

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 440/2013, 441/2013 & 442/2013

Jodhpur, this the 13th day of April, 2015

CORAM

Hon'ble Justice Mr K.C. Joshi, Judicial Member

Hon'ble Ms Meenakshi Hooja, Administrative Member

OA No. 440/2013

1. Bhawani Singh S/o Shri Nathu Singh, aged 48 years, R/o Hanuman Hatha, Gali No. 3, Near Ganesh Mandir, Bikaner.
2. Raj Kumar S/o Shri Mangal Singh, aged 50 years.
3. P O Augustine S/o Shri Ouseph, aged 50 years.
4. P V Kesvan S/o Shri Kunji Krishna Kurup, aged 48 years.
5. Verghese Oommen S/o Shri Oommen Koshi, aged 50 years.
6. Mohan Lal Joshi S/o Shri Ram Niwas, aged 50 years.
7. Mirza Alias Beg S/o Shri Mirza Ahmed Beg, aged 50 years.
8. Bal Mukund S/o Shri Megh Raj Sharma, aged 50 years.
9. Anand Kumar S/o Shri Purna Nand, aged 50 years.

All applicants are FGM and are posted under the Garrison Engineer (Air Force) (N), MES, Nal, Bikaner and all residents of C/o Bhawani Singh S/o Shri Nathu Singh, R/o Hanuman Hatha, Gali No. 3, Near Ganesh Mandir, Bikaner.

.....Applicants

By Advocate: Mr Vijay Mehta.

Versus

1. Union of India through the Secretary to the Government,

3. Garrison Engineer (Air Force), MES, Nal Bikaner.

.....Respondents

By Advocate : Ms K. Parveen.

OA No. 441/2013

1. Man Singh S/o Shri Maktul Singh, aged 51 years, R/o Gali No. 5, Shiv Colony, Shiv Badi Road, Bikaner.
2. Jaipal Singh S/o Shri Gokul Singh, aged 50 years.
3. Bajran Singh S/o Shri Surjan Singh, aged 52 years.

All applicants are FGM and are posted under the Garrison Engineer (P), MES, Kanasar, Bikaner and all residents of C/o Man Singh S/o Shri Maktul Singh, aged 51 years, R/o Gali No. 5, Shiv Colony, Shiv Badi Road, Bikaner.

.....Applicants

By Advocate: Mr Vijay Mehta.

Versus.

1. Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Air Force), MES, Bikaner.
3. Garrison Engineer (Air Force), MES, Nal Bikaner.

.....Respondents

By Advocate : Ms K. Parveen.

OA No. 442/2013

1. Shambhu Dayal S/o Shri Ram Kumar, aged 47 years, R/o Ward No. 19 Naya, Suratgarh, District Sri Ganganagar.
2. Kamaljeet Singh S/o Shri Jogendra Singh, aged 53 years.
3. Digamber Singh S/o Shri Hari Kishan, aged 52 years.

6. Kayamudeen S/o Shri Nasarudeen, aged 51 years.

All applicants are FGM and are posted under the Garrison Engineer (Air Force), MES, Suratgarh, District Sri Ganganagar and all residents of C/o Shambhu Dayal S/o Shri Ram Kumar, aged 47 years, R/o Ward No. 19 Naya, Suratgarh, District Sri Ganganagar.

.....Applicants

By Advocate: Mr Vijay Mehta.

Versus

1. Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Air Force), MES, Bikaner.
3. Garrison Engineer (Air Force), MES, Nal Bikaner.

.....Respondents

By Advocate : Ms K. Parveen.

ORDER

Per Justice K.C. Joshi

By way of Original applications Nos. 440, 441 and 442 of 2013, filed under Section 19 of Administrative Tribunals Act, 1985, the applicants have challenged the order dated 19.09.2013 issued by respondent No. 2 (common respondent) i.e. Commander Works Engineer (AF) Bikaner by which the claim of the applicants to promotion on the post of FGM HS-II, HS-I and MCM from the dates their juniors were promoted, have been rejected. Since, questions involved in these OAs are similar/identical and also the reliefs sought by them is common, therefore, we are deciding these OAs by a common order while permitting the applicants to pursue the

2. The applicants in OA Nos. 440/2013, 441/2013 and 442/2013 have sought following relief(s):-

"The applicants pray that they may kindly be allowed to file and prosecute the OA jointly. The applicants pray that order Annex. A/1 qua all the applicants may kindly be quashed and the respondents may kindly be directed to give promotions to the applicants on the post of FGM HS-II, FGM HS-I and MCM forthwith from the dates their above said juniors have been given promotion. The respondents may kindly be directed to grant promotion to the applicants on the post of HS-II w.e.f. 22.03.1995, the date on which their junior was promoted on the said post. They may also be directed to grant promotion to the applicants on the post of HS-I and MCM from 31.01.2000 and 20.05.2003, the dates on which their juniors were granted promotions to the said posts. They also pray that consequently the respondents may kindly be directed to assign due seniority to the applicants on the promoted posts to the applicants. Interest at the rate of 12% on due amount may also be granted to the applicants. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

3. For the sake of convenience, we are taking into account the facts as averred by the applicants in OA No.440/2013, for adjudication of all these OAs. The brief facts of the case, as averred by the applicants in OA No. 440/2013, are that the applicants were appointed on the posts of DES and MPA SK in the year 1985-86 and these posts have been redesignated as FGM SK. The services of the applicants were terminated against which the applicants filed OA bearing No. 65/87 before this Tribunal and this Tribunal allowed the same and the respondents were directed to reinstate the applicants with back wages.

Court by filing SLP and the Hon'ble Supreme Court vide its order dated 05.10.1989 directed the respondents to reinstate the workmen on the posts held by them before retrenchment and further directed the respondents to regularize their service in accordance with rules. Thereafter the respondent-department reinstated the applicant w.e.f. 10.11.1989 on the posts of Mazdoor instead of DES and MPA. The applicants again filed an OA bearing No. 240/2006 before this Hon'ble Tribunal. It has been averred that similarly situated DES, MPA etc. had to file similar OAs firstly for quashing their termination order and thereafter for being reinstated on the posts of MPA, DES (redesignated as FGM) instead of on the post of Mazdoor. A number of OAs were filed by such employees for being appointed on their respective posts and this Hon'ble Tribunal vide order dated 05.09.2006 passed in OA No. 221/2004 filed by Kamaljeet and Ors directed the respondents to reinstate the applicants on the posts of DES and MPA and thereafter consider the regularization of the applicants on the posts against which they were appointed from the date of their initial appointment entitling them with consequential benefits. The applicants have also filed OA No. 240/2006 and the same was allowed vide order dated 06.02.2008 in terms of order passed in OA No. 221/2004. Thereafter, the respondent No. 2 vide PTO dated 22.05.2008 (Annex. A/2) appointed the applicant on their

Tribunal in OA No. 240/2006 and were granted due annual increments w.e.f. 10.11.1989. The applicants were also called upon to sit in trade test on 26.02.2009 and declared passed vide PTO dated 22.06.2009 (Annex. A/3) and the applicants were also granted benefit of ACP vide order dated 23.09.2010 (Annex. A/4). The applicants came to know that while they were granted due designation and salary vide order Annex. A/2 dated 22.05.2008, some of their juniors were promoted in the meanwhile and the applicants gathered information that S/Shri Mohan Lal Meena and Parmatma Swaroop were granted promotion on the post of HS-II w.e.f. 22.03.1995 and Ram Lal, Madan Lal, Gomand Ram and Lila Dhar were granted promotion on the post of HS-II on 20.06.1995, 30.08.1995, 30.06.1995 and 28.09.1995 respectively and all these juniors were granted further promotions on the post of HS-I and MCM w.e.f. 31.01.2000 and 20.05.2003. Therefore, after gathering due information the applicants submitted separate but identical representations to the respondent No. 2 on 19.05.2011 (Annex. A/5) but the respondents neither granted due reliefs nor passed any order on the representations, thus, the applicants filed OA bearing No. 490/2011 which resulted into this Tribunal directing the respondents to decide the representations filed by the applicants by a reasoned and speaking order vide its order dated 04.04.2013 passed in aforesaid OA. In compliance of this Tribunal's order

have been rejected. In the meanwhile, this Tribunal while dealing with the similar controversy in OA No. 136/2011, filed by similarly situated persons, directed the respondents to give promotions to the applicants of OA under reference on the posts of FGM HS-II, HS-I and MCM from the dates on which their juniors have been given promotions vide order dated 05.09.2013 and the case of the present applicants is covered by the facts, circumstances and legal position enumerated in OA No. 136/2011. However, the respondents without taking into consideration the observations and directions contained in the order dated 05.09.2013 passed in OA No. 136/2011 issued order Annex. A/1 dated 13.09.2013 by which the claim of the applicant has been rejected. Therefore, the applicants have filed these OAs seeking relief as extracted in para No. 2 of this order.

4. The respondents without denying the factual aspects of the OA have inter-alia averred that all incumbents/individuals viz. Mohanlal Meena, Parmatma Swaroop, Ram lal and Liladhar were initial appointed as FGM (SK) and were on seniority Roster of FGM (SK) and promoted as HS-II after passing their Trade Test before date of their promotion whereas the applicants were initially appointed as Mazdoor and were not borne on the seniority roster of FGM (SK) and they were appointed by virtue of order dated 06.02.2008 passed in OA No. 240/2006. All the applicans were appointed on the post of DES and MPA w.e.f. 10.11.1989 vide PTO

respondents have also averred that how could the applicants of the present OA can be placed in the seniority roster before the individuals whose names mentioned above as the applicants were initially appointed as Mazdoor by virtue of Tribunal's order dated 06.02.2008. Moreover, the applicant were appeared in the Trade Test for the purpose of promotion of HS category on 26.02.2009 and were declared successful i.e. after the date of promotion of those juniors who are referred by the applicants in their OA. The respondents have further averred that if vacancies are released, the applicants can only be promoted after the date of passing the Trade Test i.e. 26.02.2009 and since the trade test is obligatory requirement for the purpose of promotion from FGM (SK) to FGM (HS) and the date of passing of the Trade Test is taken into account for the effective date of promotion. It has been averred in the reply that there are no vacancies with the Department for promotion of the applicants and department cannot create such vacancies for promotion and the applicants have been informed about the reasons for not granting promotion vide reasoned and speaking order dated 19.09.2013. The respondents have further averred that the promotion from FGM (SK) to FGM (HS) has been stayed due to interim order of this Tribunal passed in the case of Dev Raj & Ors of GE (AF) Suratgarh. Thus, the respondents have averred that the applicants appointed as MPA, DES and PHO from Mazdoor category

in MPA, DES and PHO category after the appointment of the applicants are junior.

5. Heard both the parties. Counsel for applicant contended that facts of the present cases are similar to the facts of OA No. 136/2011 with MA No. 82/2011 and all the applicants in these OAs are similarly situated vis a vis applicants of OA No. 136/2011 with MA No. 82/2011. Although, this Tribunal vide its order dated 05.09.2013 allowed the OA No. 136/2011 with MA No. 82/2011 but still the respondent No. vide order dated 19.09.2013 (Annex. A/1) rejected the claim of the applicant without taking into consideration order passed by this Tribunal in aforesaid OA. Counsel for applicant submits that the respondents in their reply as well as in Annex. A/1 have raised the question of availability of vacancy and contended that if vacancy were not available at the relevant times then how could the persons junior to the applicants have been promoted and he prayed to quash the order Annex. A/1 and allow the OA in terms of order passed in OA No. 136/2011 with MA No. 82/2011.

6. Per contra, counsel for respondents contended that the order Annex. A/1 dated 19.09.2013 has been passed in compliance of order dated 04.04.2013 in OA No. 490/2011 and she further contended that the order passed by this Tribunal in OA No. 136/2011 with MA No. 82/2011 is dated 05.09.2013 and Annex. A/1

Annex. A/1 in compliance of the order dated 04.04.2013 passed in OA No. 490/2011 by this Tribunal.

7. We have considered the rival contentions and also perused record including order dated 05.09.2013 passed by this Tribunal in OA No. 136/2011 with MA No. 82/2011. The facts of the present OAs are squarely covered by the facts of OA No. 136/2011 with MA 82/2011 and all the applicants in the instant OAs are similarly situated to the applicants of OA No. 136/2011 with MA No. 82/2011. This Tribunal, after considering all the facts and contentions of the parties, in order dated 05.09.2013 in OA No. 136/2011 with MA No. 82/2011 passed the following order:

"12. In view of the discussions made hereinabove, the applicants are entitled to get the relief sought in the OA. Therefore, the respondents are directed to give promotion to the applicants on the post of FGM, HS-II, HS-I and MCM forthwith from the dates on which their juniors have been given promotions. The respondents are further directed to grant promotion to the applicants on the post of HS-II w.e.f. 22.03.1995, the date on which their juniors were granted promotion on that post and they further directed to grant promotion to the applicants on the post of HS-I and MCM w.e.f. 31.01.2000 and 20.05.2003, from the date on which their juniors were granted promotions, as per rules. Further, the applicants are entitled to get all the consequential benefits including arrears and so far as interest part is concerned, we are not inclined to grant any interest. The respondents are directed to comply with the order within four months from the date of receipt of a copy of this order."

As we have already dealt with the matter in above OA, therefore, Annexure A/1 dated 19.09.2013 is quashed in all the OAs.

8. Accordingly, Original Applications No. 440/2013, 441/2013 and 442/2013 are disposed of in terms of order dated 05.09.2013 passed by this Tribunal in O.A. No. 136/2011 with MA No. 82/2011 (Annex. A/6). The respondents are directed to comply the order within 4 months from the date of receipt of this order. There shall be no order as to costs.



[Meenakshi Hooja]
Administrative Member



[Justice K.C. Joshi]
Judicial Member

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