

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00165/2012

Pronounced on : 03.03.2020
(Reserved on : 14.02.2020)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Shankar Lal Meena son of Late Shri Sohan Lal Meena, aged about 45 years, resident of P-262/3, MES Colony, Air Force Suratgarh Distt. Srigananagar, at present employed on the post of Elect HS-I in the office of Garrison Engineer (AF) Suratgarh, Distt. Srigananagar.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence Raksha Bhawan, New Delhi.
2. Chief Engineer, MES Western Command, Chandimandir (Pb).
3. Commander Works Engineer MES (AF) Bikaner (Raj.)

RESPONDENTS

BY ADVOCATE: Mr. B.L. Bishnoi, for R1 to R3

ORDER

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Per Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

"8(i) That the respondents may be directed to consider the candidature of the applicant for promotion to the post of MCM Elect against ST reserve point No.13, from dated of restructuring as per the

restructuring cadre of artisan staff policy and allow him all consequential benefits. The impugned order dated 23.09.2011 (Annexure A1) may be ordered to be modified accordingly.

(ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the fact and circumstances of this case in the interest of justice.*

(iii) *That the costs of this application may be awarded."*

2. Brief facts of the case as submitted by the applicant are that the applicant belongs to ST category and he was initially appointed on 01.11.1989 on the post of Elect SK in the office of GE (AF) Suratgarh. The applicant was promoted to the post of Elect HS-II w.e.f. 18.05.1995 vide PTO dated 29.05.1995, which was reviewed and the date of promotion as Elect HS-II was changed from 18.05.1995 to 01.01.1996 vide letter dated 15.11.2007. Thereafter, he was promoted to the post of Elect HS-I w.e.f. 01.01.2006. The posts of HS-II and HS-I were merged w.e.f. 01.01.1996 and pay scale of Rs.400-6000 was granted. There was a provision of placement on the post of MCM in the pay scale of Rs.4500-7000 to the extent of 25% of HS Grade posts vide order dated 20.05.2003. It was not a part of promotional hierarchy. The seniority list in respect of Elect HS for promotion to MCM was issued on dated 31.05.2006 and the name of applicant was placed at Serial No.32. Applicant was the only person belonging to ST category on the post of Elect HS.

3. It is submitted that 22 persons were given the placement on the post of MCM vide letter dated 18.03.2008. The said placement was given strictly as per the seniority and no reservation as such was provided in respect of reserved category SC/ST candidates since it was not considered to be a promotion under normal promotion rules or under ACP Scheme. None of the SC/ST candidate was given the benefits of reservation. The scheme of restructuring of cadre of Artisan

Staff in defence establishment was modified vide letter dated 14.06.2010. The post of MCM was made as a part of promotional hierarchy and 25% of HS-I may be granted the pay scale in pay band-2 with 4200 GP as MCM. The restructuring was to be made as on 01.01.2006. Normal rules of promotion including the rules of reservation would apply to the post of MCM.

4. It is further submitted that the respondent No.3 has issued an order dated 23.09.2011 for implementing the aforesaid restructuring of cadre of Artisan Staff orders as per the recommendation of 6 CPC. The name of the applicant is placed at Sl. No.12 and he is given seniority on the post of HS-II w.e.f. 01.01.1996. He is the senior most ST category candidate. Six persons have been shown as having been promoted to the post of MCM (Elect) as mentioned in remarks column. As per the 200 points Reservation Roster for promotion issued by the DoPT, point Nos. 13, 28, 40, 55, 69, 80, 95, 108, 120, 136, 148, 175 and 198 are meant for ST Category. The cadre of MCM is 28 posts and this fact is borne out from the aforesaid placement order whereby 22 persons were given the post of MCM. Subsequently, 6 more persons have been promoted under restructuring as indicated in the impugned order dated 23.09.2011 (A/1). Therefore, the point No.13 and 28 ought to have gone to ST category. But no one from ST category has been promoted as MCM (Elect) under restricting of cadre of artisan staff orders. The applicant happened to be the senior most ST category candidate on the feeder post. The applicant submitted representation on 20.01.2011 and his representation was forwarded by his controlling authority vide letter dated 20.01.2011. He also submitted another representation on 20.10.2011 after issuance of impugned and requested for assignment of correct seniority and due promotion. The DoPt has also issued for

special drive for filling up the reserved category vacancies vide OM dated 10.06.2011. But there was no response in the matter and the applicant has not been granted the due benefits. He has also not been communicated a decision on his pending representation and more than six months to the same have elapsed. Therefore, he has filed the present Original Application.

5. The respondents by way of reply submitted that after coming into force of the scheme of restructuring of cadre of Artisan Staff, the post of MCM was made part of promotion hierarchy and 25% of HS-I could be granted the pay scale in pay band-2 with 4200 GP as MCM, but the applicant did not form part of 25% of Elect HS-I for promotion to MCM. The total numbers of vacancies available were only 6 and the name of the applicant stands at Sl. No.12, therefore, he could not be promoted. Since the promotion roster shows the serial No.14 for ST candidate and only 6 HS-I were considered for promotion to the post of MCM as per vacancy available vide HQ CWE (AF) Bikaner letter dated 16.11.2009 and 26.10.2010 as per Government of India, Ministry of Defence Order dated 14.06.2010. After implementation of the order dated 14.06.2010, only 06 persons were promoted as MCM (Elect) and the applicant was in the seniority list at Serial No.12. Thus, he has not been considered for promotion as point of reservation roster for promotion of ST candidate has been shown placed at serial No.14 in the reservation roster.

6. In the rejoinder, the applicant submitted that the promotional posts are required to be filled in as per post based roster. The DOPT has issued a post based roster vide OM dated 02.07.1997 (Annexure-A/10). The respondents have on the other hand resorted to fill up the posts of vacancy basis. There are 28 post in the cadre of MCM and point No.13 and 28 are reserved for ST category reserved candidates but not even

single persons has been promoted from ST category. The applicant is the senior most ST category candidate.

7. The respondents have also filed additional affidavits on 07.05.2014 and 16.11.2017 while reiterating the submissions made in the reply and stated that the promotion to the grade of MCM for implementation of re-structuring of Artisan Staff in modification of 6th Central Pay Commission recommendations issued upto 31.03.2011 are without giving any reservation as per clarification issued by the E-in-C's Branch, Integrated HQ of MoD (Army), New Delhi letter dated 27.09.2006. Further, the promotions made to the grade of MCM are without considering any reservation roster in terms of the said letter. It is further submitted that the applicant was considered for the purpose of promotion to the grade of Electrician HS-I w.e.f. 01.01.2006 and relaxation of passing the requisite Trade Test was allowed to him in terms of the Government of India, Ministry of Defence letter dated 14.06.2010. As per clarification sought vide HQCE Western Command Chandimandir letter dated 20.12.2012, the personnel already placed as MCM between 01.01.2006 to 14.01.2010 are treated as senior most. Moreover, the promotion to the grade of MCM for implementation of re-structuring of Artisan Staff in modification of 6th Central Pay Commission recommendations issued upto 31.03.2011 are without giving any reservation as per clarification issued by the E-in-C's Branch Integrated H! of MOD (Army), New Delhi letter dated 27.09.2006.

8. Heard Shri J.K. Mishra, learned counsel for the applicant and Shri B.L. Bishnoi, learned counsel for the respondents and perused the pleadings available on record.

9. It is the case of the applicant that 28 posts of MCM (E) were available in the respondent department for promotion and out of these as per the 200 point Roster two posts were reserved for ST candidates. However, despite this the applicant who is an ST candidate was not considered. Applicant submits that having got promotion to HS I on 1/1/2006 and HS II on 15/11/2007 he was eligible for consideration. Applicant avers that after the exercise of restructuring of the Cadre with effect from 1/1/2006 the posts were available for promotion. It was the case of the applicant that earlier it was not so but after restructuring the posts are made part of the promotional hierarchy.

10. Learned counsel for the applicant states that he has challenged Annexure A1 as six persons have been considered for promotion but applicant was not considered. He drew our attention to the guidelines of the DoPT for preparation of the Post based roster.

11. Per contra the learned counsel for the respondents drew attention to the reservation policy and stated that the Department had fully complied with relevant instructions on the subject as there were six posts as per roster and six persons were placed/promoted in those posts from the quota. Learned counsel for the respondents clarified that the 200 Point Roster for SC and ST was not applicable for placements to the grade of MCM from HS II.

12. Drawing attention to the Annexure R/1 respondents clarified that the respondents have already given placement/promotion to 22 persons with effect from 1/1/2006 (w.e.f. 2003) and later to another six taking the total to thirty two persons as required under the point system. He reiterated that since MCM were not promotional posts the two hundred point roster will not apply.

13. Learned counsel for the respondents vehemently denied the claim of the Applicant on the ground that the seniority list by which six persons were promoted has not been challenged by the applicants. In the absence of the seniority list or Roster being challenged the case of the applicant is not maintainable. Moreover the applicant is at seniority twelve while only senior most six were promoted/placed. He drew our attention to the Document placed at R2 wherein it has been amply clarified by the Ministry of Defence vide their letter dated 27/9/2006 that:

"Ministry of Defence have now clarified that the post of MCM is not part of the hierarchy and placement in this grade will not be treated as promotion for HS grade either under formal promotion rule or under ACP scheme. In view of the above clarification it is decided that applicability of 200 point roster for SC/ST will not be applicable for placement in the grade of MCM from HS grade."

14. For a better appreciation we have perused a catena of judgments of the Hon'ble Apex Court in the matter.

15. In Writ Petition Nos. 41309-41311/2015 (S-CAT) Union Of India vs. Shri Ashwathanarayana KL decided on 4th March, 2016, the Hon'ble High Court of Karnataka **has given a brilliant discourse on the distinction between placement and promotion and the applicability of the roster for reservation**

"9. Before advertiring to the materials on record, it is to be considered whether the up-gradation given to the respondents amounts to promotion or it is only a financial up-gradation without changing the cadre. In this regard, we would like to refer the decision of the Hon'ble Apex Court in order to ascertain what exactly are the principles laid down in the case of Bharat Sanchar Nigam Ltd., Vs. R. Santhakumari Velusamy & Others reported in (2011) 9 SCC 510, wherein, the Hon'ble Apex Court has observed at paragraph 14 to the effect that -

"14. Article 16(4) enables the State to make any provision for reservation of appointment or posts in favour of any backward classes of citizens. Article 16(4-A) enables the State to make any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes, which in the opinion of the state, are not adequately represented in the services under the State. As

upgradation involves neither appointment nor promotion, it will not attract reservation. Upgradation involves mere conferment of financial benefits by providing a higher scale of pay. If there is mere upgradation of posts, as contrasted from promotion, the reservation provisions would not apply."

The Hon'ble Apex Court has also clarified the difference between financial up-gradation and promotion in the following manner at paragraph 29 as under:

29. *On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:*

1. *Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity.*

Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both—that is, advancement to a higher position and advancement to a higher pay scale—are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

2. *Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.*

3. *Therefore, when there is advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.*

4. *Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit if advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to*

those applicable to promotion, then it will in effect, be a promotion, though termed as upgradation.

5. Where the process is an Upgradation simpliciter, there is no need to apply the rules of reservation. But where the Upgradation involves a selection process and is therefore a promotion, the rules of reservation will apply.

6. Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation. On meaningful reading and understanding of the above said decision, it is abundantly clear that, where there is prescribed process of selection or consideration of comparative merit or suitability for granting promotion or up-gradation or the benefit of advancement of higher pay scale with the change of cadre, then it can be called as promotion. But without considering the comparative merit or suitability for granting up-gradation or without following the procedure for promotion, a mere up-gradation of financial benefits will not amount to promotion. If such being the case, if it is only a financial up-gradation without changing the actual work of the employee, without entrusting any extra work of any higher post and also without following any tests for promotion, then it only amounts to financial up-gradation though the pay band of the next cadre or higher post is given to the employees"

16. In view of the discussion as above and the decision of the Hon'ble High Court of Karnataka (as quoted above), we are of the opinion that no interference called for in the action of the respondent department. Therefore, the OA has no merit and deserves to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

**(ARCHANA NIGAM)
MEMBER (A)**

**(HINA P. SHAH)
MEMBER (J)**

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