

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 350/00401/2014

Date of order: 10th April 2018.

**Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Shri Kohinoor Prakash Shah,
Son of Shri R. Shah,
Aged about 48 years,
Working as Machinist Skilled at HMS Section,
Ordnance Factory, Dum Dum,
Kolkata – 700 028,
Residing at Qtrs. No. G-32, Magazine Quarters,
Dum Dum Estate,
Kolkata – 700 028.**

.. Applicant

Vs.

- 1. Union of India,
Service through the Secretary,
Ministry of Defence,
Department of Defence Production,
North Block,
New Delhi -1.**
- 2. Ordnance Factory Board,
Service through the Chairman/DGOF,
Ordnance Factory Board,
Sahid Khudiram Basu Road,
Kolkata – 700 001.**
- 3. The General Manager,
Ordnance Factory,
Dum Dum, Jessore Road,
Kolkata – 700 028.**
- 4. Accounts Officer,
Ordnance Factory, Dum Dum,
Jessore Road,
Kolkata – 700 028.**
- 5. The Liaisoning Officer (SC/ST/OBC),
Cum- Dy. General Manager (Admin.),
Ordnance Factory, Dum Dum,**

Kolkata – 700 028.

.. Respondents

For the Applicant : Mr. J.R. Das, Counsel

For the Respondents : Ms. M. Bhattacharyya, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at non-receipt of promotions in his capacity as a ST candidate, the applicant has filed the instant application seeking the following relief:-

(i) An order directing the respondents to review the seniority/position of the applicant herein strictly as per rule as due for an ST candidate since his re-designation in Industrial Establishment (IE) on and from 1.7.1995 up to date.

(ii) An order directing the respondents to review whether point roster system regarding promotions have ever been followed in case of the applicant herein and whether as per such point roster system the applicant was due for such further promotion as an ST candidate since deprived.

(iii) An order directing the respondents to grant all promotional benefits at par with his erstwhile juniors with all consequential monetary benefits to the applicant.

(iv) An order directing the respondents to produce all relevant records before this Hon'ble Tribunal for conscionable justice with a copy to the Ld. Advocate of the applicant.

(v) Any other order or further order/orders and/or direction/directions as to this Hon'ble Tribunal seem fit and proper."

2. Heard Ld. Counsel for parties, perused pleadings, documents on record and written notes furnished by both sides.

3. The matter, in brief, as canvassed by the Ld. Counsel for the applicant, is as follows:-

The applicant belongs to ST category and had joined the respondent's service on compassionate ground as a Messenger Boy on

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14.12.1981 and that he was confirmed in his entry grade by an order dated 27.4.1992 w.e.f. 1.4.1988.

That, on 19.12.1991, the Ordnance Factory Board circular was issued regarding re-designation from NIES to IES and that such re-designation was considered on the basis of existing seniority position.

That his seniority, however, was forfeited on redesignation dated 22.6.1995 and he came to know of this only after the offer was accepted by him post publication of the re-designation list.

Such injustice was challenged in an O.A. No. 1439 of 1997, which was decided in his favour on 29.7.2002 but was subsequently denied by a speaking order dated 9.11.2002, further challenged in an another O.A. bearing No. 510 of 2010, which, during the time of filing of the application, was pending for order before the Tribunal.

That, on 29.11.1995, trade test was called to fill up 47 vacancies and although the applicant was a ST candidate, he was not allowed to participate in the same.

That, thereafter, on 22.5.1998, another 38 number of vacancies were declared and the applicant, even though allowed and successful in the trade test, was not considered for promotion. His representations in this regard were not responded to favourably.

That, on 4.9.2009, 44 candidates were again called for trade test for existing Skilled to Highly Skilled grade and the applicant, in spite of being the senior most ST candidate, was omitted without assigning any reason whatsoever. After his numerous representations to various authorities, the applicant was able to procure a tally sheet of Machinist for 118 posts as on 16.1.2010, which reveals that there was a shortfall in ST cadre by (-3) nos. and UR by (-4) nos. and hence, being the senior-most ST candidate, the

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applicant being aggrieved at being left out in the promotional post, has approached this Tribunal with the instant application.

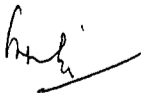
4. The Ld. Counsel for respondents, per contra, argued as follows:-

That, the applicant is presently working in the capacity of Machinist Highly Skilled Gr. II and was initially appointed in the non-industrial establishment w.e.f. 14.12.1981 as a Messenger Boy and promoted as an Orderly w.e.f. 1.1.1985.

The respondent authorities had issued a letter bearing 273/JCM/A/NI dated 21.1.1980 laying down the guidelines for dealing with cases of re-designation of eligible Gr. 'D' employees for the post of Labour "B" (Unskilled) in Industrial Establishment after completion of five years service in non-Industrial Establishment at the request of the candidates and on account of the fact that there was no promotional prospect in any Gr. "D" post in non-Industrial Establishment. It was also stated that before such re-designation is accepted, the candidates would have to furnish a written undertaking that they are willing to forego all the benefits of NIE service such as seniority etc. (except pension) and that in future they will not seek re-transfer to NIE and that on re-designation to Labourer "B", the seniority in the IE for the purpose of future promotion would be reckoned from the date of re-designation.

That, such re-designation could not be completed on account of the general ban on recruitment imposed by Govt. of India and on 19.12.1991, the respondent authorities conveyed their decision in favour of such re-designation to the extent of compassionate ground appointees in NIEs.

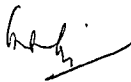
That, the applicant was one of the employees, who submitted their declaration that they had understood all the implications of transfer from



NIE to IE as Labourer "B" (Unskilled) and that they would not in future seek re-transfer or revert to their old Establishment, trade/grade in future.

Subsequently, a Factory Order Part. II No. 614 dated 22.6.1995 was published wherein the applicant's name appeared at Srl. No. 2. It was clearly stated therein that the seniority of the applicant as Labourer (Unskilled) in Industrial Establishment for the purpose of further promotion would be reckoned from the date of his re-designation as Labourer (Unskilled) i.e. w.e.f. 1.7.1995. The applicant had never challenged or objected to such order and had accepted the same. After completion of three years of service, the applicant, along with others, was called for appearing at a trade test for the post of Labourer/Semi-Skilled. The combined list was prepared in respect of all successful candidates, notified on 24.7.1998 and the applicant, being an ST candidate, was promoted w.e.f. 23.9.1998 vide orders dated 23.9.1998.

That, the applicant was redesignated to Machinist/Semi-skilled w.e.f. 21.12.2004 and thereafter upgraded to Machinist/Skilled w.e.f. 23.12.2006. As there are no provisions for reservation on re-designation on upgradation, the question of maintaining reservation roster in this context did not arise. Further, in the year 2010, vide circular dated 13.12.2010, a new policy was introduced for cadre re-structuring of Industrial Employees w.e.f. 1.1.2006 and with the introduction of the said new "4-Grade Structure", the erstwhile cadre structure of Industrial Employees became defunct. The respondents further averred that the benefit of the said "4-Grade Structure", however, was extended to the applicant (in relaxation of Trade Test, Qualifying Service etc. as one time measure) by promoting him from Machinist/Skilled to the post of Machinist/Highly Skilled Grade-II



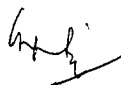
w.e.f. 24.12.2006 against an ST vacancy earmarked as per the reservation roster and the promotion was notified on 29.11.2011.

The applicant was considered for further promotion from Machinist/Highly Skilled Gr. II to Machinist/Highly Skilled Gr. I along with other eligible incumbents and accordingly, was called for trade test held on 15.11.2013.

The trade test was duly held and the result was published. But since a criminal case was pending against the applicant, his result was kept in a sealed cover which was to be opened and acted upon after conclusion of the criminal case against the applicant in a Court of Law.

While the respondents, in their written notes of argument, has further stated that although the applicant did not challenge his re-designation as Labourer (Unskilled) w.e.f. 1.7.1995 as well as the speaking order dated 9.11.2002 until 2010, in 2010 i.e. after a lapse of eight years from the date of issue of the speaking order consequent to directions in O.A. No. 1439 of 1997, the applicant further filed an O.A. No. 510 of 2010 in which the applicant prayed for relief of counting of past seniority in the non-Industrial Establishment and for setting aside and quashing of the aforesaid speaking order dated 9.11.2002. The said O.A. had been disposed of on 22.4.2015 with a direction upon the respondents to consider the case of the applicant appropriately in terms of the earlier order of Tribunal dated 29.7.2002 in O.A. No. 1439 of 1997. In compliance with such order dated 22.4.2015, the respondent authorities have issued a speaking order dated 20.7.2015. The applicant, however, have not challenged the said speaking order till date.

According to the respondents, the applicant has filed the instant O.A. No. 401 of 2014 broadly on the same cause of action as contended in O.A.



No. 510 of 2010 along with certain new issues and that his representation regarding ST vacancy for Labourer/Semi-Skilled has been disposed of by the competent authority vide letter dated 23.9.1998 and 22.2.1999 as will be evident from Annexure "A-8" and "A-9" collectively and that the applicant's representations regarding ST vacancy for Machinist (Highly Skilled) was also disposed of by the competent authority vide letter dated 23.9.2010 (Annexure – "A-13" colly.).

DISCUSSIONS

5. While examining the arguments and the pleadings on record, the records in O.A. No. 510 of 2010 were called for further perusal and examination. It is seen that in the said O.A., the following relief had been sought for:-

"(a) An order directing the Respondents to set aside and/or quash the impugned memorandum being dated 09th November, 2002 being wholly arbitrary and against provisions of natural and procedural justice.

(b) Direction upon the Respondents to set aside and/or quash the impugned order dated 22.6.1995 to the extent of forfeiture of claim of the applicant of the benefits of NIE Service.

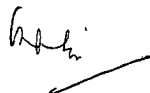
(c) Direction upon the Respondents to count seniority of the applicant from the date of his appointment without prejudice to his re-designation/conversion from Non-Industrial Establishment (Group 'D') to Industrial Establishment (Group 'D') and grant promotion on the basis of entire seniority since his appointment.

(d) Direction upon the Respondents to set aside and/or quash the impugned order dated 22.2.1999 to the extent that no irregularity was found in the promotion of the applicant against his earned seniority.

(e) Cost of the suit;

(f) An order directing the respondent authority to produce all relevant records for proper adjudication of the matter with copies served to the Ld. Advocate of the applicant in the interest of justice.

(g) Any order and/or further order as the Hon'ble Tribunal may deem fit and proper."



The Tribunal had disposed of the matter with the following orders:-

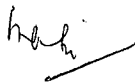
“6. In such a view of the matter, the speaking order dated 9th November, 2002 is hereby quashed and the matter is remitted back to the Respondents to consider the case of the applicant appropriately in terms of the earlier order of this Tribunal dated 29.7.2002 in O.A. No. 1439 of 1997 and intimate the result thereof to the applicant within a period of sixty days from the date of communication of this order.

7. In the result, this O.A. stands allowed to the extent stated above. There shall be no order as to costs.”

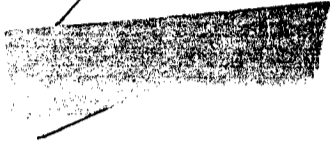
It is also submitted by the respondents in their written notes of argument that, in compliance, the respondents have passed an order dated 20.7.2015. The said order, however, not having been annexed, it is not possible to examine the contents of the said speaking order.

6. It is not understood as to why the O.A. No. 401 of 2014 which was filed on 20.6.2014 and has been pending until the date of this order, has continued to mention that O.A. No. 510 of 2010 is pending decision before the Tribunal given that the said O.A. was disposed of on 22.4.2015. The applicant has never sought to amend his application with such information which was available to him nearly three years earlier. Further, as the grievance of the applicant arose since his re-designation in the Industrial Establishment and the same had also been flagged as Para 8(c) of the relief sought in O.A. No. 510 of 2010, it is not possible to conclude as to whether the relief sought for was responded to favourably or otherwise by the respondents in speaking order dated 20.7.2015 as such order has not been referred to or challenged by the applicant through any supplementary affidavit.

7. In such context, it would be premature to arrive at any decision in the instant O.A.



8. Hence, the application is dismissed as premature as the speaking order dated 20.7.2015 in O.A. 510 of 2010 has not been challenged in the same.



(Dr. Nandita Chatterjee)
Administrative Member



(Manjula Das)
Judicial Member

SP

