

(2019) 04 CAT CK 0078

In the Central Administrative Tribunal

Case No : Original Application No. No. 274 Of 2016, Miscellaneous Application
No. 258 Of 2016, 4252 Of 2017, 139 Of 2019

Devendra Kumar And Ors

APPELLANT

Vs

Union Of India Through

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0078

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : U. Srivastava, Gyanendra Singh

Final Decision : Disposed Off

Judgement

V. Ajay Kumar, J

1. The applicants, 7 in number, and working as Junior Works Managers (Electrical) in the 4th respondent-Ordnance Factory at Dehradun, filed the OA seeking quashing of the Annexure A-1 proceedings dated 22.12.2015 of the respondents, whereunder the promotions of the applicants to the post of Junior Works Manager (Electrical) have been postponed (i.e. deferment of date of promotion) and it was further stated that as per rules, their pay will be refixed in accordance with deferred date.

2. The brief facts, leading to the issuance of the impugned order, as narrated in the counter of the respondents and not seriously disputed by the applicants are as under:-

"That prior to implementation of the recommendation of the 6th Central Pay Commission, the hierarchy of Technical Supervisory cadre in the Ordnance Factory Organization is shown below:-

Junior Works Manager

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Asst. Foreman

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Chargeman Gr. I

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Chargeman Gr.II

It is pertinent to mention in this regard that the post of Chargeman Gr.II was a unit-based post, i.e. the seniority of the post was maintained by respective factories. Hence, there was no central (i.e. all India) Seniority List of Chargeman Gr.II for promotion to the post of Chargeman Gr.I. The promotions to the post of Chargeman Gr.I were granted by the respective units/factories on the basis of availability of vacancies in that unit/factory. However, promotions from the post of Chargeman Gr. I to Asst. Foreman were made from an all-India seniority list of Chargeman Gr.I, which was maintained centrally.

2. It is further pertinent to mention in this context that the post of Chargeman Gr.II and Chargeman Gr. I are sub-divided into various disciplines. During the vacancy year 2010-11, it was noted that there was a huge number of unfilled vacancies in the post of Asst. Foreman in the Mechanical discipline. At that point of time the feeder post for Asst. Foreman was Chargeman Gr.I and the residency period as per SRO-13E of 1989 was three years in the grade of Chargeman Gr. I. Hence, in order to qualify for the post of Assistant Foreman as on 01.01.2010 an incumbent had to hold the post of Chargeman Gr.I at least from 01.01.2007. However, it was seen that at that point of time that the number of eligible incumbents as per the above mentioned eligibility criteria in the Mechanical discipline were far low than the existing vacancy year in Asst. Foreman (Mechanical). On the other hand at that time there were 138 eligible candidates in the grade of Chargeman (Electrical) who could not be promoted due to non-availability of vacancy in the post of Asst. Foreman (Electrical). This situation was adversely affecting the career prospect of these eligible Chargeman Gr. I in the Electrical discipline vis-à-vis the functional requirement of the Organization. It is pertinent to mention in this regard that the applicants in the present OA belonged to this category of Chargeman. In order to ameliorate their condition, it was decided to divert the posts lying vacant in the Mechanical discipline to the Electrical discipline, so that the inter-discipline disparity could be minimized within the framework of the existing SRO wherein it has been clearly mentioned under Note No.15 that "In the exigency of service within the total number of posts in the same scale of pay, the Ordnance Factory Board may add to the categories or sub-divided or merge any category mentioned in Rule 3.2 or add to and reduce number of posts in different categories in same scale of pay from time to time, on the basis of change in functional requirement." A copy of the relevant extract from SRO-13E of 1989 is annexed herewith and marked as Annexure-R-1. However, while taking this decision it was taken into account that the excess strength in the grade of Asst. Foreman arising from such diversion will

wane out by promotion/superannuation during the subsequent year.

3. On the basis of above decision of the competent authority, a supplementary DPC was held on 26.7.2010 wherein 140 incumbents in the Electrical discipline were promoted from Chargeman Gr. I (Electrial) to Asst. Foreman (Electrical) vide OFB letter NO. 3265/AF/2010(SUPL)/A/NG dated 28.7.2010 (Annexure-R-2 to the OA). This was in addition to 50 incumbents who had been promoted earlier on 31.5.2010 against the actual vacancy. It may noted that the applicant in the instant OA was promoted to the post of Asst. Foreman vide the promotion order dated 28.7.2010.

4. In accordance with the recommendations of the 6th CPC the posts of Chargeman Gr. I and Chargeman Gr. II were merged and renamed as Chargeman and placed in Grade Pay of Rs.4200/- and the post of Asst. Foreman was also merged with junior Works Manager in the Grade Pay of Rs.4600/- vide OFB order NO.3265/6th CPC/IMPL/2011/A/NG dated 04.02.2011 (Annexure-R-3). Now, therefore, the post of Chargeman became the feeder post for junior works manager and eligibility criteria i.e. the residency period was modified to

6 years in the grade of Chargeman. The hierarchy of the posts after the implementation of the recommendations of the 6th CPS is shown below:

Junior Works Manager

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Chargeman

Thus, in the changed scenario for the purpose of promotion to the post of Junior Works Manager from Chargeman, the inter se seniority of the individuals who had been promoted to the post of Chargeman Gr. I from Chargeman Gr. II, on the basis of their unit-based seniority vis-à-vis those who were holding the post of Chargeman Gr. II and had been re-designated as Chargeman as a result of the merged had now to be decided. The vital question for taking this decision was whether the crucial date for determining seniority would be the date of holding of Chargman Gr.I that of Chargeman Gr. II. This question was answered vide DOP&T OM No.20020/4/201-Astt(D) dated 13.9.2012 (Annexure-R-4), wherein it was clearly laid down that subsequent to the merger of pay scales "the seniority of government servant which existed on 29.08.2008 (date of acceptance of recommendation of 6th CPC) will be maintained i.e. the holder of post having higher pay scale or post which constituted promotion post for the posts in the feeder grade, will rank en block senior to those holding post having lower grade pay scale or the posts on feeder grade."

In view of the above clarification, the individuals who were holding the post of Chargeman Gr. I (promotion post) as on 29.08.2008 were to be treated as en bloc senior to those who were still in the post of Chargeman Gr. II (feeder post). Accordingly, the seniority list of Chargeman was required to be re-casted for assigning proper seniority as a result of the changed scenario. To carry out the

colossal task of working out the seniority list of Chargeman after merger, a "TASK FORCE" was constituted vide OFB letter No.3265/CM/T&NT/SNTY/2009/A/NG dated 07.05.2013 (Annexure-R-5). The task was accomplished by the said TASK FORCE which submitted its report along with the draft central seniority lists of Chargeman in all disciplines vide letter dated 21.11.2014.

The said draft central seniority list of Chargeman was circulated for information of all concerned as also to ensure adequate opportunity to submit representations vide OFB Circular No.3265/CM/T&NT/ SNTY/2009/A/NG dated 25.11.2013 (Annexure-R-6). To consider various aspects of the representations so received the matter was referred back to TASK FORCE to take an appropriate view and corrective action as warranted. On the basis of the representations the draft Seniority list of Chargeman prepared by the TASK FORCE were revised and re-published on 20.4.2015. The representations received against these revised seniority list were duly considered in light of the extent rules as well as date obtained from the concerned units/factories and a final seniority list of Chargeman as on 01.01.2009 was published on 05.08.2015/07.08.2015.

5. In view of the revised seniority list of Chargeman as on 01.01.2009, review DPCs for promotions to Junior Works Manager from Chargeman were convened for the vacancy year 2009-10, 2013-14 in the month of December, 2015. At this point of time, since the eligibility criteria had been modified to

6 years in the grade of Chargeman, it was seen while reviewing the DPC of 2010-11 that unlike the previous situation (as described in para 2 above) there were sufficient incumbents available in the Mechanical discipline who had now become eligible due to the said modification in the eligibility criteria. Accordingly, these eligible candidates now had to be granted promotion against the vacancy of the Mechanical discipline that had arisen during the vacancy year 2010-11. This resulted in the exhaustion of the unfilled vacancies that had earlier been diverted to Electrical discipline during 2010-11 due to unavailability of eligible incumbents in the Mechanical discipline at that point of time. Review DPC was also held for the Electrical discipline in view of the revised seniority list. However, the number of vacancies had now come down to the actual vacancy of 50, since the diverted vacancy of 140 posts had already been consumed by the eligible incumbents in the Mechanical discipline. Thus, the 140 incumbents in the Electrical discipline who had been promoted earlier from Chargeman Gr. I (Electrical) to Asst. Foreman (Electrical) vide OFB letter No. 3265/AF/2010(SUPL) /A/NG dated 28.7.2010 (Annexure-A-2 to the OA) now stood excess to the sanctioned strength of JWM Electrical for the vacancy year 2010-11. It was noted that the last person in the General/UR category who had been promoted during the vacancy year 2010-11 figured far below in the revised seniority list of Chargeman. Therefore, if promotions were to be limited to only the actual number of vacancies that had been calculated afresh/ arrived at, there would have been a situation of having to essentially revert several incumbents. In order to overcome the situation of having to resort to reversion of incumbents

additional vacancies were used from the overall strength of Junior Works Manager for holding regular DPC at par with other disciplines upto the vacancy year 2015-16. Therefore, in order to ensure that the incumbents promoted earlier are not reverted back their promotion was postponed to a subsequent dates vide OFB letter No.DJWM-15/Tech(Elec)Per/GB/2015 dated 22.12.2015 (Annexure-A to the OA)".

3. The applicants were originally appointed as Chargeman Grade-II (Electrical) during the years 1998-2002, as per rules. The respondents, vide the Annexure A-2 order dated 28.07.2010, on the recommendation of the Supplementary DPC, promoted the applicants and others to the post of Assistant Foreman (Electrical) with effect from 16.08.2010. However, vide Annexure A-3 Corrigendum dated 02.08.2010, the respondents have changed the date of promotion from 16.08.2010 to 30.07.2010. While the applicants and others were working as Assistant Forman (Electrical), in view of the implementation of the 6th CPC recommendations, the respondents again vide the Annexure A-4 dated 14.02.2011, merged the post of Assistant Foreman (Electrical) wherein the applicants were working, with the post of Junior Works Manager (Electrical). However, while the applicants were working as Junior Works Manager (Electrical), the respondents revised the seniority list of Chargeman (Technical/Electrical) from 01.01.2009 onwards upto 01.01.2013, vide letter dated 07.08.2015 (Annexure R-1 to the compliance affidavit filed on behalf of the respondents on 22.01.2019), after following due procedure, i.e., after calling for objections from the applicants and others, and in view of the consequent Review DPC recommendations, have issued the impugned Annexure A-1 letter dated 22.12.2015 postponing or deferring the date of promotion of the applicants from the original date of 30.07.2010 to the dates mentioned in the said proceedings.

4. Aggrieved with the said proceedings dated 22.12.2015, the applicants filed the instant OA.

5. Heard Shri U. Srivastava, the learned counsel for the applicants and Shri Gyanendra Singh, the learned counsel for the respondents and perused the pleadings on record.

6. Shri U. Srivastava, the learned counsel appearing for the applicants while reiterating the aforesaid facts submits that once the respondents have promoted the applicants against the posts of Assistant Foreman (Electrical), diverted from the Mechanical discipline to Electrical discipline by invoking Note 15 of the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 (SRO 13-E) (Annexure R-1 to the counter filed by the respondents), and after the applicants worked in the said promotional posts of Assistant Foreman (Electrical), which were later re-designated as Junior Works Manager (Electrical) for all these years, cannot defer or postpone the promotions of the applicants to any subsequent date. The learned counsel further submits that if any other category of employees deserves promotion from a particular date, in view of any change in the rules or

circumstances, they can be promoted as such by creating supernumerary posts or by adjusting them against any future vacancies, but deferring/postponing the promotions given to the applicants way back in the year 2010, is illegal and arbitrary.

7. The learned counsel further submits that once the applicants have physically worked in the promotional posts from 30.07.2010 till the date of issuance of the impugned order, proposing to refix their pay in accordance with the deferred date is illegal, arbitrary and also violative of the principles of the natural justice, as the said promotions to the applicants were conferred by the respondents themselves and that the same were not due to any misrepresentation or fraud played by the applicants.

8. The learned counsel for the applicants placed heavy reliance on the judgment of the Hon'ble Apex Court in *Kusheswar Nath Pandey Vs. State of Bihar and Others* (2013) 9 SCR 593 and of the Hon'ble High Court of Orissa, Cuttack in W.P. (C) No.4652/2017 in *Union of India and Others Vs. R. Srinivas and Others* decided on 20.07.2017.

9. On the other hand, Shri Gayenendra Singh, the learned counsel for the respondents would submit that once the applicants admit that the respondents have empowered to invoke Note 15 of the Annexure R-1 Rules 1989, in their favour, they cannot raise any objection when the respondents invoked the same Note while setting right the injustice done to the Mechanical Wing employees. The learned counsel further submits that the applicants having not challenged the revised seniority lists of Chargeman (Technical/Chemical/Electrical) as on 01.01.2009 onwards upto 01.01.2013, which were issued after calling for objections from the applicants and others and after considering the same, and basing on which the impugned order was passed, cannot question the consequential action of issuance of the impugned order. Once the applicants accepted their seniority position, as per the revised seniority list of Chargemen dated 07.08.2015 as on 01.10.2009, i.e. the date prior to their promotion to the post of Assistant Foreman (Electrical), the OA itself is not maintainable as the impugned order was passed strictly basing on the said revised seniority list.

10. The learned counsel further submits that the entire process, i.e., revising the seniority list and deferring the dates of promotion etc. was carefully undertaken by the Task Force, which was specifically created and that no employee is discriminated in any manner in the whole process and accordingly prays for dismissal of the OA.

11. As rightly submitted by the learned counsel for the respondents, the applicants have not challenged the revised seniority list of Chargeman as on 01.01.2009 issued on 07.08.2015 basing on which the promotions of the applicants and others were reviewed and accordingly appropriate dates of fresh promotions were assigned to the applicants and to others. Further, once the power of the respondents to invoke Note 15 of the 1989 Rules, is not disputed,

the respondents action cannot be found fault with, as the applicants fail to show violation of any other rule or existence of any arbitrariness in respect of the applicants or any other individual employee.

12. However, we are in full agreement with the submission of the learned counsel for the applicants that the promotions to the post of Assistant Foreman (Electrical) now re-designated as Junior Works Managers (Electrical) were given to the applicants with effect from 30.07.2010 by the respondents themselves, and that there was no misrepresentation or fraud played by the applicants and that the applicants having actually worked in the said promotional posts from the date of said promotion till the date of deferment or postponement of the same, the respondents cannot resort to any recovery consequent to the deferment/postponement of the promotions of the applicants. On our enquiry about the stand of the respondents on the said issue, the learned counsel for the respondents today produced a letter dated 25.01.2019 written by Director/NG for Director General, Ordnance Factories addressed to the General Manager, Ordnance Factory Muradnagar wherein it was categorically stated that "although, relevant rules regarding pay fixation would inevitably have to be applied to the case of the applicants, whose date of promotion to JWM have been postponed, the respondents do not intend to make any recovery of payments already made to them and hence, the earnings received by them for the period which they had served as JWMs, will not be affected in any manner".

13. The facts in Kusheshwar Nath Pandey's case (supra), on which the applicants counsel has placed reliance, are not applicable to the facts of the present case.

14. Similarly, the decision of the Hon'ble High Court of Orissa in R. Srinivas and Others (supra) would not support the contentions of the applicants.

15. Hence, we do not find any merit in the challenge made to the impugned order. However, in the circumstances and for the aforesaid reasons, the respondents are directed not to affect any recoveries in pursuance of the impugned orders of the OA, in terms of their own letter dated 25.01.2019. Accordingly, the OA is disposed of.

16. Pending MAs, if any, stand disposed of. No costs.