

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.332/2012

Friday, 18th March, this the 18th day of February 2013.

CORAM

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. Bilbert Joseph
Plater H.S.
Naval Ship Repair Yard
Willington Island
Cochin-682004.
2. Shaju C. Maprani
Plater H.S.
Naval Ship Repair Yard
Willington Island
Cochin-682004.

Applicants

[By advocate: Mr.C.S.G.Nair]

Versus

1. Union of India represented by
its Secretary
Ministry of Defence
South Block
New Delhi-110001.
2. Flag Officer Commanding-in-Chief
Southern Naval Command
Willington Island
Cochin-682004.
3. K.V.Sivanandan
SMW (HS)
Naval Ship Repair Yard
Cochin-682004.
4. P.M.Antony Xavior
SMW (HS)

BB

Naval Ship Repair Yard
Cochin-682004.

5. M.T.Sebastian
SMW (HS)
Naval Ship Repair Yard
Cochin-682004.

6. P.R.Hariharan
SMW (HS)
Naval Ship Repair Yard
Cochin-682004.

7. M.S.Harikumar
Blacksmith (HS)
Naval Ship Repair Yard
Cochin-682004.

Respondents

[By advocate:Mr.Rajesh for Mr.Sunil Jacob Jose, SCGSC (R1&2)]
[Mr.M.R.Hariraj (R3-7)]

This Original Application having heard on 6th February 2013, this
Tribunal on 15th day of ~~March~~ February 2013 delivered the following:

O R D E R

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicants (two in number) had joined as Plater (Skilled) in the Respondents' organization respectively in Mid 1998 and 1999. Earlier, an original application, bearing No. OA No. 498 of 2006 was filed by the first applicant challenging certain act on the part of the respondents in clubbing some of the trades to be brought under a common trade for the purpose of promotion vide order dated 04-08-2006 at **Annexure A-1**. This was relating to the rationalization of the Trade Structure in Naval Dockyards/NSRYs. The OA was disposed of by the Tribunal through a common order dated 10-03-2008 (vide **Annexure A-2**) whereby the respondents were, inter alia, directed to design a fresh seniority list of all the employees in the Highly Skilled Category after merging H.S. Grade-II and H.S. Grade-I w.e.f. 01-01-1996 and also for issue of separate orders working out the ratio on the basis of the



sanctioned and authorized strength of all trades and further the respondents were directed to undertake certain other exercise as well, of which we are not directly concerned.

2. A private respondent in the aforesaid OA No. 498 of 2006 (R-7 in this OA) moved the matter before the High Court (WP No. 36728 of 2009) stating that during the pendency of the above OA certain action had been taken by the respondents consequent to which the the grievance of the applicant got already redressed and there was no need to include his case in the common order. Accordingly, the writ petition was allowed to that extent as the applicant also fairly stated before the High Court that no grievance did subsist in his case. Judgment dated 10-06-2009 at **Annexure A-3** refers.
3. The first applicant was promoted as Highly Skilled w.e.f.01-01-2007 and the second applicant from 01-01-2008.
4. Respondents have then issued **Annexure A-5** order dated 28-01-2008, whereby the posts of Plater and Sheet Metal worker were to have combined seniority and as and when required, the vacancies would be carved from either of the trades to be released for the other trade which warranted consideration of candidate eligible for promotion as per seniority. This order applied only to the Eastern and Southern Naval Command. This was challenged by Applicant No. 2 in OA through OA No. 149 of 2008 which was partly allowed vide order dated 18-03-2009 (**Annexure A-6**) and the said Annexure A-5 administrative order dated 28-01-2008 was quashed to the extent the general note in respect of the trade 'Plater' added to the Enclosure-II of the earlier letter dated 04-08-2006 made it applicable only for NSRY(K) and NC(V) and not for other Command, i.e. WNC.
5. Against the above order, Review by one Mr. Sivanandan K.V. and

Varghese C.M. had been filed seeking clarification as to the effect of the above order over the letter dated 04-08-2006. It was for a clarification that the order dated 18-03-2009 (Annexure A-6) in so far as it related to the quashing of order dated 04-08-2006 was concerned, quashed only to the extent that the same applied to Vizag and Cochin only. Review was dismissed observing that the review applicants are at liberty to file a fresh OA as per the provisions of and subject to limitations as contained in the Act. **Annexure A-7** refers. Respondents have, in compliance with the earlier orders of the Tribunal issued one promotion/ placement order dated 19-02-2009 vide **Annexure A-8** in which the names of the first and second applicants figured in.

6. On 31-03-2010 the respondents had issued an order vide **Annexure A-9** whereby the posts of Plater, Blacksmith and Sheet Metal Worker were to be merged and designated as Plater and the same with Blacksmith are to be merged at HSK level and on promotion to supervisor grade, they would be designated as Chargeman-II (Plater). OA No. 363 of 2010 was filed by one Mr. C.K. Sajeev and another challenging the validity of the above order inasmuch as the same had the retrospective effect. As such an interim order was passed by the Tribunal in that OA stating that the first respondent therein shall not fill up the vacancies in Plater grade existed prior to 31-03-2010. **Annexure A-10** refers.

7. On the basis of the various orders of the Tribunal, a combined seniority had been prepared and circulated amongst the members for raising objections, if any. Annexure A-11 refers. By **Annexure A-12** order dated 14-06-2010, the post of Master Craftsman was inserted in the hierarchy of the posts of Skilled, H.S. etc.

8. At this stage, the above situation could be summarized as under:-

(a) Trades Tinsmith and Blacksmith got merged and designated as **Blacksmith (Annexure A-9)**

(b) Plater and Sheet Metal Worker got merged together and designated as **Plater (Annexure A-9)**

(c) The posts of Plater and Blacksmith would be merged at HSK level and on promotion to the post of supervisor the designation would be CM (Plater). **(Annexure A-9)**

(d) The post of Master Craftsman was introduced in the hierarchy of Skilled, HS Grade II and HS Grade I, effective from 01-01-2006, **(Annexure A-12)**.

9. By Annexure A-13, in the wake of the restructuring whereby the posts of Sheet Metal Worker and Plater were merged and designated as Plater w.e.f. 29-10-2009, the positions of the applicants vis-a-vis the respondents had been as under:-

PLACEMENT/PROMOTION OF INDUSTRIAL STAFF CONSEQUENT ON THE CADRE RESTRUCTURING IN TERMS OF GOI, MOD LETTER NO.1195)/2009-D(CIV-I) DATED 14 JUN 2010

SHEET METAL WORKER/PLATER (MERGED AS PLATER W.E.F. 29.10.2009)

Sl.N o.	Name	Dept	SK w.e.f.	HS-II w.e.f.	HS-I w.e.f.	MCM w.e.f.
11	K.V.Sivanandan(Plater)	NSRY(K)	-	-	01.01.2006 to 23.01.2006	24.01.2006
13	P.M.Antony Xavier (SMW)	NSRY (K)	-	-	01.01.2006 to 19.09.2007	20.09.2007
16	M.T.Sebastian (Plater)	NSRY (K)	-	01.01.2006 to 23.01.2006	24.01.2006	-
17	P.R.Hariharan (Plater)	SHO (K)	-	01.01.2006 to 23.01.2006	24.01.2006	
24	M.S.Harikumar (Plater)	NSRY (K)	01.01.2006 to 23.01.2006	24.01.2006	-	-
28	Bilbert Joseph (Plater)	NSRY (K)	01.01.2006 to 31.12.2006	01/01/07	-	-

Sl.N o.	Name	Dept	SK w.e.f.	HS-II w.e.f.	HS-I w.e.f.	MCM w.e.f.
29	Shaju C. Marpani (Plater)	NSRY (K)	01.01.2006 to 31.12.2007		01/01/08	

10. Consequent to the above mentioned seniority list, there have been further actions on the basis of the same vide Annexure A-14 to A-17, whereby the private respondents have been granted further promotion and Annexure A-18 is the latest seniority list of platers which according to the applicants is erroneous.

11. The grievance of the applicants is that the frequent change of trade has resulted in their having been pushed down in seniority, though from the initial stage they are senior in their trade of Plater. Their representations vide Annexure A-19 and A-20 have remained without any decision thereon. Hence this OA and the applicants have prayed for the following reliefs:-

1. *"To call for the records leading upto the issue of Annexure A-13, A-14, A-15 and A-18 and quash the same.*
2. *To direct the 2nd respondent to prepare the seniority list in accordance with the decisions of this Hon'ble Tribunal in Annexure A2 judgment Annexure A3 and effect promotions accordingly till 31.3.2010.*
3. *To direct the respondents to grant the applicants promotions as HS-I w.e.f. 1.7.07 and 1.4.08 respectively.*
4. *To grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case; and*
5. *to award the cost of this proceedings."*

12. Both official as well as private respondents have contested the O.A.

13. The stand taken by the Official Respondents is as under:-

(a) Restructuring in the wake of the recommendations of the sixth Pay Commission came into effect from 01-01-2006. As per the same there was a combined seniority list of trades like Blacksmith, plater, Sheet Metal Worker. However, this underwent a change by issue of order dated 04-08-2006 vide Annexure A-1. Enclosure to Annexure A-1 order



dated 04-08-2006 (annexed by the respondents along with their counter) stipulates that the Trades of Blacksmith, Sheet Metal Worker and Plater, which hitherto were separate trades will be merged in H.S. Grade for promotion to the post of Chargeman Gr. II. This was subsequently modified to the effect that even at the Skilled level, certain trades would be merged as for example, that of Tinsmith and Blacksmith, as well as Plater and Sheet Metal Worker. And, it is at the HS level that the two trades – Blacksmith and Plater (with which the other sister-trades already got merged) would be merged at a higher level of HS. This came into effect from 29-10-2009 as per the decision communicated by the Integrated Headquarters of the Ministry of Defence, vide Annexure R-2. Thus, at the level of CM, the trades of Tinsmith, Blacksmith, Plater and Sheet Metal Worker would be considered for promotion to the said post.

(b) Since the seniority scenario underwent a thorough change from 04-08-2006 compared to the earlier ones, options were called for from the employees concerned, for their choice to switch over from one trade to another. Respondents 3 to 7 had accordingly opted for the Plater Trade and their willingness had been received while the applicants, had not given their willingness, and as such, respondents have considered the case of the said private respondents for promotion. Accordingly, Respondents 3 and 4 who were in the trade of Sheet Metal Worker and who switched over to Plater Trade had been promoted as MCM in Plater Trade. Similarly Respondent No. 7 who was in the grade of Skilled category in Blacksmith Trade and who had opted for Plater Trade was considered and promoted as Highly Skilled Grade II in Plater Trade on the strength of his seniority as well as option accorded. The applicants stand far below in the seniority list. It has also been stated that there were in all 8 posts prior to October, 2009 – one MCM, two HS Grade I, one HS Grade II and 4 SK. The applicants were at the material point of



time holding the post of Skilled Grade. The applicants thereafter were kept in HS Grade II on restructuring, despite the fact there was excess complement in the said post. The pattern adopted for drawing one seniority list for the post of Plater and Sheet Metal Worker at SK Grade came for consideration in OA No. 363 of 2010 and the same came to be upheld vide order dated 23-02-2012 in the said O.A. (Annexure R- 3).

(c) In so far as the seniority position is concerned, at the time when the applicants were in the Skilled category, the private respondents at Serial No. 3 to 6 had already been placed in HS category.

14. The stand taken by the private respondents is as under:-

(a) The grade structure in general of various Trades consisted of Skilled, HS Grade II and HS Grade I, where-after, MCM was also included in the structure. In so far as Plater was concerned, there was no post of HS Grade II and thus, only two categories existed – Skilled and HS Grade I. Later on, the posts of HS Grade II and Grade I were merged to read as Highly Skilled only.

(b) In view of the fact that the functional requirements of Plater and SMW were akin to each other, the S.N.C. Suggested for a combined seniority with flexible movement of the higher post in accordance with the combined seniority. This was agreed to and as a matter of fact that since the two posts were available only in SNC and ENC, the said position had been made applicable to the two Commands, excluding the Western Naval Command. However, the same had been alleged to have resulted in a discrimination by the applicants in OA No. 149 of 2008 and finding favour with the arguments that the SNC and ECNC are subjected to unreasonable classifications, the Tribunal was pleased to allow the OA



partially, vide Annexure A-6. None of the affected parties was impleaded in the said OA.

(c) In the wake of recommendations of the Sixth Pay Commission, the earlier two different grades in HS were brought back. Thus, w.e.f. 01-01-2006, the posts carried H.S. Grade I as well as II.

(d) The position of combined seniority for all the trades ruled the fort till 03-08-2006. Thereafter, these were divided trade wise, while trades like Plater and SMW were merged.

15. Counsel for the applicants argued at length, referring to various documents and contended that there is no question of combined seniority. He has, summarized his oral arguments as hereunder:-

- i) As ordered in OA 498/2006, the restructuring could be effected from 1.1.2006 and order dated 14.6.2010 could be implemented accordingly.
- ii) Merger of different trades takes effect only from 31.3.2010 prospectively.
- iii) Giving effective date for the merger from 24.2.2009 is illegal as the order was issued when the matter was pending before this Hon'ble Tribunal.
- iv) Seniority list issued on 30.8.2011 as per various orders of the Hon'ble Tribunal and judgment of the Hon'ble High Court is to be finalized.
- v) All vacancies which arose in Plater trade prior to 31.3.2010 should be filled up by those recruited in Plater trade only.
- vi) There is no question of any combined seniority of different trades.
- vii) Annexure R6 has no validity as it is not supported by any order from the Ministry.

16. Counsel for the private respondents submitted that the case has to be analyzed on the basis of various orders passed both administratively as also by the Tribunal. In the trade of Plater, there was no intermediate post of HS Grade II and it was only after the two grades of HS Grade II and Grade I could be merged that the applicants could be considered for promotion from Skilled to HS. Qualifying in the trade test was also one of the requirements. The decision of the respondents to combine the two trades restricted to two Commands only had caused confusion and by Court order, the same got redressed. Now, there



is a well defined structure with the confluence-junction in respect of Plater and SMW at the level of Skilled grade (designating the same as Plater Skilled) for consideration for promotion to the next higher post. Likewise, the confluence-junction in respect of Plater and Blacksmith at the level of HS would be considered for higher promotion at the level of CM (Plater). In the instant case, the respondents have considered the case of the applicants as well as the private respondents on the above lines, and accordingly, afforded the promotions to the private respondents. As such, the case does not call for any judicial interference at all.

17. Counsel for the official respondents also endorsed the above mentioned position and justified the action taken by the respondents.

18. Arguments were heard and documents perused. The analysis should be in respect of combination of trades at various levels at a particular time and the position of the applicants vis-a-vis the private respondents to see whether the applicants have been deprived of any of their legitimate rights for consideration for promotion to the higher grades and whether the promotions granted to the private respondents are at the cost of the promotion of the applicants. In that process the legal validity of such combination of trades has also to be examined.

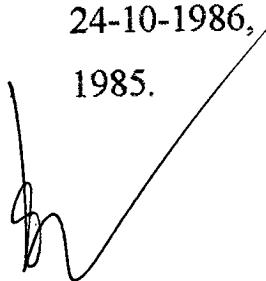
19. The First Applicant was holding the post of Plater SK on 18-05-1998. In OA No. 498 of 2006 the Tribunal rendered the finding that his entitlement to the post of Highly skilled Plater would mature only in 2006 on completion of eight years of his service as Skilled Plater. Admittedly, his promotion to HS fructified only w.e.f. 01-07-2006. In the aforesaid OA the rival party to the applicant is M.S. Harikumar (Respondent No 3 of the said O.A). The said Harikumar has been impleaded as Respondent No. 7 in the instant OA. He joined the respondents as Blacksmith SK w.e.f. 31-10-1991, which is seven

years prior to the joining of the applicant as SK Plater. Well before the applicant could be considered for promotion to the HS grade (Plater) the said Harikumar got his higher post of HSII w.e.f. 24-01-2006 and became HS II Blacksmith w.e.f 23-06-2006 and his post had been re-designated due to merger of various trades as aforesaid, as HS II (SMW) from 04-08-2006. Thus, since right from the beginning the said Respondent No. 7 had been senior to the applicant (in the equivalent grade of Plater skilled as also HS), the applicant cannot seek any march over the said Respondent No. 7. Thus, no case is made out to seek any relief against Respondent No. 7.

20. The second applicant joined as SK on 24-05-1999 and his turn for HS came only in or after 2007. Accordingly he was promoted as HS Plater from 01-01-2008, restructured as HS II Plater from the said date. If the first applicant who is admittedly senior to this applicant, could not seek any relief against Respondent No. 7, this applicant too cannot claim any relief.

21. As regards the other respondents, Respondent No. 3 was induced as Blacksmith SK as early as 31-03-1987, while the first applicant had entered into the services eleven years after the induction of the said respondent. At the stage of HS I, (which he was holding at least from 01-01-2006,) the combined seniority having taken place, his post was merged as MCM Plater w.e.f. 29-10-1-2009. No legal flaw could thus be discerned in respect of this individual as well.

22. Perusal of the details with reference to the other respondents too would go to show that all these respondents were inducted into service much earlier than the applicants. (For e.g. Respondent No. 4 joined in the Skilled Grade on 24-10-1986, Respondent No. 5 on 10-09-1987, Respondent No. 6 on 01-04-1985.



23. These respondents having been considered for MCM post in accordance with the restructuring and merging of various trades as detailed in para 8 above, no legal flaw could be discerned from the same.

24. The applicants thus, have not been able to make out any case in their favour. Consequently, the OA being devoid of merits has to be necessarily dismissed, which we order. No costs.



(K.NOORJEHAN)
ADMINISTRATIVE MEMBER

aa.



(Dr K.B.S.RAJAN)
JUDICIAL MEMBER