

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01094/2016

Dated the 19th day of September Two Thousand Eighteen

PRESENT

HON'BLE MRS. JASMINE AHMED, Member (J)

&

HON'BLE MR. T. JACOB, Member (A)

G.S.Rajkumar,
T.No. D. No. 67152/9309,
HT/EP Shop, HS-I,
HVF, Avadi,
Chennai 600054.

....Applicant

By Advocate M/s. R. Rajesh Kumar

Vs

1.Union of India,
rep by its Secretary,
Ministry of Defence,
Department of Defence,
101A, South Block,
New Delhi 110001.

2.The Chairman & DGQF,
Ordnance Factory Board,
10/A, S.K.Bose Road,
Kolkatta 700001.

3.The Senior General Manager,
Heavy Vehicle Factory,
Avadi, Chennai 600054.

4.The General Manager,
HAPP(Heavy Alloy Penetrator Project),
HAPP Township PO,
Trichy 620025.

....Respondents

By Advocate Mr. M. Kishore Kumar

Order reserved on : 27.08.2018

Order pronounced on : 19.09.2018

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The applicant has filed this OA seeking the following relief:

“To set aside the order passed by the respondent vide its letter dt. 27.01.2016 bearing Ref. No. 00901/LB/RECT/Rep/2015 and direct the respondent to promote the applicant to the post of HS-1 from 01.01.2006 with all attended benefits and financial benefits alternatively direct the respondent to reckon the seniority of the applicant from the date of promotion to the post of Electroplater (Skilled) in the 4th respondent organisation ie. 29.12.1999 and further direct the respondent to grant all attended benefits and financial benefits and to pass such or other order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The facts of the case as stated by the learned counsel for the applicant are:

The applicant was initially appointed as an Electroplater (Semi Skilled) on 17.09.1997 with the 4th respondent in the HAPP, Trichy. Subsequently, he was promoted as Electroplater (skilled) on 29.12.1999 and Electroplater (Highly Skilled) on 01.03.2003. During the year 2006, the applicant had applied for compassionate transfer from HAPP, Trichy to HVF, Avadi. His request was considered and transferred to HVF Avadi. He took transfer on a condition of his foregoing the promotional post and opting the feeder post ie Electroplater (Skilled) in HPF, Avadi. He submitted representation to the Senior Genral Manager, HVF Avadi to fix his seniority by giving him appropriate place in the cadre of Electroplater (Skilled) taking into consideration of his initial appointment as Electroplater (Skilled) in HAPP, Trichy. His representation came to be rejected under letter No. 00901/LB/RECT/Rep/2015 dt. 27.01.2016. The order dt. 27.01.2016 is under challenge in this OA.

3. The respondents filed reply. It is stated in the reply affidavit that the applicant came to HVF, Avadi on his own request and on his undertaking for reversion to the post of Electroplater (Skilled). In view of the undertaking, it is not permissible for the applicant to contend that his initial date of promotion as Electroplater(Skilled) in HAPP, Trichy is to be taken into consideration. For better appreciation of the plea advanced by the respondents (R1-3), we may refer to para 4 and 5 of the reply affidavit filed by the and is thus:

"4. With regard to para 4.2, it is most respectfully submitted that the applicant was fully aware that he has to lose his Highly Skilled grade and be reverted to Skilled grade on his transfer to 3rd respondent factory from 4th respondent factory. In skilled grade also, the applicant could be placed only in junior most level, since his transfer from the 4th respondent factory to 3rd respondent factory may affect the promotional prospects of the existing Electroplaters in Skilled grade in the 3rd respondent factory, Hence, as per the rules on the subject, the applicant has to be placed in the bottom of the seniority list in the Skilled grade. The applicant was fully aware of the consequences and had also executed an undertaking on this effect. In cases of transfer on employee's own interest from one factory to another on compassionate grounds, the seniority of the concerned employee in the existing grade shall be reckoned from the date he joins the new factory. In fact the applicant had attached the relevant OF Board Instructions No. 429/Policy/A/I dated 29.11.2006 (**Annexure A4 of the OA, page No. 11**) where para 2.a clearly states as under:-

"In case of transfer from one factory to another on compassionate grounds on individual's own interest, the seniority of concerned individual in the existing grade shall be reckoned from the date he joins the new factory."

Hence, the contention of the applicant that the OF Board letter No. 429/A/I dated 28.05.1974 and Nov 2006 had been violated by the 3rd respondent is not correct and hereby denied. There is no double jeopardy as claimed by the applicant. He was well aware of the consequences of transfer from one factory to another on compassionate grounds. It is the applicant who submitted an undertaking to this effect. Had he not done these his case would have been outrightly rejected by 3rd respondent. Now having got his transfer on compassionate grounds the applicant conveniently tries to forget his own undertakings and policy directives of 2nd respondent. Hence, the contention of the applicant is not correct and the same cannot be accepted.

5. With regard to para 4.3, it is most respectfully submitted that the applicant is referring to cadre re-structure of Industrial employees implemented

in the year 2010 retrospectively from 01.01.2006 in the 4th respondent factory. However for the purpose of compassionate transfer from 4th respondent factory to 3rd respondent factory, the applicant was reverted to Skilled by the 4th respondent factory itself vide Factory Order Part II No. 1343 dated 26.10.2006, which clearly stated his seniority in the post of Electroplater Skilled will be reckoned only from the date of joining duty at HVF, Avadi, Chennai since the transfer is on compassionate grounds. The applicant's transfer on compassionate grounds can be accepted in the entry grade only ie., Skilled grade. Accordingly, the same has been accepted. The other contentions raised regarding his right to the post of Highly Skilled Grade-I of the applicant are not relevant to this cause of action, hence the same are hereby denied."

4. Heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondents.

5. It is contended by the learned counsel appearing for the applicant that the applicant came to the 3rd respondent on request transfer foregoing his promotional post as Electroplater (Highly Skilled) accepting the lower post as Electroplater (Skilled). As per the circulars of the respondent department, the employee on request does not lose the seniority on the lower post. Learned counsel refers to the circular dt. 28.08.1974. Much emphasis has been laid on the following portion of the circular which reads as hereunder:

" Doubts have been raised by certain Factories whether Seniority of IEs who are transferred on mutual basis will also be reckoned from the date they join the New Factories and whether in cases of Volunteers who seek transfer on reversion to lower posts in the new factories; loss of seniority would also be involved. It may be clarified that in cases of mutual transfers, loss of seniority will also arise on the lines indicated in this Headquarters circular letter quoted above. So far as volunteers seeking transfer on reversion to lower posts are concerned, loss of seniority in the lower grade also should not arise."

Further, learned counsel for the applicant also cited order of this Tribunal in OA 1476/2013, dt. 27.07.2015.

6. Learned counsel for the respondents submits that the undertaking given by

the applicant at the time of transfer from one factory to other is crystal clear that he is foregoing not only his promotional post but also seniority in the lower cadre. The learned counsel laid much emphasis on the under taking given by the applicant which finds place at page no. 13 of the reply statement. Learned Counsel for the respondents also relied on an order of the Hon'ble High Court of Madras dt. 05.07.2016 in WP 4669 of 2016 in a similar matter (appeal filed by the respondents against order of CAT-Madras Bench order dt. 19.08.2015 in OA 1161/2013). Learned counsel for the respondents has further stated that there is no All India seniority and factory wise seniority is only maintained and therefore, the request of the applicant cannot be acceded to.

7. It is an admitted fact that prior to transfer to HVF, Avadi, the applicant has served as Electroplater (Highly Skilled) in HAPP, Trichy and subsequently, on his request he has been transferred to HVF, Avadi and posted as Electroplater (Skilled). The relevant portion of the circular dated 28.08.1974 quoted by the counsel for the applicant does not apply to the facts of the case in as much as the applicant is not a volunteer. The only point that has to be decided in the present OA is as to whether the applicant can claim his original seniority since he has been transferred from one factory to another. The entire contention put forth on the side of the respondents is based on OF Board Instructions No. 429/Policy/A/I dt. 29.11.2006 wherein para 2.a clearly states as under:

"In case of transfer from one factory to another on compassionate grounds on individual's own interest, the seniority of concerned individual in the existing grade shall be reckoned from the date he joins the new factory."

8. It is an admitted fact that the applicant has been transferred from HAPP, Trichy to HVF, Avadi only on the basis of his undertaking wherein inter alia it is stated as thus:

"1. I understand that my transfer to HVF/Avadi as Electroplater-Skilled grade is purely on compassionate grounds.

2. I have understood that my seniority will be as per existing rules on compassionate grounds transfer at HVF on reporting."

9. Two aspects are involved in this case-

(a) Reversion to a lower grade and

(b) loss of seniority in the transferred post.

The former is governed by F.R. 15(a)(2)(a) while the latter, by guidelines of transfer from one factory to another. In so far as (a) is concerned, a request transfer could be acceded to, for transferring an individual from one post to another carrying a less pay than the pay of the post one holds on substantial basis. This benefit is afforded to the individual to accommodate him in the new place of posting at his request and the price paid for the same is loss in his pay. Such a loss in his pay does not in any way affect any other persons. In so far as transfer on compassionate grounds from one unit to another having disparate seniority lists, if the seniority of the previous unit is maintained even in the new factory, the same would unduly affect the promotional prospects of those in the said grade in the transferred unit. The guidelines thus take care of the interest of those individuals already working in the transferred unit in the following way:

(a) The transfer is permissible only when there is an element of direct

recruitment in the concerned post to which an individual is transferred from one unit to another. This is to ensure that the promotional prospects of those in the feeder grade are not hampered.

(b) While accommodating an individual against a direct recruit post, in so far as seniority is concerned, the seniority position of those already in the concerned post in which the individual is transferred should not be hampered.

It is for this reason that the transferred individual is placed at the bottom of the seniority list. The undertaking given by the applicant as extracted above meets the above two requirements – former for transfer to a post carrying less pay and thus in terms of FR 15(a)(2)(a) and the latter with reference to loss of seniority in terms of the guidelines.

The application seeks following reliefs –

(a) for promotion to the Highly Skilled grade w.e.f. 01-01-2006 or in the alternative,

(b) to keep his seniority in tact from the date he has been holding the post of Skilled Grade. If the former is acceded to then the same would amount to his being transferred in the same grade of HS. Such a transfer to HS which does not have an element of direct recruitment is impermissible. Again, the applicant does not appear to have claimed such promotion in his representation addressed to the respondents. His focus in the representation has been only for retention of his seniority in the skilled grade intact. If the alternative relief is acceded to, the same would then offend the guidelines on request transfer and it would unduly

affect the seniority of others in the transferred unit. Therefore, it is quite clear that neither the applicant can be promoted to HS w.e.f. 01-01-2006 nor could the seniority of the applicant be reckoned from the date he was holding the said post of Skilled grade in the earlier factory. Thus, the 3rd respondent after considering the existing circular, clarification and guidelines has rightly stated in the impugned order that the seniority of the applicant will be reckoned from the date of joining in the new factory. The order of the Hon'ble High Court of Madras dt. 05.07.2016 in WP 4669 of 2016 (supra) is applicable to the facts of the present case.

10. In view of the matter, we find that the OA is devoid of merits and accordingly the same is dismissed with no order as to costs.

(T.Jacob)
Member(A)

(Jasmine Ahmed)
Member(J)

19.09.2018

SKSI