

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00143/2017

Date of Order: This, the 14th day of November 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Mon Mohan Dutta
MES No. 229591
Electrician HS-II
Office of the A.G.E (E/M)
Shillong – 793002.

...Applicant

By Advocates: Sri M. Chanda, Smt. U. Dutta & Sri H. Das

-VERSUS-

1. Union of India
Through the Secretary
Ministry of Defense, Govt. of India
South Block, New Delhi – 110001.
2. The Secretary
Ministry of Finance
Department of Expenditure
New Delhi – 110001.
3. The Secretary
Ministry of Personnel
Public Grievances and Pensions
Department of Personnel and Training
New Delhi – 110001.
4. Commander Works Engineer
Spread Eagle Falls
Shillong – 793001.

5. Garrison Engineer
Shillong Division, Shillong – 793002.
6. Assistant Garrison Engineer E/M
Shillong – 793001.
7. Sri M.P. Choudhury
Electrician HS-I
Office of the Garrison Engineer
Shillong Division, Shillong – 793002.

... Respondents

By Advocate: Smt. G. Sutradhar, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

This O.A. has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- “8.1 That the Hon'ble Tribunal be pleased to direct the respondents to ante-date the promotion of the applicant in the cadre of Electrician HS-II at par with his juniors namely respondent no. 7 with all consequential service benefits along with all monetary benefits.
- 8.2 That the Hon'ble Tribunal be please to direct the respondents to grant the benefit of placement in the cadre of Electrician HS-I in the grade pay of Rs. 2800/- atleast w.e.f 01.01.2008 at par with juniors of the applicant namely 7 with all consequential service benefits along with all monetary benefits.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to grant the benefit of 3rd MACP in the grade pay of Rs. 4200/- instead of Rs. 2800/- atleast w.e.f. 10.12.2014 by way of modification/cancellation of the relevant order extending the benefit of 3rd MACP on completion of 30 years of service with all consequential benefits including arrear monetary benefits.”

2. Brief facts as narrated by the applicant are that he was initially appointed to the post of Mazdoor on 10.12.1984. Thereafter, He was promoted as Mate Mazdoor in the pay scale of Rs. 2610-3540/2650-4000/- on 12.10.1995. Subsequently he was appointed/promoted as Electrician (SK) on 15.02.2002. Again he was promoted in the cadre of Electrician HS-II on 01.01.2005 whereas his junior namely Sri M.P. Choudhury, MES No. 229381 was promoted in the cadre of Electrician (SK) on 22.03.2002 and again he was promoted in the cadre of Electrician HS-II on 20.05.2003. Said Sri M.P. Choudhury was further placed/promoted in the cadre of Electrician HS-II w.e.f. 01.01.2008 in the grade pay of Rs. 2800/-. He was granted wrongly benefit of 3rd MACP in the grade pay of Rs. 2800 in the relevant pay band when it has already been settled by the decisions of the different Tribunals that placement in the cadre of HS-I cannot be treated as a promotion rather it is merely a placement in the cadre of Electrician HS-I as per Govt. of India, Ministry of Defence Cadre restructuring policy dated 14.06.2010, since the juniors of the applicant were promoted/placed in the cadre of Electrician HS-I w.e.f. 01.01.2008 ignoring and overlooking his case.

3. It was submitted by Smt. U. Dutta, learned counsel for the applicant that similarly situated employees approached before the Calcutta Bench of CAT vide O.A. No. 172/2012 as well as Ernakulam

Bench of CAT vide O.A. No. 09/2013 where in both the cases, it was held that placement from HS-II to HS-I cannot be treated as promotion. The CAT, Calcutta Bench held that the category of HS-II and HS-I created w.e.f. 01.01.2006 by way of cadre restructuring, as such post of HS-II and HS-I subsequently created w.e.f. 01.01.2006 cannot be treated as promotional avenue for the incumbents holding erstwhile post of highly skilled grade prior to 01.01.2006. In view of that, according to Smt. U. Dutta, the present applicants are entitled to 2nd financial upgradation in the next avenue of promotion available to the grade of Master Craftsman. Applicant submitted detailed representation on 09.01.2017 for ante-dating his promotion in the cadre of Electrician HS-II at par with his juniors and also prayed for grant of benefit of placement in the cadre of HS-I w.e.f. 01.01.2008 at par with juniors and also for grant of 3rd MACP in the grade pay of Rs. 4200/-. But to no result.

4. Smti. Dutta has drew the attention of this court to the letter dated 14.06.2010 issued by the Govt. of India, Ministry of Defence on the subject of "Restructuring of Cadre of Artisan staff in Defence Establishments in modification of recommendations of 6th CPC".

5. Smti Dutta reiterated that while the applicant working in the cadre of Electrician HS-II, he was granted benefit of 3rd MACP

w.e.f. 10.12.2014, but wrongly placed in the lower grade pay of Rs. 2800/- on account of 3rd MACP on completion of 30 years of regular service. Hence placement in the scale/grade pay of Rs. 2800/- which is attached to the post of HS-I cannot be treated as a next promotional post in the hierarchy of the avenue of promotion, it is rather a placement. As such, the applicant ought to have been placed in the grade pay of Rs. 4200/- in the relevant pay band (pre-revised scale of Rs. 5000-8000) on account of 3rd MACP due and admissible to the applicant atleast w.e.f. 10.12.2014. According to Dutta, scale of Rs. 5000-8000/- is attached to the promotional post of Master Crafts Man, but said benefit has been wrongly denied to the present applicant.

6. On the other hand, Smt. G. Sutradhar, learned Addl. CGSC representing the official respondents submitted that both the applicant and private respondent No. 7 (Sri M.P. Choudhury) got the promotion from Male (Elect) to Elect (SK) w.e.f. 15.02.2002 vide CWE Shillong letter dated 15.02.2002. According to Smt. Sutradhar, as per seniority list as well as availability of vacancy, private respondent No. 7 (Sri M.P. Choudhury) got the promotion to the post of Elect (HS) w.e.f. 20.05.2003 and the applicant got the same promotion w.e.f. 01.01.2005.

7. Learned Addl. CGSC further submitted that during re-structuring of Industrial Staff and Non-industrial staff w.e.f. 01.01.2006, the applicant was placed in the seniority list Highly Skilled Grade-II (PB-I with GP Rs. 2400/-). Being senior to the applicant, private respondent No. 7 was placed in the seniority list of Highly Skilled Grade-I (PB-I with GP Rs. 2800/-) depending upon the availability of vacancy. As regards the claim of the applicant for the benefit of 3rd MACP in the Grade Pay of Rs. 4200 w.e.f. 10.12.2014, learned Addl. Submitted that the applicant is working as Elect (HS-II) w.e.f. 01.01.2006 in the Grade Pay of Rs. 2400/-.

8. By rebutting the arguments advanced by the learned Addl. CGSC for the respondents, learned counsel for the applicant submitted that the placement in the cadre of HS-I is merely a placement in the grade pay of Rs. 2800 without having any higher responsibility but on account of cadre re-structuring and the said issue has already gone under the judicial scrutiny by the CAT, Calcutta Bench as well as Ernakulum Bench in O.A. No. 172/2012 and O.A. No. 9 of 2013(supra) respectively. Hence, in view of the decision rendered in the aforesaid cases, the present applicant is legally entitled the benefit of Grade Pay of Rs. 4200/- instead Grade Pay of Rs. 2800/- on account of 3rd MACP.

9. We have heard the learned counsel on both sides, perused the pleadings and the decisions relied upon. As referred by the learned counsel for the applicant, we are in hand the case of **Indrani Roy Chowdhury & 162 Ors Vs. Union of India & Ors. (O.A. No. 172/2012)** wherein Co-ordinate Bench of Calcutta Bench vide order dated 16.01.2014 passed an order. Relevant portion of which reads as follows:-

- “14. Being not supported by any cogent reason we hold that the placement of erstwhile (pre 1.1.06) HS to HS I due to cadre restructuring effected on 13.12.10 w.e.f. 1.1.06, should not be treated as a promotion for the purpose of MACP. Consequently, we hold that the applicants shall be entitled to MACP.
15. Accordingly, we quash the para 2(1) of the impugned order dt. 1.12.10 and direct the respondents to examine the claim of each of the applicants for grant of MACP benefits as applicable and pass appropriate orders within three months. The O.A. is allowed in aforesaid terms. The applicants are directed to pay individual court fees.”

10. Further we are in hand the case of **Cochin Naval Base Civilian Workers Union (AIDEF) and Ors. Vs. Union of India and Ors. (O.A. No. 09/2013)** wherein Co-ordinate Bench of Ernakulam Bench vide order dated 12.08.2015 passed an order. Relevant portion of which reads as follows:-

- “6. The facts in F.C. Jain case (supra) and the present O.A. are similar. We, therefore, set aside the impugned Annexure A-7 order dated 1.12.2010 and declare that placement in Highly Skilled Grade I due to bifurcation of Highly Skilled Grade is not a promotion for the purpose of MACP Scheme. The respondents are directed to grant the benefit of MACP Scheme to 2nd and 3rd applicant and members of the 1st applicant union who are similarly placed with all consequential benefits of

arrears of pay and allowances. Accordingly, the O.A. is allowed. No order as to costs."

11. Since the present applicant also claiming that he is similarly situated liked applicants in the aforesaid cases (supra) and prays for similar benefits, hence, considering the case of the present applicant as well as respectfully following the decisions of the Co-ordinate Bench of CAT, Calcutta Bench as well as Ernakulum Bench, we direct the respondents to decide the present issue in accordance with aforesaid precedents after examining the case of the applicant and if they are found similarly situated, similar benefits be granted to the present applicant also. The said direction shall be complied with by the respondent authorities within a period of three months from the date of receipt of a copy of this order.

12. With the above directions, O.A. stands disposed of accordingly. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)