

Central Administrative Tribunal
Jabalpur Bench

OA No.962/04

this the 22nd day of November, 2005.

C O R A M

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

Hon'ble Mr.Madan Mohan, Judicial Member

M.Bhojraj

Son of H.Morachan

Supervisor-B

NT/OTS, R/o Qr.No.2131

Type II, Ordnance Factory Estate

Itarsi.

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through its

Secretary

Ministry of Defence (Production)

New Delhi.

2. Chairman

Ordnance Factory Board

10, S.K.Bose Road

Kolkata.

3. The General Manager

Ordnance Factory

Itarsi.

Respondents.

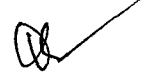
**(By advocate Shri Harish Patel on behalf of
Shri S.C.Sharma)**

ORDER

By Madan Mohan, Judicial Member

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

- (i) Set aside the impugned order dated 1.6.2004 (Annexure P.1).**
- (ii) Direct the respondents to restore the applicant's position in Store Stream as per 1992 seniority list and thereafter treating**



him in Store Stream giving him all consequential benefits including seniority and promotion and other attended benefits arising there from or in the alternative direct the respondents to give effect to the order dated 1.6.2004 (Annexure P1) since beginning thereby treating S/s Mathai, Nair and Venugopal as Chargeman Grade I in OTS Stream, which will result in promotional avenues to the applicant.

2. The brief facts of the case are that the applicant who was initially appointed on 14.2.1972 as Messenger Boy under respondent No.3 was promoted as LDC in August 1979 after passing departmental examination. He was again promoted as Supervisor-B. According to the applicant he worked in Store Stream right from 1979 under respondent No.3. A seniority list was issued on 12.12.1992 by respondent No.3, which pertains to the Store Stream, wherein the name of the applicant finds place at S.No.2. Another seniority list was issued on 23.11.1993 wherein the name of the applicant is shown in other than Store Stream at S.No.14 (Annexure P2 & P3 respectively). Feeling aggrieved, applicant submitted a series of representations. By order dated 27.12.96, respondent No.3 held that the name of the applicant couldn't be included in Store Stream, as he has been promoted as Supervisor-B from the post of LDC. Thereafter, respondent No.2 issued a Central Seniority List of Chargemen Grade I/Stores as on 1.1.93. A perusal of the same shows that there are various employees who were promoted and continued as Supervisor-B, Chargemen Grade I and II in Store Stream. Thus the applicant has been given step motherly treatment for no valid reason. In the said seniority list, there are 46 employees, who were LDCs and have been given promotion in Store Streams. The name of K.O.Yohaman finds place at S.No.156 in the said list, who was holding the post of Telephone Operator which is neither from the Store Stream nor from OTS, yet he has been promoted from Store Stream. A.Venugopal, Chargeman-I, M.M.Mathai, Chargeman-I and A.N.N.Nair, Chargeman-I were promoted from Chargeman Grade II and were brought to Store Stream from OTS. The feeder post of Mathai and



Nair was LDC like the applicant. When departmental remedy was not forthcoming, applicant filed OA No.425/2000, which was decided by the Tribunal vide order respondents, which was rejected by respondent direction of the Tribunal, the applicant submitted a detailed representation to the respondents, which was rejected by respondent No.2 by a cryptic order. This order is under challenge in this OA.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the respondents ought to have inducted the applicant also in the store stream with all consequential benefits as if he continues in Store Streams since beginning. The name of the applicant was rightly included in the seniority list of store Stream published in 1992. Applicant is only claiming parity with similarly situated employees. The impugned order runs contrary to the settled legal position.

4. Respondents in the reply contend that during 1982, due to difference in interpretation of departmental instructions issued by the OFB, Kolkata, the seniority list of Supervisor (Non-Technical) was revised and the names of applicant and 2 other employees were wrongly shifted in the seniority list of Supervisor (Non-Technical/Stores) stream as they were posted for work in the Stores zone and their names appeared at S.No.1,2 & 3 in the seniority list dated 12.12.92 of Non-Tech/Store stream. On this, they preferred representation to the General manager, Ordnance Factory as well as Chairman, OFB Board for taking a decision in the matter. The OF Board informed that the action in treating Supervisor-B/Supr.'a'(OTS) working in Stores on 10.10.84 belonging to Store Stream was not correct. On receipt of OFB's letter, the applicant was brought back to Supr.B stream and placed at S.No.14 in the seniority list dated 23.11.95. The applicant had submitted a representation for placing him back to Stores Stream, which was disposed of vide letter dated 9.1.96. Shri A.Venugopal was holding the post of Storekeeper from 17.9.1973 before his appointment to the post of Chargeman Gr.II on 20.9.84. He was not specifically earmarked for other than stores



stream. Thus after his appointment to the post of Chargeman Gr.II, his name was to be included in the Chargeman Grade.II (Stores), which was not done. In order to remove the anomaly, it was decided to bring back M.M.Mathai and A.N.N.Nair to other than stores stream and to assign them actual seniority as per rules. It was also decided to rectify the error after issue of show cause notices to them. But before the show cause notice to be issued, it was seen from records that A.N.N.Nair had already retired on 30.6.2003. Hence the OA is liable to be dismissed.

5. After hearing the learned counsel for both parties and perusing the records, we find that the Tribunal had passed the order dated 19.2.2004 in OA 425/00. In its Para 5.1 it is mentioned that the contention of the respondents that there was functional requirement and no senior person with experience of Stores was available, therefore, relaxation in respect of aforesaid two persons was granted, but relaxation in the case of the applicant is not possible at this stage. The Tribunal was of the considered view that the relaxation in the recruitment rules or otherwise is required to be exercised in respect of category of persons and not in respect of particular individuals. Therefore, the contention of the respondents that because of functional requirement, they have relaxed the rules for only those two persons is not acceptable. In the circumstances, the Tribunal felt that the applicant has been discriminated. The applicant was directed to make a detailed representation to the respondents within a period of 4 weeks and the respondents were directed to consider and dispose of that representation by passing a detailed speaking order within 3 months. The argument advanced on behalf of the respondents that Shri A.Venugopal was holding the post of Storekeeper from 17.9.73 before his appointment to the post of Chargeman Gr.II (NT) on 20.9.84. He was not specifically earmarked for other than stores stream, while his appointment to the post of Chargeman Gr.II. Thus after his appointment to the post of Chargeman Gr.II, his name was to be included in the Chargman Gr.II, which was not done. Since he was



originally appointed as ASK, he belongs to the Stores stream and his position in the stores stream does not need to be interfered with. So far as other 2 employees M.M.Mathai and A.N.N.Nair are concerned, the argument advanced on behalf of the respondents is that on the representation of the applicant dated 17.3.2004 which was filed by him in compliance with the aforesaid order of the Tribunal in OA No.425/2000, the respondents decided to bring back these two employees to other than stores stream and to assign them actual seniority as per rules in other than stores stream. Shri A.N.N.Nair had already retired on 30.6.2003. The representation received from him was disposed of vide order dated 14.2.2005. Hence the respondents have rectified the alleged discrimination with the applicant as mentioned in para 5.1 of the order of the Tribunal. We have perused the impugned order Annexure A1 in which is a detailed, speaking and reasoned order. In its para 8 it is specifically mentioned that accordingly it has been decided to rectify the irregularity by bringing back Shri M.M.Mathai and Shri A.N.N.Nair to the Other Than Stores Stream and to assign them actual seniority as per rules in 'Other Than Stores' Stream. Shri Venugopal being originally appointed as ASK belongs to the Stores stream and his position in the Stores stream does not need to be interfered with.

6. Considering all 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.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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पृष्ठकम सं. दो/नया.....जयलपुर, दि.....
प्रति.....
(1) श्री.....को कार्यसल
(2) श्री.....को कार्यसल
(3) श्री.....को कार्यसल
(4) श्री.....को कार्यसल
सूचना एवं आचार्यका कार्यालय, दि.....
पत्रा रजिस्ट्रार

Received
25-11-05