

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH  
JABALPUR

Original Application No.34/1998

Jabalpur, this the 18th day of December, 2003

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

S.B.Chatterjee  
s/o Late Chatterjee  
Retd. Works Manager (Gazetted Officer)  
Gun Carriage Factory  
Jabalpur, M.P.  
r/o Panchpedi, Jabalpur. ... Applicant

(By Advocate: Shri K. Datta)

Versus

1. Union of India  
through The Chairman  
ordnance Factory Board  
10/A, Kahudi-Ram Bose Lane  
Calcutta. W.B.
2. The General Manager  
Gun Carriage Factory  
Jabalpur, M.P. ... Respondents

(By Advocate: Shri B. da. Silva)

O R D E R (Oral)

By G. Shanthappa, Judicial Member:

The above OA is filed seeking for direction to Respondent No.1 to amend the seniority list of AWM as on 1.1.1994; further direct the Respondent No.1 to decide the seniority of the AWM according to the date of holding the respective post, and placed the applicant prior to S.C.Verma in between serial No.10 and 11 of the impugned seniority list; and applicant's promotion order be suitably amended and necessary antedating be made to put the applicant prior to his junior at least to promote him from 27.7.1994. The applicant <sup>has sought</sup> further relief, through an amendment, that to declare that the non-consideration

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of the applicant (Promotees) for the post of Works Manager (STS) immediately after 4(four) years of service as Assistant Works Manager (AWM), as done in case of Direct Recruits is discriminatory, violation of law and also be kind to direct the Respondents to ante-date promotion of the applicant at par with Direct Recruits i.e. from 30.7.1994 instead of 25.8.1995.

2. The case of the applicant, in brief, is that he is retired from the Indian Ordnance Factories Service, while serving in the post of Works Manager, on 31.8.1995 from Gun Carriage Factory, Jabalpur. The applicant was promoted 5 days before his retirement in the post of Works Manager but the same has not been shown in the service certificate.

3. The applicant joined the Ordnance Factory on 1.3.1955 as an Engineering Apprentice after rendering 40 years of service on different posts gracefully superannuated on 31.8.1995. His services are governed under the Indian Ordnance Factory Services (Group - A) Recruitment Rules, 1972. The applicant was promoted as Assistant Works Manager, which is a Junior Time Scale under the Recruitment Rule vide order No.381 dated 6.6.1990. To that effect a notification No.25 was published on 19.12.1990. The applicant has completed 4 years of service as A.W.M and as per the Recruitment Rule 1972 in item No.2 of the Appendix II he became entitled to promotion in the post of Senior Time Scale, i.e., Works Manager. Respondent No.1 has

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published a Seniority List of A.W.M. (Junior Time Scale) in the month of February, 1994. <sup>in</sup> The said list, the applicant has been shown at Sl. No.93, whereas juniors to the applicant, one <sup>S/</sup>Shri Suresh Chandra Verma and Dinesh Singh who were appointed as AWM on 3.7.1990, their names were shown at Sl. No.11 and 31. Apart from, these two persons, and several juniors were shown at much higher places than the applicant in the seniority list. According to the recruitment rules, for promotion to the Senior Time Scale (STS), the respondents have held DPC in the month of July, 1994 but under the malafide intention, Respondent No.1 did not include the name of the applicant in the DPC. Whereas <sup>S/</sup>Shri S.C. Verma and Dinesh Singh were considered and promoted as Works Manager (STS) as on 27.7.1994. The promotion of the applicant in the post of Works Manager is governed by the Indian Ordnance Factory Service (Group - A) Recruitment Rules, 1972. The relevant Rule 25 speaks for the recruitment to the post of Junior Time Scale (JTS) officer and Rule 26 speaks for recruitment of certain posts by promotion. According to the said provisions, the name of the applicant should have been considered and he should have been promoted. However, because of wrong policy of preparation of seniority list, the name of the applicant has not been considered by the respondents. The applicant has made a representation against the illegal and discrimination method of promotion. Subsequently, when the applicant could not receive any response, he submitted representations on 25.2.1994 and 20.10.1995 seeking the relief for reviewing the seniority list and placing him in an appropriate place in the seniority list.

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4. Subsequently, Respondent No.1 has rectified the mistake by passing a promotion order in the <sup>of</sup> post of Works Manager, only w.e.f. 25.8.1994, in fact, the respondents should have been promoted the applicant on the date when his immediate juniors i.e. S/Shri S.C.Verma and Dinesh Singh were promoted. The applicant has submitted his representation vide Annexure A-12 dated 10.10.1996 to set right the illegalities committed by the respondents against the impugned seniority list. Hence, the present OA has been filed ~~following~~ <sup>for</sup> seeking the aforesaid reliefs.

5. Subsequent to filing the OA, the applicant has filed MA 500/98 for production of additional documents, i.e., Annexure A-14 dated 29.7.1994.

6. Admittedly, the applicant has not filed any MA for condonation of delay in filing the OA.

7. Per contra, respondents have filed their reply denying the allegations/averments made in the OA. The applicants have urged that there is no cause of action for the applicant, the cause of action arose, according to the seniority list, <sup>as</sup> on 1.1.1992. <sup>in</sup> The said seniority list, the name of the applicant is placed at Sl.No.349 in the Junior Time Scale in IOFS, his alleged juniors Shri S.C. Verma and Dinesh Singh were placed at Sl. No.137 and 229 respectively. The applicant himself has admitted that he made a representation in this regard in the month of February, 1994. The applicant finally challenged the seniority list before the Tribunal at the end of 1998. Hence, the OA is filed after a lapse of limitation period under Section 21 of the Administrative Tribunals Act, 1985.

8. In the Judgement of the Hon'ble Supreme Court in the case of Shri H.R.Kasturi Rangan and others v. Union of India and Others, 1998(1) SCALE (SP)11 and Shri B.S.Bajwa and Another Vs. State of Punjab and Others, 1998(1) SCALE 78, the Hon'ble Supreme Court has held that in the matter of seniority and promotion, an objection should be raised within a reasonable period of time. In the case of Shri Kasturi Rangan, the application filed before the Tribunal after 5 years from the date of cause of action arose was dismissed by the Tribunal. The Hon'ble Supreme Court upheld the dismissal of the OA by the Tribunal. In the case of Shri B.S.Bajwa the Hon'ble Supreme Court has held that on the question of seniority, the matter should not be reaped after a lapse of long period. Since the applicant has filed the OA after a lapse of so many years, the applicant has not filed any kind of MA for condonation of delay in filing the present OA, hence the OA is not maintainable and the same is liable to be dismissed as barred by limitation.

9. The defence of the respondents is that <sup>the</sup> seniority in JTS in IOFS is determined by rotation of vacancies based on the quota of vacancies reserved for direct recruits and promotees as per the Recruitment Rules. For the promotees, seniority is fixed with reference to the date of approval of the recommendation of the DPC by the Commission and for direct recruits, it is the result of the

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competitive examination declared by the UPSC and with reference to the date of recommendation by Commission in the case of the candidates recommended by the direct selection. Thus the date of holding of the post has got no relevance on the determination of the seniority in JTS in IOFS. The tabular chart shown in the reply of the respondents at Para 3 is extracted below:

Sl. No.	Names	Seniority position in AWM Grade as per IOFS Seniority List of		
		1.1.1992	1.1.1993	1.1.1994
1.	S.C.Verma	137	77	11
2.	Dinesh Singh	229	168	31
3.	Petitioner	349	282	93

It is stated by the respondents that in view of the above position of the seniority of the applicant and other two persons S/Shri S.C.Verma and Dinesh Singh, the OA is liable to dismissed.

10. It is further stated by the respondents' counsel that the aforesaid persons, i.e., S/Shri S.C. Verma and Dinesh Singh have not been made as parties to the proceedings, hence the OA is liable to be dismissed on the ground of non-rejoinder necessary of parties.

11. It is further stated that the applicant has submitted the amendment application to amend the OA after a lapse of so many years, hence, the amendment cannot be brought out after lap-se of so many years in view of the Hon'ble Supreme Court Judgement in Raghu Tilak D. John v. S. Rayappan & Others, AIR 2001 SC 699.

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12. In view of the above position, the respondents' counsel stated that as the applicant has not made out any case to interfere by this Tribunal, the OA is liable to be dismissed.

13. We have heard the learned counsel of both the parties and perused the pleadings and documents on record. We proceed to dispose of the OA finally.

14. The admitted facts of the case are that the applicant is a promoted one and S/Shri S.C.Verma and Dinesh Singh are the direct recruits. According to the SRO issued by the Ministry of Defence dated 5.6.1954, called as Indian Ordnance Factories Service (Group - A) Recruitment Rules, 1972, wherein Rule 3(ii) and Rule 4(a) & (b) speak as under:

Rule 3(ii)

Method of Recruitment:- Recruitment to the Service shall be made by the following methods, namely:-

(i) .....

(ii) by promotion, transfer or deputation from another service in accordance with Part-III of these rules;

Rule 4:

(a) 60% of the vacancies for the Junior Time Scale shall be filled by competitive examination from among Engineers and Administrative Officers (Non-Technical) and selection from the remaining categories as specified in rules 31 and 32 of Part IV rule 38 of Part V. The remaining 40% of the vacancies shall be filled by promotion transfer or deputation. In making promotions due care will be taken to ensure that within the overall percentage prescribed for promotion adequate promotions are made to each of the categories specified in clause (h) of rule 2.

(b) The other grades mentioned in Appendix-I annexed to these rules shall be filled promotion, transfer or deputation (vide Part-III of those rules) failing which recruitment in accordance with Part V of these rules.

15. Appendix-II (Rule 26 and 27) speak that statement showing the filed of promotion and the minimum qualifying service in the next lower grade for appointment of officers on promotion to duty posts included in the various grades of Indian Ordnance Factories Service (Class I)

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Sl. No.	Name of the post/grade Field of selection & the minimum qualifying a service for promotion.
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1.	Jr. Time Scale Rs.700-40-900-EB-40-1100-50-1300 Foreman (Tech)/Foreman (Non-Tech) Store Holder/Staff Asstt./Staff Asstt. (Psychologist) with 3 years, regular service in the respective grade.
2.	Sr. Time Scale Rs.1100 (6th year or under) - 50 - 1600 officers in the Jr. Time Scale with 4 years regular service in the grade.
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16. The respondents have considered the cases of the applicant and also cases of S/Shri S.C. Verma and Dinesh Singh according to their respective services/quotas and their seniority has been maintained. Since the applicant has retired on 31.8.1995, he is asking for antedating of his promotion w.e.f. 30.7.1994, in our considered view, it is not legally valid. When the respondents have maintained the rota quota system (60 : 40), the applicant cannot claim the seniority over the direct recruits under Rules 3 and 4 of the aforesaid recruitment rules. In our considered view, the respondents have correctly placed the applicant's name in the seniority list. Accordingly, the applicant has no case.


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17. It is pertinent to mention here that the cause of action arose, according to the applicant on 1.1.1994, he submitted his representations on 25.2.1994, 20.10.1995 and 10.10.1996 but the OA was filed on 13.1.1998. In our considered view, repeated representations filed by the applicant does not give a fresh cause of action and does not extend the limitation period in view of the Hon'ble Supreme Court's Judgement in S.S. Rathore v. State of Madhya Pradesh, AIR 1990 SC 10 and in Rago Tilak D. John v. S. Rayappan (supra).

18. In totality of the facts and circumstances of the case and in view of the discussion held above, we are of the considered view that the applicant has not made out his case for grant of the aforesaid reliefs. Accordingly, the OA is dismissed not only on limitation but also on merits. No order as to costs.

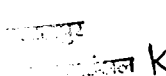
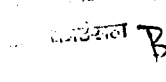
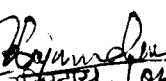
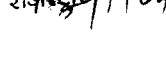
  
(G. SHANTHAPPA)  
Judicial Member

  
(M. P. SINGH)  
Vice Chairman

/rao/

*Filed  
on  
7.1.04*

पृष्ठान्कन से औचित्य दिनांक दि.....

(1)  K. Datta, Adm  
(2)  B. dasilva, Adm  
(3)  B. dasilva, Adm  
(4)  B. dasilva, Adm