

(2008) 04 MAD CK 0139

In the Madras High Court

Case No : Writ Petition No. 1629 of 2002

Union of India (UOI)

APPELLANT

Vs

S. Ram Mohan Unnithan and Others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) 04 MAD CK 0139

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : T.S. Sivagnanam, ACGSC, for the Appellant; Karthik Rajan, for Respondents 1-5, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of Mr. T.S. Sivagnanam, learned Additional Central Government Standing Counsel representing the petitioners and Mr. Karthik Rajan, learned Counsel for the respondents 1 to 5 and have perused the records.

2. Aggrieved by the order of the Central Administrative Tribunal [for short, "CAT"] dated 26.9.2001 made in O.A. No. 1249 of 2000, the Union of India, represented by the Chairman, Ordnance Factory Board, and the General Manager of the Engine Factory, Avadi, have filed the present writ petition.

3. Respondents 1 to 5 moved the CAT seeking for a direction to set aside the order dated 30.3.2000 passed by the second petitioner wherein and by which their junior 6th respondent herein (M. Muthurangam) was given promotion from the post of Supervisor (NT/Stores) to that of Chargeman Grade II.

4. The respondents 1 and 2 are working as Supervisors in the second petitioner's Factory and the respondents 3 to 5 are working as Upper Division Clerks in the same factory. Their next higher post is that of Chargeman Grade II (Non-Technical / Stores). The promotion to the said post is governed by Indian

Ordnance Factory Group "C" Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989. The said Rules framed under Article 309 of the Constitution came into operation with effect from 04.5.1989. Under the Rules, ratio for recruitment is fixed as 2:1, the direct recruitment and promotees respectively.

5. As per the order, promotions will have to be made from the post of Supervisor Grade or UDC or equivalent and also Telephone Operator Grade I with three years regular service. Subsequently, by an amendment dated 28.11.1994, the ratio among the feeder categories was amended. By the said amendment, 25% was to be made by direct recruitment, 25% by limited Departmental Examination from among the LDC or equivalent post and 50% by promotion. Though as per the Recruitment Rules, only the post of Chargeman Grade II (Non-Technical / Stores) was available, it was contended that by administrative instructions, the said post was bifurcated into two posts, viz., Chargeman Grade II (Non-Technical / Stores) and Chargeman Grade II (Non-Technical other than Stores).

6. By virtue of these instructions, whenever any post of Chargeman Grade II (Non-technical) post arose out of the employees performing the duty in the Stores Department, the said post was filled up from the post of Supervisor (Stores). Even though the post of UDC was equivalent to Supervisor (Stores), the post of Chargeman Grade II was continued to be filled up by Supervisor (Stores). These administrative instructions were challenged before the CAT (Bombay Bench) and the said instructions were struck down by the CAT. The said judgment was delivered on 25.7.2000.

7. But even before that judgment, the sixth respondent, who was working as a Supervisor, was promoted as Chargeman Grade II. The sixth respondent was originally appointed as Store Keeper on 28.10.1985 and promoted as Supervisor on 13.9.1995 whereas the respondents 1 to 5 were holding the equivalent posts even earlier. It is in this view of the matter, the O.A. was filed.

8. A reply statement was filed by the petitioners justifying the office instructions by placing reliance upon OFB Note 15 of SRO 13-E of 1989. It was contended that the posts of Chargeman Grade II (Non-Technical) and Chargeman Grade II (Stores) have not been made as per the executive instructions.

9. The CAT held that in the absence of the amendment to the Service Rules, the administrative instructions cannot be relied upon. The CAT, after referring to the decision of the Supreme Court in Dr. Rajinder Singh Vs. The State of Punjab and Others, , held that no Government Order or Notification or Circular can be a substitute for the Statutory Rules framed in their service and, therefore, held that the order dated 30.3.2000 granting promotion to the sixth respondent was not valid. It also directed the official respondents to consider the case of the respondents 1 to 5 on the basis of the common seniority list and corrected by the earlier order of the CAT in O.A. No. 1067 of 1993. A Review Application No. 37 of 2001 was filed by the petitioner and the same was also dismissed by the CAT

vide its order dated 07.12.2001. Aggrieved by the same, the present writ petition has been filed.

10. At the time of admission of the writ petition, interim stay was granted by this Court on 29.01.2002 and the same was made absolute vide order dated 30.9.2004 on the ground that the sixth respondent is still continuing in service.

11. Mr. T.S. Sivagnanam, learned Additional Central Government Standing Counsel representing the petitioners submitted that by statutory Rules and Order 13(E) of 1989, the first petitioner was empowered to sub-divide any post or category of posts. It was only as per that authorisation, the feeder categories to the post of Chargeman Grade I was bifurcated and there was no illegality in the bifurcation and the CAT was wrong in deciding the matter erroneously. Even though this was brought to the notice of the CAT, the same was unfortunately dismissed. Once the power was conceded, there is no further challenge that can be made against the action taken by the petitioners. He also submitted that the vacancies in the Stores Stream and other than Stores stream are independent of each other and the promotions are confined only to the persons coming from the respective streams only.

12. In this context, the learned ACGSC brought to the notice of this Court the order of a Division Bench of this Court in W.P. No. 13290 of 1998 [G.C. Balasubramanian v. Central Administrative Tribunal, Madras Bench and Ors.]. The following operative portion found in paragraphs 4 and 5 of the said order may be usefully extracted below:

Para 4:...The Tribunal, in T.A. No. 44 of 1988, by order dated 08.02.1999, held that it is clear that the Stores Stream and the other than Stores Stream are independent compartments and have water tight promotional channels. It was further found that both Stores Stream and other than Stores Stream are independent of each other and that promotion of each Stream was given only to the members of that Stream and diversion of Posts between Streams is not contemplated in the Rules.

Para 5: In the earlier considered order in T.A. No. 44 of 1988, after referring to the relevant portion of the correspondences and orders as well as the Rules, a clear finding was given by the Tribunal that both Streams are independent and water tight compartments. The said ratios will squarely apply to the facts of the present case. There is no scope to make a diversion from one Stream to another on the spacious argument of functional requirements. Any such deviation will not only affect the respective employees, but will also lead to arbitrary exercise of power of promotion. In order to maintain uniformity, it is necessary that the respondents should follow the Rules of promotion and appointments made strictly in accordance with the Rules, orders and procedures, which had been followed.

13. Therefore, in the light of the above, we are of the opinion that the CAT has misread the order of bifurcating the channel of promotion as an executive order.

When once the bifurcation has been made in the manner known to law and the two wings are kept as separate compartments for promotion, the claim made by the respondents 1 to 5 is clearly unsustainable and the CAT was wrong in allowing the Original Application.

14. Hence, the writ petition is allowed and the order of the CAT is set aside and the promotion made in favour of the sixth respondent is upheld. However, there will be no order as to costs.