

P/2

17

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 278 of 1999
Original Application No. 375 of 1999
Original Application No. 410 of 2000

Jabalpur, this the 9th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

1. Original Application No. 278 of 1999 -

Rothin Chakraborty, Son of late
Anil Chakraborty, Chargeman Grade-II
(Technical) Design Section, Central
Drawing Office, Ordnance Factory,
Khamaria, Jabalpur, Resident of House
No. B/162, Sanjay Nagar, Ranjhi,
Jabalpur, M.P.

... Applicant

(By Advocate - Shri K. Datta)

Versus

1. The General Manager,
Ordnance Factory, Khamaria,
Khamaria, Jabalpur, M.P.

2. Union of India, Through the
Chairman, Ordnance Factory Board,
10-A, Shaheed Khudiram Bose Lane,
Calcutta, West Bengal.

... Respondents

(By Advocate - Shri Harshit Patel on behalf of Shri S.C.
Sharma)

2. Original Application No. 375 of 1999 -

1. Vijay Kumar, S/o. Shri Ram Shanker
Patel, aged 39 years, Present Post
Chargeman Grade-II (Technical)
Design, Section R.D., Vehicle
Factory, Jabalpur, M.P., Resident
of village Onriya, Post Mangela,
Jabalpur, M.P.

2. Shyam Lal Sharma, aged 39 years,
Son of late R.S. Sharma, Charge-man
Grade-II (Technical) Design, Section
EDO, Vehicle Factory, Jabalpur,
Resident of House No. 1261/3, Prem
Nagar, PO Premnagar, Jabalpur, M.P.

3. Rakesh Kumar Jain, age 39 years,
son of Shri D.K. Jain, Chargeman,
(Technical) Design, Grade-II,
Vehicle Factory, Section TDO,
Resident of House No. 445, Hanumantal,
Jabalpur, M.P.

(By Advocate - Shri K. Datta) ... Applicants



V e r s u s

1. Union of India Through the Chairman, Ordnance Factory Board, 10-A, Shaheed Kshudiram Bose Lane Calcutta, West Bengal.
3. The General Manager, Vehicle Factory, Jabalpur, M.P. ... Respondents

(By Advocate - Shri Harshit Patel on behalf of Shri S.C. Sharma)

3. Original Application No. 410 of 2000 -

1. V.H. Dhanvijay, S/o. Shri Haridas, aged about 40 years, Draughtsman Drawing Office, Ordnance Factory, Itarsi, M.P. Residence of Q. No. 2294, "A" Block-B, Ordnance Factory Estate, Itarsi, M.P. Pin: 461122.

2. S.C. Paraste, S/o. Shri Shobha Singh Paraste, aged about 41 years, Low Tracer, NIE/701229, Section : P.O. Gun Carriage Factory, Jabalpur, M.P. Residents of : 695/2, Shantinagar, Vehicle Road, Ranjhi, Jabalpur, M.P. ... Applicants

(By Advocate - K. Datta)

V e r s u s

1. Union of India, through the Chairman, Ordnance Factory Board, 10/A, Saheed Kshudiram Bose Lane, Calcutta, West Bengal, Pin 700001.

2. The General Manager, Ordnance Fy. Itarsi, Itarsi, M.P. Pin:461122.

3. The General Manager, Gun Carriage Factory, Jabalpur, Jabalpur, M.P. Pin : 482001. ... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

COMMON ORAL ORDER

By M.P. Singh, Vice Chairman -

Since the issue involved in all the cases is common and the facts and the grounds raised are identical, we dispose of these Original Applications by passing a common order.



2. For the sake of convenience, we are taking up OA No. 278 of 1999. In this OA the applicant has claimed the following main reliefs :

"(i) to set-aside the impugned order/show-cause notice, Annexure A-1;

(ii) to declare that the promotion of the applicant from Tracer to Draughtsman is proper and correct."

3. The brief facts of the case as stated by the applicant are that the applicant was appointed to the post of Tracer vide order dated 22nd November, 1982 in the Ordnance Factory, Khamaria. He has been promoted to the post of Draughtsman vide order dated 12th October, 1994
w.e.f. 9.10.1994.
(Annexure A-6) His pay has also been fixed in the scale of Draughtsman vide order dated 11th September, 1997. The respondents have issued a show cause notice dated 25th
(Annexure A-1) June, 1999 to the applicant to revert him to the post of Tracer in the pay scale of Rs. 4000-6000/-. Aggrieved by this show cause notice the applicant has filed this Original Application. The Tribunal vide its order dated 1st July, 1999 has granted stay against the reversion and that stay has been continuing till today.

4. The respondents have filed their reply, wherein they have stated that the applicant is an employee posted at Ordnance Factory, Khamaria, Jabalpur, and conditions of his service are governed under relevant rules and regulations in force as well as executive instructions issued from time to time by the Government of India. The applicant was working on the post of Tracer and was wrongly promoted to the post of Draughtsman with effect from 09.10.1994, which is in clear violation of the instructions issued by the Ordnance Factory Board on 19.04.1993.

In terms of the letter dated 19.04.1993 the Chargeman Grade-II(T) posts were filled up with effect from 10.5.93 by promotion of Draughtsman in the pay scale of Rs. 1200-2040/- and alongwith HS Gr-I employees and by transfer of Supervisor (T) and Draughtsman in the pay scale of Rs. 1400-2300/-. It was specifically mentioned in the said letter that no promotion will be made by the factories after these promotions to the posts of Chargeman Grade-II (T) as all the posts falling vacant will be in the Central Pool at Ordnance Factory Board. It was further stipulated that no factory will effect promotion in the chain vacancies arising in Draughtsman/HS Gr.I and lower grades till further orders after adjustment of the NGOs strength as per sanctions. These orders were communicated to all the 39 ordnance factories all over the country under the control of Ordnance Factory Board, Ministry of Defence for strict compliance. Inspite of these instructions the applicant was wrongly promoted from the post of Tracer to the post of Draughtsman. Since the applicant was erroneously promoted from the post of Tracer, it has been decided by the respondents to revert the applicant to his original post of Tracer. Hence the respondents have stated that the applicant has no case, ^{and} the OA is liable to be dismissed.

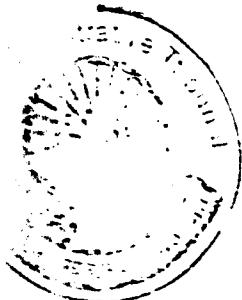
5. Heard both the learned counsel for the parties and perused the records carefully.

6. The learned counsel for the applicant states that the respondents have taken a ground that there was a ban to fill up the vacancies of Chargeman Grade-II(Tech.). He has drawn our attention towards the letter dated 19th



(21)

April, 1993 issued by the Ordnance Factory Board. He has submitted that as per paragraph 2 of the said letter, the posts of Highly Skilled Grade-I and Draughtsman in the scale of Rs. 1200-1800/-, who were in occupation of their respective posts and who have opted for promotion to Chargeman Grade-II (Tech.), were to be promoted. He has also submitted that as per paragraph 7 of the said letter no promotion will be made by the factories, after these promotions to the posts of Chargeman Grade-II (Tech.) till further orders as all the posts falling vacant will be in the Central Pool at Ordnance Factory Board. These posts will be released in phases after adjusting the NGOs strength as per sanctions. No factory will effect promotion in the chain vacancies arising in HS Gr.I/Draughtsman and lower grades till further orders. The promotions for the chain vacancies will be allowed by the OFBoard after the promotions of HS Gr.I etc. are effected and the re-allocation of posts of NGOs are worked out. He has also submitted that as per this letter there was no ban by the Ordnance Factory Board and in fact this ban was lifted by the Board after reviewing the vacancy position in the grade of Draughtsman. The learned counsel for the applicant further submitted that the position relating to the vacancies in the grade of Draughtsman has been reviewed by the Ordnance Factory Board and they have issued a letter dated 15th July, 1994 stating that the vacancies in the posts may be filled by following the provisions of Recruitment Rules but no direct recruitment in the direct recruitment posts is allowed except under the scheme of compassionate appointment and in respect of Fireman Gr.II. These vacancies were to be filled as per instructions contained in the circular dated 06.04.1993 and necessary



proposal should be forwarded in this respect in terms of the circular dated 24.12.1993. The applicant has been promoted in pursuance of this letter which provides for promotion to the persons working in the grade of Tracer. He has also submitted that if the ban was imposed, it was from 16th December, 1996. Para (a) and (e) of the said letter dated 16.12.1996 is relevant. The same is extracted below :

"(a) There will not be any further induction in the post of Draughtsman as provided in the Recruitment Rules viz. SRO-14E dt. 4.5.89.

(e) The Tracers working in the Factories will not be considered for the time being for promotion to the post of Draughtsman."

According to the applicant the ban has been imposed by the respondents with effect from 16.12.1996, whereas the applicant has been promoted vade order dated 12.10.1994 and therefore the ban imposed by the respondents is not applicable in the case of the applicant as he has been promoted earlier to the imposition of the ban.

6.1. The learned counsel for the applicant has further submitted that as per the letter dated 31st July, 1997 (Annexure A-12) issued by the Ordnance Factory Board, "it is seen from the reports received from the factories that there are incumbents in the post of Draughtsman in the pay scale of Rs. 1200-2040/- and these persons shall be held as Draughtsman in the strength against the post of Chargeman Grade-II(Tech.) till they are placed in the higher pay scale of Rs. 1400-2300/-." Para (3) of the said letter provides that the factories shall not take any action to fill the posts of Draughtsman in the pay scale of Rs. 1200-2040/- in any manner. He has further stated that either this ban imposed can be effected from 16.12.1996 or from 31st July, 1997 and not from an earlier date. He has

(23)

also given a copy of the letter dated 11th August, 2003 issued by the Ordnance Factory, Khamaria addressed to one Smt. Gita Bai Lodhi, Tracer, whereby the respondents have sought options from the Tracers to re-designate the post of Tracer to Highly Skilled in the Industrial Establishment or Supervisor (NT/OTS). He has submitted that now the respondents wants to re-designate the applicant as Highly Skilled Grade-I and transfer him to Industrial Establishment. In view of these facts the learned counsel for the applicant submits that since the order passed by the respondents subsequent to his promotion on 12.10.1994, the ban is not applicable in the case of the applicant and the notice issued by the respondents on 25th June, 1999 is not tenable and the same should be quashed and set-aside.

7. On the other hand the learned counsel for the respondents has submitted that the present case of the applicant is fully covered by the judgment of the Hyderabad Bench of the Central Administrative Tribunal in OA No. 1195/2000 & 1779/2000, dated 08.04.2003. Thus he submitted that in view of the judgment in OA Nos. 1195/2000 and 1779/2000 (supra) the case of the applicant is liable to be dismissed.

8. The learned counsel for the applicant further submitted that the facts mentioned by the applicant in the present OA and the facts mentioned by him while making submissions have not been considered and discussed in the judgment passed by the Hyderabad Bench of the Tribunal. He has stated that the applicant has enjoyed promotions to two next higher posts from 1994 to 1999 for a period of 5 years. Therefore he cannot be reverted to the post of Tracer. In support of his claim he has relied upon the judgment of the Hon'ble Supreme Court in the case of



* 8 *

S.C. Rethoswamy vs. State of Karnataka & Ors, AIR 1991 SC 295 and Smt. Vijay Goel vs. Union of India, AIR 1998 SC 101.

The learned counsel for the applicant submitted that if the judgment of the Hyderabad Bench of Tribunal was brought earlier to the notice of the applicant he could have taken into consideration the facts mentioned in the judgment.

9. We have very carefully considered the rival contentions and the pleadings made by both the parties. We have perused the judgment of the Hyderabad Bench of the Tribunal dated 8.4.2003 and the judgments of the Hon'ble Supreme Court relied by the applicant. We find that the judgments relied by the applicant are not applicable in this case and are distinguishable. Further we are in full agreement with the findings recorded by the Hyderabad Bench of this Tribunal which fully covers this case. The relevant para of the said judgment is reproduced below :

10. For the above reasons we find no merits in the present OAs. Both the OAs are therefore dismissed. However, the applicants are given liberty to submit a representation to the respondent No. 1 and 2 for extending them the benefit of the judgment of the CAT Chennai Bench in OA No. 1214/1996 dated 31.8.1999 and if any such representations are submitted, the respondent No. 1 and 2 shall dispose of the same within a period of three months from the date of receipt of the said representations by passing an appropriate order. The applicants are given liberty to approach this Tribunal if they are aggrieved by any orders which have been passed by the respondent No. 1 and 2 on the said representations in this regard, by filing fresh OA."

In view of the judgment of the Hyderabad Bench of the Tribunal, referred to above, the present OAs are dismissed. The interim orders stand vacated. No costs.

11. The Registry is directed to place a copy of this order on record in the files of all the OAs.

—Sd—
(G) Srinathappa,
Judicial Member

SA

—Sd—
Vice Chairman

