

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01593/2015

Dated the 03rd day of June Two Thousand Twenty

**CORAM : HON'BLE MR. P. MADHAVAN, Member (J)
HON'BLE MR. T. JACOB, Member (A)**

1. R.Murali,
2. G.JayaRaj,
3. T.M.J.Lawrence,
4. M.Jothi Krishnan,
5. K.Nadimuthu,
6. K.Paramanandam,
7. S.Sankaran,
8. S.Rajendran,
9. P.Neelamegam,
- 10.T.Meenachi Sundaram,
- 11.R.Manavalan,
- 12.R.Sekkilar,
- 13.S.Rajapandian,
- 14.R.Selvakumar,
- 15.R.Ramasubramanian,
- 16.S.Sakthivel,
- 17.L.Ganesan,
- 18.S.V.Shanmugasundar,
- 19.G.Srinivasan,
- 20.N.Balachandran,
- 21.N.PushpaRajan,
- 22.C.Sasi,
- 23.S.Amaldoss,
- 24.K.Devanathan,
- 25.S.Samsudeen,
- 26.S.Radhakrishnan,
- 27.K.K.Mohanan,
- 28.S.Raja.

....Applicants

By Advocate M/s. R. Pandian

Vs

1.Union of India rep by,
The Secretary, Ministry of Defence,
Department of Defence Production,
South Block, New Delhi 110001.

2.The Chairman,
Ordnance Factories Board,
10A, S.K. Bose Road, Kolkata 700001.

3.The General Manager,
Heavy Alloy Penetration Project, Trichy 620025.

....Respondents

By Advocate Mr. C. Kulanthaivel

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking following reliefs :

"To direct the respondents :

I. To call for the records regarding the impugned orders No. 12002/HAPP/LB/2015 dated 24.07.2015, 24.07.2015, 31.07.2015, 03.08.2015, 07.08.2015, 10.08.2015, 11.08.2015, 14.08.2015, 17.08.2015, 18.08.2015, 19.08.2015, 31.08.2015 and 15.09.2015 and quash the same,

II. To direct the respondents to grant the second Financial Upgradation under MACPS to the GP of Rs. 4600/- to the applicants with all consequential benefits, as they have completed twenty years of service from their date of appointment as on 01.09.2008 and the applicant was holding the GP of Rs 4200 as on 01.09.2008."

2. The facts leading to this case can be summarised as follows. The applicants entered the service as Semi Skilled Workers during 1987-91. Thereafter, they were placed in the Skilled Grade. They were thereafter promoted as Highly Skilled Grade II. During Vth CPC, the Highly Skilled Gr. II & Gr. I were merged into a single grade of Highly Skilled Grade I. In the year 2003, restructuring of cadre of Artisan Staff was done and the applicants were placed as Master Craftsman. In the year 2010, re-structuring of Artisan Staff in Ordnance factories were implemented & Master Craftsman was granted a Grade Pay of Rs. 4200/- w.e.f. 01.01.2006.

3. The applicants got only one promotion ie., from Skilled grade to Highly Skilled grade II. The movement to Highly Skilled Grade I & from Highly Skilled (HS) Grade I to Master Craftsman (MCM) was not promotion but only a placement. The MCM is not a post in the regular hierarchy. When posts are

placed in a higher scale of pay with or without change in designation, without any requirement of quality & without invoking any change in responsibilities & duties, then such placements cannot be treated as promotion. So, the applicants have got only one promotion in the entire career & the applicants are entitled to II MACP after completion of 20 years.

4. The respondents had denied the IInd MACP as per order dt. 11.08.2015 (Annexure A2 series) holding that applicants had got promotions & they are not entitled to get II MACP. So the applicants seek to quash the impugned order A2 & seek granting of II nd MACP.

5. The respondents filed a reply stating that as per OFB clarification dt. 25.01.2011 & letter dt. 20.06.2011 the movements from HS Grade I to MCM, HS Gr. II to HS Gr. I and Skilled grade to HS Gr. II are promotion. The financial upgradation will be admissible whenever a person has spent 10 years continuously in the same grade pay.

6. According to respondents, the movement from Skilled with grade pay Rs. 1900/- to Highly Skilled Gr. II ie., Rs. 2400/- is to be treated as Ist financial upgradation & movement from HS Gr. II to MCM having grade pay of Rs. 2800/- (later changed to Rs. 4200/-) has to be treated as 2nd financial upgradation. As per letter No. Per/1/01/CR/658 dt. 10.07.2015 the 3rd financial upgradation under MACP was given to 25 applicants. Three applicants were promoted to the post of Chargeman/Technician as per their option.

7. The applicants were appointed as Semi Skilled/Skilled Workers and they

were promoted (under various trades) in between 1987-1990. Then they were promoted as Highly Skilled Grade II between 1994-98. On restructuring artisans, they were appointed as Highly Skilled Grade I as per order in 2003 with retrospective effect from 01.01.1996. Then 28 applicants were posted as MCM between 2003-2005.

8. The Counsel for the applicants had invited our attention to the decision of this Tribunal in OA 403/2014 (*H. John Nepomission & 28 others V. Union of India & others*) dt. 29.01.2016, wherein Tribunal's order was confirmed by the Hon'ble Madras High Court in WP Nos 26447/2016 and batch dt. 24.06.2019. The Hon'ble Madras High Court held that the placement of the Highly Skilled personnel in the post of Highly Skilled Grade I will not amount to promotion within the meaning of word "promotion" in the MACP scheme. The Hon'ble High Court of Madras had referred to the Hon'ble Supreme Court decision in *Bharat Sanchar Nigam Ltd. V. R. Santhakumari Veluswamy & others* (reported in 2011 (9) SCC 510) and extracted the principles laid down by Hon'ble Supreme Court:

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

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to 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.

(ii) 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.

(iii) Therefore, when there is an 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 simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) 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 simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of 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 simplicitor. 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.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(v) 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.”

9. So, according to the applicant, the placement due to restructuring in Highly Skilled Gr. I cannot be treated as 2nd promotion.

10. The Counsel for the respondents would contend that if an employee is posted to a post having higher emoluments, it has to be treated as promotion. Structuring & restructuring of cadre is done for improving efficiency of administration.

11. We have carefully gone through the pleadings & various annexures produced. OA 403/2014 is a case of similarly placed employees under the OFB & they were also denied the 2nd MACP holding that placement in Highly Skilled Gr. I is a promotion. The said OA was allowed holding that placement in HS Gr. I is not a promotion. We are bound to follow this Tribunal's order in OA 403/2014 & batch dt. 20.01.2016 which was confirmed by the Hon'ble Madras High Court in WP 26447, 26448/2016 & batch dt. 24.06.2019.

12. Accordingly, we hereby set aside the impugned order (Annexure A2 series) & direct the respondents to consider the granting of IInd MACP to the applicants in the light of the law laid down in OA 403/2014 if they are otherwise eligible. The respondents are directed to complete the above exercise within three months after receipt of copy of this order.

13. **OA is allowed. No costs.**

(T.Jacob)
Member(A)

(P. Madhavan)
Member(J)

03.06.2020

SKSI