildar Sihora, Jabalpur (MP) declaring ordinary resident of Tehsil Sihora, Dist.Jabalpur, where the Caste 'Gond' has been declared as ST whereas this ^{is} caste SC and the ~~caste~~ certificate so issued by Tehsildar Sihora was cancelled by District Collector, Jabalpur. Therefore, he was issued a charge sheet for this misconduct and after completion of departmental inquiry, he was imposed with the penalty of reduction to the post of semi skilled from highly skilled grade II vide order dated 15.1.93. The applicant had filed an OA No.133/94 which was disposed of by the Tribunal on 26.11.97 and the respondents challenged the above order before the Hon'ble High Court by filing W.P. No.3207/98 and it was disposed of vide order dated 4.4.02 (Annexure A8). The Hon'ble High Court has held in paras 6 & 7 as follows:



“6. To appreciate the several submissions raised at the Bar, we have bestowed our anxious consideration and scrutinized the order passed by the Tribunal. It is not disputed at the Bar that the punishment has spent its force and Mrs. Nair, learned senior Counsel for the petitioner has no objection to treat the respondent No.1 from the very beginning as a general category candidate and be given due seniority keeping in view his general category status. Learned counsel has also submitted that the Department has no objection to abide by the mandate of the Tribunal so far as recovery part is concerned.”

7. Mr.Datt, learned counsel for the respondent No.1 has submitted that the seniority can be counted for all purposes. To this, Mrs. Nair, has no objection. In view of the aforesaid premises, we are of the considered view that that nothing remains to be adjudicated to direct a de-novo enquiry, as it has become inconsequential and accordingly, we set aside that part of the order.”

Thus the punishment imposed by the respondents on the applicant vide order dated 15.1.93 was not quashed by the Hon'ble High Court because the punishment has spent its force. The order was passed by the High Court on 4.4.02 while the force of the punishment order was spent on 15.1.1996. The respondents called the applicant for trade test after expiry of the period of penalty i.e. in 1996 and on having passed the trade test, the applicant was promoted to skilled grade on 22.11.96 i.e. the next promotional grade of semi skilled. He was accordingly granted seniority in the skilled grade from original date i.e. from 16.10.1981 notionally by treating as a general candidate from the date of original appointment in compliance with the directions of the High Court. He was also subsequently promoted to highly skilled from 20.5.2003 based on the notional seniority in skilled grade and on availability of vacancy.

6. The applicant lost his seniority in the highly skilled grade from 16.8.81 when he faced the penalty of reversion and

subsequently he is entitled to get seniority only from the date he was again promoted after completion of penalty. While the other alleged person did not face any departmental enquiry proceedings and the respondents punished him, the applicant cannot compare himself with that person in any way. The applicant was given all promotional benefits. The respondents have complied with the order of the Hon'ble High Court perfectly. The applicant has not controverted any fact mentioned in the return filed by the respondents by filing a rejoinder against it.

7. Considering all the facts and circumstances of the case, we are of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.

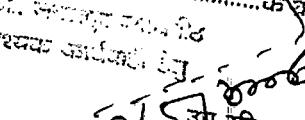
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(Madan Mohan)
Judicial Member

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(Mr. Wright)
Vice Chairman

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पृष्ठांकन सं. ओ/व्या..... जवलपुर, दि.....
 चत्तिलिपि अब? छिल: -
 (1) समित, उत्तर चत्तिलिपि: दारा प्रसाद शिलाल, जवलपुर
 (2) आदेशक: विजय शिलाल, जवलपुर
 (3) प्रत्यार्थी: विजय शिलाल, जवलपुर
 (4) द्रविधाल, लोहापुर, असाम, देशपान दिल
 सूचना एवं अन्तर्याम उपायकारी द्वारा
 ११५ डिसेम्बर


9 ssued

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