

*(RESERVED ON 30.08.2018)*

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**  
**ALLAHABAD**  
**(CIRCUIT BENCH SITTING AT NAINITAL)**

This the **22th** day of **OCTOBER, 2018**.

**ORIGINAL APPLICATION NO. 331/0006/2014**

**HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J).**  
**HON'BLE MR. MOHD. JAMSHED, MEMBER (A).**

1. Shri Rajesh Kumar, S/o Shri Nathi Ram, aged about 44 years R/o Village Dharmuchak, P.O. Doiwala, Dehra Dun presently posted as HS-1 in MILLIWRIGHT trade in the office of Senior General Manager, OLF, Raipur, Dehradun, Uttarakhand.

.....Applicant.

**VERSUS**

1. Union of India through Secretary, Ministry of Defence, Central Government, New Delhi.
2. General Manager, OPTO Electronics Factory, Raipur, Dehradun (Uttarakhand).
3. Assistant Works Manager (A), OPTO Electronics Factory, Raipur, Dehradun (Uttarakhand).
4. Board of Ordinance Factories, Shaheed Khudi Ram Bose Road, Opposite Eaden Garden, Calcutta (West Bengal) through its Chairman.
5. Shri Rajesh Singh, MCM in the office of General Manager, OPTO Electronics Factory, Raipur, Dehradun (Uttarakhand).
6. Shri A K Singh in the office of General Manager, OPTO Electronics Factory, Raipur, Dehradun (Uttarakhand).
7. Shri Kawaljeet Singh in the office of General Manager, OPTO Electronics Factory, Raipur, Dehradun (Uttarakhand).

.....Respondents

Advocate for the Applicant : Shri Ashish Srivastava  
Shri Ram Prasad

Advocate for the Respondents : Shri R K Srivastava  
Shri D.S. Bohra

**ORDER**  
**(Delivered by Hon'ble Mr. Mohd Jamshed, Member (A))**

The applicant has sought relief in the OA based on the contention that the applicant has been reverted from Master Craftsman (MCM) grade to Highly Skilled (HS) grade vide letter dated 06.04.2011 (Annexure No. A-1 to the OA) and his reversion from MCM grade to HS Grade amounts to reduction in rank. Hence, the impugned order dated 06.04.2011 is violative of Article 311 of the Constitution.

2. The brief facts of the case are that the applicant was initially appointed in OLF, Raipur Dehradun as Semi Skilled Workman in Millwright trade on 03.04.1989. This cadre in the same establishment has inbuilt hierarchical structure which starts from Semi-Skilled to Skilled, Highly Skilled Grade-II, Highly Skilled Grade-I and to Master Craftsman (MCM). All these positions except High Skilled Grade-II and Grade-I are in different grades with Master Craftsman (MCM) being in the highest revised pay scale of Rs. 4500-12-7000.

3. The applicant was promoted as Skilled Workman (SKL) on 16.06.1999 on the basis of trade test and thereafter he was promoted as Highly Skilled Workman on 23.10.2001. The applicant was placed in MCM grade on 20.05.2003 on the basis of his seniority.

4. The applicant who was working as MCM was informed vide letter dated 22.03.2011 (Annexure No. A-6 to the OA) that in view of the cadre restructuring of the Ministry of Defence effective from 20.05.2003, only 04 senior most employees holding the grade of HS in Millwright trade could be placed in MCM grade and since the name of the applicant is at SI No. 7 in the seniority list, as such there is a proposal to cancel the placement order of the applicant w.e.f., 31.12.2005 in MCM grade. The applicant was asked to reply to the aforesaid show cause notice within three days from the date of receipt of letter. In response, the applicant submitted a detailed reply dated 27.03.2011 (Annexure No. A-7 to the OA) to the respondent no. 2. The applicant in his detailed reply to the above show cause notice stated that the proposed action is arbitrary, illegal and not covered by the existing rules, as the applicant was granted the HS grade on the basis of trade test w.e.f. 23.10.2001. Thereafter, the respondent no. 2 allegedly without examining the case passed the impugned order dated 06.04.2011 (Annexure No. A-1 to the OA) cancelling the placement of MCM (granted

since 20.05.2003) w.e.f., 31.12.2005, thus, reverting the applicant from MCM grade to HS grade. Thereafter, the applicant submitted various representations to the respondents and in reply to the representations, the respondents vide letter dated 26.04.2012 (Annexure No. A-2 to the OA) stated that the seniority of the applicant was revised w.e.f., 21.3.2007 and based on the revision of seniority, the placement of the applicant has been cancelled.

5. Heard the learned counsels for the parties and perused the pleadings.

6. It has been argued by the learned counsel for the applicant that perhaps the decision of respondent no. 2 to revert the applicant was based on the wrong interpretation of the order dated 17.05.2005 (Annexure No. A-14 to the OA) passed by the Ernakulam Bench of this Tribunal in OA No. 740 of 2003, 741 of 2003 & 882 of 2003 and that it is incorrect to say that the order passed by the Ernakulam Bench of this Tribunal in any way had commented about the manner in which this reversion has to take place. It was also argued that the respondents had published a seniority list on 01.01.2007 (Annexure No. A-15 to the OA) wherein the applicant was placed at SI No. 03 and thereafter another amended seniority list dated 01.06.2007 was issued placing the applicant at serial no. 7. The General Manager, Ordnance Factory, issued a revised seniority list vide circular dated 12/21.03.2007 wherein the applicant's original seniority has been indicated as 003 and the revised seniority as in MCM has been indicated as 006. The applicant submitted the objection against the amended seniority list but the same has remained unreplied. It was also argued that being aggrieved by the arbitrary decision of the respondent no. 2 some of the colleagues of the applicant challenged the seniority by filing OA No. 796 of 2007 before this Tribunal and this Tribunal vide order dated

20.05.2011 (Annexure No. A-17 to the OA) decided the OA and interalia held in paragraph no. 8, 9 and 10 of the said judgement that:-

*"8. The restructuring got the benefit of preponing the promotion to the post of Highly Skilled Grade from 01-01-1996. At that time, as a one time measure, relaxation with regard to passing of trade test was granted. The said promotion was to be necessarily based on seniority. Admittedly, in the skilled grade, the applicants are senior to the private respondents. As such, when there has been relaxation with regard to trade test, the same is available to the applicants. Thus, notwithstanding the fact that the private respondents had qualified in the trade test prior to the applicants, the restructuring having provided for relaxation, and the promotion being based on seniority in the skilled grade, in the seniority list of Highly skilled Grade, in the wake of the promotion of the applicants and that of respondents w.e.f. 01-01-1996 the seniority position should be so construed as to retain their seniority in the grade of skilled grade. In so far as the subsequent clarification, i.e. those who had qualified in the trade test between 01-01-1996 to 19-05-2003, it should apply to those who did not qualify in the trade test at all but were, under relaxation, promoted to the higher Grade i.e. Highly skilled under the restructuring scheme. Perhaps, the applicants would have been placed so, had they not qualified in the trade test in 1999.*

*9. The applicants have, therefore, made out a case in their favour. Their seniority shall, in the grade of highly skilled, be corresponding to their seniority in the grade of skilled grade. Their placement in the next higher grade i.e. MCM shall be based on such seniority. If there had been any placement in the grade of MCM had been made on the basis of the earlier seniority in which the applicants were shown junior to the private respondents, the same shall be reviewed and the recommendations of the review DPC shall hold good. In that process, if the private respondents were to be downgraded to the post of Highly skilled, respondents may consider, if their service in the grade of MCM is for a substantial period, for creation of supernumerary post so that reversion could be avoided. Driven to the wall, if reversion is inevitable, the same shall be in accordance with law, by following the principles of natural justice.*

*10. The OA is allowed accordingly. Respondents are directed to restore the seniority of the applicant in the grade of Highly skilled corresponding to their position as skilled category and conduct review DPC for placement of MCM (if the same is warranted) and afford necessary consequent benefit of pay and allowances to the applicants notionally from the date they were due to be placed in that position and actually from the date they actually shouldered the responsibilities as of MCM."*

7. It has been prayed that as the applicant's case is exactly identical to the aforesaid order passed by this Tribunal, a direction may be issued to the respondents to restore the seniority of the applicant and pay consequent pay & allowance notionally for the period he has not worked physically on MCM grade and thereafter actual from the date of becoming MCM.

8. In the short counter affidavit, the respondents have clearly stated that the said case pertains to seniority of individuals in Industrial Establishment of the Factory, which was revised in terms of Ministry of Defence orders issued consequent upon judgement of Ernakulam Bench of this Tribunal. It has been stated that the applicant was promoted as Skilled, thereafter to Highly Skilled Grade-II and then to Grade-I and thereafter the placement of the applicant to Millwright as MCM w.e.f, 20.05.2003 was as per the seniority position and therefore was in order.

Further, a reference has been given to the directions given in the order of Ernakulam Bench of this Tribunal in OA No. 740 of 2003, 741 of 2003 and 882 of 2003 dated 17.05.05 and in view of the observations of the order of the Ernakulam Bench of this Tribunal subsequently, amended seniority list was published vide order dated 12/21.03.2007 and according to the respondents the applicant's seniority was revised from original seniority no. 4 to no. 7. It is also mentioned that due to these amendments to the seniority, the placement of MCM was also required to be reviewed but the same was not done at the time of revision of seniority in 2007. However, subsequently as per orders of restructuring, it was decided that those holding the placement post of MCM on 31.12.2005 were to be kept as MCM on 01.01.2006. Interestingly, in the short counter affidavit, it is also mentioned by the respondents that "since the seniority had already been amended on 12/21.3.2007, it was decided at factory level to cancel the placement of the applicant to Millwright, MCM from 31.12.2005, so that from 01.01.2006 the anomaly can be sorted out". Accordingly, the applicant was issued letter dated 22.03.2011, affording him an opportunity and subsequently after considering his reply, his placement to Millwright, MCM was cancelled w.e.f., 31.12.2005 vide order dated 06.04.2011.

9. In the detailed counter affidavit filed by the respondents, similar points have further been elaborated. It is also mentioned that the private respondent no. 5 i.e., Shri Rajesh Singh, is now not in the strength of OLF. He has been transferred to G.C.F. Jabalpur w.e.f., 15.02.2013. He was appointed in semi-skilled grade w.e.f., 18.05.1992 and promoted to skilled grade w.e.f., 18.05.1994. Subsequently, he was promoted to HS-II grade w.e.f., 05.11.1997, prior to cadre restructuring issued by Ministry of Defence Letter dated 20.05.2003 effective from 01.01.1996. Later on, he became MCM w.e.f., 31.11.2005 and subsequently promoted to the post of Chargeman (Tech.) w.e.f., 21.08.2011. It is also mentioned that the applicant was promoted to HS grade w.e.f., 01.01.1996, while the date of holding post of HS of private respondent no. 5 i.e., Shri Rajesh Singh remains same i.e., 05.11.1997. Therefore, the applicant was placed above the private respondent in the seniority list of HS. Subsequently, owing to his seniority the applicant was placed to MCM grade w.e.f., 20.05.2003. In the detailed counter reply, it has been concluded that even though the applicant was promoted to Millwright, HS from a date earlier than private respondent no. 5, yet it is a fact that the private respondent no. 5 has passed the trade test prior to the applicant and the letter dated 06.04.2011 was an intimation letter to the applicant that his placement to Millwright, MCM is being cancelled from 31.12.2005 owing to the revision of seniority of the applicant in terms of Ministry of Defence letter dated 27.03.2006.

10. The rejoinder and counter affidavit filed by the parties have furnished the same position.

11. From the above, it is quite obvious that the applicant has been consistently getting his promotions from his entry level as Semi Skilled workman from 03.04.1989 to Skilled workman, then to Highly Skilled

Grade-II and Grade-I and thereafter to the post of MCM. His promotions were subject to seniority-cum-suitability and also passing of the trade test. It is also a fact that in terms of Ministry of Defence letter dated 20.05.2003 (Annexure No. A-12 to the OA), the cadre structure were modified to three categories i.e., (i) Skilled with grade of Rs. 3050-490, (ii) Highly Skilled (HS-I + HS-II) in the grade of Rs. 4000-6000 and (iii) Master Craftsman with grade of Rs. 4500-7000). These cadres have been provided further pay bands i.e., (i) Skilled - Pay Band - I, Grade Pay Rs. 1900/- (ii) Highly Skilled Grade - II - Pay Band - I Grade Pay Rs. 2400/-, (iii) Highly Skilled Grade-I - Pay Band - I, Grade Pay Rs. 2800/- and (iv) Master Craftsman - Pay Band - 2, Grade Pay - Rs. 4200/-. This clearly indicates that the applicant has been promoted to MCM which is a higher grade post than Highly Skilled and which also carries higher grade pay. It has been mentioned by the learned counsel for the respondents that the decision to revise the seniority and revert the applicant has arisen based on the directions of the Ministry of Defence in view of the orders passed by Ernakulam Bench of this Tribunal. However, interestingly, in the short counter affidavit of the respondents, it has been mentioned that the placement of the applicant to Millwright, MCM w.e.f., 20.05.2003 was as per his seniority position and therefore was in order and that since, the seniority had been amended on 12/21.03.2007, it was decided at factory level to cancel the placement of the applicant to Millwright, MCM from 31.12.2005, in order to sort out the anomaly from 01.01.2006.

12. In the detailed counter affidavit, it is also mentioned that letter dated 06.04.2011 was an intimation letter to the applicant that his placement to Millwright, MCM is being cancelled from 31.12.2005 owing to the revision of seniority of the applicant in terms of Ministry of Defence letter dated 27.03.2006. However, it is obvious from the said letter dated 22.03.2011,

that the applicant was asked specifically, if he had any submissions to the proposed reversion from placement of MCM for which detailed representation had been submitted by the applicant.

13. In OA No. 796 of 2007 filed by similarly aggrieved applicants before this Bench, order dated 20.05.2011 was passed and relief granted. The relevant paragraph 8, 9 and 10 are quoted below:-

14. It is observed that there are quite a few contradictions in the short counter affidavit and the counter affidavit by the respondents, which also do not clarify the reasons for reversion of the applicant and also whether he could have been adjusted on the same post elsewhere and whether he has been accorded any pay protection. We also find that the fundamentals of the relief claimed by the applicant in this OA and the relief sought and granted to the applicants of OA No. 796 of 2017 quoted above are similar. A person who has been promoted and later on reverted without any specific cause/reason and purely on the grounds of correction of seniority list and restructuring reducing the number of posts in MCM category is not considered sufficient reason for reverting the applicant after so many years from the post which draws higher grade and grade pay.

15. Accordingly, the OA is allowed. The respondents are directed to restore the seniority of the applicant in the grade of Highly skilled (HS) corresponding to his position and conduct review DPC for his placement as MCM and afford necessary consequent benefit of pay and allowances to the applicant notionally from the date he was due to be placed in that position and from the date of his actual shouldering the responsibility as MCM. This exercise is to be completed within a period of three months from the date of receipt of certified copy of this order. No order as to costs.

**(MOHD JAMSHED)**  
**MEMBER-A**

**(JUSTICE BHARAT BHUSHAN)**  
**MEMBER-J**

Arun...