

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00227/2014

Thursday, this the 22nd day of November, 2018

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

V.K.Sudheer, aged 35 years
S/o Late V.Karuppu
Mechanical (Air Structural) (High Skilled-I)
Naval Aircraft Yard, Naval Base, Kochi-682 004.
Residing at Kulirma-Valangara House
Near KSRTC Depot, Chalakkudy
Thrissur District-680 307. Applicant

(Advocate: Mr. O.V.Radhakrishnan, Sr. assisted by Mr.Antony Mukkath)

versus

1. Flag Officer Commanding-in-Chief
Southern Naval Commanding Kochi-682 004.
2. Commodore Superintendent
Naval Aircraft Yard, Naval Base
Kochi-682 004.
3. Union of India represented by its
Secretary, Ministry of Defence, South Block
New Delhi-110 001.
4. V.Sethunath
High Skilled Grade-I
Naval Ship Repairing Yard, Naval Base, Kochi
presently on work arrangement as Welder (Chargeman)
Warship Overseeing Team, Cochin Shipyard Limited
Kochi-682 004.
5. G.Ganesan
Master Craftsman
Naval Aircraft Yard, Naval Base
Kochi-682 004. Respondents

Advocate: Mr.N.Anilkumar, Sr.PCGC for R1 to 3
Mr.M.R.Hariraj for R4 & 5

This OA having been heard on 15th November, 2018, the Tribunal delivered the following order on 22.11.2018:

O R D E R

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Sri V.K.Sudheer, Mechanic (Highly Skilled-I), Naval Aircraft Yard, Naval Base, Kochi, aggrieved by the refusal on the part of the respondents to interpret the roster principle in promotion in the wake of the restructuring of the Division ordered as per order dated 14.6.2010 (Annexure A3).

The reliefs sought in the OA are as follows:

- (i) to call for the records leading to Annexure A-4 placement of Industrial Staff consequent on the cadre restructuring in terms of Government of India, Ministry of Defence letter No. 11(5)/2009-D(CIV-I) dated 14-06-2010 and Annexure A-11 letter dated 16-01-2014 to the extent they adversely affect the applicant in the matter of promotion to the categories of Highly Skilled Grade-I and Master Craftsman;*
- (ii) to issue appropriate direction or order directing the respondents 1 to 3 to review the placements/promotions to the categories of Highly Skilled Grade-I and Master Craftsman consequent on the restructuring strictly following the roster points reserved for Scheduled Caste in Annexure III to Annexure A-6 and to promote the applicant to the cadre of Highly skilled Grade-I against the 7th roster point with effect from 01-01-2008 wrongly given to 4th respondent and to the cadre of Master Craftsman against the 7th roster point with effect from 01-04-2009 earmarked for SC wrongly given to the 5th respondent and grant the applicant his rightful promotions with effect from the respective dates of his entitlement with all consequential benefits;*

2. The applicant had joined the Southern Naval Command on 15.3.2006 as a Skilled Mechanic in the Air Wing Division of the said Command. He was promoted as Mechanic (Air Structural) Highly Skilled-II on 6.4.2010. At this stage, Govt of India, Ministry of Defence issued order No.11(5)2009 D(Civ-I) dated 14.6.2010 restructuring the cadres of Artisan Staff in Defence Establishments. Copy of this order is at Annexure A3. According to this scheme, the following posts were structured with due weightage to number of vacancies:

- (i) Highly Skilled Grade II in Grade Pay of Rs.2400 in PB-1.
- (ii) Highly Skilled worker Grade I in Grade Pay of Rs.2800 in PB1.
- (iii) Master Craftsman in Grade Pay of Rs.4200 in PB2.

These were ordered with effect from 1.1.2006 in relaxation of conditions such as trade test etc. as a one time measure. As can be seen, Master Craftsman also became a part of the hierarchy and placement of Highly Skilled Grade-I in the grade of Master Craftsman was to be treated as promotion. It was in implementation of Annexure A3 order that the applicant was promoted as Highly Skilled Grade-I w.e.f. 3.4.2010 (Annexure A4).

3. The applicant states that he belongs to Scheduled Caste. As per the consolidated instructions contained in OM No.36012/17/88/Estt(SCT) dated 25.4.1989 providing for reservation for SC/ST in the posts filled by promotion (Annexure A5), percentages were ordered for the reservation categories in promotion from Class III to Class II and from Class II to Class I. As there was no direct recruitment to HS Grade-I and Master Craftsman and the posts could be filled by promotion alone, reservation provided in Annexure A5 is applicable.

4. Consequent to the implementation of the judgment of Hon'ble Supreme Court in *R.K.Sabharwal vs. State of Punjab*, DoPT had issued OM dated 2.7.1997 providing post based reservation rosters. A copy of the OM is at Annexure A6. As per Annexure A6(3) to A6(6) of the OM, posts falling against roster point at 7, among other numbers, were to be reserved for Scheduled Castes. The applicant also points out that as per decision in *BSNL vs. R.Santhakumari Veluswamy and others*, reported in (2011) 9 SCC 510, the Hon'ble Supreme Court had held that in the case of restructuring also, reservation for promotion will apply. Thus the 7th roster point in the cadre of

Highly Skilled Grade-I and Master Craftsman stands reserved for promotion of Scheduled Caste candidates. Thus far, there is no dispute on the stated facts.

5. The controversy relates to identifying the 7th post among the two categories. According to the applicant, the 7th post in Highly Skilled Grade-I arose on and from 1.1.2008 and the 7th post in the cadre of Master Craftsman from 1.4.2009. Being the only Scheduled Caste employee in the Highly Skilled Grade-I category, he claims that he ought to have been promoted as HS Grade-I with effect from 1.1.2008. His grievance is that he was promoted to that category only on 3.4.2010. Instead, the authorities accommodated the 4th respondent Sri V.Sethunath who is a general candidate against the 7th vacancy which arose on 1.1.2008. Similarly, the 7th roster point of Master Craftsman arose on 1.4.2009, according to the applicant, and the applicant claims that he ought to have been promoted as Master Craftsman against this vacancy. However, the respondents filled the vacancy of Master Craftsman by accommodating the 5th respondent G.Ganeshan who is a general candidate. The applicant filed a representation dated 8.5.2013 which is marked as Annexure A8.

6. The applicant's representation was replied to by a communication dated 16.1.2014 by the 1st respondent stating that the reservation principles for SC/ST are being strictly followed and the 5th respondent was promoted against unreserved point and not against SC reservation post (Annexure A11). Aggrieved by the stand of the respondents, the applicant has chosen to approach this Tribunal.

7. As grounds, the applicant contends that the reservation principles protected under the Constitution of India are being flouted by the respondents. It is alleged that the respondents while agreeing with the principle of reservation

have freely accommodated general candidates against the slots where only an SC candidate can be accommodated. The list of Industrial Staff who were placed on the basis of the cadre re-structuring (Annexure A4) from which point the roster should have come into play, clearly shows that the posts meant for SC candidates have been taken over by the general candidates.

8. A reply statement has been filed by 4th and 5th respondents, which is examined first. The first objection raised by these respondents is to the effect that the OA is badly delayed and is hit by limitation. The applicant is pressing a claim for promotion to a slot which was filled up in 2009 after 5 long years and has no adequate reasons to explain the delay. In so far as the merits of the case are concerned, it is submitted that the restructuring exercise cannot be considered for promotion for the purpose of reservation. Initially, appointment of Master Craftsman was clearly treated as a lateral up-gradation alone and not as a promotion. This is evidenced in Annexure R3(a) which details the order on the creation of grade of Master Craftsman in the Defence Establishments. In the said order, the term 'Promotion' is not used. As per Annexure R3(b) which narrates the situation before the up-gradation, it can be seen that Master Craftsman is not a part of the hierarchy and the placement in the grade is not to be treated as a promotion under normal promotion rules of this scheme. The reply statement draws our attention to Annexure R3 (c) which is a placement/promotion order of the Industrial Staff dated 30.9.2005 wherein it is seen that N.K.Vijayakumar and A.V.Karunakaran whose names figure among the persons who are promoted as Master Craftsman w.e.f. 1.1.2006, according to the applicant, figure. They are seen as having been 'placed' in the grade of Master Craftsman.

9. The contentions of respondents 1 to 3 are contained in the reply statement filed on their behalf. The statement opposes the contentions made in the OA by the applicant and reiterates the stand that on the date of implementation of Annexure A3 restructuring order i.e. 1.1.2006. the applicant was not even in service, having joined as Skilled Mechanic on 15th March 2006. It is stated that he had earned two promotions within a span of 4 years which, as per normal eligibility in the recruitment rules, would have come about only as late as 1st April, 2014.

10. We have heard Sri Antony Mukkath, learned counsel appearing on behalf of Sri O.V.Radhakrishnan, Sr., for the applicant and Sri N.Anilkumar, Sr.PCGC appearing for R1 to 3 and Sri Hariraaj appearing for R4 to 5.

11. The controversy, as can be seen, revolves around the action taken by the authorities in consequence to the restructuring ordered with effect from 1.1.2006. It may be seen that there are three categories involved here in terms of hierarchy. They are Master Craftsman at the highest position, Mechanic Highly Skilled-I and Mechanic Highly Skilled II in descending order. The applicant being the sole SC candidate is pursing his claim for the 7th roster point starting with Master Craftsman whereby he who belongs to the lowest level and being the sole SC candidate would get promotion to higher levels out of turn. In order to succeed here, he argues that promotion in the category of Master Craftsman effected in consequence to restructuring is as follows:

S.No.	Name	Master Craftsman Promotion with effect from
1	A.V.Karunakaran	01/01/2006
2	C.M.Vasudevan	01.01.2006
3	N.K.Vijayakumar	01.01.2006
4	V.S.Haridas	10.10.2006
5	G.Natarajan	06.06.2007
6	R.Gopidas	01.01.2008
7	G.Ganesan	01.04.2009 (ought to have filled by a SC candidate as it falls under the 7 th roster point reserved for SC.)

12. He contends that the 7th post was wrongly assigned to Sri .G.Ganesan who is a general candidate. Similarly the 7th roster point in the subordinate positions of HS-I and HS-II also went to general categories and this was illegal, according to the applicant. There was a chain of promotions took place such as the promotion of Sri G.Ganesan to Master craftsman with Ganesan's vacancy in HS-II going to Mohammed Saiju etc.

13. On the other hand, the counsel for respondents 4 & 5 has filed a list of incumbents on particular dates which may be seen as follows:

1.1.2006 (Restructuring)

<i>MCM</i>	<i>HS I</i>
<i>1. N.K.Vijayakumar</i>	<i>1. V.S.Haridas (HS-I-1)</i>
<i>2. A.V.Karunakaran</i>	<i>2. G.Natarajan (HS-I-2)</i>
<i>3. C.M.Vasudevan (MCM-1)</i>	<i>3. R.Gopidas (HS-I-4)</i>

9.10.2006 (Retirement of A.V.Karunakaran)

MCM	HS I
1. N.K.Vijayakumar 2. C.M.Vasudevan (MCM-1) 3. V.S.Haridas (MCM-2)	1. G.Natarajan (HS-I-2) 2. V.V.Mathai (HS-I-3) 3. R.Gopidas (HS-I-4) 4. G.Ganeshan (R5) (HS-I-5)

5.6.2007 (Promotion of N.K.Vijayakumar as Chargeman)

MCM	HS I
1. C.M.Vasudevan (MCM-1) 2. V.S.Haridas (MCM-2) 3. G.Natarajan (MCM-3)	1. V.V.Mathai (HS-I-3) 2. R.Gopidas (HS-I-4) 3. G.Ganeshan (R5)(HS-I-5) 4. Simon Theruvil (HS I-6)

5.6.2007 (Promotion of V.V.Mathai as Chargeman)

MCM	HS I
1. C.M.Vasudevan (MCM-1) 2. V.S.Haridas (MCM-2) 3. G.Natarajan (MCM-3)	1. R.Gopidas (HS-I-4) 2. G.Ganeshan (R5) (HS-I-5) 3. Simon Theruvil (HS-I-6) 4. (HS I-7 SC Vacancy-unfilled)

31.12.2007 (C.M.Vasudevan promoted as Chargeman)

MCM	HS I
1. V.S.Haridas (MCM-2) 2. G.Natarajan (MCM-3) 3. R.Gopidas (MCM-4)	1. G.Ganeshan (R5)(HS-I-5) 2. Simon Theruvil (HS-I-6) 3. HS I-7 SC Vacancy-unfilled 4. V.Sethunath (R4)(HS I-8)

- One Mr.C.A. Davis was promoted as HS II to the vacancy caused in that category on this date. It is to be noted that even on this date, the applicant is not even appointed as HS-II, which is the feeder category of HS-I.

31.3.2009 (G.Natarajan promoted as Chargeman)

MCM	HS I
1. V.S.Haridas (MCM-2) 2. R.Gopidas (MCM-4) 3. G.Ganeshan (R5) (MCM-5)	1. Simon Theruvil (HS-I-6) 2. (HS I-7 SC Vacancy-unfilled) 3. V.Sethunath (R4)(HS-I-8)

- The applicant was promoted as HS II on this date against this vacancy.
- It was a reserved vacancy and applicant was appointed as HS II overlooking his seniors in SK grade since he is an SC candidate.

3.4.2010 (Promoting the applicant as HS I in unfilled reserved vacancy)

<i>MCM</i>	<i>HS I</i>
1. V.S.Haridas (MCM-2) 2. R.Gopidas (MCM-4) 3. G.Ganeshan (R5)(MCM-5)	1. Simon Theruvil (HS-I-6) 2. V.K.Sudheer (applicant) HS I-7 3. V.Sethunath (R4)(HS-I-8) 4. Mohammed Saiju(HS I-9)

- *The applicant is appointed to the SC vacancy left unfilled in relaxation of the rules demanding at least three years service in HS II for promotion as HS I as per para 3 (b) of Annexure A3.*

14. The dispute has arisen in the interpretation given to the posting of Sri A.V.Karunakaran and Sri N.K.Vijayakumar. It is claimed by the respondents on the strength of Annexure R3(c) document dated 30th September 2005 that they were placed as MCM w.e.f. 1.10.2005, whereas the applicant states that on the strength of documents presented, they were placed in that category only w.e.f. 1.1.2006, thereby being eligible for 1st & 2nd roster point. Having been placed as MCM w.e.f. 1.10.2005, we feel that it would be not appropriate to assign them a future date as a result of restructuring. They were clearly MCM before the process of restructuring was initiated. Besides looking at the career part of the applicant, we do not see that he has been a sufferer due to the circumstances that he has narrated. As pointed out, he has been the beneficiary of two promotions in less than 5 years whereas his normal turn would have only come on 1st April 2014. He has also been the beneficiary of one time relaxation as per Annexure A3 orders. While it is admitted that a vacancy for SC candidate was available as on 1st Jan 2008, the applicant could not have been considered as he was promoted to HS II only on 1st April, 2009. Clearly he was not entitled to two elevations simultaneously for the reason that a vacancy is available two levels above. We are also inclined to take the view, as already pointed out, that the

Master Craftsman category was a placement post prior to 1st January, 2006 where roster principle is not applicable. The incumbents who are posted in the vacancies demanded by the applicant were all much senior to him and were eligible in all respects.

15. The applicant calls to his support the judgment of Hon'ble Supreme Court in *BSNL vs. Santhakumari and others* which laid down the principles governing reservation in promotion. On a perusal of the facts of the case, we are not of the view that any of the principles have been violated. The OA has been filed well after the limitation period and is also hit by the clause relating to delay. Also, if allowed, the demand of the applicant would unsettle the entire hierarchy among the three categories of MCM, HS-II and HS-I.

16. For the reasons stated, the OA, being devoid of merits, is dismissed.

(Ashish Kalia)
Judicial Member
aa.

(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

Annexure A1: Copy of the order dated 30.10.2007 of the Commodore, Chief Staff Officer (P&A), Southern Naval Command.

Annexure A2: Copy of the order No.CS 2765/34/1 dated 6.4.2010 of the Captain, Chief Staff Officer (P&A) (AOD).

Annexure A3: Copy of the order No.11(5)2009 D (Civ-I) dated 14.6.2010 of the 3rd respondent.

Annexure A4: Copy of the GOI MOD letter No.11(5)/2009-D(Civ-I) dated 14.6.2010-HQ SNC letter No.CS-2764/1/94 dated 2.6.2011.

Annexure A5: Copy of the Consolidated OM No.36012/17/88/Estt(SCT) dated 25.4.1989.

Annexure A6: Copy of the G.I. Dept. of per. & Trg., O.M.No.36012/2/96-Estt. (Res.) dated 2.7.1997.

Annexure A7: Copy of the order dated 4.9.2012 in OA No.743 of 2011 of this Tribunal.

Annexure A8: Copy of the representation dated 8.5.2013 of the applicant to the 1st respondent.

Annexure A9: Copy of the application dated 15.5.2013 of the applicant under the Right to Information Act along with the reply No.130/13/45/PIO dated 13.6.2013.

Annexure A10: Copy of the representation dated 16.12.2013 of the applicant to the 1st respondent.

Annexure A11: Copy of the order No.CS 2779/7 dated 16.1.2004 of the 1st respondent.

Annexure A12: Copy of the order-placement of Industrial Staff consequent on the cadre-re-structuring in terms of GOI MOD Letter No.11(5) 2009-D (Civ-I) dated 14.6.2010-Mechanical 'Air Weapon'.

Annexure A13: Copy of the proceedings-placement of Industrial Staff consequent on the cadre re-structuring in terms of GOI MOD letter No.11(5) 2009-D(Civ.I) dated 14.6.2010- Mechanical 'Air Radio'.

Annexure A14: Copy of the proceedings-Mechanical 'Air Electrical'.

Annexure A15: Copy of the proceedings – Mechanical 'Air Engineering'.

Annexure A16: Copy of the application dated 15.5.2013 and the reply No.130/13/45/PIO dated 13.6.2013.

Annexure A17: Copy of the Civilian Establishment List No.111/2011 dated 9.11.2011 of the Administrative officer Gde-II for Commodore Superintendent.

Annexure A18: Copy of the Seniority List of mechanic (AL), (AE), (AR), (AS) & (AW) with covering letter No.CS2776/20 dated 27.3.2014 of the Administrative Officer-II, for Flag Officer Commanding in Chief.

Annexures filed by the respondents:

Annexure R1: Copy of Southern Naval Command order CS 2764/86 dated 30th Sept. 2005.

Annexure R2: Copy of Hon'ble Supreme Court of India order dated 6th Sept., 2011.

Annexure R3(A) :Copy of the order No.1(2)/80/D(Civ.I) dated 21.9.1982 issued for the 2nd respondent.

Annexure R3(B): Copy of the order No.11(1)/2002/D (Civ.I) dated 20.5.2003.

Annexure R3(C) Copy of order No.CS/2764/86dated 30.9.2005 issued for the 1st respondent.