

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.210/175/2014

Dated this Thursday the 11th day of July, 2019

Coram: Dr.Bhagwan Sahai, Member (A).
R.N.Singh, Member (J).

Sh. Bhagwan Tomar
B-04/11, Kendriya Vihar,
Sector-11, Kharghar,
Navi Mumbai-410 210.
Working as Foreman (Gazetted)
in Centre No.32, DAG Department
Lion Gate, Naval Dockyard,
Mumbai-400 023.

...Applicant.

(Applicant in person).

Versus

1. Union of India, through
The Secretary to Government
of India, Ministry of
Personnel, Public Grievances
and Pension Department
of Personnel & Training,
North-Block, New Delhi-110011.
2. The Secretary to Government
of India, Ministry of Defence,
South Block, New Delhi-110011.
3. The Chief of Personnel,
Integrated Headquarters of
MoD (Navy), 109, D-II wing,
Sena Bhawan, New Delhi-110011.

4. The Admiral Superintendent
Naval Dockyard, Lion Gate,
Mumbai-400023.
5. Al India Naval Technical
Supervisory Staff Association
Through its President Mr. Avinash
Laxman Mahatre, resident of P-57-01,
SPD Colony, Sion, Trombay Road,
Maharashtra (W), Mumbai-400088.

... Respondents.

(By Advocate Sh. N. K. Rajpurohit and Sh. Ali Zaman).

O R D E R (O R A L)

Per : R. N. Singh, Member (Judicial)

Present.

1. Sh. Bhagwan Tomar, applicant in person.
2. Sh. N. K. Rajpurohit along with Sh. L. C. Kranti, proxy counsel for Sh. Ali Zaman, learned counsel for the respondents.
3. The applicant who is working as Foreman (Gazetted) under the respondents has filed the present application under Section 19 of the Administrative Tribunals Act, 1985 on being aggrieved of stipulation in para 7 of the order dated 01.06.2012 (Annex A-1) although he himself was promoted from the post of Assistant Foreman to Foreman (Gazetted) by that order.
4. The applicant has prayed for the following

reliefs:

"8.1 Hon'ble Tribunal may kindly call for the record of the case of arbitrary condition vide para 7 of the promotion order dated 01.06.2012 (Annexure A-1), DoP&T OM dated 13 Sep 2012 (Annexure-A-2), IHQ of MoD (Navy) letter dated 25 Feb 2013 (Annexure A-3), order dated 28 Mar 2013 (Annexure A-4), IHQ, MoD (Navy) letters dated 13 May 2013/19 July 2013 (Annexure A-5), DoP&T's clarification dated 06.12.2013 and IHQ of MoD (Navy) letter dated 06 Jan 2014 (Annexure A-6) and hold to quash the condition laid down vide para 7 of promotion order of the applicant and the rest of above orders.

8.2 Hon'ble Tribunal may kindly hold that since the promotion of the applicant has been made to the grade of Foreman under the existing rules in force and on the basis of instructions issued purposely in the regard by teh competent authority itself then the seniority of the applicant on his promotion is deserved to be decided in accordance with the existing Rules and the instructions issued by the Competent Authority, IHQ, MoD (Navy) vide letter dated 23 Sp 2010 only. Accordingly promotion order to the grade of Foreman cannot be given effect in violation of what is mandated by the rules and instructions issued by the IHQ, MoD (Navy). Therefore the condition laid down vide para 7 of promotion order to the grade of Foreman dated 01.06.2012 is arbitrary, irrational and unjust liable to be quashed and set aside.

The instructions/clarifications issued by DOP&T subsequent to the promotion

of the applicant cannot be relied upon to deny his seniority in the grade of Foreman already accrued on the basis of his promotion under existing rules in force and the instructions issued purposely by the competent authority IHQ (Navy) in the regard.

8.3 Hon'ble Tribunal may kindly hold that no Government Order, Notification or Circular can be a substitute of the statutory recruitment rules made and framed with the mandate of Article 309 of Constitution. Therefore the orders issued to conduct DPCs in revised two grades structure of Chargeman and Foreman when rules to the contrary are holding the fields, are arbitrary, irrational, illegal, null and void liable to quashed and set aside. Then automatically no question arise to review DPCs which have been already held for promotions in four grades structure to revised two grades structure.

8.4 Hon'ble Tribunal may kindly hold that the incumbents in the grade of Foreman who have been promoted from the grade of Assistant Foreman will remain enblock senior to all the incumbents of Assistant Foreman grade, since they have been promoted under the provisions applicable to the post of Foreman under statutory rules in vogue irrespective of the date of promotion although these two grades have been merged and placed in identical pay scale/grade pay with effect from 01.01.2006. Accordingly the DPC held during the vacancy year 2013-14 for promotions of Foreman to the grade of Technical Assistant (Engineering) may be reviewed."

5. The applicant submits that the posts of Chargeman Grade-II and Chargeman Grade-I were merged as Chargeman and the posts of Assistant Foreman and Foreman were merged Foreman w.e.f. 05.04.2010 based on recommendations of 6th CPC which were accepted by the Government of India on 29.08.2008. He further contends that sanction of the Competent Authority for merger of the post of Chargeman Grade-II and Grade-I was issued vide order dated 05.04.2010 whereas for the post of Assistant Foreman and Foreman it was issued on 05.05.2010.

6. The applicant who appears in person submits that none of his juniors have been promoted to the post of Foreman prior to him. He has been further promoted as Technical Assistant from the post of Foreman in December, 2018 and even in the grade of Technical Assistant no junior to him has been promoted. On being questioned as whether he has ever been ignored for promotion to the post of Foreman or further promotion to the post of Technical Assistant or he has been ignored by giving preference to any of his juniors either in the grade of Assistant Foreman or in the post of Foreman, he replies in the

negative.

7. On further query about his grievance in the present OA, he has submitted that para-7 of the order dated 01.06.2012 (Annex A-1) is meaningless and it should have been withdrawn by the respondents.

8. The para-7 of the order dated 01.06.2012 in the reference reads as under:

"7. The promotions would not have any overriding effect on the inter-seniority int eh merged post as they existed on 01 Jan 2006."

9. On our further query he has submitted that about para-7 in the aforesaid order dated 01.06.2012, he has made representations dated 25.02.2013 and on 28.05.2013 (Annex A-13). However, without considering his representations, the respondents have issued a draft seniority roll of Foreman (Engineering) as on 01.04.2013 (Annex A-15) wherein he has been shown at serial no.109 and his revised seniority as Foreman has been indicated as 12.06.2009 whereas he has been actually been promoted w.e.f. 29.05.2012 vide order dated 01.06.2012. Hence his main grievance is to the effect that one Mr. K. S. Muley who has not been even promoted to the post of Foreman and was working only as Assistant Foreman as on 11.06.2009 has been shown

senior to him and he has been placed at serial no.101 in the said draft seniority list. Similarly various other Assistant Foremen who have not been promoted along with the applicant or before the applicant to the post of Assistant Foreman (Gazetted) have been shown as senior to him in the said draft seniority role (Annexure A-15).

10. The applicant further contends that keeping in view the law decided by the Hon'ble Apex Court and also the extant Rules and instructions on the subject, the respondents 1 to 4 should not have shown him junior to one sh. K. S. Muley and other similarly situated persons in the draft seniority list. Aggrieved of the said draft seniority list, he has preferred an representation dated 20.06.2013 (Annex A-14) but till date it has not been considered and disposed of by the Competent Authority under the respondents.

11. However, the applicant admits that all those grounds which he has taken in the present OA could not be taken by him in the said representation dated 20.06.2013 or his earlier representation dated 25.02.2013 or 28.05.2013.

12. The learned counsel appearing for the respondent no.5 submits that the aforesaid Shri K. S. Muley while working as Assistant Foreman was senior to the applicant and similar has been the position of various other persons.

13. In view of the aforesaid facts and submissions, without going into merits of the OA, it is disposed of with directions to the respondent no.3 to consider the applicant's representations dated 25.02.2013, 28.05.2013 and 20.06.2013 and dispose of the same by passing a reasoned and speaking order within eight weeks from the date of receipt of certified copy of this order.

14. No costs.

✓
(R. N. Singh)
Member (J)

✓
(Dr. Bhagwan Sahai)
Member (A)

V.

JD
8/8/19