

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 414 OF 2008

Tuesday, this the 15th day of September, 2009.

CORAM:

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.A. Larar,
Rigger T. No. 482,
Material Organization,
Southern Naval Command,
Cochin - 4

... Applicant.

(By Advocate Mr. C.S.G. Nair)

v e r s u s

1. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin - 4

2. Union of India represented by its
Secretary, Ministry of Defence,
South Block, New Delhi : 110 001

... Respondents

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

The Original Application having been heard on 3.8.09, this Tribunal on 15.09.09 delivered the following :

O R D E R

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

The career calendar of the applicant in this O.A. is as under:-

- (a) 06-03-1981: Joined as a casual labourer.
- (b) 01-04-1982: Benefits for physically Handicapped (40% in this case) extended.
- (c) 05-07-1991: Passed the trade test for semi skilled labourer.
- (d) 01-06-1996: Grant of in-situ promotion.
- (e) 09-07-1999: Passed the trade test for skilled labourer
- (f) 30-03-2000: Promoted as Mukadam of Labourer (SK) (in short MUL)

2.

The claim of the applicant is as detailed below:

- (a) On 20-05-2003, restructuring of cadre of artisan staff in Defence Establishments took place, whereby Highly Skilled grade I and II have been merged and the ratio between SK and HSK rescheduled as 45:55. From out of HSK (55%), 25% had been carved out to be called Master Craftsman (MCM), vide Annexure A-1. This does not form the promotional post in the SK-HSK ladder but only a placement. The above restructuring had been effective from 01-01-1996.
- (b) The above restructuring was made applicable to Mukadam Labour vide MO(K) order No. 109/II/2003 dated 29th October 2003.
- (c) Vide Annexure A-2 order dated 02-12-2003, categories of Driver Crane Mobile, Mukadam of Labourer and Engine Fitter had been kept away from the above merger, till further orders. Consequently, the earlier order dated 29th October, 2003, had been cancelled, vide Annexure A-3.
- (d) In the Naval Dockyard, vide Annexure A-4, a number of trades have been grouped into 6 main disciplines and the Construction discipline, one of the six disciplines, had within it 11 trades, including 'rigger' trade. This rigger trade had within it rigger, Slinger and Mukadam of labourer, all merged into one, vide Note 7 of Annexure A-4. The Material Organization of the SNC had spelt out the categories of Rigger etc., as stated above, vide Annexure A-5 C.E. List dated 20th May 2006. On the basis of Annexure A-4, placements as MCM/HS of rigger trade (after merger of Mukadam of Labourer and Slinger with rigger) had been brought out vide Annexure A-11.
- (e) Notwithstanding the merger at the HSK level of Mukadam of Labourers with Rigger, the said trade of Mukadam of labourer was made a dying trade, and the merger and redesignation as rigger of the Mukadam of

labourer was to be there till waster. By a deliberation that took place at the Integrated Headquarters of Ministry of Defence (Navy), merger level for Mukadam of labourer and Slingers had been made at SK Level, and as stated above, the trade of Mukadam of labourers had to be wasted out. Annexure A-6 refers.

- (f) Seniority list of Rigger (with the other two merged trades, i.e. Mukadam of labourer and Slinger) was prepared, and in the list of 35 names, that of the applicant figured in at serial No. 16 and in the Skilled Grade. In addition, there was yet another list of 16 names of MCM and HS riggers.
- (g) The respondents have published list of Rigger (SK) and HS vide Annexure A-7 letter dated 7th January 2008, in which the name of the applicant appears at serial No. 16 in the SK grade. The applicant being the lone Physically handicapped person in the trade of rigger, and there being 3% reservation of such PH individuals, he had penned a representation dated 05-02-2008 (Annexure A-8) for consideration of his case, if the trade of rigger had been identified for earmarking PH quota. This request was renewed by Annexure A-9 representation dated 5th May 2008.
- (h) The Southern Naval Command considered the representation and informed the applicant that the applicant would be eligible for promotion as Rigger HS on or after 01-01-2009, i.e. On completion of requisite 8 years qualifying service as Rigger (SK), subject to qualifying in the departmental test for promotion and also on availability of vacancies. Annexure A-10 refers.
- (i) As there was some confusion about the division as SK, HS and MCM of the employees in various trades, a few O.As had been filed, and the Tribunal, vide Annexure A-12 directed that first seniority list should be

drawn, circulated and finalized and it is later that the drill of placements in MCM/HS etc., should be undertaken. The earlier promotion granted on the basis of Annexure A-1 was quashed.

- (j) The applicant has through this OA claimed that the respondents should be directed to (a) set the clock back to the period prior to merger; (b) prepare seniority list of each grade before merger, grant promotions within each trade in the ratio as provided for in Annexure A-1 and thereafter effect the merge of the three trades Rigger, Mukadam of Labourer and Slinger. Independent of the same, the applicant has also claimed promotion under the PH quota in terms of Annexure A-13 order of the DOPT which relates to reservation under the PH quota.

3. Version of respondents: Facts, save as contained below, as in the OA are not rebutted. In so far as Mukadam of labourer is concerned, vide Annexure R-1, the same has not been treated as artisan since no training had been imparted in any trade. It is for this reason that the said trade had been, vide Annexure A-3 order dated 8th Jun 2004, kept away from the initial restructuring order dated 20th May 2003 (Annexure A-1). Subsequently, vide Annexure A-4, the Headquarters had issued order for rationalisation of industrial cadre whereby the grades of Slinger, Rigger and Mukadam of Labourer had been merged into a single grade of Rigger. Accordingly Annexure A-7 combined seniority was prepared based on which 55% of the total sanctioned strength of skilled labourers was promoted to the grade of HS during January 2008, with relaxation of qualifying service and passing of Departmental qualifying test, as a one time measure with retrospective effect from 4th August 2006 (date of issue of Annexure A-4 rationalisation Order). Consequently, 9 Mukadam of Labourers (skilled) out of 22 Mukadam of Labourers had been promoted to the grade of Highly skilled and the applicant could not be considered for the said placement as the seniors to the applicant had to be considered for the same as per the seniority list. As regards the order of the Tribunal at Annexure A-12, the same

does not contain promotion to the rationalized trade of Slinger, Rigger and Mukadam of Labourer and as such it does not have affect in any manner Annexure A 11 Memorandum which relates exclusively to the aforesaid rigger trade. As regards the applicants right to be considered under the PH quota, here again, the applicant has to fulfill the requisite experience and qualify in the Departmental Test, without which he cannot be considered for promotion either in the general quota or PH quota. (Later on in the additional affidavit, the respondents have stated that there is no reserved quota for physically handicapped for the post of Rigger (Highly Skilled) to which the applicant is to be considered for promotion. And as regards promotion under general quota, the applicant having become eligible from January 2009, he along with five individuals was promoted to the post of Rigger (HS) vide Annexure R-2 order dated 3rd April, 2009. He would be considered for placement in MCM on completion of 3 years in the HS grade.

4. Counsel for the applicant submitted that the order of this Tribunal vide Annexure A-12 has to be held to be a common order for all the trades and thus, it cannot be stated that the same does not affect Annexure A-11 promotion order. The foundational point of the said order is that when the merger had taken place, and promotion to be granted, first, there should be a combined seniority list on the basis of which only the promotion should have been effected. In the instant case, the prayer of the applicant is that first there should be promotion in the individual trade in the ratio of 45:55, and thereafter merger of the three trades and a combined seniority list.

5. Counsel for the respondents submitted that the post of Mukadam of labourer cannot be treated as an artisan at all and it was for that reason that Annexure A-3 order came to be passed. However, after certain deliberations with the JCM, it was decided to merge the trade of Mukadam of Labourer and Slinger at the SK level with Rigger and the post of Mukadam labourer has to be wasted out.

6. Arguments were heard and documents perused. The admitted position is that there has been a recommendation of the V Central Pay Commission for a two grade structure of SK and HS and out of HS there shall be a placement of MCM and percentage for all these grades has been duly specified. The same was generally effective from 01-01-1996. However, in so far certain trades are concerned, as a policy decision, the Respondents had implemented the ratio only from a future date (4th August 2006) instead of 01-01-1996. Annexure A-11 is thus, the restructuring of Rigger, which included the Mukadam of Labourer as well as Slingers. Out of 18 HS posts, four had been placed under MCM which constitutes 25 of the total HS. The list contains Mukadam of Labourer also, who are seniors to the applicant. Thus, preparation of the list has been strictly in accordance with the policy and no legal lacuna could be discerned from the same. The applicant was not found to be that senior so as to be accommodated as HS in the Annexure A-11 list. His claim for promotion under reservation has to be rejected as the respondents in their Affidavit filed on 17th July 2009 clearly stated that no post has been identified in the rigger trade for reservation for P.H. Persons. No one can compel the respondents that reservation should be in a particular trade. It is left to a committee that would have gone in for identification or the Head of the Department. Hence, the prayer for promotion under PH quota has to fail. Again, as regards the claim of the applicant that fresh seniority should be prepared as per the order of this tribunal and the same circulated before hand, and it is thereafter that promotion should be granted, it is seen from Annexure A-7 that the respondents have prepared the seniority list on 7th January 2008, while the order of this Tribunal vide Annexure A-12 is dated 10th March 2008. In all probability, the seniority list would not have been revised in quick succession, and also for the reason that the respondents are under the impression that Annexure A-12 order may not be applicable to the trade of Riggers, MUL and Slingers. Since the total number of persons in this trade is comparatively less an exercise has to be conducted to ascertain whether the list prepared on 7th

January 2008 vide Annexure A-7 is in conformity with the directions given by the Tribunal in the common order dated 10th March 2008 and if not the same be redone and before finalizing the same, draft seniority list should be circulated to all concerned. If the seniority list does not warrant any modification and the one prepared is in conformity with the requirement as spelt out in order at Annexure A-12, the applicant may be duly informed of the same.

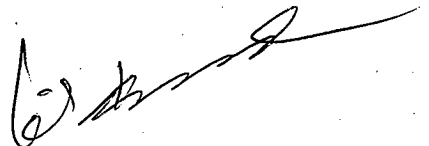
7. To sum up, the applicant is not entitled to be considered for promotion under the PH quota in view of non identification of any post in Rigger trade. As regards circulation of seniority list, the same should be there only when changes are warranted in the already prepared seniority list of 7th January 2008. The OA is disposed of with the above observation/direction. Time limit calendared for compliance with the order is four months from the date of communication of this order.

8. No costs.

(Dated, the 15th September, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.