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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH

An application Under Section 19 of the Administrative Act, 1985.

Original Application No. 975 of 2012.

TITLE OF THE CASE:

1) Pranab Kumar Pal

Son of Late Binoy Chandra Pal

aged about 66 years and residing at

BK-338, Sector-2, Salt Lake,

Kolkata - 700 091.

2) Anand Kumar Saxena

Son of Late Hariranjan Saxena

aged about 67 years and residing at

D-1/403, Lunkad Queensland, Viman Nagar,

Pune - 411 014.

3) Nishit Kumar Paul

Son of Late Nilmoni Paul

aged about 67 years and residing at

2-1, Gurudas Dutta Garden Lane, Ultadanga,

Kolkata - 700 067.

4) Tapan Kumar Roy

Son of Late Nirendra Narayan Roy
aged about 69 years and residing
at Sri Gouranga Ghat Road,
P.O. Panihati, Kolkata - 700 014.

5) Purnendu Mukhopadhyay alias

Purnendu Kumar Mukherjee
Son of Late Shyam Chand Mukherjee
aged about 67 years and residing
at 120A, South Sinthee Road,
Kolkata - 700 030.

All the aforesaid applicants are at
present retired employees having
their Head Quarters at Ordnance
Factory Board at 10A, Shaheed
Kshudiram Bose Road, Kolkata-700 001
from where the relevant parent orders
for implementations, impugned or not
have been issued. A detailed particu-
lars of the applicants are given at
paragraph 4 (x) and at Annexure - A-5)
hereinafter.

...

... Applicants.

- Versus -

1) Union of India, through the
Secretary, Ministry of Defence,
Government of India, Department of
Defence Production & Supplies,
South Block, New Delhi - 110 001.

2) Director General of Ordnance
Factories and Chairman, Ordnance
Factory Board, 10A, Shaheed Khudiram
Bose Road, Kolkata - 700 001.

3) General Manager, Ordnance Factory,
Ambajhari, P.O. Ambajhari, Nagpur-
440 021, Maharashtra.

4) General Manager, Rifle Factory,
Ichapore, P.O. Ichapore Nawabgunj,
Pin - 743 144, 24-Parganas(North).

5) General Manager, Metal & Steel
Factory, Ichapore, P.O. Ichapore
Nawabgunj, Pin - 743 144, 24 Parganas
(North).

6) General Manager,

Ammunition Factory, Kirkee,

P.O. Kirkee, Pune,

Maharashtra.

... ... Respondents.

7) Subrata Sinha,

B- 302, Anugraha Co-operative Housing

Society, Sai Section Plot No. 99/100,

Ambarnath (E), Pin - 421 501.

Maharashtra.

8) Sri Kaushal Kishore Singh,

Personal No. 909064,

Ex-Assistant Works Manager

and residing at 317/2B, Block Pank I,

Kanpur - 208 020, Uttar Pradesh.

... ... Preforma
Respondents.

O.A. 975 of 2012

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. B.R. Das, Counsel
Mr. N. Roy, Counsel

For the Respondents : Mr. B. P. Manna, Counsel

Heard on : 31.08.2018

Date of order: 14-9-2018

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

This application has been filed seeking the following reliefs:

"8(a) Leave for filing the instant original application jointly under Rule 4(5)(a) of the Administrative Tribunal Procedural Rules, 1987 since all the applicants are similarly situated and similarly circumstances with each other.

(b) Impugned reply of the respondents dated 4.1.2012 (A-8) corresponding to the order dated 8.9.2011 (A-1) and other orders at Annexure (A-1) be suitably amended for reckoning dated of antedated notional promotion to Foreman/JWM as per order dated 20.10.2009, (Annexure A-9 hereto)

(c) Amended order be issued by the respondent no. 2 declaring that the notional promotion of the applicants be reckoned from the date of the promotion of their immediate junior employees like Proforma respondent no. 7, 8 and alike others from the date of issue of the order by the respondents with effect from 30.11.93 and/or as per their individual entitlement as has been done by the same respondents through Implementation order at Annexure A-9 of the respondents issued previously on 10.11.93; 15.2.293 (A-6) and dated 26.6.2002 (A-5) hereto;

(d) A direction upon the respondents and especially upon the respondent no. 2 to issue order for notional seniority/promotion in the grade of Foreman/JWM from the date of notional promotion w.e.f. 30.12.1993 or as per individual entitlement on that basis in respect of the applicants, in respect of which each applicant is similarly situated with each other.

(e)A further direction upon the same respondents extend the same benefit to the present applicants with all consequential benefits like notional refixation of pay and other related benefits to the present applicants as has been already granted to the said other beneficiaries as mentioned hereinabove and to the Proforma respondent no. 7 and 8 herein as is presently also being granted from time to time to the co-applicants and the similarly situated persons in correct implementation of the solemn order of the Hon'ble Supreme Court in C.A. No. 2311 of 1991 dated 5.8.93 and in C.A. No. 4862 of 2007 dated 12.10.2007 and also to effect further notional promotion to the post of Assistant Works Manager etc. as per eligibility of the applicants as and when arrived at, after correct implementation of the solemn order of this Hon'ble Tribunal as merged with that of the Hon'ble Supreme Court on subsequent appeal before the Hon'ble Apex Court."

2. Admitted fact that emerged from the pleadings of the parties is as under:

In 1950, the Union of India in the Ministry of Defence introduced Apprenticeship Training Scheme (ATS) under MoD Letter No. 9/20/D-1(B)/FY, dated 10.4.1950 for Supervisory post in Ordnance Factories for efficient working and supervision. After completion of successful apprenticeship, the trainees were offered post training employment by the Director General Factories (DGOF) to

various posts of Supervisor Gr. A and Chargeman Grade-II (CM-II) on gradation secured by them in the examination conducted by the Central Selection Board.

There used to be cut off marks fixed by the Central Selection Board in those gradation examinations. Those apprentices who were successful in securing more than the cut off marks were graded directly as Chargeman Gr. II (CM-II), but those apprentices who failed to secure the cut off marks were graded, as Supervisor Gr. A, CM-II (Tech) posts were higher/promotional posts than Supervisor Grade-A.

The hierarchy of Supervisor cadre as it then existed is shown below:

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Foreman

Asst. Foreman

Chargeman Gr. I

Chargeman Gr. II

Supervisor Gr. A

Those apprentices who failed to secure the cut off marks prescribed for gradation as Chargeman Gr. II were graded as Supervisor which was a feeder/lower post to the grade of Chargeman Gr. II. These Gr. A Supervisors were being promoted to CM-II after some years of service as Supervisor Gr. A by the normal process and procedure of promotion. Hence, this used to be two separate and distinct categories of erstwhile apprentices in the grade of CM-II, viz. those who secured more than the cut off mark and were directly graded as C/M-II (this category can be called 'Directly Graded' Chargeman Gr. II) and those who had failed to secure the cut off mark and were originally graded as Supervisor Gr. A but were subsequently promoted to the Grade of C/M-II (this category can be called "Promotee Chargeman Gr. II").

The scheme was modified under MOD letter No. 548/A/TG/1197/II/D (FY), dated 23.04.1965. Paragraph 11 of the modified scheme made following provision for post training employment.

(a) On satisfactory completion of the Apprenticeship course, the apprentices will be graded by the DGOF as fit for appointment to the grades of C/M-I or Gr. II or Supervisor A or equivalent grades of Senior Draftsman, Senior Planner, Senior Rate Fixer and Senior Estimators or unfit. Some outstanding apprentices may also be graded as assistant Foreman. While Govt. offer no guarantee of appointment, successful candidates will be offered appointment in the grades in which they have qualified subject to the availability of vacancies and subject to their being found fit, both physically and in other respect for such appointment."

The aforesaid scheme was further modified by a corrigendum dated 23.10.1967 by introducing the following provisions in paragraph 11 thereof:

"(d) The Supervisory apprentices who secured upto 5% marks less in the aggregate than prescribed by the Central Selection Board for gradation as C/M-II in a particular gradation examination will be allowed to take another chance at the next gradation examination and on the basis of their performance may be graded by the DGOF as fit for appointment as C/M-II and appointed as such with effect from a date after they are so graded in the subsequent gradation examination. This will have retrospective effect to cover the past cases in which the DGOF has already allowed such Supervisor apprentices a second chance to appear in the gradation examination."

Though the provision for second gradation examination (for those who

had originally been graded as Supervisor A) was formally made on 23.10.1967, some apprentices graded as Supervisor A in the examination conducted in 1965 were permitted to take the second gradation in 1966. This prompted some Supervisor A (of earlier batches and who satisfied the eligibility criteria as per corrigendum dated 23.10.1967) to approach the Delhi High Court by filing WP No. 729 of 1976. The Hon'ble High Court, Delhi directed the department to allow the Writ petitioners the second chance to improve their gradation.

However, before the examination could be held the applicants who had succeeded before the Delhi High Court approached the High Court of Calcutta for a direction to grant them the same benefit and determine their seniority as CM-II, six months from the date of examination. The petition filed by certain employees (Purnendu Mukhopadhyay and 94 others) was transferred to this Bench as TA No. 1069 of 1986, and decided on 09.07.1990. The operative portion of the judgment of Hon'ble CAT dated 09.07.1990 is as under:

".....we direct the respondent authorities not to hold the examination. We also direct the respondent authorities to re-fix the respective notional seniority of the applicants and fix their pay scale and all benefits attached thereto as per the rule on the basis that all the applicants came out successful in the selection test for promotion to the post of C/M-II from their respective date of examination. But they will not be entitled any back wages or any other financial benefit, save and except the notional seniority. The applicants will be entitled to be paid in accordance with the re-fix pay scale. As the present applications was filed in the representative capacity by obtaining leave under Rule 11 of CPC from the Hon'ble High Court on 18.03.1983 this decision will be binding on all other persons similarly situated and similarly affected. The respondents are directed to give the same benefit to them to avoid future litigation on the same issue."

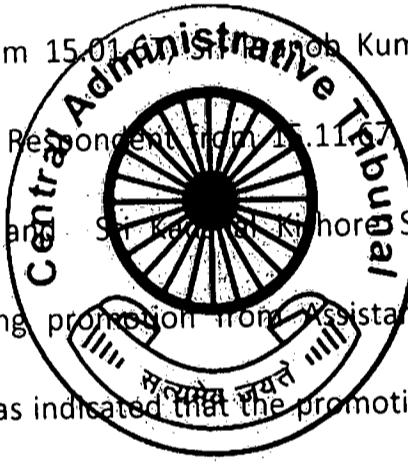
Union of India had moved an SLP against the above judgment before the Hon'ble Supreme Court. The matter was admitted as Civil Appeal No. 2311 of 1991 and disposed of vide order dated 05.08.1993, wherein the Apex Court had directed as under:

".....the placement of all those supervisors Grade A who came in the field of eligibility, namely, of securing less than 5% marks in aggregate fixed for selection as Chargeman Gr. II should be fixed by directing that they were selected for that post 6 months from the date of their gradation examination."

In compliance of the above directives of Hon'ble Supreme Court, OFB Order No. 3265/CA-2311/91/PM/GSF/A/NG dated 04.11.1993 was published thereby re-fixing the seniority in the Grade of Chargeman Gr. II as on 01.01.1977.

3. Pursuant to the direction of this Tribunal in T.A.1069/1986 the seniority of all the candidates who were below 5% region in the original gradation for selection to the Chargeman was re-fixed in the grade of Chargeman Gr.- II(Mech/Elec/Met/Chem) and gradation list/revised seniority list of 4th November, 1993 bestowed notional seniority with effect from 15.10.64 onwards by virtue of which Sri Purnendu Mukhopadhyay came to be assigned notional seniority in Chargeman Gr. II with effect from 15.5.66, Sri Nisith Kumar Paul from 15.01.67, Sri Anand Kumar Saxena from 15.01.67, Sri Job Kumar Pal from 15.11.67, Sri Debaprasad Deb, Private Respondent from 15.11.67, Sri Tapan Kumar Roy was assigned from 15.10.66 and Sri Kavindra Singh from 15.06.67. On 15.12.1993 while granting promotion from Assistant Foreman (Technical) to Foreman (Technical) it was indicated that the promotions would take effect from 30.12.1993 or from the date of assumption of higher responsibilities at the new place or posting, whichever is later. Although the applicant along with Sri Purnendu Mukhopadhyay figured in the list to be accorded with promotion with effect from the date mentioned in the order dated 15.12.1993, they were promoted from a subsequent date.

4. Respondents in their reply emphatically admitted that one Sri Subrata Sinha was granted promotion on transfer to MPF which was accepted by him and was given effect from 03.08.1995. Upon his representation he was accorded his seniority antedating his seniority to 30.12.1993 from 03.08.1995 whereas in case of applicant they refused antedating their seniority as according to them the



applicants were offered regular promotion but declined to accept such promotion as such they were debarred for one year and after the next DPC they were allowed promotion from 1994 onwards.

5. The counsels were heard and materials on record were perused.
6. It transpired in the course of hearing that the applicants were inarguably and indubitably entitled to be bestowed with the benefits flowing from the Hon'ble Apex Court's decision (supra) and to be granted notional promotion w.e.f. 30.12.93 by virtue of order dated 15.12.93, yet the respondents denied them such notional promotion on the ground of their refusal to accept promotion in normal course, which ground was untenable in the eyes of law. The notional promotion had to be automatically bestowed upon them irrespective of any subsequent event or contingency. The respondents are strangely conspicuous by their silence on how notional promotion could be deferred for a subsequent refusal of normal promotion.
7. In the aforesaid backdrop the respondents are directed to consider the case of the present applicants alike Shri Subrata Sinha for pre-ponement of date of promotion on par with the juniors of the applicants namely, Sri Pranab Kumar Pal, Sri Debaprasad Deb, Sri Tapan Kumar Roy and Kaushal Kishore Singh.
8. Let appropriate order be issued within 8 weeks.
9. Accordingly, OA would stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banérjee)
Member (J)

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