

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.585/2013

Wednesday, this the 6th day of April, 2016

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

1. V.M.Antony, S/o.Michael,
Semi Skilled Labourer, Base Victualling Yard,
Southern Naval Command, Cochin – 682 004.
Residing at Vadakkedath House,
Koppandassery Road, Maradu P.O.,
Ernakulam District – 682 304.
2. Sherin T.K., S/o.Devadasan P.K.,
Semi Skilled Labourer, Material Organization,
Southern Naval Command, Cochin – 682 004.
Permanent Address : Thattarkandy House,
West Hill Chungam, Poozhiyul Road,
Calicut – 673 005.Applicants

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Defence (Navy), South Block,
New Delhi – 110 011.
2. The Chief of the Naval Staff,
Integrated Headquarters (for P&A),
Ministry of Defence (Navy), 'C' Wing,
Sena Bhavan, New Delhi – 110 011.
3. The Flag Officer Commanding in Chief,
Headquarters Southern Naval Command,
Naval Base, Cochin – 682 004.



4. The Naval Store Officer (P&A),
Integrated Headquarters
of Ministry of Defence (Navy),
Directorate of Logistics Support, 'C' Wing,
Sena Bhavan, New Delhi – 110 011.

5. The Material Superintendent,
Material Organization,
Headquarters Southern Naval Command,
Naval Base, Cochin – 682 004. ...Respondents

(By Advocate Mr.N.Anilkumar,Sr.PCGC)

This application having been heard on 8th March 2016, the Tribunal on 6th April 2016 delivered the following :

O R D E R

HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicants who are presently working as Semi skilled labourers under the 3rd respondent are aggrieved by the rejection of their request for promotion as Assistant Store Keeper, passed in purported implementation of the direction of the Tribunal in O.A.No.43/2012. Annexure A-1 order bearing No.CS 2695/43/1464 dated 20th May 2013 issued on behalf of the 3rd respondent is under challenge in this O.A.

2. The 1st applicant was initially appointed as a Group D employee on 18.9.1985 in the Naval Store Depot which was later re-named as the Material Organization, Kochi. The 1st applicant was appointed in the then scale of pay of Rs.196-232/Rs.750-940. While continuing so in that organization, the applicant was selected as a Semi skilled labourer and transferred to the Base Victualling Yard of the Naval Base, Kochi, on



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21.8.2008 (ie. prior to the promulgation of CCS (RP) Rules, 2008. The 2nd applicant was initially appointed on 28.6.1996 as a Group D employee in the INS Sanjivani and, thereafter he was transferred to the Material Organization in April, 2005. The staff of the Material Organization and those of the Base Victualling Yard, are workshop staff covered under the Factories Act. Though the applicants were not specifically promoted to the Semi skilled grade prior to 1.9.2008, the Unskilled and the Semi skilled grade posts stood merged with effect from 1.1.2006. The applicants submit that on and with effect from 1.1.2006 all the Group D scales of pay including those of unskilled and semi skilled staff, were merged together into a common Pay Band of Rs.5200-20200 with a common Grade Pay of Rs.1800/-. All the posts in the unskilled and semi skilled cadre of the workshop stood merged to constitute a singular cadre of semi skilled staff in PB-1 + GP of Rs.1800/-. This is evident from Part B Section 1 of the First Schedule of the CCS (Revised Pay) Rules 2008. The order of the Government of India, Ministry of Defence dated 11.7.2012 re-designated the unskilled and semi skilled workers as Multi Tasking Staff (Industrial) with retrospective effect from 1.1.2006. Thus the distinction between semi skilled and unskilled labourers ceased to exist on and with effect from 1.1.2006.

3. The Modified Assured Career Progression Scheme (MACPS) was introduced with effect from 1.9.2008. The 1st applicant, thereby, was granted two financial upgradations under the MACP Scheme with effect

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from 1.9.2008. In that process, the 1st applicant was granted PB-1 + GP of Rs.1900/- and also GP of Rs.2000/- with effect from 1.9.2008 itself. Similarly the 2nd applicant was also granted the 1st MACP with effect from 1.9.2008 in PB-1 + GP of Rs.1900/-. While so, applications were invited from among the semi skilled labourers who had experience in the stores work with 5 years continuous service in the grade after appointment thereto on regular basis, who are in possession of academic qualification of middle school certificate for being considered for promotion to the post of Assistant Store Keeper in PB-1 + GP Rs.1900/-. The applicants being qualified applied for the post. However, the 4th respondent by his letter bearing No. SE/2445/SHS/2011 dated 4th February 2011 rejected the case of the 1st applicant stating "USLs" are not eligible for the above examination.

4. The applicants submit that the 1st applicant, whose candidature was rejected by Annexure A-3 was not an unskilled labour and he was promoted to the semi skilled grade of the previous scale structure as early as on 21.8.2008. Therefore, the 1st applicant submitted a representation dated 27.4.2011 addressed to the 2nd respondent. No rejection advice was received in the case of the 2nd applicant, though, of course, he was not, by any specific order, promoted as a semi skilled labourer unlike in the case of the 1st applicant. But he became at par with a semi skilled labourer by virtue of Annexure A-2 order of the Government of India upon the merger of the unskilled and semi skilled posts with effect from 1.1.2006.

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5. In the meanwhile, the 4th respondent by letter bearing No.SE/2445/SHS/2011 dated 5th April 2011 communicated the list of candidates eligible to appear for the departmental qualifying examination for being promoted to the post of the Assistant Store Keeper. In this letter the applicants' names were not included. Considering the representations of the applicants the 5th respondent by letter bearing No.Nil/II/2011 dated 9th May 2011 permitted the applicants to participate in the examination scheduled to be held on 9th May 2011. Accordingly, both the applicants participated in the examination and performed well.

6. By letter bearing No.SE/2445/SHS/2011 dated 12th December 2011 issued by the 4th respondent, results of the departmental qualifying examination held on 9th May 2011 were published. The applicants' names were not included in the list of candidates passed. On enquiries the applicants were informed that the applicants' candidature has not been considered by the respondents on the alleged ground that they were not semi skilled labourers. The applicants submit that the respondents have published a seniority list of semi skilled labourers as on 31st March, 2011 marked as Annexure A-7. In Annexure A-7 the 1st applicant is at Sl.No.146 and the 2nd applicant is at Sl.No.329. It may be seen that in the remark column the applicants have been re-designated as semi skilled labourer with effect from 1.1.2006. With effect from 2006 there is no distinction between unskilled and semi skilled cadres/grades on account of the merger. The

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promotions of industrial staff issued by the Chief Staff Officer Headquarters, Southern Naval Command, Kochi - 682 004 the letter No.CS/2765/34/1 dated 2nd April, 2012 would show that persons who were juniors of the applicants and who have not been technically promoted as semi skilled labourers prior to the date of publication of the Revised Pay Rules were nevertheless treated as semi skilled and granted consideration on that basis. The services rendered by the applicants prior to 1.1.2006 should therefore, also have been reckoned as service rendered in the same grade as has been done for the purpose of financial upgradations.

7. Aggrieved by the arbitrary denial of consideration for promotion to the post of Assistant Store Keeper, the applicants filed O.A.No.43/2012 before this Tribunal. The Tribunal after hearing both sides directed the respondents to consider the applicants for promotion to the post of Assistant Store Keeper in the light of the Annexure A-3 order of the Ministry of Defence dated 11.7.2012 re-designated Group D posts of semi skilled worker and unskilled labourer as Multi Tasking staff (Industrial). The applicants submit that the respondents themselves have treated all those who are semi skilled as skilled. The Tribunal further ordered that if the applicants are found entitled to appear in the departmental qualifying examination for promotion to the post of Assistant Store Keeper, their performance in the qualifying examination should be evaluated and based on the results, further action as per rules should be taken within a period of

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three months from the date of receipt of a copy of the order. The applicants submitted representation to the 3rd respondent along with a copy of the order to the Tribunal in O.A.No.43/2012 dated 2nd November 2012 for implementation of the order. The 3rd respondent in purported compliance with the orders of this Tribunal in O.A.No.43/2012 rejected the same by Annexure A-1 order, which is under challenge in this application. Reliefs sought by the applicants are to declare that they are entitled to be considered for promotion as Assistant Store Keeper and for a direction to the respondents to communicate their results with reference to the departmental qualifying examination for promotion to the post of Assistant Store Keeper held on 9th May 2011 and based on the result to take further action to grant all the consequential benefits including the benefit of promotion and arrears of pay and allowances.

8. Respondents in their reply submit that the applicants were working at BYK (K) and MO (K) as SSL and USL respectively (now both are working as MTS (Industrial). The 1st applicant was promoted to the grade of SSL with effect from 21.8.2008 and the 2nd applicant was never promoted as SSL. As per existing Recruitment Rules, "Semi Skilled Labourer who have got experience in the store work with five (05) years continuous service in the grade after appointment thereto on regular basis who are in possession of academic qualification of Middle School Standard Certificate, subject to qualifying in a Departmental Qualifying Examination are eligible for

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promotion to the post of Assistant Store Keeper". Accordingly, the name of eligible SSLs for appearing in DQE-2011 which was exclusively meant for SSLs for promotion to the grade of ASK and was scheduled to be held on 9th May 2011 were sought vide IHQ MoD (N)/DLS letter dated 22nd December 2010. The 1st applicant had forwarded his application which was subsequently returned by the 3rd respondent unactioned as the individual was not eligible for appearing in the DQT as per eligibility criteria laid down in para 1(a) of the said letter. The 2nd applicant had not submitted any application till the last date prescribed for submitting applications. However, he had applied for DQE 2011 after the expiry of due date. Accordingly, names of the eligible SSLs were circulated to Commands/Units by the 4th respondent. The applicants were not included in the list as they were not having the qualifying service as per Recruitment Rules (RR). In the meantime, the 3rd respondent vide fax dated 9th May 2011 had intimated the 2nd respondent that the applicants have been allowed to appear in the examination on 9th May 2011 on provisional basis subject to the decision of the 2nd respondent and requested to include their names also in the list of departmental candidates eligible for appearing in the examination. The request made by the 3rd respondent vide letter dated 9th May 2011 was examined by the 2nd respondent and was not acceded to and accordingly the decision was conveyed vide letter dated 8th September 2011. Respondents submit that in compliance of order passed by this Tribunal in O.A.No.43/2012 the case was examined and evaluation of performance in

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respect of the applicants in DQE 2011 was not found feasible as Ministry of Defence letter quoted in this Tribunal order as at Annexure A-4 is post completion of the examination formalities. The same has been communicated to the 3rd respondent by the 2nd respondent vide letter dated 12th March 2013. Accordingly, the 3rd respondent vide Annexure A-1 has passed a speaking order to the applicants conveying the decision of the 2nd respondent who is the competent authority. Questioning the veracity of the Annexure A-1, the applicants have once again approached this Tribunal by filing the present O.A.

9. Heard the counsel for the parties and considered the written submissions made. The counsel for the applicant referred to a similar relief sought in O.A.No.285/2015 filed before this Tribunal. The relief sought by the applicants in the O.A is to direct the respondents to consider the applicant for promotion as Assistant Store Keeper. To examine this matter it is necessary to peruse the examination notification for eligibility conditions as per Recruitment Rules. As per Recruitment Rules and Departmental Examination notification dated 7.2.2012 the eligibility condition is as under :

Eligibility : Labour Semi Skilled who have got experience in the store work with 5 years continuous service in the grade after appointment thereto on regular basis who are in possession of academic Middle School Standard Certificate subject to qualifying in a Departmental Qualifying Examination are eligible for promotion to the post of Assistant Store Keeper.



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10. Applicants contend that Ministry of Defence order dated 11.7.2012 re-designated the unskilled and semi skilled workers as Multi Tasking Staff (Industrial) (MTS) with effect from 1.1.2006 and hence the experience cited in the eligibility condition should be counted from the date of above merger as the distinction between semi skilled and unskilled labourer ceased to exist from the date of merger ie. 1.1.2006. The Recruitment Rules/vacancy notification does not support this contention.

11. The 1st applicant was selected as SSL on 21.8.2008. The 2nd applicant was a Group D and was not promoted as SSL, but was a USL. Whereas the 1st applicant had forwarded his application for appearing in the ASK examination, the 2nd applicant had not submitted any application till the closing date for receipt of application. The 1st applicant's case was rejected as he did not have five years continuous service in the grade of SSL. The 2nd applicant's case was rejected as he had not held the post of SSL and therefore did not fulfill the basic eligibility criteria as per Recruitment Rules and the notification of departmental examination.

12. The 2nd applicant's case does not fulfill two conditions of the Recruitment Rules and examination notification ie. he should have been in the grade of SSL in the first place and secondly he should have applied within the closing date for appearing in the examination. Whereas a relaxation of qualifying service may appear to be a reasonable request, not

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having any qualifying service should not be encouraged or considered as it is a total violation of the Recruitment Rules. Such a total relaxation is also not advisable as the respondents are a defence establishment of the country. Hence case of 2nd applicant is not admitted.

13. The 1st applicant was promoted as SSL on 21.8.2008. The Departmental Qualifying Examination Notification was dated 7.2.2012. As on the said date applicant had 3 years and 5 ½ months service as SSL. Hence applicant was short of 1 year and 6 ½ months service. Applicant contends that the Ministry of Defence order dated 11.7.2012 re-designated the USL and SSL as Multi Tasking Staff with effect from 1.1.2006 and hence the experience cited in the eligibility condition should be counted from the date of above merger as the distinction between SSL and USL ceased to exist from the date of merger ie. 1.1.2006. The Recruitment Rules and vacancy notification does not support this contention of the applicant. Whereas SSL and USL posts were merged with effect from 1.1.2006, the statutory Recruitment Rules did not reflect the merger as on date of notification of the examination. The Recruitment Rules cited the eligibility condition as SSL who have 5 years continuous service in the grade after appointment thereto on continuous basis. Hence as per the Recruitment Rules in operation on the date of notification the applicant is expected to have 5 years service as SSL. The 1st applicant has 3 years and 5 ½ months service and hence is not eligible for appearing in the examination for being

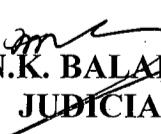
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considered for the post of ASK. The requirement of experience which is one of the eligibility condition in the Recruitment Rules was not an issue before the Bench in the order passed in O.A.No.43/2012.

14. The 1st applicant has appeared in the examination but result of success or otherwise is not known. Taking a liberal and broad based interpretation, in view of the merger of USL and SSL as MTS with effect from 1.1.2006, in the event the 1st applicant has passed in the examination, the shortfall of 1 year and 6 ½ months service as SSL be relaxed and adjusted against the re-designated MTS post service and declared eligible to be promoted as ASK. We, therefore, think it proper that the service rendered by the 1st applicant as MTS would be sufficient to cover the short fall of 1 year and 6 ½ months service as SSL. As after the said merger of the posts, the post of SSL no longer exist for the 1st applicant to gain the required experience after the merger. This would cover the shortfall of 1 year and 6 ½ months service as SSL as the 1st applicant has sufficient experience in the re-designated and merged post of MTS. Thus the 1st applicant is declared eligible to be promoted as ASK within two months with effect from date of promotion of her immediate junior as per declaration of Departmental Examination. The Original Application is allowed as directed above.

(Dated this the ..^{6th} day of April 2016)


(P. GOPINATH)
ADMINISTRATIVE MEMBER
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(N.K. BALAKRISHNAN)
JUDICIAL MEMBER