

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.232/2013

Reserved On:26.09.2018

Pronounced On:16.11.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

1. Shri Baburao Sukhram Nagose,
Age 55 years,
working as Junior Works Manager,
Ordnance Factory, Bhandara,
Residing at Quarter No.E/6, Jawahar Nagar Of
Estate, Bhandara- 441906.
2. Mangalds Z. Padwekar,
Age 48 years,
working as Junior Works Manager,
Ordnance Factory, Varangaon
Residing at Quarter No.4/C Type 4,
Ordnance Factory Varangaon
Estate, Pin-425308.
3. Dudharam C.Thalal,
Age 54 years,
working as Junior Works Manager,
Ordnance Factory, Ambajhari
residing at Quarter No.1/15/4 Type 4
Ordnance Factor, Ambajhari Estate
Nagpur, Pin-440021,
4. Ashok S.Adol,
Age 51 years,
working as Junior Works Manager,
Ordnance Factory, Institute of Learning
Ambajhari,
residing at Ordnance Factory,
Ambajhari Estate Nagpur, Pin-440 021.
5. Surender Kumar,
Age 51 years,
working as Junior Works Manager,
Ordnance Factory, Bhandara,
residing at Ordnance Factory,
Bhandra Estate, Jawahar Nagar, Pin-441906.

6. Hemant H. Ghate
 Age 57 years,
 working as Junior Works Manager,
 Ordnance Factory, Chanda,
 residing at Quarter No.33/A, Type 4,
 Sector 5 Ordnance Factory,
 Chanda, Pin-442501. ...Applicants

(By Advocate: Shri Sudarshan Rajan with Shri Ramesh Kumar Rawat)

Versus

1. Union of India
 Through the
 Secretary of Defence
 Department of Defense of Production
 And Supplies, South Block
 New Delhi-110001.
2. The Chairman,
 Ordnance Factory Board
 10-A, S.K.B. Road,
 Kolkata -700001.
3. The Chairman
 Union Public Service Commission
 Dholpur House, Shahajahan
 Road, New Delhi.-1100 69.
4. Shri Visw Manohar
 Assistant Works Manager
 Ordnance Factory, Varangaon,425308.
5. Shri M.K. Gangadhar
 Assistant Works Manager
 Ammunition Factor Khadki,
 Pune-411 003.
6. Smt. Usha Kiran
 Assistant. Works Manager
 B-273, Vaishali Nagar,
 Jaipur, Rajasthan-302021.
7. Shri Sudhir Kumar Dixit
 Works Manager
 C/O The General Manager

Ordnance Factory Medak,
Yeddu-mailaram(Po), Medak(Dist),
Telangana-502205 (Respondent No. 7).

8. Shri Chandrasekhar's
Works Manager
C/O The General Manager,
Ordnance Factory Medak,
Yeddu-mailaram(Po),
Medak(Dist), Telangana-502205(Respondent No. 8).
9. Shri D.K. Jain
Works Manager
C/O The General Manager,
Ordnance Factory Medak,
Yeddu-mailaram(Po),
Medak(Dist), Telangana-502205(Respondent No. 9).
10. Shri Chanchal Pal
Works Manager
C/O The General Manager
Heavy Vehicle Factory Avadi
Chennai Tamil Nadu-600054 (Respondent No. 10).
11. Shri D.D.Jadhav
Works Manager
C/O The General Manager
Heavy Vehicle Factory Avadi
Chennai Tamil Nadu-600054 (Respondent No.11).
12. Shri Prasanna Kumar Va
Works Manager
C/O The General Manager
Heavy Vehicle Factory Avadi
Chennai Tamil Nadu-600054 (Respondent No. 12).
13. Shri Shivraj C
Works Manager
C/O The General Manager
Heavy Vehicle Factory Avadi
Chennai Tamil Nadu-600054 (Respondent No. 13).
14. Shri Chandrasekharan D
Works Manager
C/O The General Manager Heavy
Vehicle Factory Avadi Chennai
Tamil Nadu-600054 (Respondent No.14).

15. Shri S.N.Sharma
Works Manager
C/O The Sr. General Manager
Ordnance Equipment Factory,
Kanpur Phool Bagh Kanpur
Uttar Pradesh -208001(Respondent No. 15).
16. Shri Haldar Swapan
Works Manager
C/O The Sr. General
Manager Ordnance Equipment
Factory, Kanpur Phool Bagh
Kanpur
Uttar Pradesh -208001 (Respondent No. 16).
17. Shri R.Kgupta
Works Manager
C/O The Sr. General Manager
Ordnance Factory Kanpur
Kalpi Road Kanpur
Uttar Pradesh-208009 (Respondent No. 17).
18. Shri Yadya Dav C B Singh
Works Manager
C/O The Sr. General Manager
Ordnance Factory Kanpur
Kalpi Road Kanpur
Uttar Pradesh-208009 (Respondent No. 18).
19. Shri V.K.Sharma
Works Manager
C/O The Sr. General Manager
Gun Carriage Factory Jabalpur
Madhya Pradesh-482011(Respondent No.19).
20. Shri Rengaraju V
Works Manager
C/O The Sr. General Manager
Gun Carriage Factory Jabalpur
Madhya Pradesh-482011 (Respondent No.20).
21. Shri S.K.Saha
Works Manager
C/O The General Manager
Gun And Shell Factory Cossipore,
Kolkata West Bengal-700002 (Respondent No. 21).

22. Shri S.K.Saha
Works Manager
C/O The General Manager
Ordnance Parachute Factory
Napier Road, Cantt., Kanpur
Uttar Pradesh -208004 (Respondent No. 22).
23. Shri S.K.Saha
Works Manager
C/O The General Manager
Ammunition Factory Khadki
Khadki, Pune
Maharashtra-411003 (Respondent No. 23).
24. Shri A.N.Gonge
Works Manager
C/O The General Manager
Ordnance Factory Dumdum
Jessore Road, Dum Dum, Kolkata
West Bengal-700028 (Respondent No. 24).
25. Shri R.K.Kushwaha
Works Manager
C/O The General Manager
Ordnance Clothing Factory
Distt: Shahjahanpur
Uttar Pradesh-242001 (Respondent No. 25).
26. Shri S.K.Singh
Deputy Directofr
C/O Principal Director Ordnance
Factories Institute Of Learning
Kalpi Road Kanpur
Uttar Pradesh-208009 (Respondent No.26).
27. Shri- K.R.Singh
Works Manager
C/O The General Manager
Opto Electronics Factory
Raipur, Dehradun
Uttrakhan-248 008 (Respondent No. 27).
28. Shri S.S.Yadav
Works Manager
C/O The General Manager
Ordnance Equipment Factory
Hazratpur District Firozabad
Uttar Pradseh-283103 (Respondent No. 28).

29. Shri A.K. Chaudhari
 Works Manager
 C/O The General Manager
 Ordnance Factory Chandrapur
 Bhadravati,Chandrapur
 Maharashtra-442501 (Respondent No. 29).

30. Shri V.Maruti
 Deputy Director
 C/O Principal Director Ordnance
 Factories Institute Of Learning
 Ambajhari Ambajhari,Nagpur
 Maharashtra -440021
 (Respondent No. 30). ...Respondents

(By Advocate: Shri V.S.R. Krishna for respondents No.1 to 3)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The applicants, 6 in number, and working as Junior Works Managers (in short JWMs) in the 2nd respondent-Ordnance Factory Board, filed the OA seeking to quash the orders of promotion dated 30.06.2009 and 31.07.2009 to the extent of not promoting them to the post of Assistant Works Manager (JTS), (in short AWM/JTS).

2. Heard Shri Sudarshan Rajan with Shri Ramesh Singh Rawat, learned counsel for the applicants and Shri V.S.R. Krishna, learned counsel for the respondents No.1 to 3 and perused the pleadings on record.

3. Shri Sudarshan Rajan, learned counsel for the applicants submits that the service conditions of the post of JWM , which is a Group 'B' post, are governed by the Annexure A-4, the Indian Ordnance Factories Organisations, Junior Works Manager (Group 'B' post) Recruitment Rules, 1996, and as per the said rules, the

total cadre strength of the JWM is 1586 and the same are divided into different disciplines, such as, Mechanical, Electrical, Civil etc. with specific sub division of the posts, out of the total posts of 1586. The applicants belong to the Chemical discipline for which 232 posts of JWM are allotted.

4. The learned counsel further submits that the next promotional post is Assistant Works Manager, which is a Group 'A' post and is in the Junior Time Scale and the service conditions of the same are governed by Annexure A-5 rules, i.e. the Indian Ordnance Factories Service (Group-A) Recruitment Rules, 2002. As per the said rules, 50% of the total posts for the Junior Time Scale, i.e., Assistant Works Manager shall be filled up by promotion from the Junior Works Managers (Technical) with 3 years regular service and Junior Works Manager (Non-Technical/Stores) with 3 years regular service. Though the total cadre strength of the feeder post of JWM is divided into different disciplines, but there is no such division in the post of Assistant Works Manager, as per the said Rules. However, the same is by way of selection from among suitable persons from the feeder category.

5. The learned counsel further submits that the posts of Assistant Works Manager are not divided into any sub disciplines, and hence though the respondents are required to publish a common seniority list of all the JWMs and to consider the cases of persons as per the said common seniority list, they have illegally

prepared the seniority lists of JWM, discipline/trade wise and also promoted the private respondents as Assistant Works Managers, though they are juniors to the applicants, as per the date of appointment to the post of JWM.

6. Per contra, Shri V.S.R. Krishna, learned counsel appearing for the respondents submits that the Annexure A-5 Recruitment Rules, 2002 for the post of Assistant Works Managers, nowhere prohibited the respondents from preparing a discipline-wise seniority list of JWMs and hence the publication of discipline-wise seniority list of JWMs cannot be said to be illegal. He further submits that the Annexure A-5 Rules were issued in the year 2002 and that the practice of publication of separate seniority lists of JWMs discipline-wise has been in vogue since long time, and hence the same cannot be objected now. It is further submitted that though the posts of Assistant Works Managers are not divided into different disciplines, but the respondents are empowered to fill the said vacancies as per the requirements of the specialties, depending on the administrative exigencies in different Ordnance Factories.

7. The relevant Rules of Annexure A-5 Recruitment Rules, 2002, which governs the selection procedure for the post of Assistant Works Managers (JTS), among other posts, are as under:-

“2(f) **“Service”** means Indian Ordnance Factories Service Group – ‘A’ which consists of the posts or grades or time-scales mentioned in Schedule-I annexed to these rules and comprises of the following categories of offices, namely:-

- (i) Engineers (Mechanical/Electrical/Electronics/Civil)

- (ii) Chemical Engineers
- (iii) Metallurgical Engineers
- (iv) Leather Technologists
- (v) Clothing Technologists
- (vi) Administrative Officers

Provided that the Government may, in consultation with the Commission:-

- (x) include in the service any post or grade or time scale other than those included in Schedule I annexed to these rules or exclude from the service a post or time scale included in the said Schedule: or
- (y) appoint an officer, the post or grade or time scale held by whom is included in the Service under items (i) above, to the appropriate grade of the Service in a temporary capacity or in a substantive capacity as may be deemed fit and fix his seniority in the grade.
- (z) officers belonging to the trades not mentioned above in the cadre will continue to be governed by the provisions of this SRO and they will be entitled for the benefits as applicable to the officers belonging to the trades as mentioned in sub-clauses (i) to (vi) of clause (f) of rule 2 above.

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

- (i) by a competitive examination in accordance with Examination Rules published by Union Public Service Commission;
- (ii) by Promotion or deputation/absorption from another service in accordance with Part II of these rules;
- (iii) by Selection in accordance with Part III of these rules.

1. By special selection in accordance with Part IV of these rules

6. Percentage of vacancies to be filled by various methods of recruitment:-

a. 50% of the total posts for the Junior Time Scale shall be filled by competitive examination from Engineering Services Examination (ESE) for Engineers and Civil Services Examination (CSE) for Administrative Officers and by selection from the remaining categories as specified in Part III and Part IV. The remaining 50% of the total posts shall be filled by promotions as specified in accordance with Schedule II.

b. The other grades mentioned in Schedule-I annexed to these rules shall be filled by promotion, transfer or deputation (vide Part II of these rules) failing which by recruitment in accordance with Part IV of these rules.

7. Determination of method of recruitment:- Subject to the proviso in rules 5 and 6, the Government may, in consultation with the Commission, determine the method or methods to be employed for the purpose of filling of any post for any particular period and the number of candidates to be recruited by each method”.

8. The learned counsel appearing for the respondents while drawing our attention to the above referred rules, submits that Rule 7 specifically empowered the respondents to determine the method or methods for the purpose of filling up of any post and hence, the action of the respondents in filling up the AWM/JTS posts, discipline-wise is authorized under the rules.

9. The instant OA was originally filed in the Mumbai Bench of this Tribunal, with OA No.748/2011 and later transferred to this Bench and renumbered as OA No.232/2013 and dismissed by this Tribunal on 22.07.2014, on the ground that the affected parties are not made as parties to the OA. However, the Hon’ble High Court in

W.P. (C) No.6370/2015 by order dated 08.07.2015, set aside the said dismissal order permitting the applicants to implead all the necessary and affected parties. Accordingly, the applicants impleaded the private respondents No.7 to 30 as parties to the OA. Notices in the OA were served on the private respondents, but as they have neither filed any counter nor appeared in person or through any advocate, their right to file counter was forfeited.

10. Shri Sundarshan Rajan, the learned counsel appearing for the applicants submits that since posts of Assistant Works Manager are not divided into any sub disciplines, like the post of Junior Works Managers, the respondents are required to prepare a common seniority list of all the JWMs, without reference to their discipline, and basing on the said common seniority list of JWMs, promotions should be affected to the post of Assistant Works Manager. The learned counsel placed reliance on the following decisions in support of his submissions:-

- (1) **Dr. N.D. Mitra and Another Vs. Union of India and Others, (1994) 4 SCC 474;**
- (2) **D.P. Das Vs. Union of India and Others, (2011) 8 SCC 115;**
and
- (3) **B. Premanand and Others Vs. Mohan Koikal and Others, (2011) 4 SCC 266.**

11. On the other hand, Shri V.S.R. Krishna, the learned counsel appearing for respondents No.1 to 3 submits that the UPSC has

examined the said issue in detail and finally decided to hold the DPC for promotion to the post of Assistant Works Manager (JTS) on the basis of stream-wise vacancies. He has also drawn our attention to the Minutes of the meeting of the DPC held on 04.07.2013. It is useful to note one of the paragraphs of the said Minutes, which is relating to the present subject matter and the same is as under:-

“(b) The Ministry of Defence has not stated that the matter has since been reviewed by the Ordnance Factory Board in the light of observations of the Commission’s office and found that the review DPC meeting since 2002-03 may further result in reversions and may create legal complications. The Ministry has further stated that while preparing the combined seniority list of Junior Works Manager, a large number of Junior Works Managers of a particular discipline are appearing/figuring together in a bunch in the Combined Seniority List. Such bunching is likely to result in a situation where while drawing Select Panels for promotion to JTS a high number of incumbent from a single discipline only would figure. Such a situation would result in imbalance amongst various disciplines within the JTS grade and directly affect functional requirement of the organization. Accordingly, after reviewing the whole situation, it has been decided to continue promotion from Junior Works Manager to Assistant Director/Assistant Works Manager as per the existing norms, i.e., discipline wise allocation of vacancies and discipline wise seniority of officers as was being done since 2002. The Ministry has also stated that from the point of view of cadre management, a sudden shift to common seniority as against hitherto practice of maintaining stream wise seniority may not be a sound proposition. Going by combined seniority would necessitate review DPC since 2002-03, which would have widespread unsettling effect in the cadre as well as in the organization. The Ministry has further stated that there may be apprehensions that the move to revert to stream-wise seniority may lead to court cases by aggrieved parties. The Ministry has stated that there are already court cases for and against both common seniority and stream-wise seniority and no interim/stay orders have been passed by the respective benches....”

12. In Dr.N.D. Mitra and Another (supra), it was held as under:-

“.....The normal rule for fixing seniority in a cadre is the length of service. In the absence of any statutory rules or executive instructions to the contrary, inter se seniority amongst the Deputy Director Generals has to be fixed on the basis of continuous length in the said post. As mentioned above the hierarchy of the six distinct separate disciplines comes to an end with the post of Deputy Director General. Thereafter the post of Senior Deputy Director General is common to all the disciplines. The Deputy Director Generals, working in all the six disciplines, are entitled to be considered for promotion to the post of Senior Deputy Director General and as such it is necessary to maintain their inter seniority. We see no infirmity in fixing the seniority amongst the Deputy Director Generals on the basis of their length of service in the said-post. We, therefore, uphold the finding of the Tribunal on this point”.

13. In D.P. Das (supra), it was held as under:-

“18. The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account. The Supreme Court in M.B. Joshi & others. V. Satish Kumar Pandey & Ors., AIR 1993 SC 267 has laid down that it is the well settled principle of service jurisprudence then in the absence of any specific rule the seniority amongst persons holding similar posts in the same cadre has to be determined on the basis of the length of the service and not on any other fortuitous circumstances.

19. Determination of seniority is a vital aspect in the service career of an employee. His future promotion is dependent on this. Therefore, the determination of seniority must be based on some principles, which are just and fair. This is the mandate of Articles 14 and 16”.

14. In B. Premanand and Others (supra), it was held that “when there is a conflict between law and equity, it is the law which is to prevail and equity can only supplement the law when there is a gap in it, but it cannot supplant the law”.

15. There is no quarrel with the decisions cited by the learned counsel for the applicants. Further, the Hon’ble Apex Court in the said decisions categorically held that “In the absence of any specific rule, the determination of seniority must be based on some principles, which are just and fair”. Admittedly, there is no specific rule indicating that the promotions from the posts of Junior Works Managers to the post of Assistant Works Manager (JTS) are to be made basing on the discipline-wise seniority list of JWMs or the combined common seniority list of all the JWMs, irrespective of their discipline. Further, the respondents were empowered to determine the method of recruitment for the post of Assistant Works Managers, in terms of Rule 7 of Annexure A-5, the Indian Ordnance Factories Service (Group-A) Recruitment Rules, 2002. The UPSC also justified the action of affecting promotions to the

post of Assistant Works Managers (JTS), discipline-wise, by observing that “bunching of all the Junior Works Managers, of all the disciplines into a combined seniority list is likely to result in imbalance amongst various disciplines within the JTS grade and directly affecting functional requirement of the organisation”. It cannot be said that the respondent-authorities have no power, under the rules, to affect promotions to Assistant Works Managers (JTS)(Grade), discipline-wise in view of the functional requirements of the organisation. Further, admittedly, the respondents are following the same procedure, i.e., affecting promotions to the post of Assistant Works Managers (JTS), discipline-wise, basing on the seniority list of Junior Works Managers prepared, discipline-wise from 2002 to 2003 onwards, i.e., even prior to the impugned promotions made in the year 2009. Though, an issue was raised and considered but it was felt that the earlier procedure is in the interest of the organisation and support the functional requirement, the same procedure is continued even subsequent to the impugned promotions. In our view, the said action is just and fair and not violative of any of the rules in vogue.

16. In the circumstances and for the aforesaid reasons, we do not

find any merit in the OA and accordingly, the same is dismissed.

No costs.

(A.K. Bishnoi)
Member(A)

(V. Ajay Kumar)
Member (J)

RKS