

(2012) 06 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 482 of 2008

Arun Kumar Bhowmick and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 06 MP CK 0005

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : Akash Choudhary in Writ Petition No. 482/2008 and Writ Petition No. 17536/2007 and Mr. Kishore Roy in Writ Petition No. 929/2008, for the Appellant; Anoop Nair, Advocate in Writ Petition No. 482/2008 and Shri S.A. Dharmadhikari, Advocate in Writ Petition No. 929/2008 and in Writ Petition No. 17536/2007, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav

1. This order shall govern final disposal of W.P. Nos. 482/2008, 928/2008 and 17536/2007. These petitions are directed against a composite order passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in O.A. Nos. 400/1998, 306/2000 and 423/2004; whereby, claim of the petitioners, Chargeman Grade-II, in the Ordnance Factories, under Ordnance Factory Board, for grant of seniority over and above private respondents has been negated.

Relevant facts are carved out from W.P. No. 482/2008. Petitioners were initially appointed as Supervisor in the pay scale of Rs. 380-560 under the third Pay Commission. Subsequently, they were appointed by way of transfer as Chargeman Grade II under the order dated 8.5.1993. That, prior to their appointment as Chargeman Grade II by transfer, their pay scale in pursuance to the recommendations by the 4th Pay Commission was revised from Rs. 380-560 to Rs. 1400-2300. That, the private respondents who were holding the post of

Highly Skilled Grade I in the pay-scale of Rs. 1320-2040 were promoted to the post of Chargeman Grade II w.e.f 8.5.1993. Both the petitioners as well as private respondents were thus made Chargeman w.e.f. 8.5.1993. As apparent they were drawn from two different streams.

2. The said promotion and appointment by transfer was effected in pursuance to the provisions contained in Statutory Rules and Orders (S.R.O) 13 (E) dated 4.5.1989 which has been framed in exercise of the powers conferred by proviso of Article 309 of the Constitution regulating the method of recruitment to the posts belonging to the supervisory and Non-Gazetted cadre covering Supervisors to Foreman in Ordnance and Ordnance Equipment Factories and other offices and establishments under the Ordnance Factories Organisation. These Rules are called Indian Ordnance Factories Group C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989. Schedule appended with the Rules provides for method of recruitment of Chargeman Grade-II (Technical); stipulating therein that, "66-2/3% direct recruitment after adjustment of surplus and transfers. 33-1/3% by promotion from panel prepared by relevant DPC for each category with transfers inter se. In any category of supervisor cum operator (such as new category of CNC Machine or computer operator) on failure of recruitment by promotion, by transfer failing which by direct recruitment."

3. That, with the appointment of petitioner by transfer as Chargeman Grade II and the promotion of private respondents as Chargeman Grade II, the promotee Chargeman Grade II were made en block senior to the petitioners in the cadre of chargeman.

4. Appointment by transfer and by promotion was effected in pursuance to a policy decision taken by the Government of India, Ministry of Defence, Ordnance Factory Board, circulated by circular dated 19.4.1993 which provided for utilization of post of Chargeman Grade II by following the principles of first effecting the promotion and then by posting by transfer of employees in equivalent grade.

5. It will be pertinent to note at this juncture that issue regarding inter se seniority amongst the promotees and appointees by transfer has been the issue before various Tribunals. Central Administrative Tribunal, Mumbai Bench, Mumbai in O.A. No. 549/1993, 525/1994 and 854/1994 decided on 27.3.2000 in respect of the issue "whether the applicants are entitled to seniority over the promotee Chargeman Grade II on the basis of their respective dates of joining the feeder cadre and according to their scale of pay in their feeder cadre?" answered the same in paragraph 17 of its order holding that, the Ordnance Factory Board having issued a circular dated 19.4.1993 stating therein that the seniority between the promotees and direct recruits shall be decided on the rota-Quota principle on the basis of which the appointments/promotions are made. Therefore, Supervisors who come to the cadre of Chargeman Grade-II cannot gain enblock seniority over promotees, who come from H.S. Grade I. While arriving at such conclusion Tribunal held that Supervisors who were brought to

the Cadre of Chargeman Grade II by appointment by transfer was like filling the post by direct recruitment. We are in complete agreement with the view expressed by Bombay Bench of the Tribunal.

6. The matter, however, did not rest there and a Full Bench of Central Administrative Tribunal was constituted in O.A. No. 4/1994 and 134/1994 to decide the issue (i) relating to re-designation of Supervisor B w.e.f. 1.1.1986, i.e., the date from which they were granted scale of Rs. 1400-2300 and (ii) regarding fixation of seniority on transfer from the post of Supervisor B (T) to Chargemen Grade II (T) on the basis of S.R.O 13 (E). The Full Bench rendered decision on 5th February 2002 holding that the Supervisor B (Technical), as the petitioners are, are not entitled for re-designation as Chargeman Grade II w.e.f. 1.1.1986 the date from which Supervisor "B" were granted the scale of Rs. 1400-2300.

7. It appears that the erstwhile Supervisors who were redesignated as Chargeman II by transfer, subsequently, when promotions were effected by order dated 24.1.1998 to the post of Chargeman Grade I on the basis of existing seniority list whereby promotee Chargeman II were placed en block senior to transferee Chargeman Grade I, re-agitated the issue of seniority by filing O.A. No. 400/1998 and other connected original applications. The Tribunal by its order dated 26.2.2004 negated the claim of the petitioners seeking march over promotee Chargeman Grade II on the post of Chargeman Grade I.

8. Aggrieved whereby petitioners preferred writ petitions before this Court forming subject matter of W.P. Nos. 6368/2004, 8610/2004 and 9618/2004. By composite order dated 17.7.2007 this Court with certain observations remanded the matter to the Tribunal for fresh decision.

9. The Tribunal on remand considered the claim of the petitioners afresh and by order dated 30th November 2007 rejected the claim of the petitioners holding that:

3....The applicants and the private respondents were promoted as Chargeman Grade II on the same date i.e. 8.5.1993. The applicants say that they have a legal right to be placed over and above the private respondents by virtue of the wording in SRO after adjustment of surplus and transfers. By no stretch of imagination it can be said that such a legal right has accrued to the applicants. The applicants were appointed as Chargeman Grade II by way of transfer. The promotion of the private respondents has been done by way of direct recruitment in accordance with the SRO. The applicants who were transferees were appointed as Chargeman Grade II by way of adjustment while filling up the post by direct recruitment in the proportion as laid down in the SRO. The wording "after adjustment of surplus and transfers" does not in any way indicate that such adjustment is a free pass for the applicants to be placed over and above those who were promoted. It is nothing but a misplaced notion to import such a meaning in those wording. What has been done is legally right and illegal (sic no

illegality) has been committed by the respondents. The essence is that the applicants were brought at par with the private respondents after adjusting them while making the promotion by way of direct recruitment. S.R.O 13-E is applicable by way of one time relaxation in so far as it relates to the percentage of post for promotion and direct recruitment. The promotion of the applicants and the private respondents were made on the basis of this one time relaxation...

10. The aforesaid reasonings of the Tribunal has now been questioned by the petitioners/applicants vide these petitions.

11. It is contended that the Tribunal has misconstrued the provisions contained in SRO 13-E. It is urged that the petitioners having enjoyed a better status as Supervisor drawing higher grade (Rs. 1400-2300) w.e.f. 1.1.1986 than the private respondents who were High skilled Grade I and were drawing the pay-scale of Rs. 1320-2040 as on 1.1.1986 ought not to have been given a march over the petitioners while being appointed by transfer/re-designation as Chargeman Grade II by order dated 8.5.1993. It is contended that the Tribunal loss sight of the fact that the case of the petitioners who were appointed by transfer could not have been governed by principle of Rota-Quota; but strictly in accordance with the stipulations contained in S.R.O 13 (E); wherein it is clearly stipulated that appointment of transfer is against direct recruitment and it is only when the posts are left vacant that the same can be done by promotion. We are afraid to accept the aforesaid contention put forth by the petitioners. The provisions as contained in SRO 13 (E) which provides for "66-2/3% direct recruitment after adjustment of surplus and transfers. 33-1/3% by promotion from panel prepared by relevant DPC for each category with transfers inter se. In any category of supervisor cum operator (such as new category of CNC Machine or computer operator) on failure of recruitment by promotion, by transfer failing which by direct recruitment."

12. A bare perusal of aforesaid provision nowhere indicate that the appointment to the post of Chargeman Grade II shall first be by direct recruitment and then by promotion. The position was; however, clarified by the circular issued on 19.4.1993; wherein it is clearly stipulated that it is the promotion which is to be resorted to as the mode of recruitment to the post of Chargeman Grade II and then the appointment by direct recruitment. Paragraphs 1 and 2 of the circular dated 19.4.1993 indicate such policy of the official respondents. Even the Full Bench in its decision dated 5.2.2002 in paragraph 7 has admitted this position. It is stated therein:

7. Admittedly, the statutory recruitment rules, i.e., S.R.O 13-E dated 4.5.1989 was framed under proviso to Article 309 of the Constitution of India which governed the service conditions of the applicants and the Factory Orders Annexures-A-10 & A-11 dated 8.5.1993 (in OA 134/94) were published by the respondents on the basis of the express provisions contained in the aforementioned SRO 13-E dated 4.5.1989 which provided that the post of Chargeman Grade-II (T) is to be filled up by promotion from the post of

Draughtsman or equivalent posts having pay scale of Rs. 1400-2300 with three years regular service, failing which from the post of HS Grade-I with three years service or HS Grade-II with six years regular service in respective categories. It was also provided that Chargeman Grade II (T) will also be filled by transfer inter se of Draughtsman in the scale of Rs. 1400-2300 and Supervisor (T) or equivalent in the scale of Rs. 1400-2300 in respective categories.

13. Trite it is that where the Recruitment Rules are silent in respect of particular aspect of the matter, as in the present case regarding mode of recruitment, the executive instructions can fill up the gaps.

14. In *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, it is held

11. that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules

(Please also see *K.K.M. Nair and others Vs. Union of India and others*, (Paragraph 10).

15. In *Arvinder Singh Bains Vs. State of Punjab and Others*, it is held that it is mandatory to apply rota and quota in determining seniority where the same is provided for under the Rules, Similarly in a decision rendered in *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, it is observed:

7. Where, therefore, recruitment to a cadre is from two sources, namely direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list.....

16. In the case at hand admittedly circular dated 19.4.1993 is not questioned. The said circular stipulates the applicability of rota-quota system while implementing the promotional rules, i.e., Rules of 1989. The present case when examined on the aforesaid principle justifies the action of the respondents in placing promotees over and above the transferees who were adjusted against direct recruitment post, in the Gradation List of Chargeman Grade II on their promotion/transfer effected by order dated 8.5.1993.

17. In view whereof further promotion to the post of Chargeman Grade I on the basis of said seniority list wherein the promoted Chargeman Grade I are posted en block senior to the petitioners cannot be faulted with as would warrant any interference. In the result petitions fail and are hereby dismissed.