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S. K. BHATE & ORS.

v.

UNION OF INDIA & ORS.

November 20, 1975

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[A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA AND P. N. SHINGHAL, JJ.]

Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956—Appointment to various cadres and inter se seniority—Principles.

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The Ordnance Factory in which the petitioners were employed hold four cadres. In the 2nd cadre of non-gazetted officers there were four grades—Foremen, Assistant Foremen, Chargemen Grade I and Chargemen Grade II. The 3rd cadre of non-industrial employees had 2 grades Supervisor 'A' Grade and 'B' Grade, and were governed by the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956. Appointment was on the basis of 20% of the quota for direct recruits and 80% for promotees.

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In answer to an advertisement for appointment by direct recruitment to the 4 grades of the 2nd cadre, the petitioners, all of whom except petitioner No. 12, were serving as Supervisors 'A' Grade, applied. Petitioner No. 12 was not in service. They were interviewed but none of the petitioners, except petitioner No. 12, received orders of appointment. Petitioner No. 12 was appointed Chargeman Grade II. Between April, 1963, and November, 1963, the other petitioners were promoted as Chargemen Grade II. Respondents 5 to 16 who were apprentices, were also promoted as Chargemen Grade II, and were later promoted to the grade of Assistant Foremen. Treating this order as an order of supersession, the petitioners filed a writ petition under Art. 32 claiming to be promotees, and seniority on the basis of statutory rules 10(1)(i) to (iv) contained in S.R.O. 4.

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Dismissing the petition,

HELD : (1) There was a justifiable ground for distinction between the petitioners, who were direct recruits, and the respondents who were promotees, and hence, there was no violation of Art. 16. [762-G]

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The petitioners were really direct recruits and not promotees despite the wrong description in their service records and even wrong orders conveying the impression that they were promotees, even though they had not received intimation of their appointments as direct recruits. Promotions are only made under L 8 of the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956, as amended in 1961, to Chargemen Grade II, on the basis of a selection list prepared by the appropriate Departmental Promotion Committee. The Committee had prescribed a normal minimum qualification of 3 years' service in the post of Supervisor Grade 'A' before promotion except in exceptional cases of ex-apprentices. The petitioners did not belong to the class which had any exceptional qualification, and, since they had not satisfied the 3 years' condition, they could not be considered for promotion in the 80% quota reserved for promotees, to the post of Chargemen, Grade II. [762 B, C, 761 E-H]

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(2) The petitioners have not established that they have been denied their seniority in violation of any right under Art. 16 nor that the seniority list had been prepared in violation of any rule or principle of justice. The question of *inter se* seniority is also based upon the 4:1 (80% : 20%) ratio and it was for the petitioners to satisfy the Court that they were not given the senior

grade although they satisfied all the required conditions, and that others, who were promoted, were given unjustifiable preference over them. [763C]

Anurit Lal Berry v. Collector of Central Excise Central Revenue & Ors., AIR 1975 S.C. 538 @ 546, followed.

ORIGINAL JURISDICTION: Writ Petition No. 469 of 1971.

Under article 32 of the Constitution of India.

V. M. Tarkunde, V. N. Ganpule and P. C. Kapoor for the petitioners.

G. L. Sanghi and S. P. Nayar for respondents 1—4, respondents 5 to 16 not represented.

The Judgment of the Court was delivered by

BEG, J.—Twenty two petitioners under Article 32 of the Constitution, have come to this Court with the following assertion : (1) 'They are employed as civilian non-gazetted Officers holding posts of Chargemen Grade-II (Chemists) in high explosives' Factory, Kirkee, which is one of the 28 Ordnance Factories, located all over India, controlled by Opposite party No. 2, the Director General of Ordnance Factories, with his Head Office at Calcutta..

(2) The Factory has four cadres of officers: (i) Gazetted officers; (ii) Non-Gazetted Officers; (iii) Non-Industrial employees; (iv) Industrial employees. The petitioners belong to the second cadre which has four grades : (a) Foremen ; (b) Assistant Foremen; (c) Chargemen Gr. I; (d) Chargemen Grade II. The 3rd cadre of non-industrial employees has two grades : (i) Supervisor 'A' Grade; and (ii) Supervisor 'B' grade. The employees of the 3rd cadre are classified as Class III employees in the general scheme of classification of Govt. servants who are governed by India Ordnance Factories (Recruitment and Conditions of Service of Class III personnel) Rules.

(3) The seniority rules of Gazetted and Non-Gazetted officers of the Ordnance Factories are laid down in Office Memorandum dated 4th January, 1956, amended in 1961 (Annexure 'B').

(4) The Director General of Ordnance Factories, Respondent No. 2, issued an advertisement, dated 14th November, 1962 for direct recruitment to the grade of Foremen, Assistant Foremen, Chargemen Grade I and Chargemen Grade II. At the time of this advertisement, all the petitioners, except petitioner No. 12, were already serving as officiating Supervisors of 'A' Grade of Class III employees. In answer to the advertisement for appointment to temporary posts with prospects of being "considered for permanent appointment in due course", the petitioners, who possessed the minimum qualifications prescribed, applied for direct recruitment which was open to them also. The petitioners were called for interview by a letter issued by the General Manager, High Explosives' Factory, Kirkee, on 7th February, 1963, but, after the interviews, no letters of appointment were received by the petitioners other than petitioner No. 12.

A (5) They were promoted between April, 1963, and November, 1963, from their substantive grade of Supervisor 'A' to Chargemen Grade II by the General Manager of their factory, on short term basis, by virtue of powers delegated to him. Petitioner No. 12, who was not in service at all before, was appointed a temporary chargemen, Grade II, in April, 1963, as a result of his selection after
B interview. Respondents 5 to 16, however, entered the grade of Chargemen Grade II between 1st December, 1963 and 4th February, 1965, and were also shown as temporary Chargemen Grade II, but, they were not holding any post in the grade of Supervisors. The respondents were apprentices before entering into the Grade II of Chargemen.

C (6) The promotions of the petitioners were given retrospective effect, by an order dated 11th June, 1965, passed by the Director General Ordnance Factories. In December, 1967, however, the petitioners were superseded by others who were alleged to be their juniors. The petitioners made representations and sent reminders which were not replied to. Respondents 5 to 16 were promoted from Chargemen Grade II to the grade of Assistant Foremen by an order
D of the respondent No. 2 Director General Ordnance Factories dated 17th September, 1971. This order according to the petitioners amounted to another supersession of the petitioners who were shown as holding permanent posts only as Supervisors of 'A' Grade in 1971. The petitioners, therefore came to this Court on 14th December, 1971 against the orders dated 17th September, 1971, which amounted to their supersession.

E The petitioners also alleged that as no orders were communicated to them showing that they were considered direct recruits by the Ordnance Depot by the Ministry of Defence Production in the Govt. of India or anyone on its behalf, they came to know, for the first time, as a result of the replies filed by the respondents to the Writ Petition that they were being treated as direct recruits so that they
F could only be confirmed when their turn came in the 20% quota of direct recruits and not in the 80% quota of the promotees. The petitioners, therefore, applied for the amendment of the petition and were permitted by this Court, under an order dated 16th November, 1973, to do so. They alleged, by means of this amendment, that their classification as direct recruits instead of as promotees was "entirely fanciful, arbitrary, and even capricious". They also alleged
G that the seniority list filed in reply to their petition had been kept concealed from them and that it was prepared in utter disregard to statutory rules 10(1) to 10(4) contained in S.R.O. 4.. These rules are :

H 10(1) The Director General will prepare a seniority list of all the officers in their own categories according to the following procedure :—

(i) As between two officers holding a particular class of appointment, in a substantive capacity, seniority in that

class of appointment as well as in the officiating appointments held by them in the same rank or different ranks shall be determined with reference to the date of the substantive appointment.

(ii) Subject to the provisions of clause (iii), an officer holding an appointment in a particular class in a substantive capacity will be normally senior to an officer holding an appointment in the same class in a non-substantive capacity.

(iii) Seniority of persons holding temporary appointments which are made on agreement or on probationary basis and which are expected to be continued after the expiry of the initial period, will be reckoned *vis a vis* others holding permanent appointments in the same grade in the Ordnance Factories from the date from which the officer concerned have been holding appointments of the same grade continuously. The seniority so assigned to such persons shall not be disturbed on their confirmation at a later stage.

Note : This clause applies only to persons recruited through the Union Public Service Commission and to those recruited directly, otherwise than through the Union Public Service Commission prior to 1st April 1947.

(iv) Temporary seniority in a given grade will be reckoned from the date from which the officer concerned has been occupying it continuously, irrespective of whether he has a substantive appointment in some lower grade".

The reply of the respondents is that the so called promotion orders, of which the petitioners want to take advantage, were really the result of a mistake or misunderstanding in not realising the actual legal position of the petitioners as direct recruits. It was pointed out that, in the letters issued calling them for interviews as direct recruits, it was made clear to them that their appointments did not carry with them any decision about their fitness for the post applied for and that they could be considered for any lower post to which they might be so entitled. In other words, this clearly meant that they were on trial. It was also pointed out that promotions are only made under Rule 6 of the Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956, as amended in 1961 to Chargemen Grade II, on the basis of "a selection list prepared by the appropriate Departmental Promotion Committee". It was asserted that, in the minutes of the Departmental Promotions' Committee held in the month of April 1963, prior to the appointment of petitioners as Chargemen Grade II, the Committee had prescribed a normal minimum qualification of three years' service in the post of Grade 'A' for promotion barring exceptional cases of ex-apprentices. It was asserted that, as the petitioners had not satisfied this condition, they could not be considered for promotion to the posts of Chargemen Grade II. They did not belong to the class

A which had any exceptional qualifications. Hence, their names did not appear in the list of persons to be promoted prepared by the Departmental Promotions' Committee for the post of Chargemen Grade II.

B It was asserted that they were being treated as direct recruits and not promotees despite their wrong description and even wrong orders conveying the impression that they were promotees. The condition precedent to promotion not having been satisfied they could only be considered as direct recruits and get the appointments reserved for the class of direct recruits as and when their turns arrived in this quota. It was conceded on behalf of the respondents that much larger number of appointments had been made in the class of direct recruits than the vacancies available. It was, however, explained that this was due to the sudden and exceptional demands for these appointments as a result of the pressure on our Ordnance Factories due to the war with China and other defence requirements. It was urged that the petitioners could not take advantage of erroneous orders made by the Manager of their Ordnance
C Factory even if the error had been repeated by the Director General Ordnance Factories. If the petitioners had not satisfied the condition precedent to promotion, they could not get the appointments reserved for the 80% quota of promotees whose work was watched by the Promotions' Committee so that they could be declared fit for promotion. The promotions were on the basis of a selection on merit, the tests of which had not been satisfied by the petitioners.
D In fact, the petitioners were considered, with others, and were not selected. It was not necessary to give them opportunities of being heard on comparative merits, as they claimed, just as candidates at an examination are not entitled to any such opportunities as these are not disciplinary proceedings.
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F Counsel for the petitioners was, in our opinion, not able to meet the objections put forward to petitioners' claims as promotees. He could not show that they satisfied the conditions precedent to promotions. Hence, the so called orders of promotion could not cure the defect. It was immaterial that the petitioners were wrongly shown as promotees in their service records or that they had not received intimations of their appointments as direct recruits. There was a
G justifiable ground for a distinction between them and the class to which the respondents belonged. There was no challenge to the fairness of the 20% quota reserved for direct recruits as against that of promotees. Hence, we do not think that the petitioners can complain of violation of any fundamental rights under Article 16 of the Constitution.

H Petitioners cannot also claim any benefit resulting from being treated as persons belonging to the same class as respondents 5 to 16 whose places on the seniority list are questioned by them as

amounting to illegal supersessions of the petitioners. We may mention here that Mr. Sanghi, Counsel appearing for the Union of India, Respondent No. 1, and the Director General Ordnance Factory, Respondent No. 2, and other officials, has fairly conceded that so far as the case of Petitioner No. 11 is concerned, it stands on a special footing and that his clients are considering it on that footing. Counsel for the petitioners has also conceded that so far as 3 of the petitioners are concerned, they have been rightly treated as direct recruits. We find no error in treating the others also as direct recruits.

It may also be mentioned here that Mr. Sanghi, Counsel for the Union of India and its officials, has stated to the Court that none of the petitioners will be reverted to his substantive post merely on the ground that he was treated as a direct recruit. The question of *inter-se* seniority is a different matter. The petitioners have been unable to establish that they have been denied their seniority in violation of any right under Article 16 of the Constitution.

It may be mentioned here that, in *Amrit Lal Berry Vs. Collector of Central Excise Central Revenue & Ors.*(¹) this Court laid down (at p. 546) :

“It was for the petitioner to satisfy the Court that he was not given the senior grade although he satisfied all the required conditions of it and that others, who were promoted into it, were given unjustifiable preference over him”.

As we are not satisfied that the seniority list has been prepared in violation of any rule or principle of justice, we are unable to accept the petition before us.

We therefore, dismiss this petition. The parties will bear their own costs.

V.P.S.

Petition dismissed.

(1) AIR 1975 S.C. 538 @ 546.