

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.9/2013

Wednesday this the *12th* day of August 2015

C O R A M :

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

1. Cochin Naval Base Civilian Workers Union (AIDEF),
39/4472-E2, 3rd Floor, Peegees Mall,
Opp. Medical Trust Hospital, Pallimukku,
Kochi – 682 016 represented by its Secretary, K.K.Balachandran,
S/o.M.Keshavan Nair, Chargeman (Plater),
NSRY, Naval Base, Kochi – 682 004.
Residing at Kottarappilly House,
Vellarapilly South P.O., Aluva, Ernakulam – 683 580.
 2. K.Jayachandran Nair,
S/o.R.Karunakaran Pillai,
Electrical Fitter HS I, NSRY (K),
Naval Base, Kochi – 682 004.
Residing at Sopanam, Ramamangalam P.O.,
Ernakulam – 686 663.
 3. K.G.Freddy,
S/o.K.K.George,
Radio Fitter HS I,
NSRY (K), Naval Base, Kochi – 682 004.
Residing at Kolarikkal House,
South Chittoor, Kochi – 682 027.
- ...Applicants

(By Advocate Mr.Hariraj.M.R.)

V e r s u s

1. Union of India
represented by the Secretary to Ministry of Defence,
New Delhi.
2. Flag Officer Commanding in Chief,
Southern Naval Command,
Naval Base, Kochi – 682 004.

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3. Chief Staff Officer,
Southern Naval Command,
Naval Base, Kochi – 682 004.

...Respondents

(By Advocate Mr.N.Anilkumar, Sr.PCGC [R])

This application having been heard on 27th July 2015 this Tribunal on 12th August 2015 delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicants, who have completed 20 years of service, are aggrieved by the refusal of the respondents to grant them placements under the Modified Assured Career Progression Scheme on the ground that the appointment of the employees to the grade of HS I, due to bifurcation of a cadre, is a promotion. The 1st applicant is the registered and recognised trade union of employees under the 2nd and 3rd respondents. The 2nd and 3rd applicants are employees affected by the impugned action. Many members of the 1st applicant fall in the category of employees who were given upgradation to HS I due to bifurcation of Highly Skilled Grade under the respondents. The 1st applicant has filed this O.A representing its members falling in the said category of employees. As per Annexure A-1, the existing trade structure of the cadre Tradesman was revised to three grades, Skilled, Highly Skilled and Master Craftsman (MCM) with effect from 1.1.1996. On implementation of the 6th Pay Commission recommendations, Highly Skilled Grade was granted the replacement scale of Rs.5200-20200/- in PB 1 plus grade pay of Rs.2400/-. On further revision the grade of Highly Skilled was bifurcated in to Highly Skilled Grade II and Highly Skilled



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Grade I and placed in PB 1 plus grade pay of Rs.2400/- and Rs.2800/- respectively. The cadre of Highly Skilled Grade was divided equally in the ratio 50 : 50. The grade of Master Craftsman was placed to PB2 plus grade pay of Rs.4200/-. Based on Annexure A-2, the 1st respondent issued Annexure A-3 order stating that the bifurcation of Highly Skilled to Highly Skilled I and II shall be by redesignation. The placements to the various posts created due to restructuring shall be made with effect from 1.1.2006 in relaxation of conditions including trade test. Accordingly, employees who were seniormost in the Highly Skilled Grade were redesignated as Highly Skilled Grade I and others were redesignated as Highly Skilled Grade II. The 2nd and 3rd applicant was redesignated as Highly Skilled Grade I with effect from 1.1.2006. Meanwhile, the Modified Assured Career Progression Scheme was promulgated. It was stipulated that the personnel having not got promotions will be eligible for one financial upgradation each on completion of 10, 20 and 30 years of service. The scheme was effective from 1st September 2008. Based on the said scheme, placements under the Modified Assured Career Progression Scheme was granted to some of the employees, including the 2nd and 3rd applicants. Apart from them many others who were redesignated as Highly Skilled Grade I, based on Annexure A-3 were granted MACP placements without considering the redesignation to Highly Skilled Grade I as a promotion. They were all granted 2nd MACP placement on completion of 20 years of service or 10 years of service from their first promotion. The first promotion is the promotion from Tradesman



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(Skilled) to Tradesman (Highly Skilled). However, the benefit of fixation of pay pursuant to Annexure A-6 is yet to be extended to the 2nd and 3rd applicants and others similarly placed because of an audit objection to the effect that those who have got two promotions should be granted placement under the MACP only on completion of 30 years, or 10 years from the date of second promotion. The audit objection is based on the presumption that the redesignation on bifurcation of cadre is a promotion. Apart from persons like the 2nd and 3rd applicants who had been issued orders of MACP placement, but not granted any fixation to the higher pay band plus grade pay, there are many other members of the 1st applicant Union who are awaiting placement under the MACP scheme. They are not granted the said benefit, based on the illegal presumption that the redesignation granted to them between 1.1.2006 to 8.7.2011 is a promotion. It was clarified to the effect that the placement of Highly Skilled Workers to Highly Skilled Grade I with effect from 1.1.2006 will be treated as promotion for the purpose of ACP vide Annexure A-7. Aggrieved by Annexure A-7 the federation to which the 1st applicant is affiliated took up the matter before the National Anomalies Committee. However, no consensus could be arrived. The Hon'ble Supreme Court, according to the applicants, has categorically held in *Bharat Sanchar Nigam Limited v. R.Santhakumari Velusamy*, (2011) 9 SCC 510 as under :

“(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.

(vi) 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.”

2. The applicants in their rejoinder point out that due to the bifurcation of Highly Skilled II to Highly Skilled I, the placement to the grade of Highly Skilled Grade I, is only a redesignation, which cannot be treated as a promotion. The said redesignation is given to all the senior most employees coming within the 50% of the cadre. There is no element of selection. Even the conditions of Trade Test etc. are done away with for the said redesignation. There is no change in duties also. They therefore plead that it has to be treated as upgradation simpliciter.

3. In view of the above the applicants claim that the placement to Highly Skilled I on bifurcation of cadre cannot be considered as promotion. The reliefs sought by the applicants are :

1. To quash Annexure A-7.
2. To declare that the placement to Highly Skilled Grade I due to bifurcation of Highly Skilled Grade is not a promotion for the purpose of MACP Scheme and to direct the respondents to grant the benefit of MACP Scheme to the applicants 2 and 3 and other members of the 1st applicant union who are similarly placed with all consequential benefits including arrears of pay and allowances with interest @ 12% per annum.
3. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and
4. Grant the costs of this Original Application.



4. The respondents in their reply state that the MACP Scheme has been provides for three financial upgradations, counted from the direct entry grade on completion of 10, 20 and 30 years service and if two promotions are earned before completion of 20 years service, third financial upgradation under MACP Scheme would be admissible only on completion of 10 years of service in the same grade pay from the date of second promotion or on completion of 30 years service whichever is earlier. It is pertinent to mention that the crux of MACP Scheme is that financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay and the eligibility for granting MACP Scheme is determined accordingly. As per Annexure A-3 order the grade structure in the artisan cadre was modified as Skilled with grade pay of Rs.1900/-, Highly Skilled Grade II with grade pay of Rs.2400/-, Highly Skilled I with grade pay of Rs.2800/- and Master Craftsman with grade pay of Rs.4200/-. Besides, it has been clarified vide para 2 (b) of Integrated Headquarters of Ministry of Defence (Navy) letter CP (NG)/3008/DPC dated 3rd June 2011 based on Annexure A-7 orders that placement of Highly Skilled Grade II with grade pay of Rs.2400/- to Highly Skilled Grade I with grade pay of Rs.2800/- will be treated as promotion for the purpose of ACP/MACP. Therefore, those who were promoted to the post of Highly Skilled Grade I with higher grade pay of Rs.2800/- with effect from 1.1.2006 are not entitled for granting financial upgradation under MACP scheme on completion of 20 years service as they already have availed the



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financial upgradation with effect from 1.1.2006 on promotion to the post of Highly Skilled Grade I. As per the provisions contained in the rule governing MACP Scheme also financial upgradation under the Scheme is to be admissible whenever a person has spent 10 years continuously in the same grade pay. Those who were promoted to the post of Highly Skilled Grade I were granted with higher grade pay of Rs.2800/- with effect from 1.1.2006 and so according to the Annexure R-1 rules, they can be granted financial upgradation under MACP Scheme after completion of 10 years continuously in the same grade pay and so their entitlement for financial upgradation under MACP Scheme will become due on 1.1.2016 only. However, in certain cases, the 2nd respondent had granted third MACP benefits due to a wrong notion that MACP benefits can be granted after completion of 20 years service from the date of first promotion and the 2nd and 3rd applicants were amongst others who have been sanctioned with 3rd MACP benefits after completion of 20 years service from the date of first promotion. But, based on objection raised by the audit authorities, necessary actions were initiated to review all such cases whereby third MACP benefits were granted on completion of 20 years service from the date of first promotion disregarding the second promotion to the post of Highly Skilled Grade I. Respondents further submit that the grade pay structure was introduced by the Government through implementation of 6th Pay Commission recommendations and when the Highly Skilled Grade was bifurcated as Highly Skilled Grade II and Highly Skilled Grade I for the



reason that higher grade pay of Rs.2800/- was given to Highly Skilled Grade I, it was clearly indicated that it is an higher post than Highly Skilled Grade II. Highly Skilled Grade I is the promotional post of Highly Skilled Grade II as per Recruitment Rules of Tradesman. In respect of the observations made by the Hon'ble Supreme Court, the respondents submit that it was in a different context with regard to applicability of reservation in promotion viz-a-viz upgradation of the post. The respondents therefore prays for dismissal of the O.A.

5. Heard the counsel for the applicant and respondents. The issue under consideration is whether placement in Highly Skilled Grade I due to bifurcation of Highly Skilled Grade into Highly Skilled Grade I and Highly Skilled Grade II is a promotion for the purpose of grant of MACP or not ? This matter is no more res-integra as in the additional rejoinder filed by the applicants it has been stated that the matter has been dealt with by the Principal Bench of this Tribunal in F.C.Jain's case (O.A.No.818/2000) in applicant's favour, which was upheld by the High Court of Delhi in Civil Writ Petition No.4664/2001 and the S.L.P (Civil) No.289/2003 was also dismissed by the Hon'ble Supreme Court. In F.C.Jain (supra) after granting financial upgradation under ACP scheme of 9.8.1999 to A.Es of CPWD where 50% A.Es were placed in the higher pay scale of Rs.7500-12000 and 50% in the pay scale of Rs.6500-10500, the placement in Rs.7500-12000 with effect from 1.1.2006 was denied to the applicants therein for the reason



that they had already been given financial upgradation under the ACP. While allowing the O.A this Tribunal had ordered fixation of pay of the applicants in that case in the pay scale of Rs.7500-12000 with effect from 1.1.1996 on the ground that the placement in that scale could not be treated as a promotion. In another case the Principal Bench in O.A.No.4101/2012 decided on 13.11.2013 held that by reason of fitment in the scale of pay the applicants had not been promoted to a higher post or to a higher grade of pay. The scope and purport of the scheme is to revise pay scale for 50% of the cadre strength as they have stagnated in a particular post, and the particular scale of pay of the stagnating post is given a higher scale of pay. The placement in Highly Skilled Grade II and Grade I does not stipulate any residency period in the lower scale. Placement in the higher scale is dependent only on vacancies within the stipulated percentage ie. 50% in this case and on no other condition/qualification. Such a placement cannot be considered to be a promotion. The MACP Scheme prescribes grant of scale to which the Government servant would have been promoted as a part of 1st financial upgradation. Hence the promotion will be to the grade of Master Craftsman with grade pay of Rs.4200/-.

6. The facts in F.C.Jain case (supra) and O.A.No.4101/2012 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



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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.

(Dated this the 12th day of August 2015)



P.GOPINATH
ADMINISTRATIVE MEMBER



JUSTICE N.K. BALAKRISHNAN
JUDICIAL MEMBER

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