

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.230/2012

Dated this Friday the 15th day of March, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Shri Puneet Narayan Pandey
Works Manager,
P.O. Ordnance Factory, Varangaon,
District: Jalgaon - 425 308
(R/at. Qtr. No.8/B Type-IV
Ordnance Factory Estate,
Varangaon, Jalgaon. ... **Applicant**

(Applicant in person)

VERSUS

1. The Union of India, through
The Secretary,
Ministry of Defence Production,
South Block, DHQ, Post Office,
New Delhi - 110 011.
2. The Chairman
Ordnance Factory Board,
10-A, Shaheed Khudi Ram Bose Road,
Kolkata - 700 001.
3. The General Manager
Ordnance Factory, Varangaon,
Dist.: Jalgaon - 425 308
4. The Secretary,
Union Public Service Commission
Dholpur House,
Shahjahan Road,
New Delhi - 110 069. ... **Respondents**

**(By Advocate Shri S.A. Deshpande alongwith
Shri V.B. Joshi)**

ORDER

PER: RAVINDER KAUR, MEMBER (J)

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "(a) to allow the Original Application,*
- (b) to quash and set aside the impugned order dt.16.03.2011 reverting the applicant from Sr. Time Scale Grade to Jr. Time Scale Grade of Assistant Works Manager (Chemist)*
- (c) to direct the respondents to delete the name of the applicant from the subsequent promotion order dated 30.05.2011, and to continue him in the Grade of Sr. Time Scale, based on the earlier order of promotion dated 30.04.2010 without any interruption.*
- (d) to restore the seniority position to the applicant as indicated in the seniority list dated 20.04.2010 for Junior Time Scale Officers of Ordnance Factories.*
- (e) to grant all consequential benefits including arrears of difference of salary etc.*
- (f) to award the cost of application."*

2. The undisputed facts are that an Advertisement, for filling up 16 posts of Assistant Works Manager (Chemist) in the Ordnance Factories, was issued by the respondents in the Employment News during the year 2005. The applicant submitted his application to the Union Public Service Commission for appointment to the said post. He received interview call letter dated 05.06.2007 and he appeared for interview on 30.06.2007. The applicant was selected for

the said post in the Jr. Time Scale of pay of Rs.8000-275-13500. He joined at Ordnance Factory Varangaon, District Jalgaon as direct recruit on 31.12.2007 where he is working till date.

2.1 The respondent No.1 published "Indian Ordnance Factories Service (Group 'A') Recruitment Rules 2002 (Annex. A-3), in the Gazette of India dated 26.10.2002. As per the said rules the next promotional post for the applicant is the post of Works Manager (Chemical Engg.) which is of Sr. Time Scale Grade. The respondents issued the seniority list (Annex. A-4) of the Assistant Works Manager cadre officers/JTS Officers on 01.01.2008. The name of the applicant appeared at serial No.258 in the said post. Thereafter, respondent No.2 issued seniority list of Assistant Works Manager of 2005 batch employed in All Ordnance Factories on 20.04.2010 and the name of the applicant was mentioned at serial No.42. All these above facts are undisputed.

2.2 The seniority list dated 20.04.2010 was prepared as per Seniority Rules dated

03.07.1986 issued by DoP&T (Annex A-4). Thereafter, w.e.f. 30.04.2010, the applicant was promoted to the next higher post of Works Manager (Chemist) in the Sr. Time Scale (STS) of pay of Rs.10000-325-15200 (pre-revised) vide letter dated 30.04.2010 (Annex A-5) and on the same date, he assumed charge of the promotional post. The name of the applicant appears at Sr. No.66 in the above promotion order. It is submitted that the Respondents issued impugned order No.381/1998-A/A/G dated 16.03.2011 (Annex A-1) whereby the applicant was reverted from the post of Works Manager to the lower post of Asstt. Works Manager with immediate effect. It is submitted that the Respondents had no valid or justified reason to revert the applicant and that no show-cause notice was issued to him before reversion. He submitted his representation dated 27.03.2011 (Annex A-7) and thereafter on 19.04.2011 (Annex A-8) but no response was received from the respondents. Being aggrieved by his reversion from the post of Works Manager to the lower post of Asstt. Works Manager, he filed WP No. 6333/2011

before the High Court of Bombay Bench at Aurangabad which was allowed to be withdrawn vide order dated 08.09.2011 (Annex A-9). The applicant has stated that now he has again been promoted to the post of Works Manager (Chemist) vide order dated 30.05.2011. Aggrieved by the order of reversion dated 16.03.2011, he has filed present OA on following grounds:-

5.1 The applicant was directly selected through UPSC and appointed to the post of Assistant Works Manager (Chemist) in the Ordnance Factories Organisation. He belongs to the batch of selection of the year 2005.

5.2 The applicant is governed by the Recruitment Rules S.R.O. No.227, published in the Gazetted of India on 26.10.2002. As per the above Rules, the next promotional post for the applicant is the post of Works Manager (Chemist).

5.3 The applicant was considered by the Screening Committee and he was promoted to the next higher post of Works Manager in Senior Time Scale by letter dt.30.04.2010 with immediate effect. His name at serial No.66 in the Promotion Order.

5.4 The promotion to Sr. Time Scale Grade w.e.f. 30.04.2010 ordered by the President was of permanent nature, as is clear from reading Para-1 of the letter dt.30.04.2010. He assumed higher responsibility on 30.04.2010.

5.5 The promotion from Jr. Time Scale to Sr. Time Scale Grade is available to officers of J.T.S. Cadre after completion of 4 yrs. Of regular service in the grade as per the Recruitment Rules. These promotions are ordered on the basis of Non-Selection.

5.6 The applicant, since his appointment was not issued any adverse remarks in his ACRs and he was also not involved in any disciplinary inquiry etc. His record of work is without any blemish.

5.7 As per the Seniority Rules laid down by DOPT and applicable to Jr. Time Scale cadre of officers, selectees of UPSC of earlier years will enblock be senior

to the selectees of subsequent years in the seniority list. The applicant being selectee of 2005 batch cannot be junior to selectee of 2006 year of selection.

5.8 The promotion of the applicant dt.30.04.2010 was ordered by the President. However, the Reversion order dt.16.03.2011 is issued by the respondent No.2. Hence, the Reversion Order is illegal, since the applicant is a Group 'A' Officer, and his Appointing Authority is the President and not the respondent No.2.

5.9 The representations submitted by the applicant against his reversion are not attended/replied by the respondent No.2.

5.10 Due to illegal reversion of the applicant, his position in the Seniority list of Jr. Time Scale officers is also adversely changed by the respondents. As a result Jr. Time Scale Officers, junior to the applicant are now enlisted above the applicant in the Seniority List.

5.11 The applicant was not issued any show cause notice before the issuance of the reversion order by the respondent No.2. This is in gross-violation of the principles of natural justice. Hence, impugned order needs to be quashed and even on this ground itself."

3. The respondents in their reply have denied the fact that the applicant belongs to UPSC batch of the year 2005. It is admitted that the Respondent No.2 had issued seniority list of IOFS officers in the grade of Jr. Time Scale - 2005 batch on 20.04.2010, however, it is explained that while doing so, the batch of the applicant was incorrectly taken as 2005.

4. We have heard the applicant in person and Shri V.B. Joshi alongwith Shri S.A. Deshpande, learned counsel for the respondents and perused the material available on record.

5. The Respondents have relied upon the clarification contained in the DoPT OM No.AB 14017/16/2010-Estt.(RR) dated 10.06.2010. As per this OM, "the 'Batch' for direct recruit officers in the induction grade shall be the year following the year in which competitive exam was held." The relevant portion of the OM dated 10.06.2010 is as under:

"No.AB.14017/16/2010-Estt.(RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, the 10th June, 2010

Office Memorandum

Subject:- Non-Functional Upgradation (NFU) for Officers of Organised Group 'A' Services in PB-3 and PB-4

A reference is invited to this Department's OM of even number dated 2404.09 on the above subject. The Sixth Central Pay Commission had observed that the disparity, as far as appointments to various grades in the Centre are concerned, should not exceed 2 years between IAS and Organized Group 'A' Services. The matter relating to grant of Non-Functional Upgradation to officers of Organized Group A Services has further been examined in this Department and following clarifications are issued.

Sr. No	Point of doubt	Clarification
1	The Scheme of NFU be made applicable to JTS officer of Organised group A services in view of acute stagnation at the level of JTS in many services.	In case no IAS Officer is available for comparison in STS grade, grant of Non-Functional Upgradation to STS level may be allowed after 7 years of service as Group 'A'. This upgradation shall be subject to the terms and conditions specified in this Department OM dated 24.04.09
2	The term 'Batch' cannot have different meanings at different places.	The 'Batch' for direct recruit officers in the induction grade shall be the year following the year in which competitive exam was held. In subsequent grades the 'Batch' would remain the same provided the officer is not superseded due to any reason. In case an officer is superseded the officer would be considered along with the 'Batch' with which his seniority is fixed.

2. Hindi version will follow.

sd/-

(J.A. Vaidyanathan)

Deputy Secretary to the Government of India

6. Learned counsel for the Respondents has further drawn our attention to the fact that in the present case, the interview by UPSC was held in the year 2007 and therefore the claim of the applicant that he belongs to 2005 batch is incorrect. It is also submitted that on the basis of the seniority list dated 20.04.2010, which was originally issued, the DPC considered the candidature of the applicant for promotion to the grade of STS for the year 2010-11 whereas he did not belong to 'Batch' of 2005.

7. We have gone through the Ordnance Factories Service Recruitment Rules, 2002 published as SRO 227 dated 26.10.2002 in the Gazette of India (Annex A-3). As per the same, the eligibility for promotion to the Sr. Time Scale requires minimum of 4 years of qualifying service in the feeder scale of Jr. Time Scale. It is submitted that since the applicant was inducted in Jr. Time Scale in Indian Ordnance Factories Service from 31.12.2007, therefore, as on the crucial date for consideration of the candidature by the DPC for promotion to the post of Sr. Time Scale, the applicant had not completed the requisite 4 years of service in Jr. Time Scale. Learned counsel has also drawn our attention to Note No.2 below Indian Ordnance Factories Services (Group 'A') Recruitment Rules 2002, published as SRO 227, dated 26.10.2002 which is reproduced as follows:

"Note 2:-Where Juniors who have completed their qualifying eligibility Service are being considered for promotion, their Seniors would also be considered provided they are not short of the requisite qualifying/eligibility Service by more than half of such qualifying/eligibility Service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their Juniors who have already completed such qualifying/eligibility Service."

8. As per this rule, when the juniors who have completed a period of 4 years of qualifying service and are considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying/eligibility service or by two years, whichever is less. It further requires that the seniors to be considered must have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed qualifying service of 4 years. Learned counsel for Respondents has also explained that the applicant was promoted to the post of Works Manager (Chemist) vide order dated 30.04.2010 as he was found to be fit for promotion to the grade of Sr. Time Scale. Later on, the UPSC vide letter dated 16.08.2010 intimated that the date of declaration of result of Engineering Services Examination, 2006 was 08.06.2007 whereas the date of declaration of the result for Appointment to the posts of JTS, Assistant Works Manager (Prob.) (Chemical Engineering) in the Department of Defence Production, Ordnance

Factory Board Organization, Ministry of Defence was 27.07.2007 and thus, the applicant had not completed qualifying service of 4 years on 30.04.2010 when he was promoted to the post of Works Manager. Consequently the seniority list was found erroneous and was revised vide letter No.401/A/G/ dated 06.10.2010 (Annex R-2) and the whole batch of ESE-2006 was placed before the applicant in the seniority list.

9. Learned counsel for the respondents has further submitted that as per the seniority rules issued by DoPT from time to time, the date of the publication of the result and recommendations by Union Public Service Commission determine as to from which date inter-se seniority of officers in Indian Ordnance Factories Service is to be fixed. It is not denied by the applicant that vide letter dated 16.08.2010 issued by UPSC, it was informed that the date of declaration of result of Engineering Services Examination, 2006 was 08.06.2007 whereas the date of the result of appointment to the post of Jr. Time Scale, Assistant Works Manager (Prob) (Chemical Engineering) in the Department of

Defence Production, Ordnance Factory Board organisation, Ministry of Defence was 27.07.2007. Since the result of Engineering Services Examination was declared prior in time than the declaration of the result of Jr. Time Scale, Assistant Works Manager, the seniority list of IOFS officers in the grade of JTS in IOFS-2005 batch, published on 20.04.2010 was erroneous and was required to be revised by placing the whole batch of ESC-2006 en-block before the seniority of the applicant. It is in these circumstances, the revised seniority list was published on 06.10.2010.

10. Learned counsel for the respondents has further drawn our attention to the revised inter-se seniority list issued vide forwarding Exhibit R-2. On perusal of the same, it is observed that in para 2 of the same, it is clearly mentioned to all concerned that in case any discrepancy or omission is found in the enclosed list, it may be brought to the notice of the office by 18.10.2010. Since the respondents did not receive any representation either from the applicant or any other

officers pointing out any discrepancy or omission in the said list, the same was treated as final. The applicant has nowhere disputed that as per the forwarding letter referred above, the respondents had invited objections to the seniority list but he did not make any representation in this regard. The reversion of the applicant from the post of Works Manager was only outcome of the revised seniority list.

11. Learned counsel for the applicant has again submitted that the applicant belongs to UPSC batch 2005 and not batch 2007 as claimed by the respondents and as such he had qualifying service of 4 years on the date 30.04.2010 when he was promoted as Works Manager. It is further submitted that the seniority of the applicant is to be counted from the date of Advertisement published for filling 16 posts of Assistant Works Manager (Chemist) in the Ordnance Factories. That as per Indian Ordnance Factories Service (Group 'A') Recruitment Rules, 2002 issued on 26.10.2002 (Exhibit A-3), after joining as Assistant Works Manager, the next promotional

post for the applicant is the post of Works Manager (Chemical Engineering) which is in Sr. Time Scale grade. This fact is not disputed by the respondents that as per this rules, the next promotional post for the applicant is the post of Works Manager.

12. After considering the contention of both the parties and going through the material available on record, we are of the opinion that as per the clarification issued vide DoPT OM No.AB.14017/16/2010-Estt.(RR) dated 10.06.2010 the 'Batch' for the direct recruit officers in the induction grade shall be the year following the year in which competitive exam was held and not from the date of Advertisement published for inviting applications to fill 16 posts.

13. In the present case, there is no dispute that the interview for the direct recruits for the post of Assistant Works Manager (Chemist) in pursuance to the Advertisement were held by the UPSC in the year 2007. Therefore, the claim of the applicant that he is from batch 2005 has no substance. There is no doubt in the contention of the applicant that the next

promotional post from Assistant Works Manager is the post of² Works Manager which is in the Sr. Time Scale Grade. Vide order dated 30.04.2010, the applicant was promoted to the post of Works Manager. However, this order of promotion was withdrawn and the applicant was reverted to the post of Assistant Works Manager vide the impugned order dated 16.03.2011 after the respondents realized that they had wrongly considered the batch of the applicant to be 2005 and had granted him promotion. To be promoted to the post of Senior Works Manager, an officer in Jr. Time Scale must have regular service of four years in the said grade and only thereafter he can be promoted as Works Manager or equivalent in Sr. Time Scale as per Indian Ordnance Factories Services (Group 'A') Recruitment Rules, 2002. In the present case, the applicant had not completed regular service of 4 years in Jr. Time Scale when he was wrongly promoted to Sr. Time Scale Grade for the post of Works Manager and consequently the impugned order was issued.

14. Learned counsel for the respondents in support of their claim has relief upon the following judgments:-

(i) *State of Uttar Pradesh and Ors. Vs. Ashok Kumar Srivastava and Anr., Civil Appeal No.6967/2013 decided on 21.08.2013*

(ii) *Ravindra Kumar Shrivastava Vs. State of M.P. and Ors., 2015 (9) SCALE 495.*

15. The Hon'ble Apex Court in the case of *Ashok Kumar Srivastava* (supra) relied upon its own judgment in the case of *Pawan Pratap Singh and Ors. Vs. Reevan Singh and Ors., (2011) 3 SCC 267* and made following observations in para 15:-

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer of the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

xxx xxx xxx

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given on retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

16. In the case of *Ravindra Kumar Shrivastava* (supra), the Hon'ble Apex Court has upheld the

order of the cancellation of departmental promotion of the appellant making observation that he did not work on post in issue continuously for a period of five years before departmental promotion.

17. In the facts and circumstances of the present case, both the judgments of the Hon'ble Apex Court referred above are fully applicable. It is observed that the claim of the applicant that he belongs to batch of 2005 and as such he was qualified to be promoted to the post of Works Manager in the Sr. Time scale grade as on 30.04.2010 is absolutely untenable. The seniority of the applicant cannot be reckoned from the date of Advertisement in the year 2005 as it is not prescribed by the relevant rules. The applicant had joined the service in the year 2007, therefore he cannot be given seniority on retrospective basis when he was not even born in the cadre. Consequently, the Original Application is without any merits and is hereby dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

