

Central Administrative Tribunal - Madras

K. Unnikumaran vs Union Of India (Uoi) And Anr. on 23 February, 2007

Equivalent citations: 2008 (1) SLJ 285 CAT

Bench: A S Karamadi, G A R.

ORDER R. Ganesan, Member (A)

1. The applicant who worked as highly skilled Grade-I Heavy Vehicles Factory has sought the following reliefs;

(i) to call for the records relating to the impugned order of the 1st respondent bearing No. 571/A/ (Genl)/Ex-Journcymanship dated 19.11.2004 and set aside the same and consequently direct the respondents to consider and promote the applicant to the post of Supervisor 'B' (T) in the scale of Rs. 175-6.205-7-240 with effect from 25.1.1967 as has been given to Shri K. Narayana Swamy, who was junior Workman-B, with all further promotions, pay fixation and retiral benefits, with all arrears of pay and allowances and

(ii) to pass such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case award cost and render justice.

2. The applicant joined as Artisan Trainee (under Artisan Training Scheme) for the post-training employment at Artisan Training School at Avadi through an All India Entrance Test. He underwent the basic training from 15.6.1964 to 15.6.1965 and the Journcymanship training from 16.6.1965 to 31.6.1965. After completing the training he was graded Machinist 'A' in the scale of Rs. 125-155 in the second respondent factory. On 1.6.1968 he was further promoted to Workman 'A' grade and as Highly Skilled Machinist in the year 1978.

3. The applicant stated that the Ministry of Defence extended Army Instructions, which are applicable to Ordnance Factories also vide order dated 3.1.1966. The Director General Ordnance Factories by order dated 6.7.1978 upgraded the post of Workman 'B' as Workman 'A'. Those Workman 'A' were extended the benefits of notional promotion to Supervisor 'B' if any of the juniors had been promoted. The notional seniority was to be reckoned from the date of notional promotion to Workman 'A' as per order dated 1.1.1967. According to the applicant, the second respondent ought to have granted the benefit of promotion to him to the post of Supervisor 'FT' grade when his immediate juniors were promoted i.e. on 27.1.1967 in the scale of Rs. 175-240. He also should have been promoted from the post of Workman 'B' to that of Workman 'A' within a period of six months from initial gradation namely 1.1.1967.

4. The applicant stated that in 1979 he met with an accident and he had to be given only desk work based on the medical advice but the respondents did not extend him that benefit. After seven years, the second respondent issued a charge sheet dated 22.5.1986 alleging poor performance, which ended in compulsory retirement. Based on the intervention of this Tribunal in O.A. 364/88 he was admitted and placed under deemed suspension and the disciplinary proceedings ended in compulsory retirement at the appeal stage. However, this Tribunal in O.A. No. 189/1998 intervened with the direction to the respondents to reinstate him in an appropriate desk work. The D.G.

Ordnance Factories' order dated 6.7.1978 came to be implemented by the applicant's factory by order dated 18.1.1995, that too in 1996. The applicant was reinstated vide order dated 21.10.2000 in the scale of pay of Rs. 4000-6000. Knowing about the implementation of the D.G. Ordnance Factories' order dated 6.6.1978 for his juniors, he represented to the second respondent to extend the benefits vide his representation dated 24.1.2001. As the respondents did not give any reply, he filed O.A. No. 1151/2002, which was allowed by this Tribunal. As there was no implementation of the order of this Tribunal, a contempt application was moved and during its pendency the respondents passed the impugned order dated 19.1.2004 rejecting the representation of the applicant and holding that the applicant was not entitled to one Shri K. Narayana Swamy cited by him as his junior. It was contended that Shri K. Narayana Swamy was appointed as Supervisor 'B' (Tech.) with effect from 27.1.1967 based on regular selection and he was not holding the post of Supervisor 'B' (Tech) notionally. whereas the applicant has been granted notional promotion with effect from 21.1.1971 retrospectively extending the Chellam Committee's recommendations as per the order of this Tribunal in O.A. No. 1151/2002 and hence the applicant cannot compare his case for promotion with candidates regularly promoted to Supervisor 'B' (Tech). In view of the above disposal given by the respondents, the contempt application was closed.

5. The applicant submitted that the impugned order of the first respondent in rejecting his claim for promotion and consequent pay fixation on par with his junior Shri K. Narayana Swamy was illegal, unjust and unsustainable. The respondents ought to have granted promotion to the applicant from 27.1.1967 when Shri K. Narayana Swamy was promoted as Supervisor B (T) Grade. Director General Ordnance Factories by its order dated 6.7.1978 upgraded the post of Workman 'B' to Workman 'A' and those in the category of Workman 'A' were extended the benefits of promotion to Supervisor 'B' post. He added that merely because his batch-mates had accepted promotion from 21.1.1971 it does not forfeit his right for claiming promotion from 27.1.1967. when Shri K. Narayana Swamy who was a junior Workman 'B' was promoted as Supervisor 'B' (T) Grade. According to him the statement made in the impugned order that by the order dated 27.1.1967 the said juniors were appointed as Supervisor 'B' is not true because whenever promotions are made, the same is by appointment on the basis of selection list prepared by the D.P.C. He placed his claim for promotion to Supervisor 'B' with effect from 27.1.1967 that along with his junior Shri K. Narayana Swamy who was holding lower grade of Workman 'B' when he was promoted to Supervisor 'B' on 27.1.1961 whereas on the said date the applicant was holding a higher grade of Workman 'A' by virtue of his notional promotion with effect from 1.1.1967. The reasons given by the first respondent in the impugned order is unsustainable and hence the O.A.

6. The respondents have replied denying the averments made in the O.A. while confirming the basic facts pertaining to the O.A. They stated that to alleviate the hardship of those appointed in 'B' grade Workman, a committee was appointed under Shri R.K. Chellam. As per the recommendations of the Chellam's Committee, orders were issued according to which those ex journeyman/men who were originally graded as B Grade prior to 1976 could be granted notional seniority in A grade from the date of six months from the date of original gradation as 'B' grade workers for the purpose of promotion to Supervisor 'B1 and not for further promotion. Subsequently this benefit was extended to the Machinist 'A' Grade workers also. After grant of notional seniority in "A" Grade, a seniority list of all 'A' Grade workmen (including originally graded as 'B' Grade workmen) had to be drawn,

and ii it was found that if any junior (among ex-journeyman) was promoted to the post of Supervisor 'B' (T), then those 'B' grade workmen, who were given notional seniority should also be promoted to Supervisors on the same date as that of such juniors.

7. Heavy Vehicles Factory came under Ordnance Factories Board in 1980 and a Subcommittee under Shri K.J. Papachan DDG examined the application of the Chellam's Committee recommendations to the employees of HVF and based on their recommendations the benefit was extended by order dated 18.1.1995 in HVF also. At that time as the applicant was removed from service due to disciplinary proceedings and his re-instatement was with effect from 21.10.2000 based on this Tribunal's order in O.A. No. 189/98 the Chellam Committee benefits were not initially given to him. However, under the orders of this Tribunal in O.A. No. 1151/2002 dated 1.10.2003 the Chellam Committee benefits were made applicable to the applicant by giving notional promotion to Supervisor 'B' (T) from 21.7.1991 on par with his juniors/batchmates and on abolition of post of Supervisor 'B'(T) they were appointed by transfer to Chargemen Grade-II (T) with effect from 10.5.1993 in the scale of Rs. 4000-6000 and refixing his pay at Rs. 4600. The applicant superannuated with effect from 31.5.2002.

8. The respondents stated that the applicant had not undergone four years Artisan Training followed by one year journeymanship or subsequently promoted to skilled workmen and then Supervisor 'B' (T). He did not possess any of the qualifications mentioned in the letter dated 10.1.1961 for granting the pay scale of Rs. 175-240 and such a claim also is hopelessly barred by limitation. However, Shri K. Narayana Swamy was appointed as Electrician (AFV) with effect from 25.2.1966 on casual basis from open market (Ex Serviceman) and further confirmed to the post with effect from 25.2.1966 on 24.8.1966. Applicant was appointed to Machinist 'A' (scale equal to 'B' Grade of other trades) grade with effect from 1.7.1966 after completing the prescribed training from the Departmental Training School. The applicant has been granted gradation as Machinist 'spl' (scale equal to A grade of other trades) with effect from 1.1.1967 on completion of six months from the original gradation of Machinist 'A' Grade and further notionally promoted to Supervisor 'B' (T) with effect from 21.7.1971 retrospectively. They stated that Shri K. Narayana Swamy was senior to the applicant in date of appointment also. Applicant was working in Machinist 'A' Grade and Shri K. Narayana Swamy was working as Electrician (AVF). Applicant cannot compare his seniority with a person working in another trade/ cadre and grade. The applicant can compare his case with Machinist 'A' Grade (same grade and trade) employee only. An employee who belongs to another trade/grade cannot be compared for seniority and promotion purpose since these are different cadres having separate line of promotion and seniority. According to the respondents applicant who was notionally promoted Supervisor 'B' (T) cannot compare his case with an employee who was appointed regularly based on selection or even with regular promotee. This has been upheld by this Tribunal in Paras 13 and 14 of the order dated 24.3.2003 in O.A. Nos. 825 and 826 of 2002.

9. The respondents added that the applicant failed to understand the basic difference between promotion and appointment by selection. No junior to the applicant has been promoted to Supervisor 'B' (T) prior to his date of promotion with effect from 21.7.1991 overlooking his claim. The applicant's batchmates were also given promotion from the same date retrospectively only. This Hon'ble Tribunal order dated 1.10.2003 in O.A. No. 1151/2002 has been fully implemented by the

respondents. The applicant filed C.P. No. 34 of 2004 before this Hon'ble Tribunal for punishing the respondents for non-implementing the order in O.A. No. 1151/2002. The C.P. No. 34 of 2004 has been dismissed by this Hon'ble Tribunal order 17.3.2005 as under:

From the pleading before us and on the basis of the records available we are satisfied that the direction as observed by the Tribunal to complete the exercise of pay fixation and grant the applicant consequential retiral benefits to the applicant have been complied with by the respondents.

10. The respondents contended that since the subject matter has been considered and decided this Hon'ble Tribunal in O.A. No. 1154 of 2002 and C.P. No. 34/2004, this O.A. is infructuous and res-judicata. The Hon'ble CAT Jabalpur Bench vide order dated 14.2.1991 in O.A. No. 217/87 in Shri S.K. Chattopadhyay and Others held that persons who are regularly appointed/promoted earlier would enbloc rank but senior to the persons who have been granted proforma promotion and given notional seniority. The applicant had been granted notional promotion Supervisor 'B' (T) with effect from 21.1.1971 retrospectively extending the Chellam's Committee recommendations cannot make any comparison with persons regularly appointed on selection as Supervisor 'B' (T) from 27.1.1967 along with 38 others in the said Factory Order for regular promotion. Considering the above facts and the legal position regarding the claim of those promoted notionally with respect to others promoted/appointed on regular basis, the respondents pleaded for the dismissal of the O.A.

11. The applicant has filed a rejoinder reiterating the submissions made in the O.A. including the fact that as on 1.1.1967 he was Workman 'A' while junior Shri K. Narayana Swamy was Workman 'B' and the junior got promotion as Supervisor 'B' (T) on 27.1.1967 and hence he has to be given the benefit which his junior got by way of promotion to Supervisor 'B' from the same date as his junior. He also denied that he cannot compare with others in another trade because promotion is for each grade and not trade-wise. He also referred to the decision dated 12.12.1996 of the Calcutta Bench of this Tribunal in O.A. No. 789/96 wherein it was held as under:

We have already directed that in case the petitioners or any of them even though they may retire in the meanwhile, is or found to be entitled to retrospective promotion to higher posts, then the pre-condition of service for a minimum period in the feeder post, if any, as per recruitment rules, should be deemed to have been fulfilled even though they may not actually work in that grade.

12. The respondents have replied to the rejoinder confirming the earlier reply, also stressed on the fact that the O.A. is hit by the res-judicata. They reiterated that the applicant was not comparing his case with similarly placed employees. The applicant can compare his case only with a notionally promoted Supervisor 'B' (T) belonging to ex-journeyman who got the benefits of Chellam's Committee. He is comparing his case with an employee appointed to the post of Supervisor 'B' (T) based on selection. This has been upheld by the Hon'ble High Court of Madras order dt. 2.3.2006 in W.P. No. 37822 of 2002. Unequals cannot be treated equally hence there is no discrimination on the part of the respondents.

13. We have heard the learned Counsels for the applicant and the respondents and perused the relevant records carefully.

14. The short point that arises in the O.A. is whether the applicant was notionally promoted as Machinist 'A' based on the implementation of the report of the Chellam's Committee and Pappachan Committee in these organisation with effect from 1.1.1967 vide order dated 24.11.2003 can claim to be senior to one Shri K. Narayana Swamy who was, as on the date of 1.1.1967, admittedly Electrician 'B' who got promoted as Supervisor 'B' (T) with effect from 25.1.1967 and if so, whether the applicant is entitled to be promoted as Supervisor 'B' (T) with effect from 25.1.1967 on par with Shri K. Narayana Swamy.

15. The learned Counsel for the applicant strenuously argued that with the application of Chellam's Committee report in the respondents' organisation and extended to the applicant by giving him the same Machinist 'A' from 1.1.1967 he is senior to Shri K. Narayana Swamy who on the crucial date of 1.1.1967, was only Electrician 'B' as seen from the order dated 25.1.1967 wherein he was promoted to Supervisor 'B' (T) with effect from 25.1.1967. Thus the applicant being senior to him by holding a higher post of Machinist 'A' on 1.1.1967 he is also to be given the benefit of promotion to Supervisor 'B' (T) along with Shri K. Narayana Swamy. He refuted the respondents' submission that his batchmates have not questioned the same by claiming that he has his own right for seeking the relief irrespective of whether others do so or not. In O.A. No. 189/98 dated 6.9.2000 and O.A. No. 1151/02 dated 1.10.2003, this Tribunal had given clear directions which the respondents have failed to comply with and added that the respondents trying to make a distinction between appointment by promotion through DPC and the promotion in the applicant's case is not tenable. Hence the respondents' issuing the impugned order to deny him parity with his junior Shri K. Narayana Swamy being against rules, he strongly pleaded for allowing the O.A.

16. On the other hand the learned Counsel for the respondents made a clear distinction between the order issued dated 25.1.1967 for promotion to Supervisor 'B'(T) and the same position given to the applicant subsequently, on the ground that Shri K. Narayana Swamy was appointed based on merits, after being screened by a selection process as early as 1967 and he cannot be compared with the applicant's case where he got his position by virtue of notional promotion through the application of Chellam/Pappachan Committee report.

17. The extract of order dated 25.1.1967 comprising about of 3 8 persons reads is under:

The General Manager is pleased to appoint the following employees for the post against their names with effect from 27.1.1967.

(List of Names- 1 to 38) Shri K. Narayana Swamy With the recommendations of the Selection Boards and the individuals will be on probation for a period of two years, which may be extended at the discretion of the Appointing Authority. The terms and conditions of these appointments will be regularised under the existing rules.

Sd/-

## General Manager

18. On the basis of the said order, Shri K. Narayana Swamy was appointed with effect from 27.1.1967 as Supervisor 'B' (T). Admittedly the applicant was defacto working as Machinist 'B' on the said date when Shri K. Narayana Swamy occupied the position of Supervisor 'B' (T). However, as pleaded by the respondents, the Chellam Committee which had looked into the promotion prospects of Machinist 'B' had recommended notional promotion to those who stagnated as Machinist 'B' and this report was further recommended to be implemented in the respondents' organisation through the Pappachan Committee which subsequently examined the same issue. Thus the respondents contended that when they decided to implement the Chellam Committee report in their organisation in the year 1995, the applicant was out of service and he was reinstated in service with effect from 21.10.2000 based on the order of this Tribunal dated 6.9.2000 in O.A. No. 189/98. Thus it is evident that the applicant gets a foot-hold in the higher position of Machinist 'A' with effect from 1.1.1967 only by the application of Chellam Committee Report which was implemented in his case after his reinstatement only vide order dated 24.11.2003. With this basic distinction, the applicant trying to compare himself with Shri K. Narayana Swamy was assailed by the respondents on the basis of settled law wherein that notionally promoted employees cannot be ranked above the regularly promoted employees and in this context he relied on the following decisions:

1. CAT Principal Bench New Delhi order dated 22.12.1995 in O.A. No. 2601/ 94.
2. S.K. Saha v. Prem Prakash Aggarwal 1994 (1) SLJ 100 (SC) : (1994) 10 SOC 431
3. Gangadhar Kar v. Durgacharan Panda and Ors. 1995 (30) ATC 549.
4. CAT Mumbai Bench Order in O.A. No. 514/2004 dated 10.6.2002.

19. The respondents have submitted the following in their reply to strengthen their claims on law.

Hon'ble CAT Jabalpur Bench in O.A. No. 217/1987 S.K. Chattopadhyay and Ors. v. Union of India has observed that the persons who were given notional seniority cannot be obviously ranked above the persons who are regularly promoted earlier. The substantive capacity will be with reference to the regular promotion and he will rank senior to a person who has been otherwise promoted pro-forma on the basis of notional seniority.

Hon'ble CAT, Jabalpur Bench Order in O.A. No. 217/1987 has been upheld by Hon'ble Supreme Court in Peluru Ramakrishnan and Ors. etc. v. UOI and Anr. by 3 Judges Bench and further in C.A. No. 1690 of 1993 S.L.P. No. 13257 of 1991 in KKM Nair v. UOI case.

Hon'ble CAT Chennai Bench in its order dated 9.11.1999 in O.A. No. 689 of 1997 it is confirmed that when the above issue (notional seniority) was taken up before the Jabalpur Bench of this Tribunal in O.A. No. 217/87, the Jabalpur Bench of this Tribunal in its judgment dated 14.2.1991 had held that persons who were given notional seniority cannot rank above persons who were regularly promoted earlier. Further, when the matter was taken in appeal before the Apex Court, the Hon'ble Supreme

Court had occasion to examine the judgment of Jabalpur Bench of this Tribunal wherein the Supreme Court had upheld the judgment of the Jabalpur Bench of this Tribunal and had dismissed the S.L.P. Thus, it leaves no room for any doubt about the manner in which the seniority has to be decided in respect of persons who were given notional seniority vis-a-vis persons who were promoted on a regular basis.

....Thus it is clear that the implementation of Chellam Committee's recommendations for HVF also is based on the orders dated 6.7.1978 and 7.9.1992, cited supra. Further all the 346 Ex. Journeyman including the applicants have been granted notional promotion by HVF vide order No. 379 Part-II dated 18.3.1997. In view of this it is clear that the statement of the applicants set out in Para 6 of their rejoinder is incorrect. Further having opted on 20.3.1997, cited supra, the seniority of that applicants is governed by the relevant orders dated 6.7.1978, 7.9.1992 (cited supra) and the order dated 23.8.1994 made in Order No. 571/A/I(Genl)/Ex-Journeyman ship.). Further as on 1.9.1992 the applicants wherein the post of Supervisor 'B' (notionally promoted) and hence their promotion to Chargeman Grade-II) is to be treated as appointment to Chargeman-II/Tech. on par with other Supervisors. Thus, they cannot claim seniority alone based on promotion order Part-II No. 807 dated 3.5.1993 and cannot also quote one order for seniority and the other order for notional benefits.

From the above it emerges that the official respondents have adopted a uniform practice to not only alleviate the difficulties of those workers who obtained only Grade-B and stagnated without out any promotion prospects for a long time but also had given them the relief by way notional promotion and other attendant benefits after examination of the whole issue in depth.

We also find that the issue has already been examined by the Jabalpaur Bench of this Tribunal in the decision rendered in O.A. No. 217/1987 and the said decision has also been affirmed by the Apex Court.

Under these circumstances we find no reason to interfere with the action of the official respondents. In the result the O.A. is dismissed as devoid of merit with no order as to costs.

(Emphasis added)

20. The respondents added that five of the applicants in O.A. No. 689 of 1997 filed a W.P. No. 2258 of 2001 and W.M.P. Nos. 3514, 3515 of 2000 before the Hon'ble High Court Madras challenging the orders of this Hon'ble CAT, Chennai order dated 9.11.1999 in O.A. No. 689/97 and the same was dismissed on 27.3.2001.

21. Further the respondents also referred to the judgment dated 2.3.2006 of the Hon'ble High Court of Madras in W.P. No. 37822/2002 W.P.M.P. No. 56741/2002 and W.V.M.P. No. 676/2003 filed by GM HVF against the order of this Tribunal in O.A. No. 796/2001 wherein the applicant in the O.A. was Shri A.P. Mohandas in an identical matter, to the present O.A., Their Lordships while rejecting the claim for parity of notional promotees with regular promotees have ordered as under:

14. It is therefore clear that notional seniority was only granted as a measure of giving relief to the workers who were stagnated and they were not recommended for promotion to the next higher grade of skilled post. The second respondent has been granted the notional promotion by way of the Chellam Committee and Pappachan Committee. Therefore, what has been extended by way of a good will gesture by the Department, cannot form the basis of the claim over and above the regular appointees who have been promoted by virtue of skill, efficiency and merit.

15. There is much force in the contention made by the petitioners that by virtue of getting notional seniority in 'A' Grade, the second respondent is claiming higher status which is contrary to statutory rules and orders (SRO). The argument of the Department is that the rights of persons regularly appointed in 'A' Grade who claims seniority through higher grade only after obtaining notional seniority. The persons who obtained notional seniority should not be allowed to claim further higher status in higher grades, as it will affect the seniority of several persons who are already senior to them. The Tribunal has not considered one vital factor, in that the second respondent was given notional promotion to Supervisor 'B' (T) by proceedings dated 10.3.1997, whereas in the case of V.N. Dhanapalan, he had become Supervisor B on 10.1.1972 itself by selection. This difference has not been considered by the Tribunal. The Tribunal also erred to state that the second respondent was given higher seniority in Supervisor 'B' (T) over and above the case of V.N. Dhanapalan. This is also factually incorrect as is evident from the chart extract above.

16. The Tribunal has gone only on the ground that the notional promotion granted would entitle the second respondents to get the same benefit as that of V.N. Dhanapalan. This finding of the Tribunal apparently is factually incorrect and contrary to law. The Tribunal has not taken into consideration the decision of the Jabalpur Bench of the Tribunal referred to above, which has been confirmed by the Supreme Court. The settled legal position has not been considered by the Tribunal that notional promotion does not entitle the person concerned with any right whatsoever. In any event, the second respondent cannot claim same parity with that of V.N. Dhanapalan, who falls under different category of promotion. There is no question of treating unequals as equals, as has been sought to be done by the Tribunal.

17. In view of the above discussion, we find that the order of the Tribunal is clearly based on error of judgment. The writ petitioners are liable to succeed. The writ petition is allowed. No costs. W.P.M.P. and W.V.M.P. are closed.

(Emphasis added) In K.R. Mudgal and Ors. v. R.P. Singh and Ors. , the Hon'ble Supreme Court has held:

Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Govt. servants created by the writ petitions filed after several years. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the Court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the Govt. servants there would also be administrative complications and difficulties. (Para 7) A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. In



the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged. The High Court was wrong in rejecting the preliminary objection raised on behalf of the appellants (who were respondents in the writ petition before the High Court on the ground of laches (Para 2) (Emphasis added)

22. The ratio of the above judgment of the Hon'ble High Court of Madras being fully applicable to the present case in all aspects, including facts and law as cited by the Hon'ble Supreme Court, we are convinced that the respondents have correctly acted in giving the applicant notional promotion along with others of his batch vide order dated 25.1.1967 and for the same reasons the impugned order of the respondents dated 19.11.2004 cannot be faulted

23. The O.A. is therefore dismissed. No costs.