

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.455/2012

Dated this Thursday, the 19th day of March, 2020

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)**

1. Shri K.B.Nair, Age 57 years, working as Welder Grade I residing at Western Railway Quarters, Building No.155/12, Santacruz (East), Mumbai 400 055.
 2. Nisar Ali Amir Jamadar, Age 59 years, working as Sign Writer Grade I, residing at Kelwa Bazar, Post Kelwa, Taluka Palghar, Thane (Dist). - Applicants
- (By Advocate Shri S.V.Marne)

VERSUS

1. Union of India, Through the General Manager, Western Railway, Headquarters Office, Churchgate, Mumbai 400 020.
 2. The Divisional Railway Manager (E), Western Railway, Mumbai Division, Mumbai Central, Mumbai 400 008. - Respondents
- (By Advocate Shri V.D.Vadhavkar)

Order reserved on 25.11.2019

Order pronounced on 19.03.2020

ORDER

Per : Dr. Bhagwan Sahai, Member (A)

Shri K.B.Nair and Shri Nishar Ali Amir Jamadar, working as Welder Grade I and Sign Writer Grade I, respectively with Mumbai Division, Western Railway filed this OA on 14.03.2012. They have sought quashing and setting aside of decision of respondent No.2 i.e. DRM, Western Railway, Mumbai Central, Mumbai dated 21.02.2012 (with consequential benefits) informing that at the time of retirement of Shri B.D.Gharat, from the cadre of miscellaneous

category as per 8% of ten posts, only one post of Master Craftsman (Miscellaneous) is available by upgrading the post of Material Chaser/Welder Grade I to Master Craftsman. Since Shri Arjun Prasad was already working as Master Craftsman (Misc.), there was no vacant post of Master Craftsman. They seek direction to the respondents to fill up the vacant post of Master Craftsman after retirement of Shri B.D.Gharat by promoting applicant No.2 from 01.06.2011 and applicant No.1 after retirement of applicant No.2. They also have sought cost of this application from the respondents.

2. Summarized relevant facts:

2(a). The applicants have stated that the applicant No.2 is senior to the applicant No.1 for promotion to the post of Master Craftsman from miscellaneous category staff. In the Electric Overhead Department of respondent No.2 i.e. DRM (E), Mumbai Division, Western Railway, Mumbai, there were about 300 staff working for maintenance work.

2(b). Under a World Bank Funded project, it was decided to convert the Electric Supply in Sub urban section of the Western Railway from DC to AC, when reduction in staff was one of the agreed conditions. Different categories of posts in the Workshop are termed as Floating Cadre for promotion to the post of Master Craftsman. On merger of a Floating cadre with Mechanics for promotion as Master Craftsman, the combined cadre came to be known as miscellaneous category. Sanctioned strength of the

miscellaneous category was 20 and two posts were identified for promotion as Master Craftsman.

2(c). The respondent No.2 decided on 10.08.2007 to surrender 136 posts of Group 'C' and 'D' category in the Electric Overhead Workshop at Sub station units (Annex A-2). Because of this, the 14 sanctioned posts of floating category was reduced to four and the combined strength of six Mechanics and four Floating category staff was reduced to ten and the posts of Master Craftsman were to be reduced to one. But with the surrendering of the posts, individuals working on them were neither transferred out nor declared surplus.

2(d). In the year 2008, both posts of Master Craftsman in the combined category of Mechanics and Floating cadre fell vacant and the respondents filled them up after conducting suitability test on 10.04.2008. Shri B.D.Gharat and Shri Arjun Prasad were then promoted as Master Craftsman by order dated 09.07.2008. For surplus staff of the Electric Overhead Unit, supernumerary posts were created from 02.01.2008 to 03.11.2008 and even overtime allowance has also been paid to them.

2(e). Shri B.D.Gharat retired on 31.05.2011 and for filling up that vacant post, the respondents should have conducted suitability test of applicant No.2 who was senior most candidate in Grade I category followed by applicant No.1. But the respondents did not declare their suitability for the post of Master Craftsman (Misc.), in

spite of recommendation of Senior Section Engineer and representations of the applicants. Respondent No.2 replied on 21.02.2012 (i.e. the impugned order) stating that at the time of retirement of Shri B.D.Gharat, strength of the miscellaneous category was ten and as 8% of that strength, only one post of Master Craftsman (Misc.) was available and Shri Arjun Prasad was already working on that post, so there was no vacant post available for promotion as Master Craftsman. Therefore, this OA has been filed.

3. Contentions of the parties :

In the OA, rejoinder and additional affidavit and arguments of their counsel on 25.11.2019, the applicants' contend that -

3(a). the decision of the respondents to surrender posts in the Electric Overhead Workshop was erroneous. The order of the respondents dated 21.02.2012 is illegal and void as they have reduced the scope for promotion from miscellaneous cadre to 8% of the remaining ten posts in that cadre. At the time of promotion of Shri B.D.Gharat and Shri Arjun Prasad as Master Craftsmen (Misc.), there were 20 employees working under the Miscellaneous Category and the number of posts of Master Craftsman as 8% works out to two posts and not one post. Since the applicants have worked for many years as Welder Grade - I and Sign Writer Grade I, they should be promoted as Master Craftsmen before they retire in February, 2015 and June 2012; and

3(b). the contention of the respondents is not correct that although there was only one post of Master Craftsman in the Miscellaneous category, by an error two posts were filled up by notification dated 02.07.2008. Reliance of the respondents on Railway Board circular dated 15.01.1982 is misplaced as there were no surplus employees and they were shown as surplus only on paper. The filling up of two posts of Master Craftsmen in the Miscellaneous category was correct and that is why on those two posts Shri B.D.Gharat and Shri Arjun Prasad were promoted. In view of this, after retirement of Shri Gharat on 31.05.2011, the applicant No.2 should have been promoted (who retired from service on 30.06.2012) and after retirement of Shri Arjun Prasad on 31.01.2015, the applicant No.1 should have been promoted from 01.02.2015 till his retirement on 28.02.2015. Hence, the OA should be allowed.

In their reply and additional reply and argument of their counsel on 25.11.2019, the respondents contend that -

3(c). out of 24 posts of miscellaneous category in the Electric Overhead Workshop, 14 posts were surrendered on 02.01.2008 and thus only 10 posts remained operative. As 8% of those ten posts, there was only one post of Master Craftsman (Misc.). So Shri B.D.Gharat was promoted as Master Craftsman on 02.01.2008 and Shri Arjun Prasad was also promoted as Master Craftsman on 06.08.2008 but promoting those two persons as Master Craftsman against only one sanctioned post of Master Craftsman was an error. Therefore, after retirement of Shri Gharat on 31.05.2011, since Shri

Arjun Prasad was already working as Master Craftsman, the applicant No.2 could not be promoted;

3(d). for the surplus staff working in the Electric Overhead Workshop, after surrender of those 14 posts, supernumerary posts were created by order of 24.10.2008 and the staff members were asked their willingness for transfer to other units by memo dated 20.02.2009 but through their Union, they represented to retain them in the Electric Overhead Workshop only. Since the sanctioned post of Master Craftsman in miscellaneous category was only one after surrendering of the posts in the year 2008 and Shri Arjun Prasad had already been promoted and was working on that one post, no further promotion was possible. That's why the applicants could not be promoted; and

3(e). since the period of more than one month is required for completing all required steps including conducting of suitability test for promoting a person to the post of Master Craftsman (Miscellaneous), it was not possible to complete those steps for the applicant No.1 in one month before his retirement on 28.02.2015. Therefore, he could not be considered for the eligibility test. Hence the OA should be dismissed.

4. Analysis and conclusions :

4(a). The main issue for decision in this O.A. is whether applicants (No.2 and 1) should have been promoted as Master Craftsmen (Miscellaneous) from 01.06.2011 and 01.02.2015 respectively. We

have perused contents of the OA Memo and rejoinder filed by the applicants, reply and additional reply filed by the respondents, and have considered the arguments submitted by the learned counsels on both sides on 25.11.2019. From the study of the case record and consideration of rival contentions of the parties, the case is analysed as follows:-

4(b). As one of the agreed conditions under the World Bank funded project for converting electric supply in suburban sections of Western Railway from DC to AC, the respondents by order dated 02.01.2008 surrendered 136 posts in Group 'C' and 'D' categories of OHE and suburban stations. As explained by the respondents, thereafter the strength of Misc. category staff remained only 10 and as 8% of those posts, there was only one post of Master Craftsman (Misc.) for promotion from Welder Grade-I/Sign Writer Grade-I, etc. Thus for promotion of Welder Gr.I/Sign Writer Gr.I, etc, two posts of Master Craftsmen (Misc.) were not available. The contention of the applicants in this regard is, therefore, not correct. However, as admitted by the respondents in their reply, two persons Shri B.D. Gharat and Shri Arjun Prasad came to be promoted erroneously as Master Craftsmen (Misc.) on 02.01.2008 and 06.08.2008, respectively.

4(c). Because of that error in promoting two persons, the applicants contend that after retirement of Shri Gharat and Shri Arjun Prasad, they should have been promoted on those two posts of Master Craftsmen (Misc.). This contention of the applicants is

not justified because even if one individual was earlier promoted erroneously, after realizing the error the respondents cannot be expected to repeat the same error/mistake to promote the applicants. That erroneous action of the respondents cannot be construed to mean regular availability of two posts of Master Craftsmen (Misc.) as there is no principle of negative parity. Hence that wrong action of the respondents cannot be taken as a binding precedent to promote the applicant no.2 after retirement of Shri B.D. Gharat on 30.06.2012. Since there was only one sanctioned post of Master Craftsman (Misc.) and after retirement of Shri Gharat, Shri Arjun Prasad was holding that post, the applicant no.2 could not have been promoted. Thus as far as the applicant no.2 is concerned, in view of Shri Arjun Prasad holding the post of Master Craftsman (Misc.) upto 31.01.2015, the contention of the respondents is correct that it was not possible to promote him before his retirement on 30.06.2012. The only issue of relevance is whether the applicant no.1 could have been considered for promotion before his retirement on 28.02.2015.

4(d). The applicant no.2 retired on 30.06.2012 and applicant no.1 retired on 28.02.2015. We also note that the applicants have not pointed out any instance of promotion of any Welder Gr.I/Sign Writer Gr.I junior to them as having been promoted before retirement of the applicant no.1.

4(e). The respondents submission that to complete all the required steps, including conducting of suitability test, for eligible persons

for promotion as Master Craftsman (Misc.), time of more than one month is necessary and it was not possible to complete all those steps in one month before retirement of the applicant no.1. While this contention about required time is valid, the respondents should have initiated the process for promotion well in time which would have enabled consideration of the applicant no.1 for promotion before he retired. However, in view of the fact that applicant no.1 retired on 28.02.2015, we are also conscious of the situation that after his retirement, during the intervening period other eligible Welders/Sign Writers Gr.I, etc from the Miscellaneous category of staff would have taken the suitability test and promoted as Master Craftsman (Misc.) and thereafter they would have acquired various rights such as seniority, etc. As per the Apex Court view in decision dated 16.03.2010 in Civil Appeal No.2429/2010 (H.S. Vankani and others Vs. State of Gujarat & others) and Apex Court decision dated 10.03.2003 in Civil Appeal No.879/2000 (Bimlesh Tanwar Vs. State of Haryana and others) it would not be proper to interfere with the settled position of their seniority. Therefore, it is not proper and justified to unsettle now the already settled position of such promotions/seniority of concerned Master Craftsmen (Misc.)

4(f). While the applicants filed this O.A. on 14.03.2012 and have sought promotion to the post of Master Craftsman (Misc.), during pendency of this O.A. and inspite of having filed additional affidavit on 25.03.2015, the applicants did not seek expeditious

decision of the Tribunal on this O.A., which has taken 8 years to be decided.

In view of the facts as discussed above, the O.A. does not have merit and it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Ravinder Kaur)
Member (Judicial)

kmg/H

(Dr. Bhagwan Sahai)
Member (Administrative)

JD
20/03/2020