

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.754/02
and OA No.707/02

Created, this the 13th day of *October*, 2004.

CORAM

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

1. R.K.Jaiswal OA No.754/02
S/o Shri R.C.Jaiswal
R/o 13, south Milonigunj
Jabalpur.
Chargeman Gr.II, PEAC/846931
Ordnance Factory, Khamaria,
Tahsil and District Jabalpur.
2. Lal Kumar Singh
S/o Shri Lal Bahadur Singh
R/o P Type 309 East O.F.Khamaria
Jabalpur.
Chargeman Gr.II, Small Arms-I
(SA-1) 846926
Ordnance Factory, Khamaria
Jabalpur.
3. Nand Kumar Singh
S/o Late Radhakrishna Singh
R/o 316 West P.Type Quarters
Khamaria, Jabalpur.
working as Chargeman Gr.II
846930 Small Arms-I (SA-I)OFK,
Khamaria, Jabalpur.
4. Awadh Bihari
S/o Late Chhedilal
R/o 653, East Kariapather
(Behind Ganga Ram Bada) Near
Sheetalamai, Ghamapur
Jabalpur.
working as Chargeman Gr.II
846927, Small Arms-I (SA-I)
OFK, Khamaria, Jabalpur.
5. Ramesh Kumar Shrivastava
S/o Shri Lalji Shrivastava
R/o Azad Ward, Gorakhpur
Jabalpur.
working as Chargeman Gr.II
PEAC/846928, Ordnance Factory
Khamaria, Jabalpur.

Applicants

(By advocate Shri S.P.Sharma)

Versus

1. The Union of India through
Chairman, Ordnance Factory Board
10-A, Auckland Road
Calcutta.



2. The General Manager
Ordnance Factory
Khamaria, Jabalpur.
3. Parasnath Tripathi
working as chargeman Gr.II
(Mech)/846673, OFK
Jabalpur.
4. Ram Sooh Ram
working as chargeman Gr.II
(Mech)/846674
OFK, Jabalpur. Respondents.

(By advocate Shri K.N.Pethia on behalf of
Shri Om Namdeo)

OA No.707/2002

Dhani Ram Shiv
S/o Late Shri Anant Lal Shiv
R/o Saket Colony
Tighra, Post Khamaria
Jabalpur. working as
Chargeman Gr.II, ME/OFK
Jabalpur. Applicant

(By advocate None)

Versus

1. The Union of India
Chairman, Ordnance Factory Board
10-A, Auckland Road, Calcutta.
2. The General Manager
Ordnance Factory, Khamaria
P.O.Khamaria, Tahsil and
Dist. Jabalpur.
3. Parasnath Tripathi
S/o not known
working as Chargeman Gr.II
(Mechanical)
OFK, Jabalpur.
4. Ram Sooh Ram
working as Chargeman Gr.II
(Mechanical)
OFK, Jabalpur. Respondents.

(By advocate Shri K.N.Pethia)

O R D E R

By Madan Mohan, Judicial Member

By filing OA No.754/02, the applicants have claimed the
following reliefs:

- (i) Direct respondents 1 & 2 to justify their
stand in not deciding the inter-se seniority



of applicants vis-a-vis respondents 3 & 4 to the cadre of Mill wright 'C' as directed by the Tribunal vide A-1 dated 23.8.2000 by filing a time bound satisfactory return.

- (ii) To declare the impugned orders dated 24.10.01 (Annexure A6) & dated 25.6.01 (Annexure A11) as discriminatory, illegal and bad in law in comparison to the case of applicants.
- (iii) Direct the respondent No.2 to decide the inter-se seniority of applicants as well as respondents 3 & 4 first to the cadre of Mill wright 'C', then the cadre of Mill wright HS-I and to the post of Chargeman Gr.II and extend the benefit of notional promotion and seniority w.e.f. 12.7.97 and 16.12.96 respectively, as has been given to respondents 3 & 4 vide Annexure A2 and fix their salary as on today or on the date of final order, just equal to respondents 3 & 4 with consequential benefits.

The applicant in OA 707/02 has claimed the following reliefs:

- (i) Direct the respondents 1 & 2 to justify their in not deciding the case of applicant with private respondents 3 & 4 from the cadre of Mill wright 'C' to Mill wright HS-II and then Mill wright HS-I to Chargeman Gr.II, as directed and observed by CAD vide A-1 dated 23.8.00 in paras 7.1 to 7.3 by a time bound direction to respondents 1 & 2 to file satisfactory return.
- (ii) To quash Annexure A-10 dated 25.6.02 and hold that the applicant deserved to be considered by respondents 1 & 2 and decided his case from the cadre of Mill wright 'C' and then to the cadre of Mill wright HS-II and thereafter to the cadre of Mill wright HS-I and lastly to the cadre of Chargeman Gr.II with respondents 3 & 4.
- (iii) Declare that the applicant is entitled to notional promotion of Chargeman Gr.II w.e.f. 12.7.97 and seniority w.e.f. 16.12.96 as to respondents 3 & 4 vide A-2 dated 22.7.97.
- (iv) To declare that because of non decision of case of applicant with respondents 3 & 4 from the stage of Mill wright 'C' to Mill wright HS-II, then from HS-II to HS-I and lastly from the cadre of HS-I to chargeman Gr.II, by not promoting the applicant w.e.f.12.7.97 along with these respondents and not assigning him notional seniority of Chargeman Gr.II from 16.12.96, as to respondents 3 & 4.



2. As the issue involved in both cases is similar and as the facts and the reliefs are identical, both these OAs are ^{being} disposed of by this common order.

3. The brief facts of the cases are that the applicants joined the Defence Services with Ordnance Factory, Khamaria on 15.1.1978 as Mill wright "C" while respondents 3 & 4 joined the services in Ordnance Factory, Khamaria much later than the applicants as Mill wright "C" w.e.f.20.3.79. Later, the applicants and the private respondents were posted on promotion as Mill wright "B" w.e.f.1.6.1981 and as Mill wright HS-II w.e.f.16.10.1981 respectively. For the first time, a combined gradation cum seniority list was published on 1.2.93 and the same was subsequently amended wherein the present private respondents 3 & 4 and one Ramesh were by mistake shown seniors to the applicants as Mill wright "C" against which the applicants represented in the year 1994. Thereafter, the DPC, treating the said Ramesh and the private respondents 3 & 4, seniors as Mill wright HS-II, promoted them to the post of HS-I, ignoring the just and genuine claim of the applicants as on 30.11.94 against which the applicants represented before respondent No.2. Still their grievances were not redressed. Hence the applicants filed OA 9/95 which was finally decided on 23.8.2000 and certain directions were given to the respondents. In the aforesaid OA, private respondents 3 & 4 were arrayed as respondents 4 & 7 and these respondents were promoted from Mill wright HS-I to Chargeman Gr.II (Technical)



w.e.f. 12.7.97 and were assigned notional seniority w.e.f. 16.12.96. It seems that respondent No.5 Ramesh so arrayed in earlier OA 9/95 who had earlier been posted on promotion from the post of Mill wright HS-II to Mill wright HS-I along with private respondents 3 & 4, either declined to avail benefit of higher promotion as Chargeman Gr.II for one reason or the other, or was not found fit to be promoted to this post by respondent No.2. His name did not figure in the order dated 22.7.97 (Annexure A2). Respondents 1 & 2 without application of mind compared the case of the applicants only with the said Ramesh and the respondents fixed the pay of the applicants notionally at Rs.1600 w.e.f. 30.11.94 (Annexure A4). A perusal of order dated 14.10.2000 (Annexure A3) and dated 7.12.2000 (Annexure A4) would lead to only one conclusion that respondent No.2 has partly complied with the directions of the Tribunal while deciding the seniority of the applicants with regard to said Ramesh, while they should have considered the case of the applicants comparing with respondents 3 & 4, as respondents 3 & 4 were also respondents 4 & 7 in OA 9/95. The applicants moved an application dated 1.3.02²⁰¹² regarding their grievance. Thereafter respondent No.2 issued an order of promotion of the applicants from Mill wright HS-I to the post of Chargeman Gr.II in the revised pay scale of Rs.5000-8000 vide order dated 24.10.01 whereas respondents 3 & 4 were promoted to the said post much earlier as on 12.7.97; only because of the incorrect placement of the applicants as Mill wright 'C' in the seniority list, while the applicants were appointed as Mill wright 'C' on 15.1.1978 and the respondents 3 & 4 were appointed as such on 20.3.79. The applicants again moved a representation dated 1.3.02. Vide impugned order dated 25.6.02, the applicants were informed that the directions of the Tribunal had been complied with while the directions of the Tribunal have not been complied with by the respondents.

Hence this OA is filed.

4. Heard learned counsel for both parties. It is argued on behalf of the applicants that apparently respondents 3 & 4 were juniors to all the applicants but later on, both the private respondents and the applicants were posted on promotion as Mill wright 'B' w.e.f. 1st June 1981 and as Mill wright HS-II w.e.f. 16.10.81 respectively. According to the combined gradation cum seniority list issued under the signature of respondent No.2 as on 1.2.93 which was subsequently amended, respondents 3 & 4 and another person Ramesh were shown to be senior to the applicants by mistake as Mill wright 'C'. The applicants represented against it but it was rejected. The applicants filed OA 9/95 in which aforesaid Ramesh was also arrayed as respondent No.5 and the present respondents 3 & 4 were arrayed as respondents 4 & 7. This OA was partly allowed by order dated 23.8.2000 and certain directions were given to the respondents but they did not comply with the order of the Tribunal, as is clear from a perusal of the letter dated 14.10.2000 (Annexure A3). According to this letter, the respondents have compared the case of the applicants with the said Ramesh who was respondent No.5 in OA 9/95 only and they have not compared the case of the applicants with respondents 3 & 4 while the Tribunal had directed that they shall decide the seniority of the applicants by reckoning the date of the private respondents. The applicants moved another representation but that was also not considered by the respondents and the applicants are deprived of their legal and justified claim.



5. In reply, the learned counsel for the respondents argued that the applicants and 7 others earlier filed OA 9/95 praying to amend the seniority list of Mill wright HS-II by placing them above the private respondents and quashing the order dated 30.11.94, wherein the private respondents were promoted to the post of Mill wright HS-II ignoring the claim of the applicants. The applicants have also claimed for benefit of fitment/promotion from retrospective date prior to 15.10.87 in accordance with Govt. of India order dated 15.10.84 with all consequential benefits thereof. The said OA 9/95 was partly allowed on 23.8.2000 with a direction that the applicants shall be promoted to the post of Mill wright HS.Gr.I from prospective date as and when vacancies arise for their group and if they are found suitable by DPC, reckoning their seniority over the private respondents. In compliance with the aforesaid judgement dated 23,8,2000, the applicants had been promoted to Mill wright HS.I notionally w.e.f.30.11.94 i.e. the date on which the private respondents had been promoted and the applicants' pay had also been fixed notionally from the date on which the private respondents were promoted to HS-I. In view of the above, the judgement of the Tribunal has been fully complied with by the respondents. Since the applicants failed to bring out any specific prayer before the Tribunal for claiming grant of notional seniority cum promotion in the grade of chageman Gr.II by placing the applicants above respondents 3 & 4 from 16.12.96 as has been given to the said respondents during the pendency of OA 9/95. After getting promotion



as Chargeman Gr.II, the applicants are trying to mislead this Tribunal while the respondents have fully complied with the order of the Tribunal. Their subsequent representations were to be considered and it was not found to be accepted hence the applicants were informed by letter dated 25.6.02 accordingly.

6. After hearing the learned counsel for the parties and careful perusal of the records, we find that the applicants and 7 others had earlier filed OA 9/95 which was decided by order dated 23.8.2000 and the following directions were given:

7.1. "The respondents shall decide the seniority of applicants, vis-a-vis respondents by reckoning the date the private respondents were brought over to the cadre of Mill wright 'C' as crucial date within 3 months from today.

7.2. The applicants shall be promoted to the post of Mill wright HS.Gr.I from the prospective date as and when vacancies arise for their group and if they are found suitable by DPC, reckoning their seniority over the private respondents.

7.3. On promotion, their pay shall be fixed as if they were notionally promoted from the date the private respondents were promoted. However, they shall not be entitled for back wages."

7. It is argued on behalf of the applicants that in the aforesaid order, the respondents were directed that they should decide the seniority of the applicants vis-a-vis the private respondents by reckoning the date on which the private respondents were brought over to the cadre of Mill wright 'C' as crucial date within 3 months from that day, while the respondents have compared the case of the applicants only with one Ramesh who was arrayed as respondent No.5 in OA 9/95 and they have not given any reason in the order as is clear from the letter dated 14.10.2000 (Annexure



A3), while they should have compared the case of the applicants with private respondents 3 & 4 ^{also}.

8. We have perused the reply in this regard. In the reply, the respondents have said nothing as to whether they had compared the case of the applicants with private respondents 3 & 4, namely, Parasnath Tripathi and Ram Sooh Ram. The reply of the respondents ^{case} is silent about this fact while the Tribunal had given clear directions vide order dated 23.8.2000 in OA 9/95 that the case of the applicants shall be considered vis-a-vis private respondents ~~3 & 4~~. The respondents have also not given any reply to para 4.6 of the OA. We have also perused the rejoinders ^{or} filed by the applicants in which the applicants have clearly mentioned that the respondents 1 & 2 have not compared the case of the applicants with private respondents. The respondents have promoted the present respondents 3 & 4 namely, Parasnath Tripathi and Ram Sooh Ram w.e.f. 12.7.97 (notional seniority w.e.f. 16.12.96) while the applicants are promoted to Chargemen Gr.II w.e.f. 18.10.2001 vide order dated 24.10.2001.

9. The respondents have not said anything adverse against the present applicants regarding their performance of service in their department. The respondents were clearly directed by the order of the Tribunal dated 23.8.2000 in OA 9/95 to compare the case of the applicants with all private respondents including the present respondents 3 & 4. As the respondents could not show any reason or explanation as to why they have not



complied with the directions given by the Tribunal in earlier OA 9/95 vide order dated 23.8.2000.

10. Considering all the facts and circumstances of the case, we direct the respondents to comply with the directions given by the Tribunal in earlier OA No.9/95 decided on 23.8.2000 according to the observations made above.

11. In view of the above, both these OAs are disposed of accordingly. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman


aa.
पूठकन सं ओ/व्या.....जबलपुर, दि.....

पत्रिलिपि कार्य दिता:-

- (1) सचिव, उक्त न्यायालय कार एग्जिक्यूशन, जबलपुर
- (2) आवेक श्री/श्रीमती/शु.....के कार्यालय SP Sharma
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के कार्यालय KM Petwa

अथवा, केपडा, जबलपुर न्यायापीठ

सूचना एवं आवश्यक कार्यवाही हेतु



उपे रजिस्ट्रार

Issued
On 20.10.04
BS