

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4049/2011
MA 2266/2012
MA 2438/2011

Reserved on: 06.05.2016
Pronounced on: 17.05.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Nitanand Sharma
S/o Late Shri B.P. Sharma
R/o H.No.37A/ZP/7D,
New Madhu Nagar,
Agra ... Applicant

(Through Shri Yogesh Sharma and Ms. Sonika Gill, Advocates)

Versus

1. Union of India through the Secretary
Ministry of Defence
South Block, New Delhi
2. The Director General of EME
Ministry of Defence, MGO Branch, IHQ
DHQ Post Office, New Delhi-110001
3. The Commanding Officer,
509, Army Base Workshop
Agra – 282001
4. Shri Pankaj Sharma
MCM (Elect)
509, Army Base Workshop
Agra-282001 ... Respondents

(Through Shri Amit Anand, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed as Electrician (Skilled) on 28.04.1988 and was promoted to the post of Highly Skilled Grade-II on 20.05.2003. He was subsequently placed on placement basis to the post of Master Craftsman (MCM) with effect from 1.04.2007 and is presently working on the same post as MCM. In the seniority list of electrical trade, the applicant was shown at serial number 4 and the name of private respondent Shri Pankaj Sharma at serial number 5. Shri Sharma was also appointed as Electrician on 28.04.1988 and as Highly Skilled on 20.05.2003. In September 2006, the names were invited of eligible persons for placement to the post of MCM and the names of both the applicant and the private respondent were forwarded.

2. It is alleged by the applicant that while forwarding the names, respondent no.3 changed the date of appointment of private respondent from 22.04.1988 to 28.04.1988 and also changed his date of birth from 20.12.1964 to 20.12.1963. Due to this change of date of birth as well as date of appointment, the private respondent was shown senior to the applicant without giving any opportunity to the applicant to represent against this. Due to change in seniority, in the panel prepared for the post of MCM, respondent no.4 was promoted as such with effect from 1.10.2006. However, in March 2007, the respondents prepared another panel for promotion to the post of

MCM in which the applicant's name was included and he was promoted from 1.04.2007. Through an application filed under RTI, the applicant came to know from the response of the respondents that he was not promoted in 2006 because of 'average' grading whereas according to the applicant, 'average' grading was never communicated to him and no such memo, advisory note etc. was served on him assessing him as 'average.' Finally, he received a letter dated 25.11.2010 in which the respondents stated as follows:

“(a) Para (a):

(i) It is intimated that the list of creation of MCM for the Sep 2006 Board was asked by HQ BWG vide Signal No.Q8168 dated 23 Jan 2007 and the same was fwd to HQ BWG vide our letter No.20825/MCM/Est-Ind dated 15 Feb 2007. The variation in date of birth and date of Apptt in r/o T.No. 6854 Elect S. Pankaj Sharma published vide this office letter of even No. dated 29 Jan 2007 was resubmitted to HQ BWG vide letter even No. dated 15 Feb 2007 duly rectified. Further, on tele conversation on 12 Mar 2007, a fresh report was also fwd to HQ BWG vide letter of even No. dated 13 Mar 2007 and under which this office letter of even No. dated 15 Feb 2007 was also cancelled. As per our records, the date of apptt. of T.No.6854 Elect Sh. Pankaj Sharma is 28 Apr 1988.

(ii) Keeping in view of the above facts, it shows that this office letter of even No. dated 29 Jan 2007 has no effect on elevation to MCM

(iii) The above individual was not elevated to MCM due to Average Assessment report in comparison to T.No. 6854 Elect Sh Pankaj Sharma whose Assessment Report was Good as intimated by HQ BWG vide their letter No.20601/MCM/Est/T-7 dated 15 Dec 2007 and not on the grounds of variation in date of birth and date of apptt. Hence, his allegation is not correct.”

3. The applicant has filed the instant OA seeking the following reliefs:

- (i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 25.11.2010 and order 2.02.2010, declaring to the effect that the same are illegal, arbitrary and against the law of land and consequently pass an order directing the respondents to place the applicant to the post of MCM w.e.f. 1.01.2006 i.e. from the date of placement of junior persons with all the consequential benefits including fixation of pay and arrears of pay and allowances with interest.
- (ii) That the Hon'ble Tribunal may further graciously be pleased to pass of quashing the selected tradesmen list for elevation to Master Craftsmen Sept. 2006, only to the extent by which the name of the applicant was not included and consequently, pass an order directing the respondents to include the name of the applicant in the elevation of list of MCM dt. Sept., 2006 with all the consequential benefits.

4. According to the applicant, appointment to the post of MCM is not a promotion as per the hierarchy but is only a placement against 10% of Highly Skilled posts, only as per seniority and for placement to the post of MCM the normal promotion rules are not applicable and no such bench mark or merit has been prescribed and, therefore, placement of junior person to the post of MCM only because of good grading and the applicant being declared 'unfit' only due to un-communicated

`average' grading is totally illegal and arbitrary action of the respondents.

5. It is alleged by the applicant that the date of birth and date of appointment of respondent no.4 was deliberately altered by the respondents so that respondent no.4 could be made senior to him. Moreover, no opportunity was given to the applicant to represent against this sudden change in seniority. It has, therefore, been prayed that seniority could not have been changed without putting the applicant to notice and, therefore, the order regarding change of seniority is illegal and invalid.

6. Per contra, the respondents in their reply point out that on introduction of restructuring of cadre of Artisan staff in the defence establishments, the applicant was granted placement/promotion to highly skilled with effect from 20.05.2003 due to revision in ratio with the merger of Highly Skilled Grade – I and Highly Skilled Grade – II, which came into effect from 1.01.2006. On completion of 3 years regular service as Highly Skilled Grade – I, the applicant became eligible for elevation to the grade of MCM on 20.05.2006. One of the conditions, which has been quoted in para 6 of the reply of the respondents, for elevation to the grade of MCM was the following:

“(iii) There will be no trade test. Instead, Assessment Reports on the individual workers shall be obtained in the prescribed proforma.”

7. Thus, it is explained that assessment report is a must and it is wrong on the part of the applicant to state that there is no

provision for assessment report. Accordingly, the assessment report in respect of the applicant along with other Tradesmen was forwarded. Unfortunately, the applicant did not figure in the list of Tradesmen who were elevated to MCM due to low merit/ below benchmark grading in the assessment report. Regarding applicant's allegation that the respondents have illegally changed the date of birth of respondent no.4 to the detriment of the applicant, it is pointed out that while forwarding the name of respondent no.4 for elevation to MCM, it was detected that his date of birth and date of appointment were erroneously indicated as 20.12.1963 and 22.04.1988 respectively, whereas the actual dates were 20.12.1964 and 28.04.1988 respectively. It was merely a clerical mistake of typographical nature and on detection of the error, the same was rectified and a fresh nominal roll of Tradesmen was forwarded. It is stated that the applicant is under misconception that he was not selected for elevation to MCM by the Board in September 2006 due to the reason that respondent no.4 has been shown senior to him by virtue of his date of birth as 20.12.1963. Rather it was because of the applicant not having a favourable assessment report as required under the departmental instructions. As already noted, the applicant was again considered by the Board in March 2007 and granted elevation as MCM with effect from 1.04.2007.

8. We have heard the learned counsel for the parties and gone through the pleadings available on record.

9. From the pleadings, it will be clear that for elevation to the post of MCM, one of the conditions for eligibility is that the candidate should have a good assessment report. Unfortunately, when the applicant was considered in 2006, his assessment report was not upto the mark. Therefore, he was declared 'unfit'. The applicant's argument that no assessment report was required is not valid.

10. As regards applicant's allegation that respondent no.4 became senior due to the fact that his date of birth was illegally changed by the respondents is also not borne out by the facts. It was a clerical mistake of typographical nature, which was corrected. There was no illegality in that and neither was there any need to invite any representation from the applicant against correction in date of birth of another employee. In any case, the department has clarified that non-inclusion of the applicant in 2006 was not due to change in date of birth of respondent no.4 but because of the applicant having an 'average' assessment report and respondent no.4 a 'good' assessment report as also explained in respondents' letter dated 25.11.2010.

11. The only issue that remains is whether the respondents were required to communicate the 'average' assessment report to the applicant before the Board considered it as this has adversely affected him and he never got an opportunity to represent against the adverse report. In our opinion, in view of the law laid down by the Hon'ble Supreme Court in **Dev Dutt Vs. Union of India**, (2008) 8 SCC 725 and **Abhijit Ghosh**

Dastidar Vs. Union of India and others, (2009) 16 SCC 146 and even otherwise on the principles of natural justice, before considering his 'average' assessment report by the Board, the applicant should have been given an opportunity to represent against the same.

12. We, therefore, dispose of this OA with a direction to the respondents to communicate the 'average' assessment report to the applicant within one month so that he may file a representation against it and then pass a speaking and reasoned order on his representation within a reasonable period but not later than two months from the date of filing of the representation. In case, the respondents upgrade the assessment on his representation, a review DPC should be constituted to consider the case of the applicant for elevation to the post of MCM in the year 2006, from the date respondent no.4 was elevated and give him the notional benefits in pay fixation with actual arrears being paid from the date this OA has been filed i.e. 13.09.2011. In case, however, the applicant's representation is rejected, no further action would be required to be taken by the respondents. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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