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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 172/2003

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 172 / 2003

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants:- Sri Rishikesh Paul & another

Respondants:- U.O.I. & ors.

Advocate for the Applicants:- Mr. M. Chanda,
Mr. G.N. Chakraborty &

Advocate for the Respondants:- Mr. S. Nath,
Mr. A. Deb Roy,
Sr. C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>86490740</p> <p>26-5-2003</p> <p><i>[Signature]</i> 1/8 1/8/03</p> <p>Steps taken with envelops</p> <p>Notice forwarded & sent to OLS for being the respondents No 1 to 4 by Regd. AM.</p> <p>D/N_o 1674 & 1678</p> <p><i>[Signature]</i> 8/8/03</p> <p>7/8/03</p> <p>17-11-03</p>	<p>4.8.2003</p> <p>4.9.03</p> <p>23.10.03</p>	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. N.D. Dayal, Administrative Member.</p> <p>Heard Mr. M. Chanda, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records.</p> <p>List on 4.9.2003 for orders.</p> <p>Member <i>[Signature]</i> Vice-Chairman <i>[Signature]</i></p> <p>List on 23.10.03 for filing of written statement and further orders.</p> <p>Member <i>[Signature]</i> Vice-Chairman <i>[Signature]</i></p> <p>There is no Bench today. Adjourned to 18-11-03.</p> <p><i>[Signature]</i></p>

18.11.03 Present : The Hon'ble Mrs Lakshmi Swaminathan, Vice-Chairman
The Hon'ble Mr S.K.Naik, Administrative Member

Shri G.N.Chakraborty, learned counsel for the applicant and Shri A.Deb Roy, learned Sr.C.G.S.C for the respondents are present.

Written statement has been filed with copy to the opposite party.

List on 21.11.03 for hearing.

7/11/03
Member

JS
Vice-Chairman

pg

21.1.2004 Present: The Hon'ble Shri Bharat Bhushan, Member (J)
The Hon'ble Shri K. V. Prahladan, Member (A).

Heard counsel for the parties.
Judgment delivered in open Court, kept in separate sheets.

The O.A. is disposed of in terms of the order.

ICR Prasad
Member(A)

JS
Member(J)

bb

9/2/04

Copy of the Judgment has been sent to the Dy Sec. for Shri K. V. Prahladan as well as to the Dy Sec. for Shri Bharat Bhushan.

HS 16/2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~No.~~ No. 1111 172 of 2003.

DATE OF DECISION 21.1.2004.

.....**Sri Rishikesh Paul & Another.**.....**APPLICANT(S).**

.....**Mr. M. Chanda, G. N. Chakraborty & S. Nath,**.....**ADVOCATE FOR THE**
APPLICANT(S).

-VERSUS-

.....**Union of India & Others.**.....**RESPONDENT(S)**

.....**Mr. A. Deb. Roy, Sr. C. G. S. C.**.....**ADVOCATE FOR THE**
RESPONDENT(S).

THE HON'BLE MR. BHARAT BHUSHAN, JUDICIAL MEMBER.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other Benches ?
- Judgment delivered by Hon'ble Member (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.172/2003.

Date of Order : This, the 21st Day of January, 2004.

THE HON'BLE SHRI BHARAT BHUSHAN, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Sri Rishikesh Paul
S/o Late Harendra Kumar Paul
Fitter General Mechanic H.S.II
Office of the Garrison Engineer
Shillong.

2. Sri Dhan Bahadur Pradhan
S/o Late L.B.Bahadur
Fitter General Mechanic H.S.II
Office of the Garrison Engineer
Shillong.

. . . . Applicants.

By Advocates Mr.M.Chanda, G.N.Chakraborty & S.Nath.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Defence
New Delhi.

2. The Headquarter Chief Engineer
Eastern Command
Fort William
Kolkata.

3. The Command/ Works Engineer
S.E.Falls, Shillong-11.

4. The Army Headquarter Engineer-in
Chief's Branch, Kashmir House
P.O: New Delhi, New Delhi-110011.

5. The Garrison Engineer
Shillong.

. . . . Respondents.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R (O R A L)

BHARAT BHUSHAN, MEMBER(J) :

Mr.S.Nath, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents were present.

The two applicants were initially appointed as Mazdoors and later on promoted to the post of Motor Pump Attendant and redesignated as Fitter General Mechanic. It

21/1/04

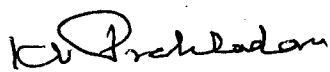
Contd./2


is stated that they have appeared in the Trade Test and have passed the said test as well. Consequently they submitted representations addressed to the respondent No.3 with the request to grant promotional benefits with retrospective effect, but the same has not been done so far. So that necessitated them to file the present O.A. The reliefs claimed in the present O.A. are as under :-

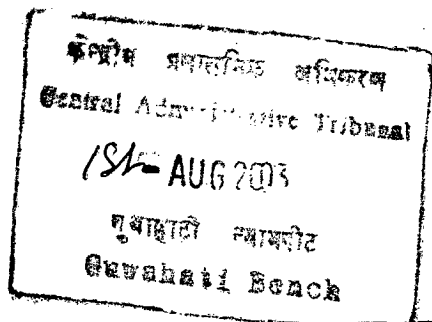
- "8.1. That the respondents be directed to promote the applicant to the cadre of F.G.M.(H.S. II) at least with effect from 31.1.1995 with all consequential service benefit and monetary benefit by necessary modification of the promotion order of the individual applicant in the cadre of F.G.M., H.S.I.
- 8.2 To direct the respondents to consider the promotion of the applicants in the cadre of F.G.M. H.S.I in the light of the instruction contained in the letter issued by the Govt. of India, dated 21.7.1994 (Annexure-II).
- 8.3 Costs of the application.
- 8.4 Any other relief(s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper."

The applicant No.2 had submitted a representation dated 4.1.2003 whereas the applicant No.1 had submitted representation dated 8.1.2003, -both addressed to the respondent No.3 with the request to grant promotional benefits with retrospective effect in terms of the order contained in letter dated 21.7.1994. It appears that the said representations of the applicants have so far not been disposed of. This being the case, in our view, the present O.A. can be disposed of at this stage by directing respondent Nos.2 & 3 to consider the representations of both the applicants and dispose them of within a period of two months from the date of receipt of the order by passing a reasoned and speaking order.

With this, the O.A. is disposed of accordingly.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(BHARAT BHUSHAN)
JUDICIAL MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O. A. NO. 172/2003

1. Sri Rishikesh Paul.

2. Sri Dhan Bahadur Pradhan

... Applicants

- Versus-

Union of India & Others

... Respondents

Lists of dates and synopsis of the case

- 1971 - Applicant no.1 was initially appointed as Mazdoor.
- 1967 - Applicant no.2 was initially appointed as Mazdoor.
- 1983 - Applicant no.1 was promoted to the post of Motor Pump Attendant.
- 06.07.1994 - Post of Motor Pump ^{attendant,} Operator was redesignated as Fitter General Mechanic vide Annexure-1.
- 21.07.1994 - Policy for promotion of FGM to FGM (HS-II & I) was issued vide Annexure-II.
- 31.03.1995 - FGM (SK) working under GE, Madras were promoted as FGM (HS-II) with all benefits
- 07.06.2001 - The applicants appeared in the trade test and passed the said trade test.
- 15.02.2002 - The applicants were promoted to the cadre of FGM HS-II. (Annexure-II)
- 13.11.2002 - The applicants submitted representations addressed to Respondent No.3 With the request to grant promotional benefit with retrospective effect in terms of the order contained in the letter dated 21.07.1994.
- 04.01.2003 - The applicant No.2 submitted representation to grant promotional benefit with retrospective effect in terms of the order contained in the letter dated 21.07.1994.
- 08.01.2003 - The applicant No.1 submitted another representation to grant promotional

Filed by me Applicant-
through:-
Subrata Nath
Advocate
Sankar
01/08/03

benefit with retrospective effect in terms of order contained in the letter dated 21.07.1994.

RELIEF (S) SOUGHT FOR

1. To direct the respondents to consider the promotion of the applicants to the post FGM (HS-II) with all consequential service benefits including seniority and monetary, by necessary modification of the promotion order of the individual applicants in the cadre of FGM HS-II, at least w. e. f. 31-3-1995.
2. To direct the respondents to consider the promotion of the applicants in the cadre of FGM HS-I in the light of the instruction contained in the letter issued by the Govt. of India, dated 21.07.1999: 1994.

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Filed by me Applicant-
for hearing Subroto Nath
Advocate
01/08/03

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No 172/2003

Sri Rishikesh Paul : Applicants

- Versus -

Union of India & Others: Respondents.

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Filed by

Date 01.08.03

Ran-
Advocate

Rishikesh Paul

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI
(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 172 /2003

BETWEEN

1. Sri Rishikesh Paul

Son of Late Harendra Kumar Paul
Fitter General Mechanic H.S.II
Office of the Garrison Engineer,
Shillong.

2. Sri Dhan Bahadur Pradhan,

Son of Late L.B.Bahadur,
Fitter General Mechanic H.S.II
Office of the Garrison Engineer,
Shillong.

-AND-

...Applicants

1. The Union of India,

Represented by the Secretary to the
Government of India, Ministry of Defence,
New Delhi.

2. The Headquarter Chief Engineer

Eastern Command,
Fort William
Kolkata

Rishikesh Paul

3. The Command Works Engineer
S.E.Falls, Shillong-11
4. The Army Headquarter Engineer-in
Chief's Branch, Kashmir House,
P.O. New Delhi, New Delhi-110011.
5. The Garrison Engineer
Shillong

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made praying for a direction upon the respondents to consider the case of the applicants for promotion to the post of Fitter General Mechanic (HS II) at least with effect from 31.3.1995 when their counter parts in other Regions were promoted with all consequential service benefits including seniority and for further consideration of their promotion to the cadre of F.G.M., H.S.-I.

2. Jurisdiction of the Tribunal.

The applicants declare that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

Rishi Kesh Patel

3. Limitation.

The applicants further declare that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicants are the citizens of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. All the applicants are presently working as Fitter General Mechanics, (in short FGM) H.S. II under the Garrison Engineer (P), MES, Shillong.
- 4.2 The applicants pray for permission to move this application jointly in a single application under Section 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules 1985 as the reliefs sought for in this application by the applicants are common, therefore they pray for granting leave to approach the Hon'ble Tribunal by a common application.
- 4.3 That the applicant no.1 was initially appointed as Mazdoor in the year 1971, under the Commandar Works Engineer, Shillong. Thereafter he was promoted to the post of Motor Pump Attendant in the year 1983. The applicant no.2 was initially appointed as Mazdoor in the year 1967 under Commandar Works Engineer, Shillong. Thereafter, he was promoted to the post of Motor Pump Attendant, ^{redesignated as P.H.O.} Thereafter the post was ^{again} re-designated as Fitter General Mechanic following the order of

Rishikesh Tad

Government of India issued bearing letter No. 6(1)/94/D(W-II), dated 6th July, 1994. In the said letter dated 6th July 1994 the Government of India, Ministry of Defence, New Delhi further stated that the re-designation as stated above would be entitled these categories for promotion to highly skilled grades as per the present benchmark percentage. It is further contended in the said letter that E-in-C's Branch will initiate action to amend the recruitment rules accordingly. And detail administrative instructions regarding training of the tradesman and their deployment trade tests for considering suitability/eligibility for higher grades etc. shall be issued by the E-in-C's Branch. It is further stated that with the concurrence of Ministry of Defence (Finance Division) and the aforesaid letter dated 6.7.1994 was duly circulated by the Government of India, Ministry of Defence to all the Commands for further necessary action. Be it stated that both the applicants were promoted to the cadre of Motor Pump Attendant during the year 1981 to 1983.

A copy of the Government of India's letter dated 6th July 1994 is annexed as **Annexure-I**.

- 4.4 That, pursuant to the order dated 6th July, 1994 the Army Headquarter Engineer-in-Chief's Branch, New Delhi further issued detail instruction/policy for promotion of existing Fitter General Mechanics to the cadre of F.G.M. H.S.II and as well as FGM HS-I, vide letter

Rishi Kesh Paul

bearing No. 91026/FGM/EIC(3), dated 21st July 1994. In the aforesaid letter dated 21st July 1994 detail procedure of promotion has been laid down so far categories of re-designated FGM are concerned.

A copy of the letter dated 21st July 1994 issued by the army Headquarter, New Delhi is annexed as **Annexure-II.**

4.5 That it is stated that in the letter dated 21st July 1994, more particularly in paragraph 2.2, it is specifically directed to lower formations to notify the 'Re-designation' in the respective unit Part II orders as a first step without any further delay. The Re-designation should be "Fitter General Mechanic (SK) with effect from 6.7.1994 without changes in pay structure.

In paragraph 5 of the letter dated 21.7.1994 it is further stated that with the Re-designation of the above trades, the personnel will be eligible for Fitter General Mechanic HS II promotion subject to passing of Trade Test and having rendered a minimum of three years service.

It is relevant to mention here that in paragraph 7 of the aforesaid letter it is also stated that the existing ratio as per fitment policy is 65% (SK), 20% (H.S.-II), 15% (HS-I). However, with the introduction of re-designated trade i.e. FGM (SK), it has now been decided to allow a total of 35% (20+15) promotions

Rishi Kestral

would be made at HS - II level only in the event of completion of requisite years of service as per recruitment rule subject to passing of Trade Test as a Welfare Measure. The relevant portion of paragraph 7 of letter dated 21.7.1994 is quoted below :

"7. Promotion to Fitter Gen Mech (SK), HS II and HS I.

The existing ratio as per Fitment Policy is 65% (SK) : 20% (HS II) : 15% (HS I). However, with the introduction of re-designated Trade i.e. Fitter General Mech (SK), a few personnel will initially become eligible for promotion to HS II after passing Trade Test. Skilled personnel thus promoted to HS II will eventually become eligible for promotion to HS I only after completion of requisite years of service as per Recruitment Rules subject to passing of Trade Test. As a welfare measure, it has been decided to allow :

- i) 20% promotions to HS II Level
- ii) and further 15% promotion to HS-II level against 15% vacancies of HS-I

Thus, total of 35% (20+15) promotions would be made at HS II Level only. The promotion of 15% against the vacancy of HS I would be made as one time measure as a special case before 31st Mar 95. TT and DPC for these 15%

Rishi Keshav

vacancies shall be conducted after a clear gap of one month of full utilization of 20% vacancies. After this deadline i.e. 31.3.95 no promotion at HS II Level against the vacancies of HS I would be made under any circumstances. Attention of CEs Command is hereby drawn to Rule 43 of FR according to which excess appointment in a lower rank/Gde may be made against vacancies left unfilled in a higher rank/Gde. For each vacancy in a higher rank/Gde only one extra appointment in a lower rank/Gde is admissible.

8. Inter se seniority

Consequent on re-designation of the above Trades, a doubt may arise as to how the Inter-se seniority is to be fixed between these trades. It is clarified that inter-se seniority will reckon from the date of their placement in the scale of Rs. 260-400(pre revised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the senior. The basis of fixing inter-se-seniority as aforesaid will

Rishi Kesh Paul

equally apply to respective Mate (SS) Trades.
A combined seniority as per their placement
be maintained for the purpose of promotion."

It is quite clear from the Army Headquarter's letter dated 21.7.1994 that total of 35% (20+15) promotion would be made at HSG-II level only and the promotion 15% against the vacancy of H.S. I would be made an one time measure as a special case before 31st March 1995. It is further made clear in the aforesaid letter that Trade Test and DPC for these 15% vacancies should be conducted after a clear one month of full utilization of 20% vacancies and after this deadline i.e. 31st March, 1995 no promotion at H.S. II level against the vacancies of H.S. I would be made under any circumstances.

It is stated that the aforesaid instruction contained in the letter dated 21.7.1994 was not followed in this Region as in the manner indicated in the letter mentioned above for the reasons best known to the respondents. As a result of non implementation of the order contained in the letter dated 21.7.1994 in time the present applicants have suffered loss in the matter of seniority, promotional prospect and also financial loss in the cadre of FGM H.S. II. Be it stated that in all other regions of the country, except the N.E. Region the order contained in the letter dated 21.7.1994 had been implemented in time and the promotion orders were also effected within the time

Rishikesh Paul

scheduled as stipulated in the letter dated 21.7.1994. In this connection, it may be stated that in the office of the Garrison Engineer (P), Madras all eligible FGM (SK) were promoted to the cadre of FGM H.S. II vide letter bearing No. 1033/178/EIB dated 3rd June, 1995. However, the promotion of the 16 eligible FGM (SK) were given benefit of promotion with effect from 31st March' 95 and also to other similarly circumstanced employees were also given the benefit of promotion with effect from 31.3.1995 and fixation of pay benefit also were accordingly given in the pay scale of Rs. 1200-1800/-. But the present applicants were denied the said benefit of promotion with effect from 31.3.1995 and as a result, the present applicants are incurring huge financial loss each and every month since 31.3.1995 and the applicants are also loosing the benefit of Annual increments since 31.3.1995. Be it stated that after repeated approach of the applicants before the competent authority the promotion of the applicants have now been effected in the cadre of FGM-HS-II with effect from 15.2.2002.

The denial of the promotional benefit to the cadre of FGM HS II with effect from 31.3.1995 is highly arbitrary, unfair and illegal and the same is violative of Article 14 of the Constitution of India.

Copy of the promotion order dated 3rd June 1995 is annexed as **Annexure-III**.

Rishi Keshav

4.6 That it is stated that the present applicants had attained the eligibility for promotion of FGM HS II long back in terms of clause-V of the letter dated 21.7.94 wherein it is stated as follows :

"5. Highly skilled Grades for Fitter General Mechanic.

With the re-designation of the above trades, the personnel would be eligible for promotion to Fitter Gen Mechanic HS II subject to passing Trade Test and having rendered a minimum of three years service. Similarly, the existing Mazdoor, Chowkidar and Safaiwals could be eligible for promotion to Mate Fitter Gen Mech (SS) subject to passing of trade test, and having rendered a minimum of three years service in the grade subject to availability of vacancies.

It is relevant to mention here that the promotion of the applicants to the cadre of FGM HS II now effected vide Part -II order No. 19 dated 13th May, 2002 issued by the Garrison Engineer (P), Shillong, granting the benefit of promotion with effect from 15.2.2002 only in the light of the instructions contained in the order of letter dated 21.7.1994. Therefore, it could be presumed that the present applicants were eligible for promotion to the cadre of FGM HS-II on the date of issuance of letter dated 21.7.1994 and vacancies were also available out of 35%

Rishi Keshav

quota reserved for promotion as an one time measure as per order contained in the letter dated 21.7.1994.

In view of the above factual position and since the applicants have passed the Trade Test conducted only on 7th June 2001 and also on considering the fact that they have now been promoted to the cadre of FGM HS II after the process of selection, therefore, there is no difficulty on the part of the respondents to grant the antedated promotional benefit in the cadre of FGM HS II at least with effect from 31.3.1995 as granted to their other counterparts working in different regions of the country.

A copy of the promotion order in respect of the applicants dated 13.5.2002 is annexed as Annexure-IV.

- 4.7 That your applicants further beg to state that one Sri Ram Briksh Baither MES 228578 was promoted from the post of FGM (SK) to FGM HS II without any Trade Test vide G.E. Air Force, Shillong PTO SER No. 23 dated 9.6.1997 with effect from 6.5.1997 even after the issuance of the order dated 21.7.1994, therefore the present applicants who have appeared in the Trade Test held on 7.6.2001 and passed the said Trade Test as such entitled to antedated promotion at least with effect from 31.3.1995 with all consequential benefit including monetary benefit.

Rishi Kesh Tail

4.8 That it is stated that due to non consideration of the promotion of the present applicants within the time schedule contained in the Government order dated 21.7.1994 the present applicants incurring huge financial loss each and every month, every day whereas counterparts of the applicants earning higher salary as because their basic pay in the scale of Rs. 1200-1800 (revised Res. 4000-6000) in fact has gone very high but the present applicants are much below in the slab of the aforesaid scales due to non fixation of pay with effect from 31.3.1995. As such, applicants are highly discriminated in the matter of promotion to the cadre of FGM HS II and the action and inaction of the respondents is violative of the Article 14 of the Constitution in as much as the Government policy has been implemented in selective areas on pick and choose basis and on the basis of the said Government policy contained in the letter dated 21.7.1994 the present applicants have been promoted to the cadre of FGM HS II only with effect from 15.2.2002 vide P.T.O. No. 19 dated 13.5.2002.

4.9 That your applicant nos. 1 and 2 in fact submitted detailed representations on 13.11.2002 addressed to the Commandar Works Engineer, Shillong with the request to grant promotional benefit with retrospective effect in terms of the order contained in the letter dated 21st July, 1994 but to no result.

Rishi Kest Paul

In the circumstances stated above the applicants are entitled to fixation benefit in the pay scale of Rs. 1200-1800 (revised Rs. 4000-6000) w.e.f. 31.3.1995 with all consequential service benefits including monetary benefit. It is further submitted that the copy of promotion order of applicant no2 could not be annexed herewith. However, the same shall be made available before the Hon'ble Court at the time of hearing.

Copies of the representations dated 13.11.2002, are annexed as **Annexure- V (series)**.

4.10 That your applicants submitted representations March, 13.11.2002 addressed to the Headquarter, Commander Works Engineer, Shillong and also submitted representation on 4th January, 2003 and 8.1.2003 with a request to grant promotional benefit with retrospective effect in terms of the order contained in the letter dated 21st July, 1994 but to no result. In the compelling circumstances applicants finding no other alternative but to approach this Hon'ble Tribunal for grant of adequate relief i.e. for a direction to the respondents for antedating the promotion of the applicants with effect from 31.3.1995 with all consequential service benefits including monetary benefit.

Copy of the representations dated 4.1.2003 and 8.1.2003 are annexed as **Annexure-VI (Series)**.

Rish'Kesh Paul

- 4.11 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

- 5.1 For that, the instructions contained in the letter dated 21.7.1994 for granting benefit of promotion in the cadre of FGM HS II within the specified time schedule has not been implemented in the N.E. Region in due time whereas the benefit of promotion provided in the said letter dated 21.7.1994 extended to the counterparts of the applicants working in Chennai and other parts of the country with effect from 31.3.1995 but the applicants were granted promotion to the cadre of FGM HS II only with effect from 15.2.2002, as such the action of the respondents are highly arbitrary, unfair, illegal and the said action is violative of Article 14 of the Constitution.
- 5.2 For that, the applicants are suffering huge financial loss, as well as loss in promotion prospect due to delayed promotion in the cadre of FGM HS II.
- 5.3 For that, the applicants had attained eligibility long back in terms of the instruction contained in the Govt. of India letter dated 21.7.1994, as such they could have been promoted to the cadre of FGM, HS II with effect from 31.3.1995.

Rishi Keshul

- 5.4 For that, the applicants being similarly situated like those, FGM working in Chennai under the same respondents, Government of India and in the same department cannot be discriminated in the matter of promotion to the cadre of FGM HS II & I.
- 5.5 For that, the delayed promotion has adversely affected the service prospect of the applicants as well as it has caused loss in emoluments which is recurring in nature, as such the applicants are meted out with hostile discrimination.
- 5.6 For that, non-fixation of benefit in the pay scale of Rs. 1200-1800 (revised Rs. 4000-6000) causing financial loss each and every month to the applicants.
- 5.7 For that the applicants had passed the trade test as well as selected for promotion to the cadre of FGM HS II but promoted to the aforesaid cadre only w.e.f. 15.2.2002, such discrimination led to civil consequences.
- 5.8 For that the applicants submitted representations for grant of similar benefits of promotion as per instructions contained in the letter dated 21.7.1994 by ante dating their promotion with effect 31.3.1995 but to no result.

6. Details of remedies exhausted.

That the applicants states that they had exhausted all the remedies available to them and there is no other

Rishi Keshav

alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the respondents be directed to promote the applicant to the cadre of F.G.M. (H.S.II) at least with effect from 31.3.1995 with all consequential service benefit and monetary benefit by necessary modification of the promotion order of the individual applicant in the cadre of F.G.M., H.S-I.

Rishi Keshpal

26

8.2 To direct the respondents to consider the promotion of the applicants in the cadre of F.G.M. H.S. I in the light of the instruction contained in the letter issued by the Govt. of India, dated 21.7.1994 (Annexure-II).

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to make an observation that the pendency of this application shall not be a bar for the respondents to consider the case of the applicants.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i)	I. P. O. No.	:	86 - 490740
ii)	Date of Issue	:	26-5-2003,
iii)	Issued from	:	C.P.O. Gurwahit.
iv)	Payable at	:	C.P.O. Gurwahit.

12. List of enclosures.

Rishikeshlak

VERIFICATION

I, Shri Hrishikesh Paul, Son of Harendra Kumar Paul, working as FGM HS II, Office of the HS II, office of the Garrison Engineer, Shillong, one of the applicants in the instant application, duly authorized by the other applicants to verify the statements made in this application and to sign this verification. Accordingly I declare that the statements made in paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to My legal advice which I believe to be true. I have not suppressed any material fact.

And I sign this verification on this the 26th day of July, 2003.

Rishikesh Paul

No. 6 (1)/94/D (W-II)
Government of India
Ministry of Defence
New Delhi the 6th July 1994

To
The Chief of Army Staff

Subject : Grant of promotional prospects to industrial workers of HAS.

Based on the decision taken by the Government in pursuance of the orders of CAT Bombay Bench in O.A. No. 704/90 filed by Shri T.Narayana Murthy & Others, I am directed to convey the sanction of the Government to the following :-

1) Redesignation of the following jobs as Fitter General Mechanic :

- (a) Pump House Operatore
- (b) Driver Engine Static
- (c) Mechanic Petrol & Diesel Engines
- (d) Driver Mobile Plant
- (e) Operator Earth Moving Machinery
- (f) Operator Pneumatic Tools
- (g) Boiler Attendant
- (h) Lift Mechanic (Existing incumbents only)

The Redesignation as above will entitle these categories for promotion to Highly Skilled Grades as per the present bench mark percentage.

(ii) The Upholsterer may be allowed option for induction in Carpenter's trade subject to his passing provide promotional avenues to Caneman which is the feeder category for Upholsterer.

2. No fresh recruitment as Lift Mechanic will be made.

3. E-in-C's Branch will initiate action to amend the Recruitment Rules accordingly.

4. Detailed administrative instructions regarding training of the tradesman their deployment trade tests for considering suitability/eligibility, for higher grades etc. shall be issued by E-in-C's Branch.

5. The expenditure involved shall be debitable to the respective Head of the Defence Services Estimates.

Contd.....2/-

Handwritten notes:
11/8/94
1/8/94
1/8/94

6. The orders will take effect from the date of issue.
7. This issues with the concurrence of Ministry of Defence (Finance Division) vide their ID No. 1248/DFA (WORKS) of 1994.

Sd/- Illegible

(D.R.Dhankani)

Under Secretary to the Government of India

Copy to :

CGDA, New Delhi - 2 copies

DADE, New Delhi - 2 copies

Dy. Director of Audit Defence Services - Calcutta/Pune/Meerut/Dahradun/Patna (2 copies each)

Controller of Defence Accounts Eastern Command 2 copies

"	"	"	Central Command (one copy signed in ink)
"	"	"	Western Command
"	"	"	Southern Command
"	"	"	Northern Command
"	"	"	Bangalore
"	"	"	Gauhati

E-in-C's Branch/Army HQs - 50 copies
Finance Division

Attended
Sd/-
A. W. K.
02/02/03

Annexure 'N'

Army Headquarters
Engineer-in-Chief's Branch
Rashtreevi House
D-2 PC, New Delhi - 110 011

21 Jul 94

No. 91026/FEM/E10(3)

Chief Engineer
53 Pune -1
38 Calcutta
40 Chandimandir
20 Lucknow
NO S/o 56 APO

Unit JME Pune
MSG & Centre, Bangalore
BG & Centre, Roorkee
BEG & Centre, Mirkee

FITMENT OF INDUSTRIAL WORKERS IN MES :
LEFT OUT CATEGORIES

1. A copy of Government of India Min of Defence letter No.5(1)/24/0(II) dt 06 Jul 94 as amended dt 08 Jul 94 accordingly Govt sanction for certain left out categories in Fitment Policy, as a result of a C-T case is forwarded herewith. Implementation orders are amplified in the succeeding para's :-

2.1 Redesignation of Trades

Consequent to issue of above Govt letter, the following Trades have been redesignated as Fitter General Mechanic.

- a) Pump House Operator
- b) Driver in the Static
- c) Mechanic Petrol & Diesel Engine
- d) Driver Mobile Plant
- e) Operator Earth Moving Machinery
- f) Operator Pneumatic Tools
- g) Boiler attendant
- h) Lift Mechanic (Existing incumbents only)

2.2 CEs Command are advised to issue directions to lower formations to notify the 'Redesignation' in the respective Unit Part II Orders as a first step without any further delay. The Redesignation should be 'Fitter General Mechanic (SK)' w.e.f. 6.7.94, without change in pay structure.

3.1 Option to allow Upholsterer for induction in Carpenter's Trade

The existing Upholsterer may be allowed option for induction in Carpenter's Trade subject to passing of Trade Test of Carpenter (SK) so that the Upholsterer (SK) after induction to Carpenter (SK) shall continue to be considered for promotion upto Carpenter Hs 1 level subject to passing of Trade Test at various level. The Upholsterer (SK) when inducted to Carpenter (SK) will be considered as reclassification only and not Promotion, without change in pay structure.

contd...2/-

Accepted.
Sd/-
Advocate
01/08/03.

3.2. Caneman

Similarly the Caneman (50) Trade which is already a feeder Category for Upholsterer (5K) could be considered for promotion to Carpenter (5K) after promotion to Upholsterer (5K) and passing the Trade Test for Carpenter (5K).

4. No Fresh Recruitment in the trade of Lift Mechanic

The above Govt order now indicates that the existing Lift Mechanic may be redesignated as Fitter General Mechanic (5K). Recruitment of Lift Mechanic has been dispensed with from 06.7.94. CEs Command are advised to issue specific directive in this regard to all Units not to recruit/promote Lift Mechanic from 06.7.94.

5. Highly skilled Grades for Fitter General Mechanic

With the resignation of the above trades, the personnel would be eligible for promotion to Fitter General Mechanic HS II subject to passing of Trade Test and having rendered a minimum of three years service. Similarly, the existing Mazdoor, Chowkidar and Safaiwala could be eligible for promotion to Mate Fitter Gen Mech (50) subject to passing of trade test, and having rendered a minimum of three years service in the grade subject to availability of vacancies.

6. Trade Test

Till the revised RIs and revised Syllabi for Mate Fitter Gen Mechanic (50), Fitter Gen Mech (5K), HS II and HS I are issued, CEs Command are advised to frame their own syllabi, keeping in view the job requirement. Simultaneously CEs Command are requested to forward Draft Syllabi for the above Trade Test to this HQ by 31 Aug 94.

7. Promotion to Fitter Gen Mech (5K), HS II and HS I

The existing ratio as per Fitment Policy is 65 % (5K): 20 % (HS II) : 15 % (HS I). However, with the introduction of redesignated Trade i.e. Fitter General Mech (5K), a few personnel will initially become eligible for promotion to HS II after passing Trade Test. Skilled personnel thus promoted to HS II will eventually become eligible for promotion to HS I only after completion of requisite years of service as per recruitment rules subject to passing of Trade Test. As a welfare measure, it has been decided to allow :

- i) 20 % promotions to HS II Level
- ii) and further 15 % promotion to HS I Level against 15 % vacancies of HS I.

Thus a total of 35 % (20+15) promotions would be made at HS II Level only. The promotion of 15 % against the vacancy of HS I would be made as a one time measure as a special case before 31 Mar 95. If any APC for these 15 % vacancies shall be conducted after a clear gap of one month of full utilisation of 20 % vacancies. After this period i.e. 31.3.95 no promotion at HS II Level against the vacancies of HS I would be made under any circumstances. Attention of CEs Command is hereby drawn to Rule 43 of FR according to which excess appointment in a lower rank/grade may be made against vacancies left unfilled in a higher rank/grade. For each vacancy in a higher rank/grade only one extra appointment in a lower rank/grade is admissible.

cont...5-

Approved
Sd/-
Advocate
5/8/93

8. Inter-Se-Seniority

Consequent on redesignation of the above Trades, a doubt may arise as to how the Inter-Se-Seniority is to be fixed between these trades. It is clarified that inter-se-seniority will reckon from the date of their placement in the scale of Rs. 250-400 (pre-revised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the Senior. The basis of fixing inter-se-seniority as aforesaid will equally apply to respective Mate (SS) Trades. A combined seniority as per their placement be maintained for the purpose of promotion.

9. New Recruits :

Future entry into Trade, made after exhausting the promotional and other avenues, will be as Fitter Gen Mech (SK) at semi-skilled level with III qualification in terms of GOI Min of Def letter No. 3810/DS(O'M)/Civ-I/84 dt 15.10.84. The newly inducted direct recruits if any will be recruited in the Semi-skilled Grade and on satisfactory completion of 2 years of Service in that Grade will be considered for promotion to the skilled Grade by DPC. Please refer para 3 of this HQ letter No. 90270/39/E10 dt 11 Jan 85.

10. Posting as per GPO 73/73

Personnel posted from one CWT to another will have seniority from the date of TDS in new Unit (under different CWT) for the purpose of promotion only. Past service rendered in the former CWT area, will not repeat not, count for the purpose of promotion since Industrial Personnel are on the area based seniority.

11. Effective date of promotions:

The subject Govt orders are effective from 06 Jul 84. All the existing tradesmen referred to in Para 2.1 above will be redesignated as Fitter Gen Mech (SK) from 06 Jul 84. However, effective date of their further promotions to HS II would be on the date of assuming new appointment. Under no circumstances the effective date would be given as 06 Jul 84 for the new assumption promotion.

12. CAT Cases

In the past there have been many CAT cases due to wrong implementation of Three Grade structure. Further, in certain cases the new recruits were given directly the skilled Grade instead of inducting them at the Semi-skilled Grade for 2 years. As such strict instructions be issued by CEs Command for the implementation of the above orders meticulously, without any deviation. Any lapse on the part of officials responsible will be viewed seriously and stern action taken against them. In case of any doubt, the unit may refer the cases to respective CEs Command/CE Zone who in turn will refer such cases (if not resolved at their level) to this HQ for a decision.

contd.../-

Alleged
Rat. Adv.
9/12/83

13. Deployment of Personnel after re-designation

There will be no change in the existing deployment of above personnel, even after their redesignation as Fitter Gen Mech for the time being. However, in due course of time all Fitter Gen Mech are expected to perform any of the duties of the tradesman mentioned in para 2.1 above irrespective of their original/old trades. Initial difficulties during transition stage will have to be borne without sacrificing the functional efficiency. As such CEs Command are requested to impress upon their lower formations in deployment during the transformation stage as per the local and functional requirement.

14. Training

Now as per the redesignated post, the above Tradesmen are expected to know the job in various trades referred to above for assignment of job as per functional requirement. In order to have adequate skill in the trades, CEs Command are requested to formulate necessary Training Programmes for considering suitability/eligibility for higher grades.

SI/-xxxxxx

(MH Buch)

Col

Dir EIC

for 3-in-C

Copy to :-

CSCC - Alongwith a copy of Govt letter No 5(1)/94/3(W-11) dt 06.7.94 and dt 08.7.94. CSCC section is requested to issue necessary amendment to Rds. Draft LR may please be shown to EIC(3) before processing the case to MOD.

E2 (PSC) 0 - for comments if any
E4 (Utility) 0

Assd
Secy.
Advocate
5/10/03

Tele : 402077

Garrison Engineer (1)
Thomas Mount
Barrack No 2 Military
Pallavaram, Madras-40

1033/176/E1B

3 Jun '95

AGE E/M Mount

TEMPORARY PROMOTION : INDUSTRIAL PERSONNEL

1. It has been intimated by CME Madras vide letter No : 11930/6905/E1R(DPC) dated 24 May '95 that the undermentioned individuals are selected for promotion to the post as shown against each and posted to the post indicated against their names, in the interest of State.

Ser No.	MES No. Name and Designation	Promoted to	Present from	Posted to
1.	MES-361548 B Narasimhalu, FGM(SK)	FGM HS II	GE(P) (I) A & D Avadi	In with
2.	MES-408623 MSP Pillai	FGM HS II	GE(P) Thomas Mount	In with
3.	MES-15856 CS Dhanapal, FGM (SK)	-do-	-do-	In with
4.	MES-135784 PR Rajagopalan, FGM (SK)	-do-	-do-	In with
5.	MES-104200 VS Benedict, FGM(SK)	-do-	-do-	In with
6.	MES-135972 C Sankaralingam, FGM(SK)	-do-	-do-	In with
7.	MES-135510 K Arjunan, FGM (SK)	-do-	-do-	In with
8.	MES-112452 R Ganesan, FGM (SK)	-do-	-do-	In with
9.	105805 AT Sankaralingam, FGM (SK)	-do-	-do-	In with
10.	108817 AT Vasudevan, FGM (SK)	-do-	-do-	In with

Affected
Sankar
A. Vasudevan
6/10/95

Ser No.	MES No, Name and Designation S/Shri	Promoted to	Present from	Posted to	Move to be completed
11.	420005 PS Ravindrakurup, FGM (SK)	FGM HS (II)	OK (P) Thomas Mount	In 11th	-
12.	183882 ADJ Xavier Raj, FGM(SK)	-do-	-do-	-do-	-
13.	170250 R Muralidharan, FGM(SK)	-do-	-do-	-do-	-
14.	134616 VU Palanivelu, FGM(SK)	-do-	-do-	-do-	-
15.	189030 K Kalaiselvam, FGM (SK)	-do-	-do-	-do-	-
16.	135980 A Santiago, FGM(SK)	-do-	-do-	-do-	-

2. Attention of promotees will be drawn to G of I, M.O. Delhi letter No 25(18)/86/3409/S/D (Appts) dt 17 Dec 79, No 22 (11)/66/139/S/D (Appts) dt 20 Apr 78 and Min of Home Affairs, Dept of Pers and Admin Reforms Om No 22034/3/81/Estt(D) dt 01 Oct 77. According to which declining/refusal or promotion or not acceptable to appointing authority will result in their not being eligible for a promotion for a period of 01 year from the date of declining/refusal in accepted by the competent authority. The individual on eventual promotion will loose seniority vis-a-vis their erstwhile juniors promoted into higher grade earlier than. In case the reasons are not acceptable, disciplinary action will be taken as provided in CCS (CCA) Rules, 1965 for refusing promotion as clarified vide E-in-C's Br. Adv letter No 43319/Br Adv dt 17.77.

3. They will be placed in position wef 31 Mar 80 and seniority in the higher grade will also be effective from 31 Mar 80.

(M. K. Panjra)
Major
Garrison Engineer (M)

Copy to :-

CWE Madras - For information the individuals promoted by letter cited at reference have not been taken up for any disciplinary case/court of enquiry.

Internal

EIR Section - For information and further necessary action.

Alleged
S. Adv
Advocate
6/10/83

36

ST. THOMAS MOUNT, PVM, PTO.No.7 Dt 11/2/95 Sh.No.4 of 9
=====

PART IV (A) (i) Contd.

9. 112496 R Balakrishnan P/Pipe. 15/12/95 Com.leave 1 day
(CK) on MC debitible
to 2 days HPL.
16/12/95 Rejoined duty.
28/12/95 2 days
10/1/95 Rejoined duty.

Eql FPL:23 HPL:228

10. 112451 PR Jothilingam FGM(3K) 21/11/95 FPL 2 days
23/11/95 Rejoined duty
28/11/95 Com.leave 40 days
on MC debitible to
30 days HPL.
07/01/95 Rejoined duty(Shift)

Bal FPL:46 HPL:151

FIXATION OF PAY
11. 112452 R Ganesan

FGM HS 31/3/95 Pay fixed at Rs.1290/-
II w.e.f 31/3/95 with
DNI/1/3/96 in the
scale of Rs.1200-30-
1440-EE-30-1800/-
provided no non
qualifying service
intervened.

Authy: Pay fixation approved by RAO (MES)
Madras letter No. RAM/GEF/242/GC dt 2/1/96
received under CE SC Pune letter No.
170101/152/518/EIR(P/E/Gp-I) dated 3/2/95.

12. 108817 AT Vasudevan FGM HS 31/3/95 Pay fixed at Rs.1290/-
II w.e.f 31/3/95 with
DNI/1/3/96 in the
scale of Rs.1200-30-
1440-EE-30-1800/- pro-
vided no non qualify-
ing service intervened.

Authy: Pay fixation approved by RAO (MES)
Madras letter No. RAM/GEF/242/GC dt 2/1/96
received under CE SC Pune letter No.
170101/152/517/EIR(P/E/Gp-I) dated 3/2/96.

13. 135919 K Arjunan FGM HS 31/3/95 Pay fixed at Rs.1290/-
II w.e.f 31/3/95 with
DNI/1/3/96 in the
scale of Rs.1200-30-
1440-EE-30-1800/- pro-
vided no non qualifying
service intervened.

Authy: Pay fixation approved by RAO (MES)
Madras letter No. RAM/GEF/242/GC dt 2/1/96
received under CE SC Pune letter No.
170101/152/515/EIR(P/E/Gp-I) dt 3/2/96.

14. 408628 MS Parthan Pillai FGM HS 31/3/95 Pay fixed at Rs.1290/-
II w.e.f 31/3/95 with
DNI/1/3/96 in the
scale of Rs.1200-30-
1440-EE-30-1800/- pro-
vided no non qualifying
service intervened.

Authy: Pay fixation approved by RAO (MES)
Madras letter No. RAM/GEF/242/GC dt 2/1/96
received under CE SC Pune letter No.
170101/152/514/EIR(P/E/Gp-I) dt 3/2/96.

Accepted
Sd/-
4/1/96

ACE TECH
For Signature

PART IV (A) (i) Contd.

Affected
Lab & provide
01/08/13

GE SHILLONG PART II ORDER NO.19 DATED 13 MAY 02 Sheet No.8 of

2 3 4 5 6

PART IV (CONTD.....)

PROMOTION

15-2-02
(FN)

Promoted from FGM(SK) to FGM:HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.

48. MES/229150 Shri. 15-2-02
Bindeswar Singh, FGM(SK)(FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.

✓ 49. MES/229000 Shri 15-2-02
Rajendra Paswan, FGM(SK) (FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.

50 JES 722110 Shri 15-2-02
Rishikesh Paul, FGM(SK)(FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.

✓ 51. MES/229010 Shri Pherbok Diengcoh, EGM (SK). 15-2-02 (FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wcf the same date in the scale of pay Rs.4000-100-6000/-.

52. MES/223507 Shri
Muktan Singh,
FGM(SK)

15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.

Auth: Sl.No.47 to 52 : CWE Shillong letter No.1455/DPC/2001/114/
ELA dated 15 Feb 2002.

53. MES/229143 Shri 15-2-02
C W Lama, FGM(SK) (FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-120-6000/-.

✓ 54. MFS/229527 Shri N C Paul, FGM (SK) 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II and placed in position wef the same date in the scale of pay Rs.4000-100-6000/-.

Auth : Sl.No.53 & 54 :CWE Shillong letter No.1455/DFC/2001/181/ETA
dated 19 Apr 2002.

Contd.....P/9

Affected
South
America
07/08/03

To,

The Commander Works Engineer,
S.M. Falls, Shillong - 011

(Through Proper channel)

Sub : Prayer for conferment of promotional benefit
to HS II with retrospective effect and allowing
to sit for IT for HS I

Sir,

With reference to the subject cited above, I have the honour to lay down the following few lines for your kind information and immediate necessary action.

That the Army H.Q., E-in-C Branch, Kashmir House, New Delhi, vide its letter No. 21026/FGM/ELC(3) dated 21st July 1994 issued a circular concerning left out categories in Fitment & Policy, MES in furtherance of a CAC case. The said letter also contained some directions to be implemented by the Respective commands regarding promotion to HS II and HS I in F.G.M Cadre, within 31st March, 1995.

That subsequent to the issuance of the aforesaid letter, some incumbents serving in the F.G.M Cadre became illegible for promotion which was to be considered by the Department before the 31st March, 1995. By virtue of the fulfilment of eligibility criteria as contained in the said letter, I also became eligible for promotion.

That inspite of the fact of my eligibility and several representations on my part, I was not given promotion to HS II in the due time which came only on 15th February, 2002, in gross violation of the directions contained in the aforesaid letter which has caused irreparable loss to my service career.

That it may be stated herein that one Shri. Ram Briksh Baitha and one (L) P.R. Lapang, who were similarly situated with me was given promotion to HS II long back in the year 1996 without conducting any Trade Test, but I was not given similar benefit by the Department without any reasonable cause.

That as the action of the Department resulted into great irregularity, discrimination and illegality I immediately approached the Department which in return repeatedly promised to look after the entire matter and would do justice for redressal of my grievance, but till date no action is taken by the Department.

That now it has been learnt that a Trade Test of eligible candidates would be held on 15th and 16th November, 2002 at Shillong which means the eligible F.G.M (SK) would be considered for HS II and HS II would be considered for HS I, but due to delay in my promotion as HS II apparently for no fault of my own, I would not be able to sit for HS I which would result into another jolt in my service career.

In the facts and circumstances, I therefore, request you to kindly confer me the status of HS II with retrospective effect i.e. from the date as per directions contained in Letter dated 21st July, 1994, and/or from the date from which the said Shri. Ram Briksh Baitha and Late Mr. Lapang were promoted and also allow me to sit for Trade Test to be conducted on 15th and 16th November, 2002, for HS I.

And for which act of your kindness I shall remain grateful to you.

Thanking you.

Yours faithfully,

Dated, Shillong 13/11/2002
The Nov'2002.

Copy to :

The Chief Engineer for info. and
Shillong Zone. necessary act. please.

MES.No. 229/170
Name. R.K. Paul
Designation. F.G.M-HS II
Unit : G.E. Shillong

Affected
Nob.
A. K. Paul
5/11/03

To,

The Commander Works Engineer,
S.E. Falls, Shillong - 791 011

-31-

Annexure-V (Serial)
40

(Through Proper channel)

Sub : Prayer for conferment of promotional benefit
to HS II with retrospective effect and allowing
to sit for IT for HS I

Sir,

With reference to the subject cited above, I have the honour to lay down the following few lines for your kind information and immediate necessary action.

That the Army H.Q., E-1n-C Branch, Kashmir House, New Delhi, vide its letter No. 91026/FGM/EIC(3) dated 21st July 1994 issued a circular concerning left out categories in Fitment & Policy, MES in furtherance of a CAS case. The said letter also contained some directions to be implemented by the Respective commands regarding promotion to HS II and HS I in F.G.M Cadre, within 31st March, 1995.

That subsequent to the issuance of the aforesaid letter, some incumbents serving in the F.G.M Cadre became illegible for promotion which was to be considered by the Department before the 31st March, 1995. By virtue of the fulfilment of eligibility criteria as contained in the said letter, I also became eligible for promotion.

That inspite of the fact of my eligibility and several representations on my part, I was not given promotion to HS II in the due time which came only on 15th February, 2002, in gross violation of the directions contained in the aforesaid letter which has caused irreparable loss to my service career.

That it may be stated herein that one Shri. Ram Briksh Baitha and one (L) P.R. Lapang, who were similarly situated with me was given promotion to HS II long back in the year 1996 without conducting any Trade Test, but I was not given similar benefit by the Department without any reasonable cause.

That as the action of the Department resulted into great irregularity, discrimination and illegality I immediately approached the Department which in return repeatedly promised to look after the entire matter and would do justice for redressal of my grievance, but till date no action is taken by the Department.

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In the facts and circumstances, I therefore, request you to kindly confer me the status of HS II with retrospective effect i.e. from the date as per directions contained in Letter dated 21st July, 1994 and from the date from which the said Shri. Ram Briksh Baitha and Late Mr. Lapang were promoted and also allow me to sit for Trade Test to be conducted on 15th and 16th November, 2002, for HS I.

And for which act of your kindness I shall remain grateful to you.
Thanking you.

Yours faithfully,

Dated, Shillong
The 12 Nov 2002.

Copy to :

The Chief Engineer
Shillong Zone

for info. and
necessary act, please.

MES No. 229009
Name. D.B. Baitha
Designation. F.G.M HS II
Unit. S.E. Falls

Accepted
Sd/-
Adm. Secy
01/12/03

To,
The Commander Works Engineer
SE Falls, Shillong - 11

(Through Proper Channel)

Sub :- Prayer for conferment of promotional benefit to US-II
with retrospective effect and allowing to sit for II
for US-I

Respected Sir,

With reference to the personal application submitted through IES E/M
Shillong vide letter No 100/540/SE dated 15 Nov 2002.

That Sir, after expiry of approximate two months, no response is received from the Department against my above application. It is once again requested your kind honour to take action on the subject as a welfare of industrial personnel. Otherwise, in the last moment, I will be required to take the shelter of legal judiciary for my legitimate right and justice.

I shall be ever remain grateful to you, if you personally look into the matter for early decision.

Thanking you,

Yours faithfully,

Sanjiv Kumar

Station : Shillong

Dated : 14-1-Jan 2003

Name : Sanjiv Kumar

Design : FGM HS II

IES No : 229008

4/1/03

Affected
Sub. Adm
01/02/03

To,
The Commander Works Engineer
SE Falls, Shillong - 11

(Through Proper Channel)

Sub :- Prayer for conferment of promotional benefit to HS-II
with retrospective effect and allowing to sit for T1
for HS-I

Respected Sir,

With reference to the personnel application submitted through ACS E/A
Shillong vide letter No 100/510/SE dated 15 Nov 2002.

That Sir, after expiry of approximate two months, no response is received from the Department against my above application. It is once again requested your kind honour to take action on the subject as a welfare of industrial personnel. Otherwise, in the last moment I will be required to take the shelter of legal judiciary for my legitimate right and justice.

I shall be ever remain grateful to you, if you personally look into the matter for early decision.

Thanking you,

Yours faithfully,

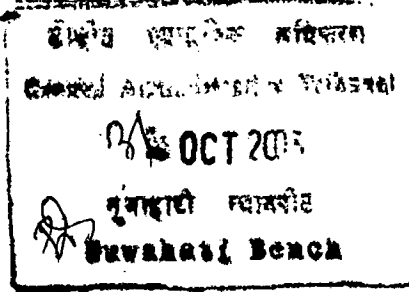
Station : Shillong

Dated : Jan 2003

Name : Riski Kesh Lal
Design : FGM HS-1
MES No : 229110

08/01/03

Affected
Smt. Arunima
5/02/03.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO 172/03/1678

Shri Rishikesh Paul & Others Applicants

-Vs-

Union of India and Others Respondents

- AND -

IN THE MATTER OF

Written Statement submitted by the respondents

The humble respondents beg to submit the Para-wise written statement as follows:-

1. That with regard to Para 1, 2, 3, 4.1, 4.2, 4.3 and 4.4, of the application the respondents beg to offer no comments.
2. That with regard to the statement made in Para 4.5, of the application the respondents beg to state that Para 5 of E-in-C's Branch, Army HQ New Delhi letter No 91026/FGM.EIC(3) dated 21 Jul 94 clearly stipulates that with the re-designation as FGM (SK), the personnel would have been eligible for promotion to FGM HS-II subject to passing of Trade Test and having rendered a minimum 3 years service in the grade of re-designated FGM (SK). The personnel who would have been eligible for promotion to FGM HS-II as a result of introduction of policy for re-designation were from different diverse fields viz Pump House operator, Driver Mobile Plant Operator, Earth Moving Machinery, Operator Pneumatic, Boiler Attendant and Lift Mechanic (Existing incumbents only).

Contd...2/-

3 years of requisite service as envisaged in policy with regard to promotion to the next higher grade in the existing hierarchy, would have helped the personnel of re-designated FGM (SK) gain sufficient knowledge about the nature of duties assigned to FGM (SK) and acquire qualitative experience on grounds in discharging their responsibilities with greater application of mind and proficiency and this in turn would have helped them develop skill and hone their skills. 3 years practical service in the re-designated FGM (SK) would have helped the personnel to prepare them well before appearance/clearance of Trade Test for promotion to FGM HS-II.

Any trade test, if sought to be conducted, prior to the introduction policy/instructions for re-designation and before completion of 3 years requisite service in FGM (SK) would have proved detrimental to both the personnel as well the organisation they were associated with. Hence having rendered 3 years service in re-designated FGM (SK) were considered inescapable for the personnel to prepare them well before appearance/clearance Trade Test for promotion to next higher grade in the existing hierarchy as otherwise the same could have been against the principles of natural justice so far as affording opportunity to personnel is concerned. It is further submitted that seniority of industrial personnel is area based and fixed by respective CsWE under whose dispensation the personnel were working and no way connected/sought to be connected with similarly situated personnel of industrial categories of other CsWE elsewhere. Therefore contention of the petitioner that promotion of industrial personnel of GE (P) Madras has effected their seniority position, promotional aspects and consequent financial loss has no basis being made out of figment of imagination in contravention to provision of policy/instructions framed on the subject. Therefore the petition of the petitioner is liable to be set aside and dismissed.

Contd...3/-

3. That with regard to the statement made in Para 4.6, of the application the respondents beg to state that the petitioners having passed the Trade Test for FGM HS-II vide GE Shillong PTO No 19 dated 07 May 2001 (Copy annexed as Annexure-I) have been promoted to the grade of FGM HS-II vide GE Shillong PTO No 29 dated 13 May 2002 (Copy annexed as Annexure-II). However, as explained in Para 4.5 above, it is apparent that personnel were eligible for promotion to FGM HS-II subject to passing of Trade Test and having rendered a minimum 3 years service in FGM (SK) as specified in policy. Further seniority of industrial personnel is being fixed by respective CsWE level under whose jurisdiction they are working and therefore career prospects are no way effected by other CsWE elsewhere. In this connection it is pertinent to mention here that career prospects of industrial personnel being area based differ from one area to another depending upon various aspects of governance.

4. That with regard to the statement made in Para 4.7, of the application the respondents beg to state that MES/228578 Shri Ram Briksh Baitha, whose name appeared in the petition had been promoted to FGM HS-II after having passed the Trade Test conducted in Mar 1987 published vide GE (AF) Shillong Zone PTO No 23 dated 09 Jun 87 and he was placed in the seniority list of 06 May 97 i.e. nearly 2 years and 11 months of service as per existing rules according to availability of vacancies. Therefore the applicants as a matter of right cannot claim their seniority to be fixed back dated wef 31 Mar 1995 created out of re-categorisation in 1997. There was no other candidate available who would have passed the trade test except two namely Shri Ram Briksh Baitha and Shri Polin Roy Lapang, who were given what was rightfully due to them. They were otherwise eligible for promotion as HS-II wef 87 but for re-designation.

5. That with regard to the statement made in Para 4.8, of the application the respondents beg to state that the statement of the petitioner is factually wrong.

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yb

Firstly Govt order is dated 06 Jul 2003 and contains no time frame whatsoever.

The E-in-C's Branch letter dated 21 Jul 94 laid down instructions/guidelines to expedite matter regarding promotion subject to availability of candidates as given in Para 5 of their letter No 91026/FGM/EIC(3) dated 21 Jul 94. Therefore the petition is liable to be set aside and dismissed.

6. That with regard to the statement made in Para 4.9, of the application the respondents beg to state that the representations cited by the petitioner are an after thought with malafide intention to extract undue pecuniary benefit from the Government which was not rightfully due to them.

7. That with regard to the statement made in Para 4.10, of the application the respondents beg to state that it is not denying that petitioners can be considered for promotion but for which they are required to fulfill the eligibility criteria laid down for promotion.

8. That with regard to the statement made in Para 5, of the application the respondents beg to state that based on the submissions made in Para 2 and 3 above, the contention of the petitioners are false and after thought with malafide intention to get something from the Government which is otherwise not rightfully due to them. Hence, the petition is liable to be dismissed.

9. That with regard to Paras 6, 8 & 9 to 12, of the application the respondents beg to offer no comments.

10. The limitation period of 3 years for filling/representing the case for delay in implementation of Government policy with regard to prospective service benefit to the applicants had not been complied with in the instant case. Therefore petition of the petitioner is barred by time by more than 4 years beyond limitation period of 3 years and hence the same is liable to be set aside and dismissed.

Contd....5/-

VERIFICATION

I, Maj B.S. Khokhar, Office of the
Garrison Engineer Shillong being authorized do
hereby solemnly affirm and declare that the statements made in Paragraphs 3 & 4
being matters of record are true to my information derived
therefore and those made in the rest are humble submission before the Hon'ble
Tribunal.

And I sign the verification on this 22 day of October 2003.



DEPONENT

PART-IV (CONTD)
FGM (SK)

11. MES-228216 Shri Rameshwar Singh		Appeared Trade test for the post of FGM HS-II and declared passed.
12. MES-224025 Shri Laxmi Singh	- do -	Failed
13. MES-228920 Shri Bala Krishna Sharma	- do -	Appeared Trade test for the post of FGM HS-II and declared passed.
14. MES-228878 Shri Lila Ram Sharma	- do -	- do -
15. MES-238551 Shri Badal Chandra Deb Nath	- do -	- do -
16. MES-228519 Shri Kalap Deo Rai	FGM	Failed
17. MES-A No.14117121 Shri. Dev Raj	- do -	Appeared Trade test for the post of FGM HS-II and declared passed.
18. MES-228221 Shri Jogeshwar Paul	- do -	- do -
19. MES-228996 Shri M K Nair	- do -	- do -
20. MES-264591 Shri Siv Raj Upadhyay	- do -	- do -
21. MES-228668 Shri Shri Raghubans Rai	- do -	- do -
22. MES-228941 Shri Deep Narayan Singh	- do -	- do -
23. MES-229060 Shri Raja Rao Rajak	- do -	- do -
24. MES-229104 Shri Ram Belash Kewat	- do -	- do -
25. MES-226939 Shri R K Chakraborty	- do -	- do -

BSO
for Garrison Engineer

Contd P 11/-

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WIALONG FPO NO.19 DT 07 MAY 2001

Page No.9 of

PART-IV (CONTD)

✓ MES-228961 Shri Chabi Lal Sharma	Mate OTF	Appeared Trade test for the post of M/ Mason and declared passed.
✓ MES-228137 Shri DB Thapa	- do -	- do -
✓ MES-229725 Shri S Roy Manik Kharkongor	- do -	- do -
✓ MES-228715 Shri Raj Narayan Rai	FGM (SK)	Appeared Trade test for the post of FGM HS-II and declared passed.
✓ MES-229010 Shri Cherbok Diengdoh	- do -	- do -
✓ MES-229110 Shri Rishi Kesh Paul	- do -	- do -
✓ MES-223501 Shri Muktar Singh	- do -	- do -
✓ MES-229148 Shri C W Lama	- do -	Failed.
✓ MES-228527 Shri S C Paul	- do -	Appeared Trade test for the post of FGM HS-II and declared passed.
✓ MES-229167 Shri Sahab Md Ali	- do -	- do -
✓ MES-228609 Shri Jung Ddr Gurung	- do -	- do -
✓ MES-229119 Shri Jawahar Lal Kohari	- do -	Failed.
✓ MES-229489 Shri Khem Nath Upadhye	- do -	Appeared Trade test for the post of FGM HS-II and declared passed.
✓ MES-229487 Shri Dev Kr Chattri	- do -	- do -
✓ MES-A No.477971 Sri Jaleshwar Shah	- do -	- do -
✓ MES-229970 Shri Ram Chandra Singh	- do -	- do -

B30

for Garrison

Contd . . .

PROMOTION

PART IV (CONTD.....)

47. MES/A-480195 Shri ✓
W K Chanda, FGM(SK) ✓ 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

48. MES/229150 Shri ✓
Bindeswar Singh, FGM(SK) ✓ 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

49. MES/229000 Shri ✓
Rajendra Paswan, FGM(SK) ✓ 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

50. MES/229110 Shri ✓
Rishikesh Paul, FGM(SK) ✓ 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

51. MES/229010 Shri ✓
Pherbok Diengdon, ✓ 15-2-02
FGM (SK) (FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

52. MES/223507 Shri ✓
Muktar Singh, ✓ 15-2-02
FGM(SK) (FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

Auth : Sl.No.47 to 52 : CWE Shillong letter No.1455/DPC/2001/114/
EIA dated 15 Feb 2002.

83. MES/229143 Shri ✓
C W Lama, FGM(SK) ✓ 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

54. MES/229527 Shri ✓
N C Paul, FGM (SK) ✓ 15-2-02
(FN)

Promoted from FGM(SK) to FGM HS-II
and placed in position wef the same
date in the scale of pay Rs.4000-100-
6000/-.

Auth : Sl.No.53 & 54 : CWE Shillong letter No.1455/DPC/2001/181/EIA
dated 19 Apr 2002.

Contd.....P/9