

JULY 22, 1994

[M.N. VENKATACHALIAH, CJ, R.M. SAHAI AND S. MOHAN, JJ.] B

Service Law—Indian Ordnance Factories Recruitment and conditions of Service (Class III) Personnel Rules 1956—Promotion to post of Chargeman Grade-II—Decision taken to appoint all diploma holders working as Supervisor 'B' as Supervisor 'A' irrespective of completion of one year service—Promotion to Chargeman Grade-II to be in accordance with Recruitment Rules only—Judgement of Tribunal to treat all initial appointments as having been made to post of Supervisor, Grade 'A'—Entitlement to be considered for promotion to post of Chargeman Grade-II on basis of two years experience as Supervisor Grade 'A'—Validity of. C

During the period 1962 to 1966, a number of diploma holders and science graduates were appointed in the various Ordnance factories. On 6.11.62, a circular was issued that all diploma holders who were appointed as Supervisor 'B', on completion of one year service in the grade, will be entitled to be promoted as Supervisor 'A'. After completion of two years of service, they will be eligible for promotion to the grade post of Chargeman Grade-II. Another circular was issued on 11.3.63 in which a decision was taken to appoint all diploma holders working as Supervisor 'B', as Supervisor 'A' irrespective of completion of one year service as Supervisor 'B'. It was also decided that in future promotion of Supervisor Grade 'A' to Chargeman Grade-II and further promotion will be effected in accordance with the Recruitment Rules only. D

By the impugned judgment dated 15.5.89, the Tribunal directed to treat all initial appointments irrespective of the fact whether the candidates are diploma holders or Science Graduate as having been made to the post of Supervisor, Grade 'A'. On the basis of two years experience as Supervisor 'A', it was directed that the candidates shall be entitled to promotion to the post of Chargeman Grade-II on the recommendation of a reviewed D.P.C. Hence this appeal. E

Allowing the appeals, this court F

A HELD : 1.1. The Tribunal failed to note that several applicants before it had joined after January 1980 as Supervisor Grade-II, there was such post of Supervisor 'A' at the time of their appointment in 1982-83. As a matter of fact the post of Supervisor 'A' has been merged with the post of Chargeman Grade- II w.e.f. January 1980. Therefore, promotion to this post could be made only after a period of three years. However there could not be an automatic promotion on the completion of minimum service as prescribed in the circulars of ordnance factories, but the promotion would be made in accordance with the recruitment rules. [82-D-E; 81-F]

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C *Paluru Ramakrishnaiah & Ors. v. Union of India*, [1989] 2 SCC 541, relied on.

1.2. Concerning science graduates, the executive orders did not cover them. Therefore, there is hardly any scope for granting relief. [82-F]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4858-59 of 1994.

From the Judgment and Order dated 15.5.89 of the Central Administrative Tribunal, Jabalpur in O.A. Nos. 198 & 471 of 1987.

E Mrs. K. Amreshwari, Ms. Ameeka Singh and C.V. Subba Rao for the Appellants.

V. Subramanian, P.I. Jose and V.J. Francis for the Respondents.

The Judgment of the Court was delivered by

F MOHAN J. Leave granted.

G During the period of 1962 to 1966, a number of diploma holders and science graduates were appointed in the various Ordnance factories. The service conditions of those were governed by Indian Ordnance Factories Recruitment and Conditions of Service (Class III) Personnel Rules 1956. On 6.11.62, a circular was issued that all diploma holders who were appointed as Supervisors 'B', on completion of one year service in the grade, will be entitled to be promoted as Supervisor 'A'. After satisfactory completion of two years of service, they will be eligible for promotion to the grade post of Chargeman Grade-II. Another circular was issued on H 11.3.63 in which the decision was taken to appoint all diploma holders

working as Supervisor 'B', as Supervisor 'A' irrespective of completion of one year service as Supervisor 'B'. The fresh recruits from 11.3.63 were also appointed straightway as Supervisor Grade 'A' by circulars dated 28.12.65 and 21.1.66. It was decided that in future promotion of Supervisor Grade 'A' to Chageman Grade-II and further promotion will be effected in accordance with the Recruitment Rules only after completion of three years' service as Supervisor Grade 'A'.

This requirement was questioned by many persons in writ petitions before the High Courts of Allahabad and Madhya Pradesh urging that on completion of two years' service as Supervisor 'A' they should be automatically promoted as Chageman Grade-II. Those writ petitions came to be dismissed both by the High Court of Madhya Pradesh as well by the High Court of Allahabad.

Special leave petitions were preferred and leave was granted on 2.2.81. A subsequent batch of writ petitions filed by the diploma holders came to be filed from science graduates in the High Court for treating them at par with the diploma holders. That was allowed and it was held that they should be deemed to have been appointed as Supervisor Grade 'A' from the date of their initial appointments. On 30th June 1987, the Central Administrative Tribunal in the matter of one *B.H. Ananthamurthy & Ors.* directed that the science graduates be treated as Supervisor 'A' from the date of their initial appointment and their notional seniority be revised. They shall be entitled to be considered for promotion to the post of Chageman Grade-II on completion of two years' satisfactory service as Supervisor 'A' retrospectively. Subsequent to this, there are other judgments including a judgment of this Court in *Paluru Ramakrishnaiah and Others v. Union of India & Another*, [1989] 2 SCC 541 where it is held that there could not be automatic promotion on completion of the minimum service as prescribed in the circular of the Ordnance Factory but the promotion would be made in accordance with the recruitment rules.

This Court had occasion to comment on the correctness of the view taken by the Tribunal in *Ananthamurthy's* case. When the Madras Tribunal rendered a decision relying on the judgment of the Tribunal of Jabalpur Bench dated 30th June 1987, this Court set aside the judgment on 6.9.89. Thereafter when similar matters were agitated before the Madras Tribunal they were dismissed.

A Notwithstanding all this by the impugned judgment dated 15.5.89, the Tribunal had directed that the appointment be treated the initial appointment of diploma holders and science graduates as having been made to the post of Supervisor Grade 'A' in spite of their recruitment to Supervisor Grade-II. On the basis of two years' experience of Supervisor 'A', it was directed that the respondent shall be entitled to promotion to the post of
B Chageman Grade-II on the recommendation of a reviewed D.P.C. which may be constituted and further promotions on the recommendation of a reviewed D.P.C. from the requisite dates when they were due to be considered for promotion on the basis of departmental rules or executive instructions.

C Aggrieved by this, the present appeal has come to be preferred. The first point that is urged on behalf of the appellants is that the Tribunal has wrongly assumed although this Court had given certain directions in regard to the case of diploma holders.

D The Tribunal failed to note that several applicants before it had joined after January 1980 as Supervisor Grade-II, there was such post of Supervisor 'A' at the time of their appointment in 1982- 83. As a matter of fact the post of Supervisor 'A' has been merged with the post of Char-
E geman Grade II with effect from January 1980. Therefore, promotion to this post could be made only after a period of three years.

In view of the judgment of this Court in *Paluru Ramakrishnaiah* (supra), the impugned judgment cannot be supported in law.

F Concerning science graduates, the executive orders did not cover them. Therefore, there is hardly any scope for granting relief. The Tribunal has chosen to rely on the ruling of this Court in *Paluru Ramakrishnaiah* (supra). Where, therefore, the principles, as laid down by this Court, best applied. No exceptions could be taken to the same.

G Learned counsel for the respondents submits that the Executive Instructions dated 6.11.62 dealt with the question of granting promotions to the then Supervisor Grade 'A' who were recruited in this wake of Chinese Aggression. The said benefit that was given by the circular, have since been withdrawn in January 1966 and, therefore, whether the said circular gave any benefits to the diploma holders or science graduates, were not relevant, and in any case, all the answering respondents are
H Diploma holders.

Respondents are seniors who were recruited first as Supervisor Grade 'B' and they were redesignated as Supervisor Grade 'A' by virtue of the circular dated 11.3.63, and also as ruled by Madhya Pradesh High Court in the judgment dated 16.4.79. The Government redesignated the answering respondents and granted them notional seniority of supervisor Grade 'A' with effect from the dates of their initial appointments. All the answering respondents have been promoted to the next higher post of Chageman Grade II in the normal course of rule and not on the basis of the judgment of this Hon'ble Court dated 2.2.81.

Thus, it is submitted that the judgment of the Tribunal does not call for any interference.

Since both the sides rely on *Paluru Ramakrishnaiah's* case (supra), it is worthwhile to extract the relevant portion of the decision :-

"It cannot be disputed that the Director General of Ordnance Factories who had issued the circular dated November 6, 1962 had the power to issued the subsequent circular dated January 20, 1966 also. In view of the legal position pointed out above the aforesaid circular could not be treated to be one affecting adversely any condition of service of the Supervisors 'A'. Its only effect was that the chance of promotion which had been accelerated by the circular dated November 6, 1962 was deferred and made dependent on selection according to Rules. *Apparently, after the coming into force of the order dated December 28, 1965 and the circular dated January 20, 1966 promotions could not be made just on completion of two years' satisfactory service under the earlier circular dated November 6, 1962 the same having been superseded by the later circular.* It is further obvious that in the view of the matter Supervisors 'A' who had been promoted before the coming into force of the order dated December 28, 1965 and the circular dated January 20, 1966 could not, therefore, constitute the basis for an argument that those Supervisors 'A' whose cases came up for consideration for promotion thereafter and who were promoted in due course in accordance with the rules were discriminated against. They apparently did not fall in the same category."

(emphasis supplied) H

A The Tribunal has *inter alia* given three directions :

(i) To treat the respondents' initial appointments' irrespective of the fact whether they are Diploma Holders or Science Graduate as having been made to the post of Supervisor, Grade-A;

B (ii) On the basis of two years' experience as Supervisor Grade-A, they shall be entitled to consideration for promotion to the post of Chargeman Grade II;

C (iii) To revise the relevant seniority lists and finalise them after inviting objections, if any, in the cadres of Supervisor 'A', Chargeman Grade II and Assistant Foreman.

D The effect of *Paluru's* case (*supra*) is that there could not be an automatic promotion on the completion of minimum service as prescribed in the circulars of ordnance factories, but the promotion would be made in accordance with the recruitment rules. This Court also held in the said case, in addition to the above extract, as follows :

E "It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule. Notwithstanding the issue of instruction dated November 6, 1962 therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion the said procedure could not be abrogated by the executive instruction dated November 6, 1962 was that Supervisors 'A' on completion of two years' satisfactory service could be promoted by following the procedure contemplated by Rule 8. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand was to be governed by the Rules. This right was conferred by Rule 7 which *inter alia* provides that subject to the exception contained in Rule 11, vacancies in the posts enumerated therein will normally be filled by promotion of employees in the grade immediately below in accordance with the provisions of Rule 8. The requirements of Rule 8 in brief have already been indicated above. Rule 12 provides that no appointment to the posts to which these Rules apply shall be made

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otherwise than, as specified in these Rules. This right of promotion as provided by the Rules was neither affected nor could be affected by the circular. The order dated December 28, 1965 which provided a minimum period of service of three years in the lower grade for promotion to the next higher grade and the circular dated January 20, 1966 which provided that promotions in future will be effected in accordance with the normal rules and not merely on completion of two years' satisfactory continuous service had the effect of doing away with the accelerated chance of promotion and relegating Supervisors 'A' in the matter of promotion to the normal position as it obtained under the Rules." (Emphasis supplied).

Therefore, we are unable to see as to how, in the light of this judgment, the impugned order of the Tribunal could be sustained. It may be relevant to note that similar applications were filed before the Madras Bench and they came to be dismissed. In the result, we hold that the order to Tribunal cannot be supported and is liable to be set-aside. It is accordingly set-aside. The Civil Appeals will stand allowed. There shall be no order as to costs.

A.G.

Appeals allowed.