

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 149 OF 2008

Wednesday, this the 18th day of March, 2009.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Shaju C Maprani
Plater (SK)
Naval Ship Repairing Yard
Cochin ... **Applicant**

(By Advocate Mr.CSG Nair)

versus

1. The Flag Officer Commanding in Chief
Southern Naval Commandant
Cochin
2. Union of India represented by its Secretary
Ministry of Defence
South Block
New Delhi ... **Respondents**

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

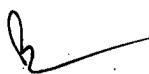
The application having been heard on 18.03.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The prayer of the applicant in this Original Application is to direct the Respondents to consider him for promotion as Plater (HS) against the existing vacancy and not to promote any one else against that vacancy overlooking his claim.

2. Brief facts of the case are that prior to 1st January1996, the industrial cadre under Navy was having 3-tier structure of promotion viz.,



Skilled, Highly Skilled Grade - II and Highly Skilled Grade - I. Based on the 5th Pay Commission's recommendations, the scale of pay of Highly Skilled Grade - II & I were merged into a single scale of pay of Rs.4000-100-6000 with effect from 1st January, 1996 and granted the revised scale of pay to all Highly Skilled Grade - II and I with effect from 1st January, 1996 vide Ministry of Defence letter No.11(1)2002/D(Civ.I) dated 20 May, 2003 (Annexure A-3). With the issuance of the aforesaid letter, cadre of Artisan staff was restructured with effect from 01.01.1996 as follows:-

1. Skilled (Rs.3050-4590)	.. 45%
2. Highly Skilled (Rs.4000-6000)	.. 55%
3. Master Craftsman (Rs.4500-7000)	.. 25% of the Highly Skilled Grade posts will be placed in the grade of the Master Craftsman. They will, however, not be a part of the hierarchy.

3. As a result of the said restructuring, all promotions made after 01.01.1996 to HS-I stood ignored and the only seniority that would govern the HS category seniority is that of HS-II as on 01.01.1996. Some of the artisans who have already been promoted as HS-I after 01.01.1996 challenged the aforesaid Annexure A-3 letter dated 20.05.2003 in OA 730/2003 and connected cases before this Tribunal. Vide common order dated 17.05.2005 (Annexure R-1), this Tribunal set aside para 3 (d) of the Annexure A-3 letter which reads as under :-

" The placement of the individuals in the posts resulting from the restructuring and ratio revision, shall be made with effect from 01.01.1996, in relaxation of the conditions, if any, ie. Trade test etc. as one time measure."

This Tribunal has also directed the Respondents to issue necessary procedural guidelines for uniform compliance by Defence Establishments within a period of three months from the date of issue of that order and to consider the representations of the Applicant therein *denovo*. Pursuant to the aforesaid directions, the Respondents issued the Annexure A-4 order



dated 02.05.2006 and the various trades as per the restructuring / ratio revision were merged as under:-

- (a) Pipe Fitter / Plumber / Coppersmith
- (b) Plater/Sheet Metal Worker/Blacksmith/Tin smith
- (c) Machinist/Machinist Drilling/Turner/Grinder/Miller
- (d) Tailor/Sail Maker/Upholsterer
- (e) Engraver
- (f) Radio/Radar Mechanic
- (g) Fitter Electric Control/Control Fitter Instrument
- (h) Carpenter/Shipwright/Shipwright.. (FRP) Carpenter-cum-Joiner/Pattern Maker/Joiner
- (i) Engine Fitter/Bench Fitter/Millwright Fitter
- (k) Leather Harness Worker

4. Thereafter by the Annexure A-5 letter dated 04.08.2006, the revised trade structure in the Naval Dockyards / Naval Ship Repairing Yards had been rationalized and the Revised Trade Structures (RTS for short) has been evolved and its salient features are as under :-

The revised Trade Structure is common to all the dockyards and repair yards and will have a total of 36 trades in 5 Disciplines are as under :-

<u>Sl. No.</u>	<u>Discipline</u>	<u>No. of Trades</u>
(a)	Engineering	11
(b)	Construction	10
(c)	Weapon and Electrical	10
(d)	Maintenance	04
(e)	PP & C	01
	Total	36

The Rationalised trade structure will commence at Skilled level (SK), followed by Highly Skilled (HSK) in the tradesman category. The distribution of SK and HSK is required to be in the ratio of 45:55. Further, 25% of HSK are to be designated as Master Craftsman. These norms are in compliance with the MOD directives promulgated vide IHQ letter 11 (1)/2002/D(Civ-i) dated 20 May 03. On promotion to Supervisor level, the designations starts at Chargeman-II, followed by Chargeman-I, Assistant Foreman and Foreman. The existing Semiskilled Labourers (SSKs) & unskilled labourers (USKs) to be given appropriate designated trades post promotion as and when due."

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5. The Applicant belongs to the discipline of "Construction" having 10 trades. Out of them, three trades of Plater, Blacksmith, Sheet Metal were merged at Chargeman 2 level, vide Enclosure II to the aforesaid Annexure A-5 letter dated 04.08.2006. The Applicant, who is a Plater (SK), made the Annexures A-6 and A-7 representations dated 09.10.2007 and 16.11.2007 to promote him as Plater (HS) in a vacancy available with effect from 20.09.2007. Thereafter, the Respondents (Integrated Headquarters, Ministry of Defence (Navy), New Delhi) issued the Annexure A-8 letter dated 18.12.2007 to the 4 Commands namely, the Western Naval Command, Eastern Naval Command, Southern Naval Command and the Andaman & Nicobar Command stating that certain other anomalies have been brought out by the Commands and the JCM Council in the implementation of Rationalised Trade Structure in Naval Dockyards and NSRYs promulgated vide the Annexure A-5 letter dated 04.08.2007. As far as the Trade of 'Plater' was concerned, it was decided to add the following "general note" after Note 7 to Enclosure II of the Annexure A-5 letter Dated 04.08.2006.

" The modus operandi for promotion of Platers, Blacksmith and Sheet Metal Workers will be to maintain their inter-se-seniority with respect to each other. As and when required the vacancies will be carved from either of the trade and will be released for the trade eligible for promotion as per seniority. This note is applicable for workers in NSRY(Kochi) and ND(Visakapatnam) only."

By the Annexure A-9 letter dated 28.01.2008, the Integrated Headquarters, Ministry of Defence (Navy), New Delhi has separately informed the Eastern Naval Command, Vishakapatnam and the Southern Naval Command, Kochi about the aforesaid addition of the "General Note." Thereafter, the respondent rejected his aforesaid representations of the Applicant vide the Annexure A-10 letter dated 15.03.2008 stating as under :-



" The representation of the individual has been considered by this Headquarters. It is intimated that a vacancy in the trade of Plater (HS) has been arose consequent on promotion of Shri I.N Prakasan, MCM (Plater) with effect from 20 Sep 07. As the appointment of Shri Shaju C Maprani as Plater (SK) was on 24 May 99 and qualified in the DQT of Plater (HS) with effect from 29 Dec 06 he is eligible to be considered for promotion on availability of vacancy in the trade only with effect from 01 Jan 2008 i.e the crucial dated for promotion.

However, in the light of IMQ, MOD, New Delhi order FM/1228 dated 28 Jan 08, circulated vide this Headquarters, Memorandum. CS 2764/1/54 dated 12 Feb 08, interse seniority is to be maintained for promotion of Platers and Sheet Metal Workers with respect to each other. Hence, Shri Jolly Pallippadan,, Sheet Metal Worker who was appointed in SMW (SK) with effect from 26 Oct 98 is become senior to Shri Shaju C Maprani considering the interse seniority as per the IHQ order ibid.

In view of the above Shri Shaju C Maprani, Plater (SK) cannot be considered for promotion to Plater (HS) vacancy available now."

6. The applicant has challenged the aforesaid Annexure A-8 letter dated 18.12.2007, the Annexure A-9 letter dated 28.01.2008 and the Annexure A-10 letter dated 15.03.2008 in this OA on the following grounds :-

A. Merger of Plater, Sheet Metal, Blacksmith Trades takes effect only from the level of CM2 as per Annexure A-5 ie. upto the level HS Grade promotions are to be effected from the respective trade. Adding a general note by annexure A-9 is highly illegal, arbitrary and is liable to be set aside.

B. As per the recruitment rules for promotion to HS Grade, a pass in the Trade test in the respective Trade is essential. Only those who passed the test in Plater Trade can be promoted as Plater HS. Granting promotion contrary to Annexure A-1 rules is unsustainable and liable to be quashed.

C. This Honourable Tribunal has already quashed the illegal merger of different trades in O.A.No.278/2007 and connected O.As. Therefore, again effecting promotions by merging different trades is illegal and liable to be quashed.

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D. Applicant is the senior most qualified Plater (SK) for promotion as Plater (HS). Overlooking the legitimate claim of the applicant for promotion as Plater (HS) is highly illegal.

E. By Annexure A-9 the merger of Plater and Sheet Metal Trades for promotion is made applicable only in Kochi and Visakapatnam. This is highly discriminatory and is a violation of fundamental rights under Article 14 and 16 of the Constitution of India."

7. During the course of the arguments, the learned counsel for applicant, Shri C.S.G.Nair has pressed only the last of the above grounds. According to him, when rationalization of trade structure was evolved on basis of various principles, it was correctly made applicable to all the Commands but by the impugned Annexures A-8 and A-9, the Respondents have imposed discriminatory restrictions regarding trade structure only in respect of the two Commands viz., the Eastern Naval Command, Visakhapatnam and the Southern Naval Command, Kochi. The other Commands at Mumbai and Andaman & Nicobar were exempted.

8. Respondents have filed their reply stating that the rationalization of the trade structure was introduced on the basis of the recommendations made by the Apex Committee which is empowered to make amendments. In the instant case, as the anomaly has been reported by the JCM members, the trade of Blacksmith has been de-linked from the Plater family. They have also submitted that promotions and placements in the industrial trades are being ordered strictly in accordance with the Rules and Regulations at that point of time.

9. We have heard Mr. CSG Nair, the learned counsel for applicant and Mr.M.L.George, on behalf of Mr.TPM Ibrahim Khan, SCGSC learned



counsel for respondents. In our considered view, even though Rationalisation of Trade Structure is a matter of policy it cannot be altered at will by the Apex Committee in an arbitrary manner. Annexure A-5 rationalization of Trade Structure in the Naval Dockyards and Naval Ship Repairing Yards was based on certain principles applicable to all the Commandants under the Ministry of Defence. It consisted of 5 disciplines having a total of 36 Trades in all the dockyards and repair yards. That was why the rationalization was made applicable to all Dockyards and Repairing Yards by the Annexure A-5 letter dated 04.08.2006. Now, restricting the applicability of the Annexure A-5 letter of the Respondents only to Eastern Command and the Southern Command is absolutely arbitrary and hence illegal. Moreover, the Annexure A-3 Ministry of Defence letter dated 20.05.2003 and the Annexure A-4 letter dated 02.05.2006 of the 2nd respondent was under challenge before the Tribunal in OA 292/2007 and other five connected cases including OA No. 498/06. Vide common order dated 10.03.2008, this Tribunal observed that by virtue of the order dated 04.08.2000 (Annexure A-5 herein), the whole question of restructuring had to be reopened as the same was also not specific on the point whether it was prospective in effect or it replaced trade structuring from 2003 onwards. The order of this Tribunal in OA 498/06 was as under :-

" The applicant in this OA is working as Plater (SK) and is qualified for promotion as Plater (HS). There are 5 Plater (SK) and 4 Plater (HS) and out of which three vacancies are already filled up. One post of Plater (HS) was filled up by promoting the 3rd respondent w.e.f. 24.1.2006 and according to the applicant, two other posts are vacant. Applicant has prayed for promotion to the post of HS but his prayer has not been considered. The respondents have not controverted the statements made by the applicant, except the statement that the impugned order was issued as per directions of this Tribunal in OA 741/2003 and batch cases. This order incidentally only directed that while the inter-se-seniority in the merit of HS-II and HS-I cadre those

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juniors who had passed the trade test in time and got promotion to HS-I before 01.01.96 should be placed senior to those who had not passed the trade test in time and being granted exemption on the trade test as one time measure by order dated 25.3.03. It is not specifically stated whether the 3rd respondent was the beneficiary to these directions and whey they have not been promoted prior to 01.1.96. In fact, the specific case is that the 3rd respondent has not passed the trade test. However, it is seen that the applicant joined the service in 1998 only and he would complete 8 years of service in 2006 only. Therefore, the contention that he should have been promoted in 2003 by virtue of having passed the trade test does not appear to be in accordance with the rules position. The position of the applicant vis-à-vis, the 3rd respondent is vague in the absence of any concrete averments unless the respondents finalise the seniority list and fix the seniority position of the 3rd respondent. We do not find any convincing reason to issue any specific direction in this case. The direction issued in the other cases will also apply in this case."

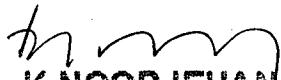
10. The aforesaid order of this Tribunal has already been implemented by the respondents in the case of the Applicant also and he has already been promoted. In this OA, he is seeking only the retrospective promotion from 01.01.2008 as per his representation.

11. In view of the above facts and circumstances, we partially allow this OA and accordingly quash and set aside the Annexures A-8 letter dated 18.12.2007 and Annexure A-9 letter dated 28.01.2008 to the extend that the General Note in respect of the Trade 'Plater' has been added to the Enclosure II of the Annexure A-5 letter dated 04.08.2006 making it " applicable for workers in NSRY(K) and NC(V) only." So long as the said "General Note " remains not applicable to other Commands the Annexure A-10 letter dated 15.03.2008 is also quashed and set aside. The respondents shall reconsider the Annexure A-6 and the Annexure A-7 representations of the Applicant dated 09.10.2007 and 16.11.2007 respectively and to take appropriate decision on his prayer to consider him

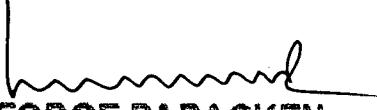
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" for promotion as Plater (HS) against the existing vacancy within a stipulated period" and communicate the same to him within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Dated, the 18th March, 2009.



K. NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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