

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,**  
**JABALPUR**

**Original Application No. 12 of 2003**

Jabalpur, this the 17<sup>th</sup> day of December, 2004

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

1. M.V. Mohandas, S/o. Shri Madhav Menon,  
Date of Birth – 10.4.1960, Sr. Data Entry  
Operator, R/o. 3039, Sector-II, Gun Carriage  
Factory, Jabalpur.
2. All India Association of Clerical Employees of  
Ordnance Factories, GCF Branch, Through its  
Branch Secretary, S.K. Banerjee, Gun Carriage  
Factory, Jabalpur.
3. All India Association of Clerical Employees of  
Ordnance Factories, Central Zone, through its  
Zonal Chairman, J.S. Bhasin, Gun Carriage  
Factory, Jabalpur. .... Applicants

(By Advocate - Shri S. Paul)

**V e r s u s**

1. Union of India, through its Secretary,  
Defence Production, New Delhi.
2. Chairman, Ordnance Factories Board,  
10-A, Shahid Khudiram Bose Marg,  
Kolkata.
3. The Sr. General Manager,  
Gun Carriage Factory, Jabalpur,
4. Shri Himanshu S. Despande,  
Chargeman Gr. II (Mech/IT), S/o.  
Shri S.K. Deshpande, P. No. 814336,  
C/o. Senior General Manager, Gun  
Carriage Factory, Jabalpur.
5. Shri Brajesh Kumar Sharma, S/o.  
Shri Lal Baboo Sharma, P. No. 814338,  
C/o. Senior General Manager, Gun  
Carriage Factory, Jabalpur. .... Respondents

(By Advocate – Shri S.P. Singh)



## ORDER

**By Madan Mohan, Judicial Member –**

By filing this Original Application the applicants have claimed the following main reliefs :

“(i) summon the entire relevant record from the respondents for its kind perusal,

(ii) upon holding that the action of the department in filling the post of Charge man Grade II (T) (Mechanical/IT) only by direct recruitment is bad in law, command the respondents to provide promotional quota to the SR. DEOs/applicants in consonance with the SRO 13 (E) and 191,

(iii) consequently command the respondents to consider the Sr. DEOs for the post of Charge man Grade II (T) (Mechanical/IT) against their quota and consider/promote them from the date before/at par the date the direct recruitees were appointed,

(viii-A) set aside the order dated 2.2.2003 Annexure a-5 and 12.3.2003 Annexure A-6 to the extent it relates to the selection in question. Consequently, command the respondents to provide a statutory quota to the applicants and similarly situated employees and consider and promote them from the same date the private respondents have been appointed with all consequential benefits including seniority, pay fixation, arrears etc.”

2. The brief facts of the case are that the applicant No. 1 is working as Senior Data Entry Operator. He was initially appointed as Welder (C) with effect from 30.3.1981. Then he became LDC and then Punch and Verify Operator w.e.f. 21.12.1987. Further he became Data Entry Operator on 11.9.1989. Thereafter, he became Sr. Data Entry Operator on 28.7.1994 in the pay scale of Rs. 1350-2200/- and is working on the same post. The applicant No. 2 and 3 are recognized association by the respondent No. 1. The rules SRO-13(E) were published by the respondent No. 1 vide notification dated 4<sup>th</sup> May, 1989 in the Gazette of India. A perusal of the rules would show that the next promotional posts for the post of Sr. Data Entry Operator is Charge man Grade-II (T). The post of Charge man Grade-II(T) carries the pay scale of Rs. 5000-8000/-. SRO 13(E) was further amended by SRO 191 & 101. A perusal thereof



would show that 50% posts of Charge man Grade-II(T) are required to be filled up by way of promotion from amongst Sr. DEO with 3 years service or Draughtsman or equivalent in the scale of Rs. 1200-2040/- with 3 years service and promotion from Highly Skilled Grade-I with 3 years of regular service falling which from highly Skilled Grade-II with 6 years regular service in respective category. 25% posts of Charge man Grade-II(T) would be filled up by limited departmental competitive examination. Further on perusal of SRO 13(E) read with SRO 191 shows that no post of Charge man Grade-II(T) (Mechanical/IT) will be filled up by direct recruitment in the rules. SRO 13(E)/191 gives the powers to the respondents to sub divide cadre as per the administrative exigency. It does not give any helping hands/enabling provision to fill up newly created posts as per their sweet will/whims. The applicants were shocked when they came to know that vide notification dated 20.4.2002 it was decided that the post of Charge man Grade-II (T)(Mechanical/IT) is going to be filled up by direct recruitment. Five posts were notified for the said purpose in the Gun Carriage Factory as well as in other factories. Since there is no statutory post of Charge man Grade-II(T)(Mechanical/IT) under SRO 13(E) and 191, it is introduced by way of an executive fiat by the respondents. The post of Charge man Grade-II(T) (Mechanical/IT) is required to be filled up by 50% by promotion, 25% by LDCs and 25% by direct recruitment and the respondents were bound to provide promotional avenues of Charge man Grade-II(T) (Mechanical/IT) to the applicants/Sr. Data Entry Operators. The respondents have not made it clear as to what happened to the promotional quota for the post of Charge man Grade-II (T) (Mechanical/IT). In view of the judgment of the Hon'ble Apex Court every employee should have at least two promotional avenues in his service career. The action of the respondents in filling the entire post of Charge man Grade-II (T) (Mechanical/IT) only by direct recruitment is contrary to mandate of SRO and is also bad in law. The applicants preferred representations to provide promotional avenues for the post in question but it went in vain and the respondents proceeded with the direct



recruitment. After receiving the notices the respondents issued two appointment orders on the posts in question on 25.2.2003 and 12.3.2003, whereby the private respondents were appointed as Charge man Grade-II (Mechanical/IT). Since the respondents admittedly created new posts under the SRO, in all fairness, they should have decided and declared the total number of such posts created by them and should have simultaneously divided the posts in different statutory quotas. It was mandatory on the part of the respondents to disclose the total number of posts on the posts of Charge man Grade-II (Mechanical/IT) and then divide it as per the SRO and fill up the posts in different quotas so that right of consideration of the candidates in all quotas are similarly available. Hence, the applicants are entitled for all the reliefs claimed.

3. Heard the learned counsel for the parties and carefully perused the records.

4. We have given careful consideration to the rival contentions made on behalf of the parties and we find that as per the recruitment rules the posts of Charge man Grade-II (T) is required to be filled up 25% by direct recruitment, 25% by limited departmental competitive examination or equivalent and above with two years experience in the grade and 50% by promotion. The short controversy which is to be decided is that the respondents have created 5 posts of Charge man Grade-II (Mech.) and have initiated action to fill up all these 5 posts by way of direct recruitment. The grievance of the applicant's association is that these 5 posts should have been filled up by different modes of selection i.e. by direct recruitment, limited departmental competitive examination and by promotion. During the course of argument, the learned counsel for the respondents has stated that the Ordnance Factory Board has given sanction for filling up 5 posts of Charge man Grade-II(Mech.) in Gun Carriage Factory. Since the recruitment was for IT trained person, the factory was directed to induct IT trained person as Charge man Grade-II(Mech.). According to the respondents it does not mean that any new



discipline or faculty in the grade of Charge man Grade-II (Mech.) was introduced. It only depicts the functional requirement of the IT trained person. The learned counsel for the applicants has drawn our attention to Annexure RJ-1 page 54 where the vacancies in the grade of Charge man Grade-II (T) have been indicated. As per this statement there are 85 vacancies in the grade of Charge man Grade-II (T) out of which 26 falls in promotion quota, 20 by limited departmental competitive examination quota and 39 by direct recruitment quota. The learned counsel for the respondents stated that the 26 vacancies available in the grade of Charge man Grade-II(T) in promotion quota were ear marked for candidates belonging to SC/ST. According to him none of the eligible/suitable/qualified SC/ST candidates were available to be considered for promotion to the post of Charge man Grade-II(T). Hence, it was decided that all the 5 posts requiring specialization in information technology shall be filled up against direct recruitment quota. The recruitment of 5 Charge man Grade-II have already been finalized and two candidates have already joined. At this stage the learned counsel for the respondents was asked to file an affidavit to the effect that no vacancy in the promotion quota is available and also no candidate was suitable. The learned counsel for the respondents has filed the written arguments verified by the Deputy General Manager, Gun Carriage Factory, Jabalpur wherein it has been stated that the vacancies lying in the promotional quota are meant for SC/ST candidates, and cannot be filled up by the applicant who belongs to the general category.

5. We further find that the respondents have taken action to fill up the posts of Charge man Grade-II as per the mode of recruitment prescribed in the recruitment rules. Since no post was available to be filled up in the Charge man Grade-II under promotion quota, all the five new posts created under the faculty of Information Technology have been filled up by the respondents as there were vacancies available in the direct recruitment quota. We also find that the Ordnance Factory Board has also clarified vide its letter dated 10<sup>th</sup> April, 2003 as under :



"In para-2 of the said short reply, the averments made by the factory are not correct. In SRO 13E of 1989, no separate stream of IT has been made in Charge Man Grade-II(T). The fact remains that through amendment of recruitment rules, notified as SRO 101 dt. 23.5.1994, provision has been made for making Sr. DEO as feeder grade for promotion to Charge Man Grade-II(T). Thus Sr. DEO is now a feeder category for promotion to CM-II(T) in Mechanical Discipline.

The DR sanction for CM-II(Mech/IT) is basically against DR quota of CM-II(Mech). Due to functional requirement it was decided to induct persons with IT qualifications. Thus they would be basically inducted against CM-II (Mech) posts, their seniority will count in CM-II (Mech). It no way introduces a new discipline called CM-II (IT). The suffix "IT" simply indicates that from functional point of view, IT professionals should be inducted.

The future promotions of Sr. DEO to Charge Man Grade-II(T) will be governed at par with other feeder categories of Charge Man Gr. II(T) of Mechanical Category."

Thus, the respondents have not diverted the vacancies from promotion quota to direct recruitment quota. They have only filled up 5 posts of Charge man Grade-II with specialization in Information Technology against direct recruitment quota. This has not in any way affected the promotional avenues of the persons working in the feeder grades. Therefore, no illegality or irregularity has been committed by the respondents in taking action to fill up these 5 posts with specialization in Information Technology.

6. For the reasons recorded above, the Original Application is dismissed. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

"SA"

पृष्ठान्कन सं ओ/न्याय.....जबलपुर, दि.....

पति निधि का नो डेपॉजिट

(1) सद्विव, उच्च न्यायालय, जबलपुर

(2) आदेशक श्री/श्रीमती, उच्च न्यायालय, जबलपुर

(3) प्रत्यक्षी श्री/श्रीमती, उच्च न्यायालय, जबलपुर

(4) कार्यपालक, रजिस्ट्रार, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

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BS

S. Paul Adv. 238  
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