

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 425 of 2000

Jabalpur, this the 19th day of February, 2004

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

M. Bhojraj
S/o Shri M. Morachan,
aged 45 years,
Supervisor 'B' (NT),
resident of Qtr. No. 2131, Type-II
Ordnance Factory Estate,
Itarsi - 461122 (M.P.)

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. Director General/Chairman,
Ordnance Factories, Board,
10-A Khudiram Bose Marg,
Calcutta.
3. General Manager,
Ordnance Factory,
Itarsi - 461122 (M.P.)
4. R.P. Chouhan,
Chargeman Grade-II (Stores),
through General Manager,
Ordnance Factory,
Itarsi - 461122 (M.P.)
5. K.M.L. Nambisan,
Chargeman Grade-II,
through General Manager,
Ordnance Factory,
Itarsi - 461122 (M.P.)
6. R.B. Choudhary,
Chargeman Grade-II,
C/o General Manager,
Ordnance Factory,
Itarsi - 461122 (M.P.)

RESPONDENTS

(By Advocate - Shri P. Shankaran for official respondents
None for private respondents.)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

has
By filing this OA the applicant/sought following
main reliefs :-

"(b) Set aside the order dated 9.8.95 (Annexure-A-11)
and 27.12.95 (Annexure-A-10) & 8.9.99 (Annexure-A-15)

(c) Hold that the action of the respondents in shifting the applicants name from Stores to OTS Stream is bad in law and accordingly uphold the seniority list dated 12.12.92(Annexure-A-1).

(d) Direct the respondents to place the applicant in the seniority list of Stores Stream in an appropriate place and accordingly direct the applicants name for consideration for promotion to the post of Chargeman Gr.II from the date his juniors/private respondents were promoted with all consequential benefits, seniority and arrears of wages on promotional post:

(g) Set aside the letter No. 2004/CC/OFI/99 dated 9.7.99(Annexure-A-17)".

2. The brief facts of the case are that the applicant was initially appointed as Messenger Boy with effect from 14.2.72. He was promoted as L.D.C. with effect from August 1979, after passing the departmental examination. On 22.10.82 he was promoted as Supervisor-B(NT). The applicant was working from September 1979 to 1982 as LDC in Stores and PV office; from October 1982 to October 1989 as Supervisor-B in the PV office; and from October 1989 to January 1996 as Supervisor B again in Store office. In the seniority list issued by respondent No. 3 on 12.12.92 for Stores Stream, the applicant's name was shown at serial No.2 and those of private respondents 4 & 5 at serial Nos. 4 & 5. Thus, the applicant was ranked senior to private respondents 4 & 5. However, on 23.11.1995, another seniority list was issued wherein the applicant's name has been shown at serial no.14. Therefore, the applicant had submitted a representation on 1.12.1995 (Annexure-A-4) for restoring his seniority in the Stores Stream. However, his request was not acceded to by the respondents vide their order dated 27.12.1996(Annexure-A-10). Thereafter, the applicant preferred a representation to the Chairman, Ordnance Factory Board, Calcutta which was also rejected vide order dated 9.7.1999 (Annexure-A-17).

2.1 The contention of the applicant is that S/Shri

A.Venugopal, M.M.Mathai and A.N.N.N.Nair, Chargeman Gr.II



(NT/OTS) were promoted as Chargemen Grade-I(NT/OTS) vide Factory Order dated 28.12.1992 (Annexure-A-14). According to the applicant aforesaid three persons were also working as LDC and brought to Stores Stream based on OFB's letter dated 29/10.9.1984. Similarly, the applicant, Shri M.L.Patel Supervisor-B(NT/OTS) and Shri R.K.Garewal, Supervisor-B(NT/OTS) were also brought to the Stores Stream from OTS Stream on the basis of their posting prior to 10.9.1984, and accordingly the seniority list for Supervisor-B(Stores/OTS) was published on 12.12.1992, in which the name of the applicant was placed at serial no.2, as stated above.

2.2 The grievance of the applicant is that no opportunity was given to him for shifting his name from seniority list of Stores to the Seniority list of OTS which resulted in supersession of the applicant by the private-respondents. The learned counsel for the applicant has contended that the action of the respondents in taking such an action without giving an opportunity to the applicant is against the principles of natural justice. Aggrieved by this, the applicant has filed this OA claiming the afore-mentioned reliefs.

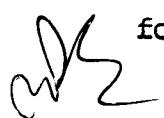
3. The respondents in their reply have stated that the applicant's name was wrongly shown in the seniority list of Supervisors(NT)-Stores dated 12.12.1992 (Annexure-A-1). When this fact had come to the notice of the respondents they had excluded the name of the applicant from the seniority list of Stores stream, and included his name in the seniority list of Supervisor(NT/OTS). As regards transfer of above mentioned persons, namely, Shri MM.Mathai and A.N.N.N Nair, the respondents have admitted the fact that they were working as LDCs and they were transferred to the Stores Stream. The respondents have stated that no senior staff in the grade of Chargeman Gr.II(NT) and Chargeman Gr.I(NT) having stores experience ^{was} were available in Ordnance Factory, Itarsi

and the sanctioned posts in those categories were lying vacant. Hence due to functional requirement in the factory in the grades of Chargeman Gr.I(NT/Stores) and Chargeman Gr.II(NT/Stores), their cases including the case of Shri A.Venugopal were referred to O.F. Board for treating them in the stream. Accordingly, the above 3 persons were shown in the seniority list of Chargeman Gr.I(NT/Stores).

3.1. The respondents have also taken a preliminary objection that the OA is barred by limitation as the first representation of the applicant was rejected in the year 1996. They have contended that it is the settled position of law that repeated representations do not extend the period of limitation.

4. The learned counsel for the applicant has contended that the objection of the respondents regarding limitation is baseless as the applicant's representation has been considered at the highest level i.e. Ordnance Factory Board and the same has been rejected only on 9.7.1999. Thereafter the OA has been filed on 12.6.2000 within the period of limitation.

5. We have very carefully considered the rival contentions advanced by the learned counsel for both the sides. We find that the applicant,

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Shri M.M. Mathai and Shri A.N.N.N. Nair were initially working as LDC and they have been promoted to the post of Supervisor. Shri M.M. Mathai and Shri A.N.N.N. Nair were also promoted as Chargeman Grade-II and thereafter as Chargeman Grade-I in Stores Stream. However, the applicant, who was similarly placed, has been denied the change to Stores Stream. The only defence given by the respondents is that there was functional requirement and no senior person in Chargeman Gr.I with the experience in Stores was available. They have also taken the plea that shifting of aforesaid two persons to Store Stream was not objected by other persons, and this was also done within the quota. The respondents have stated that now there is no post available against which the applicant can be adjusted and could be considered.

5.1 The contention of the respondents is 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, We are of the considered view that 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, we feel that the applicant has been discriminated.

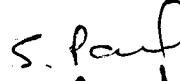
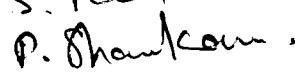
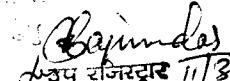
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6. For the reasons recorded above, we direct the applicant to make a detailed representation to the respondents within a period of 4 weeks from the date of receipt of copy of this order. If the applicant complies with the above order, ~~whereafter~~ the respondents are directed to consider the request of the applicant in terms of ~~above~~ observations made by us in the preceding paragraph and take a decision by passing a detailed, reasoned and speaking order within a period of 3 months from the date of receipt of such representation.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

मुख्यमंत्री से अधैरता..... अन्तर्गत, दि.....
लिखित रूप से दिया गया विवर
(1) राज्य विभाग के अधीन संचालित विभाग
(2) आवासीय विभाग
(3) वित्तीय विभाग
(4) विद्युत विभाग
सूचना द्वारा अधिकारी का नाम

S. Paul

P. Shantappa

Bevinde
मुख्यमंत्री 11/3/04

Issued
11.3.04