

(RESERVED ON 28.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **09th** day of **OCTOBER 2018**.

ORIGINAL APPLICATION NO. 330/992/2010

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Nagendra Bhadur Singh aged about 44 years, Working as Fitter Instrument (High Skilled), in Ordnance Factory, Kalpi Road, Kanpur, Son of late S.D. Singh, R/o H. No. 562-B, Panki, Kanpur.
.....Applicant.

VERSUS

1. The Union of India, Through the Secretary, Ministry of Defence, Deptt of Defence Production & Supplies, New Delhi -11.
2. The Secretary, Ordnance Factories Board, 10-A , S.K. Bose Road, Kolkata-700001
3. The Senior General Manager, Ordnance Factory, Kalpi Road, Kanpur- 208 009.
4. Shri Inderjeet Singh, Chargeman Grade II, Ordnance Factory, Kalpi Road, Kanpur (Notice to be served through Sr. G.M. OFC.
5. Shri Om Prakash Singh, Chargeman Grade II Tech, Ordnance Factory, Kalpi Road, Kanpur (Notice to be served through Sr. GM/OFC)
.....Respondents

Advocates for the Applicant : Shri R K Shukla
Shri A N Ambasta

Advocate for the Respondents : Shri Arvind Singh

ORDER
(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The OA has been filed under section 19 of the Administrative Tribunals Act with prayer for the following reliefs:-

- "(i) *To issue a writ, order or direction in the nature of certiorary quashing the impugned orders dated 25.1.2009 (Annexure A-1) and dated 11.2.2010 (Annex. A-2) denying the promotion of the applicant.*
- (ii) *To issue a writ, order or direction in the nature of Mandamus directing the respondents particularly respondent no. 3 to promote the applicant also from the same date i.e., 11.9.2007*

from which his juniors (i.e., Respondent no. 4 and 5) have been promoted with all consequential benefits including payment of arrears of pay & allowances and retention of seniority etc.

(iii) To issue any other suitable writ, order or direction in facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

(iv) To award cost of the petition to the applicant."

2. The applicant was selected for Trade Apprentice training for three years in the Small Arms Factory, Kanpur (in short SAF) under the official respondents (referred as 'respondents' hereinafter) on 2.7.1982. On 9.3.1989, the applicant was appointed at Opto Electronic Factory, Dehradun and then promoted as Fitter Instrument (Skilled) and then to Highly skilled Fitter on 1.3.2003. Thereafter, some of the fitters, were merged to single trade of fitter. On 11.9.2007, the respondent no. 4 and 5 who were junior to the applicant, were promoted to the post of Chargeman grade-II (in short referred as 'Chargeman') with effect from 20.5.2003, vide order dated 13.11.2003 (Annexure A-5). The applicant submitted a representation, which was rejected vide order dated 25.1.2009 (Annexure A-1), on which an appeal dated 18.4.2009 (Annexure A-10) was filed by the applicant. When no decision was taken by the appellate authority (respondent no. 2), the applicant filed an OA which was disposed of with a direction for disposal of the appeal. But the respondent no. 2, instead of disposing the appeal, advised the respondent no. 3 to decide the applicant's representation. The respondent no. 3 passed a fresh order dated 11.2.2010 (Annexure A-2). Both the orders dated 25.1.2009 and 11.2.2010 have been impugned this OA.

3. The grounds taken by the applicant in the OA are the following:-

(i) Applicant's juniors were promoted w.e.f. 20.5.2003, overlooking the applicant, who was senior to the respondent no. 4 and 5 (para 4.7 & 4.8)

(ii) The respondent no. have overlooked the SRO 13-E, under which the applicant was eligible for promotion (para 4.12 of the OA).

(iii) Other factories under the respondents have promoted Master craftsman working in different streams to Chargeman (para 4.15).

(iv) Respondent no. 2, appellate authority, did not take any action on the appeal filed by the applicant against the order of rejection of his representation by the respondent no. 3. On direction of this Tribunal in OA No. 1140/2009, the respondent no. 2 advised the respondent no. 3 to dispose of the representation and again his representation was rejected for the same reasons (para 4.24 of the OA).

4. The respondents have filed the counter affidavit (in short CA) stating:-

(i) As per the letter dated 30.8.2005 (Annexure CA-1) of the Ordnance Factory Board, Kolkata (in short OFB), Electrician is the feeder trade for promotion to Chargeman Gr. II (Tech/Elect) and Fitter Electronics, Fitter Instrument, Fitter Erector etc. are feeder cadre for promotion to Chargeman Gr. II (Tech/Mechanical).

(ii) As per the letter dated 28.5.2007 of OFB (Annexure CA-3). Fitter Electronics will be considered for promotion to Chargeman Gr. II (Tech/Elect) subject to their eligibility as required under the existing SRO.

(iii) Applicant is Fitter Instrument, where as the respondent no. 4 and 5 are Fitter Electronics. Hence, the applicant is in the feeder trade for Chargeman Gr. II (Tech/Mech) and the respondents no. 4 and 5 are in the feeder trade for Chargeman Gr. II (Tech/Elect). For promotion to the post of Chargeman Gr. II (Tech/Elect), the respondent no. 4 and 5 were considered and given promotion with effect from 11.9.2007 where as the applicant was not eligible for being considered for the same post as he was not in the feeder trade as per the OFB letters dated 30.8.2005 and 28.5.2007.

(iv) As per the instructions of OFB, some Fitter trades including Fitter Electronics and Fitter Instrument were merged and a combined seniority list was issued, in which, the applicant was senior to the respondent no. 4 and 5, as stated in para 19 of the CA.

(v) In pursuance to the direction of the Tribunal to the respondent no. 2 to dispose of the appeal, OFB issued a letter dated 29.12.2009 (Annexure CA-4) after due examination of the issue and directed the respondent no. 3 to issue the speaking order, since the post of Chargeman is a factory based post. Thereafter, the impugned order dated 11.2.2010 was passed by the respondent no. 3 (para 12 and 13 of the CA).

(vi) No where it is mentioned in SRO-13(E) that the posts of Chargeman Gr. II (Tech) are to be made irrespective of trades. The posts are filled up for different feeder trades as per the letters issued by OFB date 30.8.2005 and dated 28.5.2007, as stated in para 23 of the CA.

5. In the Rejoinder filed by the applicant, the averments in the OA are reiterated. In reply to para 23 of the CA, it is stated that the existing Recruitment rules i.e. SRO-13(E), there is no feeder grade provided as stated in the counter affidavit. There is one feeder trade for the clubbed trades of Fitters and one post of Chargeman (Tech). Any order in violation to the SRO-13(E) is to be declared to be illegal.

6. We have heard learned counsels for both the parties, who reiterated their respective pleadings. While reserving the order on 28.8.2018, learned counsel for the respondents was directed to file a short written argument enclosing a copy of the rule or SRO in support of the circular dated 30.8.2005 or other circulars for promotion to Chargeman (Tech/Elect) within 10 days. Accordingly, learned counsel for the respondents filed the written submission on 03.10.2018, reiterating the averments in the pleadings and enclosing a copy of the SRO-13 (E). It was also submitted that the applicant has submitted his unwillingness for promotion. Since the averment regarding unwillingness of the applicant was not included in the pleadings of the respondents, we treat it as a new averment, which cannot be considered at this stage.

7. The question that needs to be answered in this case is whether the circulars dated 30.8.2005 and 28.5.2007 of the OFB are in accordance with the Recruitment rules notified by SRO 13-E as amended from time to time. The applicant has averred that these circulars of the OFB by virtue of which his case for promotion to the post of Chargeman (Tech) has been overlooked while promoting his juniors respondent no. 4 and 5 to the said post, are contrary to the SRO-13(E). In support of his argument, learned counsel for the applicant has submitted a copy of a note from Swamy news, November, 2000 (page 69) M.V. Ayachit and others vs. Union of

India and others by Mumbai Bench of the Tribunal in OA No. 1312/1994 which holds that any Government instructions contrary to the Recruitment rules have no legal validity as they do not amount to amendment of the Recruitment rules. In that case, the Tribunal had relied upon the judgments of Hon'ble Apex Court in the case of C.C. Padmanabhan and others v. The Director of Public Instruction and others 1980 (2) SLR 599. Judgment of Hon'ble Apex Court in the case of Union of India v. Somasundaram Viswanath (1988) 3 JT 724 was also referred in which it was held as under:-

".....If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to the Article 309 of the Constitution of India prevail and if there is a conflict between the rules made under the proviso to the Article 309 of the Constitution of India and the law, the law made by the appropriate legislature prevails."

8. Now coming to the provisions of the SRO-13(E) regarding the promotion to the post of Chargeman Gr. II (Tech), as extracted in para 4.12 of the OA, which has not been denied by the respondents, state regarding criteria for promotion to the post of Chargeman as under:-

"Chargeman Grade-II (Tech) -: 66-2/3% direct recruitment after adjustment of surplus and transfers. 33-1/3% by promotion from panel prepared by relevant DPC for each category with transferrers inters. In any category of supervisor cum operator (such as a new category of CNC Machine or computer operator on failure of recruitment by promotion, by transfer failing which by direct recruitment.

Chargeman Grade- II (Tech) - By promotion - Promotion from Draughtsman or equivalent in scale of Rs. 1200-2040 with 3 years service and promotion. HS Gd. I with 3 years of regular serving failing which from HS Gd.II with 6 years regular service in respective category."

9. From above, it is clear that the Chargeman post is to be filled up by way of promotion from post of Highly Skilled Grade-I employee with three years of regular serving failing which from Highly Skilled Grade-II with six

years of regular service in respective category. This will imply that only seniority will not be the only criteria. The promotion will have to be from respective categories.

10. The letters of OFB dated 30.08.2005 (Annexure CA-1 to the counter) has specified the feeder categories for the purpose of promotion to various stream and disciplines as in the Annexure to the said letter. However, the copy of the said Annexure was not furnished by the respondents in their counter affidavit.

11. The letter dated 28.05.2007 (Annexure No. CA-3 to the counter affidavit) of the OFB stated the following:-

"(a) Fitter (Electronics) will henceforth be considered for promotion to CM-II (Tech/Electrical) instead of CM-II (Tech/Mechanical) subject to their eligibility as required under existing SRO. Annexure to OFB circular no. 01/CR/CM/A/I dated 30.08.2005 stands modified to that extent.

(b) CM-II(Tech) with Electronics background will be grouped with CM-II (Tech/Electrical) for the purpose of combined seniority list for further promotion to higher grades. The trade Electronics shall be treated as sub-trade of Electrical for the purpose.

(c) In the seniority list of CM-II (Tech/Electrical) such incumbents (both promotees and direct recruitee) will be distinctly identified as Electrical (Electronics).

(d) Such incumbency shall not be deployed in the activities viz Electrical work that may violate statutory provisions of the Electricity Act 1962 as per existing orders of OFB Hqrs, even after their promotion to next higher grade. Such incumbents promoted from Fitter (Electronics) need not have to pass the Supervisory Competency test, for promotion to CM-II (Tech/Electrical) Electronics)."

12. The letter dated 29.12.2009 of the OFB (Annexure No. CA-4 to the counter affidavit) states as under:-

"03. In view of the above, the factory is to issue the speaking order. The factory is also to defend the case if the applicant is not satisfied with the speaking order that is going to be issued.

Factory is also aware of this case. Factory may prepare a draft speaking order with special reference to the following points:

(i) Chargeman Gr. II (Tech) is a grade under which several trades like Chemical, Mechanical, Electrical, Civil, Metallurgical, Clothing Technology & Leather Technology are there. There are distinct and separate feeder trades for promotion to these trades in the Grade Chargeman Gr. II (Tech).

(ii) For example, Fitter (Instrument) is the feeder trade for promotion to Chargeman Grade-II (Tech/Mech). Carpenter is the feeder trade for Chargeman Grade-II (Tech/Civil). Similarly, Electroplater is for Chargeman Grade-II (Tech/Chem), Electrician is for Chargeman Grade-II (Tech/Elec), Blacksmith is for Chargeman Grade-II (Tech/Met) etc. This has been circulated to all factories and Units vide OFB letter No. 01/CR/CM/A/I dated 30.08.2005. The applicant is well aware of this circular.

(iii) Fitter (Electronics) was the feeder trade for Chargeman Grade-II (Tech/Mech) in the above OFB Circular dated 30.08.2005. Subsequently with the modification Fitter (Electronics) has been made the feeder trade for promotion to Chargeman Grade-II (Tech/Elec) vide OFB letter No. 75/Staff/CH-II/Feeder Grade/A/NG dated 28.05.2007. The applicant is aware of this circular also.

(iv) For all trade/discipline of Chargeman Gr-II (Tech) post, the feeder trade /discipline is distinct and separate. The incumbent of a trade can not compare his position with the incumbent of another trade. Comparison amongst trades for the purpose of promotion shall not be made.

(v) Shri Nagendra Bahadur Singh is the applicant of the present O.A. He is in the post of Highly Skilled (Fitter-Instrument). Hence, he can be considered for promotion for the post of Chargeman Grade-II (Tech/Mech) in terms of OFB Circular dated 30.08.2005. The individual compared his position to Highly Skilled (Fitter-Electronics) which is a feeder trade for promotion to Chargeman Grade-II (Tech/Elec).

13. From the above letters, it is clear that the OFB has identified the feeder trades for promotion to Chargeman Grade-II in different discipline depending on the work which has been mentioned in the paragraph no. 4 to 9 of the counter affidavit which are quoted below:-

"4. That as approved by Ordnance Factory Board Kolkata the following trades were clubbed for the purpose of application of inter grade ratio for determination of grade wise sanctioned strength and their seniority lists from Semi skilled grade to Highly Skilled grade were clubbed for the promotion/placement upto MCM grade:

Sl. No.	Trade
1	Fitter Electronics
2	Fitter Instrument
3	Fitter Erector
4	Fitter Tractor
5	Fitter Auto Fretage
6	Fitter T & G

5. That in the clubbed seniority list of the Highly Skilled grade Shri Indrajeet, Fitter Electronics, T. No. 25/LM/8417 and Shri Om Prakash Singh, Fitter Electronics, T. No. 23/LM/8440, respondent no. 4 and 5 respectively were junior to Shri Rahul Dev Pandey, Fitter Instrument, T. No. 01/Gun-D/8378 i.e., the applicant of the instant original application.

6. That the highly skilled/MCM employees are promoted to the post of Chargeman Gr. II (Tech.) Chargeman Gr. II (Tech.) is a grade wherein there are several disciplines like Chemical, Mechanical, Electrical, Civil Metallurgical, Clothing Technology and Leather Technology. There are distinct and separate feeder trades for promotion of Chargeman Gr. II (Tech) of each and every discipline. For example Fitter (Instrument) is one of the feeder trades for promotion to Chargeman Gr. II (Tech/Mech). Carpenter is one of the feeder trades for promotion to Chargeman Gr. II (Tech/Civil). Similarly. Electroplater is one of the feeder trades for promotion to Chargeman Gr. II (Tech/Chem). Electrician is one of the feeder trades for promotion to Chargeman Gr. II (Tech/Elect) and Blacksmith is one of the feeder trades for promotion to Chargeman Gr. II (Tech/Met) etc. This has been circular to all factories and Units vide Ordnance Factory Board Kolkata letter No. 01/CR/CM/A/I dated 30.08.2005. It was mentioned in the Ordnance Factory Board letter dated 30.08.2005 that Fitter Electronics, Fitter, Instrument, Fitter Erector, Fitter Tractor, Fitter Auto Fretage, Fitter T & G etc., will be the feeder trades for the purpose of promotion to stream./discipline of Chargeman Gr. II (Tech/Mechanical).

7. That for the purpose of promotion to the post of Chargeman Gr. II (Tech) of every discipline viz. Chemical, Mechanical, Electrical, Civil Metallurgical, Clothing

Technology and Leather Technology different combined seniority lists of the HS/MCM of related feeder trades are prepared. The combined seniority list is prepared on the basis of the date of holding the post of Highly Skilled/MCM grade and the promotions are made on the basis of availability of vacancies, seniority, existing rules etc.

8. That subsequently on the basis of recommendation of sub-committee of JCM IIIrd level constituted by Ordnance Factory Board Kolkata it was directed by Ordnance Factory Board Kolkata vide letter No. 75/STAFF/CH-II/FEEDER GRADE/A/NG dated 28.5.2007 that "Fitter (Electronics) will henceforth be considered for promotion to CM-II (Tech/Elect) subject to their eligibility as required under existing SRO. Annexure to OFB circular No. 01/CR/CM/A/I dated 30.08.05 stands modified to that extent.

9. That the applicant is working as Fitter Instrument (HS) while Shri Indrajeet and Shri Om Prakash Singh were working as Fitter Electronics (Highly Skilled). Fitter Instrument is the feeder trade for promotion to Chargeman Gr. II (Tech/Mech) while Fitter Electronics was the feeder trade for promotion to Chargeman Gr. II (Tech/Elect.) as per OFB letter dated 28.5.2007. Accordingly Shri Indrajeet Singh, T. No. 25/LM/8417 and Shri Om Prakash Singh, T/ No. 23/LM/8440 were considered for promotion to the post of Chargeman Gr. II (Tech/Elect) and having been found fit by the DPC, they were promoted to the post of Chargeman Gr. II (Tech/Electrical) w.e.f., 11.09.07 whereas the applicant who is working in the feeder trade of Chargeman Gr. II (Tech.Mech) could not come even into zone of consideration for promotion to Chargeman Gr. II (Tech/Mech) for want of sufficient number of vacancies."

14. The aforesaid paragraphs explain the reason as to why respondent no. 4 and 5 were promoted, while the applicant could not be promoted. It is explained that the respondent no. 4 and 5 were working as Highly Skilled Fitter in Electronics trade who were considered for promotion to Chargeman Grade-II (Tech/Elect) having been found fit as per the above order of the OFB and the applicant was not considered for this post because he was working as Highly Skilled Fitter Instrument and his promotion post will be Chargeman Grade-II (Tech/Mech) as mentioned in paragraph 9 of the counter affidavit.

15. In reply to this contention, the applicant has submitted in paragraph no. 9 of the rejoinder that:-

"9. That in reply to the contents of paragraph No. 9 of the counter affidavit, it is submitted that there is no mention of any feeder trade for the purpose of promotion to the Chargeman Gr. II in recruitment rules. In case of observance of this provision, there will be no seniority and that will create havoc in whole organisation."

16. We are unable to accept the contention made in para-9 of the rejoinder affidavit of the applicant since, the SRO-13 mentioning about promotion in respective category. In SRO-13, it is clearly specified that the promotion should be made from Highly Skilled Grade-I or Grade-II with three or six years of regular service in **respective category**. There is nothing in the SRO 13-(E) which specifies that the promotion will be only on the basis of combined seniority list. But different category will imply respective trades which have been specified in the OFB's executive instructions as the SRO is silent about it. Hence, executive instructions of the OFB in this regard issued vide letter dated 30.08.2005 or 28.05.2007 do not violate the provisions of SRO-13(E). In fact the circular specifies how the promotions in different category on the post of Chargeman pertaining to the different trades would be done. Hence, it is not correct to say that SRO does not specify any feeder trade.

17. Learned counsel for the applicant has cited the judgement in OA No. 1312 of 1994 where it was held that the Government instructions contrary to the recruitment rules have no legal sanctity has discussed in paragraph no. 7 of this order.

18. In this case the executive instructions issued by OFB vide letters dated 30.08.2005, 28.08.2007 and other circulars specifying different feeder cadre that can be promoted to different categories of Chargeman

Grade-II, do not violate the provisions of SRO 13-(E). In fact, these instructions clearly specify the feeder trades for promotion to Chargeman Gr.II. Further, we notice that these circulars have not been challenged or impugned in this OA. The orders impugned in this OA dated 25.1.2009 and 11.02.2010 are the orders by which the representation of the applicant was rejected. The applicant's case that the respondents no. 4 and 5 being junior in the combined seniority list have got promotion. Therefore, he should also be promoted is not accepted because of the fact that the respondents no. 4 and 5 were eligible to be promoted to the post of Chargeman (Tech/Elect), for which the applicant was not eligible to be promoted. The applicant is eligible for promotion to the post of Chargeman (Tech/Mech).

19. In view of the above discussions, we do not find any merit in the OA. Accordingly, the OA is dismissed.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Arun..