

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.929 of 2011

Jabalpur, this Tuesday, the 3rd day of December, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

R.K.Pandey, S/o late Shri G.P.Pandey, Aged about 52 years,
Line Mistry Highly Skilled, F13/319/67269,
Ordnance Factory, Khamaria, Jabalpur -Applicant

(By Advocate –**Shri Anoop Nair**)

Versus

1. Union of India, through its Secretary, Government of India, Ministry of Defence Department of Defence, Production & Supplies, South Block, New Delhi-110001
2. Chairman-cum-Director General, Ordnance Factory Board, 10-A, Shaheed K. Bose Road, Kolkata (WB), Pin 700001
3. Senior General Manager, Ordnance Factory, Khamaria, Jabalpur-482005
4. Senior General Manager, Ordnance Factory, Itarsi-461122
5. Shri Sukh Ram, Line Mistry, (Highly Skilled), F-1/18/63684, Ordnance Factory, Khamaria, Jabalpur-482005

(By Advocate –**Shri S.K.Mishra**)

(Date of reserving the order:-15.02.2019)

O R D E R

By Ramesh Singh Thakur, JM:-

The instant Original Application was directed against the impugned order dated 01.10.2011 (Annexure A-1) by which the representation of the applicant dated 03.06.2009 (Annexure A/1/1) for grant of promotion/seniority to the Highly Skilled Grade from 21.01.2008 or from the date his junior has been promoted, has been rejected by the respondent no.3.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:-

- i) Direct the respondents to grant promotion to applicant in the grade of Line Mistry (Highly Skilled Grade) w.e.f. 24.1.2008 i.e. the date from which his juniors were promoted and to assign him seniority in HS Grade from 24.1.2008 (instead of 20.7.2009 as granted by Factory order No. 379 dt/ 20.7.2009 Annexure-A/3/2) with all consequential benefits including arrears of pay and allowances and seniority as admissible under the rules.*
- ii) direct to pay interest at the rate of 10% per annum on the amount of the arrears of pay and allowances consequent to (i) above.*
- iii) Award the cost of the present Original Application.*
- iv) Grant any other relief as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.”*

3. The brief facts of the case are that the applicant was working as Line Mistry (Highly Skilled) in Ordnance Factory, Itarsi. Due to

some personal problem he requested for his transfer to Jabalpur. The request of the applicant was accepted with the condition that he will be reverted to lower grade i.e. skilled and by factory order dt. 18.01.2008 (Annexure A-4) issued by Sr. General Manager he was transferred to Ordnance Factory Khamaria (OFK) Jabalpur and was relieved on 18.01.2008 with the direction to report at OFK. In the aforesaid letter dt 18.01.2008 it was stipulated that his seniority will be assigned from the date he joined OFK Jabalpur in accordance with the conditions laid down in OFK letter dt. 29.11.2006.

4. The General Manager, Ordnance Factory, Itarsi had made incorrect stipulation in Factory order dt. 18.01.2008 (Annexure A-4) with regard to seniority of the applicant. In fact in accordance with Para 2(a) of the Ordnance Factory Board letter dated 29.11.2006 in case of transfer on reversion basis loss of seniority in lower grade should not arise. In other words, the original seniority of the applicant in the reverted scale i.e. Line Mistry (Skilled) had to be maintained. The applicant was assigned seniority as Line Mistry (Skilled) with effect from 28.05.1990 and the said seniority had to be maintained in OFK.

5. The applicant submitted representation to General Manager, OFK for assigning him correct seniority in the grade of Line Mistry

(Skilled) with effect from 28.05.1990. The representation of the applicant was accepted by GM, Ordnance Factory Khamaria who was pleased to issue factory order dated 15.05.2009 (Annexure A/3/1) by which factory order dated 23.02.2008 (Annexure A-4) was amended and applicant was assigned seniority in the grade of line mistry (skilled) with effect from 28.05.1990 instead of 21.01.2008 earlier assigned by factory order dt. 23.02.2008 (Annexure A-4). When he joined at OFK on 21.01.2008 he was senior most in the aforesaid skilled grade. But the employees at serial number 00709 to 00731 of the seniority list (Annexure A-6) who were junior to the applicant in skilled grade were promoted as line mistry highly skilled grade with effect from 24.01.2008 ignoring the applicant who was senior most in the skilled grade as on 21.01.2008. The applicant had already passed trade test for promotion to highly skilled grade in the year 2004 when he was working in Ordnance Factory Itarsi and consequent thereto he was promoted to HS Grade w.e.f. 16.01.2004 in Ordnance Factory Itarsi. Hence the applicant was not required to pass trade test for promotion to HS Grade again and he should have been promoted to HS Grade w.e.f. 24.01.2008 when his juniors were promoted.

6. In view of the incorrect seniority granted to the applicant when he joined on 21.01.2008 he could not be promoted to highly skilled grade when his juniors were promoted w.e.f. 24.01.2008.

7. The main grounds for challenge in this O.A. are that due to mistake of respondent No.4 and respondent no.3 who incorrectly stipulated in their Factory orders dt. 18.01.2008 (Annexure A-4) and dt. 23.02.2008 (Annexure A-5) respectively that the applicant's seniority in skilled grade will be reckoned from the date he reported for duty in OFK on his transfer from Itarsi that the applicant was assigned seniority w.e.f. 21.01.2008 and consequent thereto he could not be promoted to grade of line mistry (HS) w.e.f. 24.01.2008 when his juniors were promoted.

8. The applicant has submitted representation dated 03.06.2009 followed by reminders dated 11.07.2009 and 29.07.2009 (Annexure A/1/1, A/2 & A/3) respectively, to respondent No.3 which has been rejected vide impugned order dated 01.10.2011 (Annexure A/1/1). Hence this Original Application.

9. The respondents have filed their reply. In the reply they have contended that the applicant applied for transfer from Ordnance Factory Itarsi to Jabalpur on compassionate grounds. The request of the applicant was accepted on the ground that he will be reverted

to CPW, Line Mistry (Skilled) from CPW, Line Mistry (Highly skilled) vide order dated 18.01.2008.

10. The respondents have further submitted that the applicant executed an undertaking before transfer is affected on 10.01.2008 (Annexure R/01):-

1. That I am willing to move to OF Khamaria on reversion to the post of CPW(SK) on compassionate ground.
2. That I will not claim any TA/DA joining time, joining time pay etc. on reporting at OF Khamaria.
3. That I will not claim any previous seniority any my seniority be reckoned from the date of my reporting OF Khamaria in the reverted grade i.e. CPW (SK) in accordance with the OFB letter No. 429/Policy/A/I dt. 29th Nov. 2006 (Instruction No. 03/06/A/I).
4. That if Government accommodation is not available at that factory I will make my own arrangement for accommodation on reporting to duty at OF Khamaria.

11. It is pertinent to mention here that the applicant's seniority was counted in D.B.W. (Skilled) from 28.05.1990 and future consequential benefits were given during promotion to Line Mistry (HS). The applicant was promoted to Line Mistry (HS) w.e.f. 20.07.2009 after Trade test for promotion to Line Mistry (HS), when the first vacancy became available. Hence, grievances raised by the present applicant not sustainable therefore, the Original Application liable to be dismissed with costs.

12. In para wise reply the respondents have submitted that the applicant was transferred to O.F.K. on 19.01.2008 (A/N) on his own interest with condition that his seniority will be determined

from the date of joining at OFK. The applicant joined at OFK on 21.01.2008 (F/N), being weekly holiday on 20.01.2008. The seniority of the applicant was initially ascertained by OFK on the basis of factory order dated 18.01.2008. According to said factory order the seniority of the applicant was to be counted from the date he joined at OFK i.e. from 21.01.2008. The respondents further contended that as per the SRO provisions dated 13.03.1995, the trade test result shall remain valid for a period of three years. Thus, the contention of the applicant that he was not required to pass trade test for promotion to Highly Skilled grade again in untenable. Thus, the seniority of the applicant was counted from 28.05.1990 and taking this seniority into account he was promoted to line mistry with effect from 20.07.2009 after making him appear in the mandatory trade test for promotion to line mistry (HS), when the first vacancy was available. Moreover, as claimed by the applicant that he should not be made to appear in the trade test of line mistry as he has already passed it in 16.01.2004 may be true but the validity of trade test is only for three years and more than five years had passed when he appeared in the trade test.

13. The applicant has filed the rejoinder to the reply where he reiterated its earlier stand taken in the Original Application. The applicant submitted that he was initially granted seniority in the

grade of DBW (Skilled) w.e.f. 21.01.2008 i.e. date on which he joined OFK, Jabalpur vide order dated 23.02.2008. The applicant represented against the assignment of seniority w.e.f. 21.01.2008 as the same was against the policy circulated by OFB vide letter dated 29.11.2006 (Annexure A-7). The representation of the applicant was accepted and vide order dated 15.05.2009 (Annexure A/3/1) the applicant's seniority in grade of DBW (Skilled) was amended/modified and reckoned w.e.f. 28.05.1990. After the seniority was amended he should have been given all consequential benefits from the date his juniors were promoted, but the respondents failed to do so.

14. Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

15. From the pleadings it is very clear that the applicant was working as Line Mistry (Highly Skilled) in Ordnance Factory, Itarsi. Due to some personal problem he requested for his transfer to Jabalpur. The request of the applicant was accepted with the condition that he will be reverted to CPW, Line Mistry (Skilled) from CPW, Line Mistry (Highly Skilled) vide order dt. 18.01.2008 (Annexure A-4) issued by Sr. General Manager. He was transferred to Ordnance Factory Khamaria (OFK) Jabalpur and was relieved on 18.01.2008. The main contention of the applicant is that as per

Ordnance Factory Board letter dated 29.11.2006 in case of transfer on reversion basis loss of seniority in lower grade should not arise.

In other words, the original seniority of the applicant in the reverted scale i.e. Line Mistry (Skilled) had to be maintained.

16. On the other hand the contention of the respondents are that the request of the applicant for transfer from Itarsi to Jabalpur was done on compassionate grounds and the request was accepted and the conditions were imposed as per order issued by respondent department dated 18.01.2008. The applicant has executed an undertaking which is annexed as Annexure R-1. The relevant portion of which reads thus:

1. That I am willing to move to OF Khamaria on reversion to the post of CPW(SK) on compassionate ground.
2. That I will not claim any TA/DA joining time, joining time pay etc. on reporting at OF Khamaria.
3. That I will not claim any previous seniority any my seniority be reckoned from the date of my reporting OF Khamaria in the reverted grade i.e. CPW (SK) in accordance with the OFB letter No. 429/Policy/A/I dt. 29th Nov. 2006 (Instruction No. 03/06/A/I).
4. That if Government accommodation is not available at that factory I will make my own arrangement for accommodation on reporting to duty at OF Khamaria.

The applicant's seniority was counted in D.B.W. (Skilled) from 28.05.1990 and future consequential benefits were given during promotion to Line Mistry (HS). The applicant was promoted to Line Mistry (HS) w.e.f. 20.07.2009 after Trade test for promotion to Line Mistry (HS), when the first vacancy became

available. So as per undertaking given by the applicant vide Annexure R-1 coupled with the fact that the applicant was promoted to line mistry (HS) with effect from 20.07.2009 but due to non-availability of vacancy the applicant could not be promoted.

17. As the applicant was transferred to O.F.K. on 19.01.2008 (A/N) on his own interest with condition as stipulated in Annexure R-1, the applicant joined at OFK on 21.01.2008 (F/N), and the seniority of the applicant was initially ascertained by OFK on the basis of factory order dated 18.01.2008. So the seniority is to be given on joining at OFK with effect from 21.01.2008.

18. The respondents has relied upon the SRO provision dated 13.03.1995 wherein it has been mentioned that the trade test result shall remain valid for a period of three years. It has come in the reply of the respondents that the seniority of the applicant was counted from 28.05.1990 and taking the seniority into account the applicant was promoted to the post of Line Mistry with effect from 20.07.2009 after trade test for promotion to Line Mistry (HS), when the first vacancy became available. So the claim of the applicant that he should not be made to appear for the trade test of Line Mistry as he already passed on 2004 is not maintainable.

19. In view of the SRO Provision dated 13.03.1995 wherein it is mentioned that the trade test result shall be made valid for three

years, we do not find any illegality in the action of the respondent department.

20. Resultantly, the Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member