

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.187/09

Monday this the 15th day of February 2010

C O R A M :

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

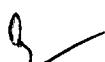
1. K.Earnest Johnson,
S/o.K.Achanbava,
Sheet Metal Works (Highly Skilled),
Naval Ship Repair Yard, Kochi,
Naval Base, Kochi – 682 004.
Residing at Kurupath House,
Thottekkattukara, Aluva, Ernakulam.
2. C.N.Chandrababu,
S/o.Narayanan C.K.,
Sheet Metal Works (Highly Skilled),
Naval Ship Repair Yard, Kochi,
Naval Base, Kochi – 682 004.
Residing at Chirakkala,
Nayarambalam, Vypin.
3. V.C.Chacko,
S/o.V.V.Chacko,
Sheet Metal Works (Highly Skilled),
Naval Ship Repair Yard, Kochi,
Naval Base, Kochi – 682 004.
Residing at Vazhayil House,
Kinginimattam P.O., Kolancherry (Via),
Ernakulam District.Applicants

(By Advocate M/s.Dandapani Associates & Mr.A.G.Adithya Shenoy)

V e r s u s

1. Union of India
represented by Secretary to Government,
Ministry of Defence, South Block,
New Delhi- 110 001.
2. The Flag Officer Commanding in Chief,
Southern Naval Command, Naval Base,
Kochi – 682 004.Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)



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This application having been heard on 15th February 2010 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicants are aggrieved by the Annexure A-5 letter No.CS 2765/34 dated 19.2.2009 issued purportedly in compliance of this Tribunal's common order dated 10.3.2008 in OA Nos.278/07, 292/07, 94/07, 447/06, 498/06, 609/06 and order dated 9.1.2008 in OA No.677/06 and in supersession of their letter No.CS 2764/94 dated 2.5.2006. By the said impugned letter, the respondents have partially modified the placement/promotion order issued by them vide their letters :-

- (a) CS 2765/34/1 dated 7.4.2006.
- (b) CS 2765/34/1 dated 1.6.2007, 11.6.2007, 6.8.2007, 1.4.2008, 2.6.2008, 30.6.2008 and 14.11.2008.
- (c) CS 2764/86 dated 7.6.2007, 26.10.2007, 19.2.2008, 1.4.2008 and 3.10.2008.

Accordingly they have issued a list of Blacksmith/Tinsmith/Plater/Sheet Metal Worker indicating their grade to which they were placed/promoted with their respective dates. At the end of the said list they have also stated that the promotions given to the applicants herein, namely, Shri.K.Earnesh Johnson, SMW (SK), Shri.C.N.Chandrababu, SMW (SK) and Shri.V.C.Chacko, SMW (SK), to the post of SMW (HS) vide Annexure A-1 letter No.CS 2765/34 dated 1.6.2007 and Annexure A-2 letter No.CS 2765/34 dated 11.6.2007 with effect from 1.6.2007 have been cancelled and the reason indicated therein was as under :-

"vacancies being reserved for SC/ST. No suitable vacancy available."

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2. The brief facts of the case are that the applicants joined service as Sheet Metal Works (Skilled) on 1.8.1990. The next post in their line of promotion is that of Sheet Metal Works (Highly Skilled). As the applicants having qualified for the aforesaid post, on the recommendations of the Departmental Promotion Committee, they were promoted as Sheet Metal Works (Highly Skilled) vide Annexure A-1 letter dated 1.6.2007 and Annexure A-2 letter dated 11.6.2007. The applicants have been continuing in the said post since then. Meanwhile, some of the persons belonging to the Plater Highly Skilled-I, Copper Smith Highly Skilled-I and Machinist Highly Skilled-I filed OA Nos.740/03, 741/03 & 882/03 before this Tribunal. All those OAs were disposed of by a common order dated 17.5.2005 setting aside para 3(d) of Ministry of Defence letter No.11(1)2002/D(Civil) dated 20.5.2003 and directing 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 those orders. This Tribunal also observed that it was wrong to deprive an employee of the benefit of seniority enjoyed by virtue of regular promotion, by an act of retrospective revision of cadre structure entailing forfeiture of promotional seniority already availed. In compliance of the directions of the aforesaid orders of this Tribunal the 1st respondent issued a Corrigendum to the order of restructuring dated 20.5.2003 saying that persons who have already got promotion by way of passing trade test between 1.1.1996 and 19.5.2003 would be enbloc senior to the persons who got promotion as a result of restructuring cadre in relaxation of passing trade test. Pursuant to the aforesaid order, the 2nd respondent, vide Annexure A-3 dated 2.5.2006, placed list of individuals in various trades as per the restructuring/ratio



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revision. However, some of the persons who have got trade test earlier to the Highly Skilled Grade-I approached this Tribunal by challenging the aforesaid Annexure A-3 seniority list and this Tribunal in OA Nos.278/07, 292/07, 94/07, 447/06, 498/06, 609/06 passed Annexure A-4 common order dated 10.3.2008 setting aside the Annexure A-3 seniority list and directed the respondents to recast the same. It is pursuant to the aforesaid Annexure A-4 order of this Tribunal the respondents have issued the impugned Annexure A-5 order revising the seniority list.

3. The contention of the applicants in this OA is that the Annexure A-5 to the extent it relates to them is highly arbitrary, illegal and cannot be sustained in law. They have submitted that undisputedly there cannot be any legal consequences due to the quashing of Annexure A-3 as the applicants were promoted as per Annexure A-1 and Annexure A-2 much after the issue of Annexure A-3. They have also submitted that it is apparent from Annexure A-5 impugned order that the applicants are reverted in order to accommodate Scheduled Caste/Scheduled Tribe candidate without specifying the names of those SC/ST candidates who have been deprived of their legitimate promotion.

4. The respondents in their reply statement submitted that the applicants were promoted to the post of Sheet Metal Worker (Highly Skilled) in June 2007. Though they were general candidates, the 2nd and 3rd applicants were promoted against the vacancy earmarked for SC/ST as no eligible SC/ST candidates were available in the feeder category in anticipation of future vacancies so as to accommodate the



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SC/ST candidates when become eligible. However, delegates from National Commission for Scheduled Caste visited Kochi during June/July 2007 and given strict instruction that the backlog vacancies due to non availability of the SC candidates in promotion is to be dealt with in accordance with the DOPT Order No.OA AB-14017/30/89-Estt R.R dated 10.7.1990. They have also submitted that as per Annexure A-4 common order of this Tribunal all promotions/placements effected from 1.1.1996 in respect of the industrial trades under dispute had been reviewed. Accordingly fresh seniority lists have been made and subsequent order for placement/promotion was issued vide Annexure A-5. While revising all the promotions effected from 1.1.1996, the 2nd and 3rd applicants who had been promoted against the reserved quota for SC/ST had to be reverted back to their earlier stage keeping the instructions issued by the National Commission for Scheduled Caste in view and accordingly the said vacancies kept unfilled for SC/ST candidates. As regards the 1st applicant is concerned, he had been promoted to the post of Sheet Metal Worker (Highly Skilled) in June 2007. In compliance with the Annexure A-4 common order and subsequent review of promotions/placements, Shri.M.S.Harikumar who had been promoted to Plater (HS) had to be placed in the trade of Sheet Metal Worker (HS) as he had passed the Departmental Qualifying Test for the promotion to the said trade and therefore the 1st applicant had to be reverted. Shri.M.S.Harikumar approached the Hon'ble High Court of Kerala against his placement as SMW (HS) vide WPC 36728/08 due to restructuring and it was disposed of vide judgment dated 10.6.2009 holding that the respondents are free to regulate the promotions effected to the petitioner. Thus the reversions



of the applicants have been taken place in accordance with the instruction of this Tribunal and National Commission for Scheduled Caste and, therefore, the relief sought by the applicants is neither sustainable nor tenable in law.

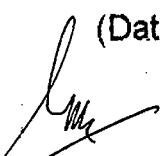
5. We have heard Ms.Jebi Mather on behalf of M/s.Dandapani Associates for the applicants and Shri.Sunil Jacob Jose,SCGSC for the respondents. The reading of impugned Annexure A-5 letter dated 19.2.2009 would reveal that it was issued in compliance of this Tribunal's order dated 10.3.2008 in OA 278/07 and connected cases. By the said order, the Annexure A-3 letter dated 2.5.2006 regarding restructuring of industrial cadre was quashed and set aside and the respondents were directed to take necessary steps for fresh finalisation of the seniority list of all the employees in the High Skilled category after merging HS-II and HS-I with effect from 1.1.1996 and publish a provisional seniority list by inviting objections and giving reasonable opportunity to file representations, if any, and to publish the final seniority list thereafter. However, it is seen that the reason for cancelling the promotion of the applicants to the post of SMW (HS) has nothing to do with the order of this Tribunal in Annexure A-4 dated 10.3.2008. By the affidavit filed by the respondents also it is seen that the applicants herein have been reverted due to certain instructions by the National Commission for Scheduled Caste. When the applicants have been promoted on regular basis after following the prescribed procedure as laid down under the rules, if they are to be reverted for any valid reasons, due notice should have been given to them and the applicants should have been given an opportunity to explain as to why they should not have been

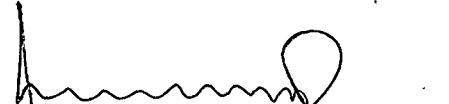


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reverted or their order of promotions should not be cancelled. By cancelling the promotions given to the applicants without notice to them and make it as a part of the impugned order and giving an impression that it has been issued in compliance of this Tribunal's order in OA 278/07 and connected cases are not correct. We, therefore, allow this OA and quash and set aside the Annexure A-5 letter dated 19.2.2009 to the extent that it cancels the promotions given to the applicants to the post of SMW (HS) and the interim relief staying the operation of Annexure A-5 order pending disposal of this OA is made absolute. The respondents are directed to withdraw the said Annexure A-5 letter accordingly forthwith. However, we grant liberty to the respondents to issue prior notice to the applicants in tune with the principles of natural justice, if their orders of promotions are again to be cancelled, if there are any legitimate claims for the said posts by the SC/ST candidates in the feeder cadre. There shall be no order as to costs.

(Dated this the 15th day of February 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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