

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 60 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri A.Srinivas Rao, aged about 39 years, S/o A. Ranga Rao, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.
2. Sri Bhuma nanda Dash, aged about 40 years, S/o Late L.K.Dash, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.
3. Sri Basundhara Choudhury, aged about 38 years, S/o Late Bhagirathi Choudhury, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.
4. Sri Ganesh Pathi, aged about 41 years, S/o Trinath Pathi, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.
5. Sri Krushna Chandra Sahu, aged about 37 years, S/o Sri Dandapani Sahu, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.
6. Sri Simanchala Behera, aged about 38 years, S/o Sri Bijoya Behera, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.
7. Sri Maheswar B.Choudhury, aged about 48 years, S/o Sri Bhaskar Choudhury, working as Master Craftsman under Officer Commanding, AD Static Workshop, C/o 99 APO, Gopalpur, Dist.- Ganjam, Odisha, Pin-761052.

.....Applicants.

VERSUS

1. Union of India, represented by Director General, EME Civil, Ministry of Defence, Integrated Head Quarter of MOD (Army), Master General of Ordnance Branch, DHQ PO, New Delhi – 110011.
2. The Commandant, Headquarters, Ministry of Defence, Base WKSP GP EME Merrut Cantonment-250001, AT/PO-Merruti, Uttar Pradesh.
3. Major General, EME, Headquarters, Ministry of Defence, EME Branch, Lucknow, Uttar Pradesh.
4. Deputy Director, EME, Headquarters, Ministry of Defence, MB Area, Jabalpur, Madhya Pradesh.
5. The Officer Commanding AD Static WKSP Gopalpur, Pin-907401, Ministry of Defence, C/o 99 APO Gopalpur, Dist-Ganjam-761052, Odisha.

.....Respondents.

For the applicant : Mr.S.K.Pattnaik, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 18.7.2019 Order on : 27.8.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

This OA has been filed by seven applicants with the prayer for the following common reliefs:-

- "(a) To declare the impugned decision dated 22.1.2014 under Annexure A/7 and consequential show cause notices under Annexure A/8 series as non est and not legally sustainable in view of office memorandum under Annexure A/6.
- (b) To quash the impugned orders under Annexure A/7 and Annexure A/8 series.
- (c) Pass any other appropriate order as may deem fit and proper in the interest of justice.
And for which act of your kindness the applicants as in duty bound shall every pray."

2. The applicants aver in the OA that the respondents are trying to revert them from the post of the Master Craftsman (in short MCM) after they were promoted on 15.4.2009 (Annexure-A/4) based on the recommendation of the Review Board. The show cause notice dated 31.1.2014 (A/8 series) was issued to revert the applicants in pursuance to the letter of the respondents at Annexure-A/7.

3. The grounds urged in the OA are:

- (i) The applicants have already rendered almost 6 years of service in the promotional post and the applicants were selected by the departmental selection committee (in short DSC) duly approved by the respondent no. 1 w.e.f. 1.4.2008.
- (ii) The promotions between 1.1.2006 and 29.8.2008 are protected as per the OM dated 13.9.2012 (Annexure-A/6), which is applicable to the case of the applicants.
- (iii) The OM dated 14.6.2010 (Annexure-A/5) cannot be applied retrospectively to affect the promotion of the applicant allowed prior to 14.6.2010.
- (iv) The impugned orders will result in demotion of the applicant and such an action is not permissible under the Article 311(2) of the Constitution of India.

4. The respondents have filed their Counter stating that the applicants were appointed initially in the year 1997 in the pay scale of HS-I. The pay scales of HS-I and HS-II were merged together to the pay scale of Rs. 4000-6000 w.e.f. 1.1.1996. After completion of 10 years of service, they were promoted to the next higher scale of MCM with effect from 1.4.2008, with the pay scale of Rs. 4500-7000 after being selected by the DSC. After re-structuring of the cadre, the number of posts of MCM was upto 25% of the total sanctioned posts of highly skilled grade.

5. It is stated in the Counter that after implementation of the sixth pay commission report, the cadre of artisan cadre in the Ministry of Defence was restructured as under vide the Ministry of Defence OM dated 14.6.2010 (Annexure-A/5):-

- (i) Skilled Grade- in Pay Band PB-1 plus Grade Pay of Rs. 1900/-, applicable to 45% of total strength.

(ii) Master Craftsman- in Pay Band PB-2 plus Grade Pay of Rs. 4200/-, applicable to 25% of total strength of the cadre excluding the skilled artisan staff, i.e. about 14% of total strength of cadre.

(iii) The remaining 41% of total posts will be divided 50:50 into 2 categories of posts i.e. Highly Skilled Grade-II in PB-1 plus the Grade Pay of Rs. 2400/- (20.5% of total cadre) and Highly Skilled Grade-I in PB-1 plus the Grade Pay of Rs. 2800/- (20.5% of total cadre).

(iv) Highly Skilled Grade-I will be senior to the Highly Skilled Grade-II and the post of MCM will be the promotional post for the post of the Highly Skilled Grade-I.

6. It is further stated in the Counter that after the restructuring as per the letter dated 14.6.2010 (A/5), the post of MCM became a promotional post which is to be allowed on the basis of seniority-cum-fitness. Prior to 14.6.2010, the elevation to the post of MCM was being done at the level of the unit after completion of 10 years of service at the level of Highly Skilled category. It is stated that the Review Committee was set up to recommend the names of senior employees for promotion to the post of MCM and that accordingly, the applicants were issued the show cause notice for reversion to accommodate the senior employees who were left out.

7. The applicants have filed the Rejoinder stating that vide the letter dated 21.9.1982 (A/1), the MCM promotion is guided by certain criteria and they had fulfilled these criteria and were promoted as MCM w.e.f. 1.4.2008. The guidelines for elevation to the post of MCM were revised vide the letter at Annexure-A/2. It is further averred that the Review Committee has misunderstood the guidelines for promotion to the post of MCM and prepared the list of selected employees as per their own version and recommending applicants' reversion. It is stated that the list was prepared by the Committee without referring to the assessment reports of the employees. It is stated that the persons who were senior did not have the eligibility criteria for promotion to the post of MCM. It is stated that the criteria for selection to the post MCM is "selection cum seniority" and not "seniority cum fitness" as per the DOPT guidelines. It is claimed that the letter dated 14.6.2010 never specified any change in the selection method for movement of HS-I to MCM grade which is to be done on the basis of outstanding performance and super specialist skill, although the grade of MCM has been made a promotional post as per the letter dated 14.6.2010.

8. Learned counsel for the applicant was heard in the matter. Apart from reiterating the contentions of the applicants in the OA, he drew our attention to the circulars at Annexure-A/12 and A/13 of the Rejoinder issued subsequent to the letter dated 14.6.2010 (A/5) in which, it was stated that the persons who were promoted as MCM till 14.6.2010 will not be disturbed. He also pointed out

that as per the DOPT circular dated 13.9.2012 (Annexure-A/6) in which it was clearly stated that the status of the government servants as on 29.8.2008 including those who had earned promotion between 1.1.2006 and 29.8.2008 will be protected as these appointments were made as per the recruitment rules, as stated in para 4.6 of the Counter. Learned counsel for the applicant has also submitted a written note of arguments broadly reiterating the stand taken in the pleadings of the applicants and enclosing a copy of the order dated 14.10.2016 in OA No. 589 to 594 of 2014.

9. Learned counsel for the respondents submitted that as stated in the Counter, prior to 14.6.2010, the post of MCM was not a promotional post. But as per the letter dated 14.6.2010, the post of MCM became a promotional post to be given on the basis of the seniority and the posts are to be filled up w.e.f. 1.1.2006. The Review Committee meeting was held and it was found that the applicants were junior and they have to be reverted to the lower grade to accommodate senior staffs, but no recovery is to take place. Learned counsel for the respondents also submitted that the applicants were issued the show cause notice and no reply has been submitted by them.

10. While the argument of learned counsel for the applicants is that by virtue of the circulars at Annexure-A/6 and at Annexure-A/13, the applicants, learned counsel for the respondents have argued that the applicants are juniors and there are seniors to the applicants who have not been promoted to the grade of MCM. It is also seen from the show cause notice issued to the applicants that no recovery will be undertaken and their pay after reversion will be fixed as per the FR 31A.

11. It is seen that after restructuring of the cadre vide the letter dated 14.6.2010 (A/5), the number of posts of MCM remained the same i.e. 25% of the strength of highly skilled category i.e. 25% of 55% or about 14% of total strength of artisan cadre and 25% of the cadre where the cadre consists of only highly skilled category of artisans. The letter dated 14.6.2010 stated as under:-

3. (a) Wherever the grade structure in the Industrial as well as Non-Industrial trades is already existing in the ratio of 45:55, the erstwhile Skilled and High Skilled, and 25% of Highly Skilled in the grade of Master Craftsman, the following will apply,

- 45% of the posts may be granted the pay scale of Skilled Worker (Grade Pay of Rs.1900 in the Pay Band PB-1)
- 25% of the remaining 55% may be granted the pay scale of MCM (Grade pay of Rs.4200 in the Pay Band PB-2), and
- The remaining posts may be divided in a ratio of 50:50 and redesignated as Highly Skilled Worker Grade-II (Grade Pay of Rs.2400 in Pay Band PB-I) and Highly Skilled Worker Grade-I (Grade Pay of Rs.2800 in Pay Band PB-I).

(b) The Placement of the individuals in the posts resulting from the restructuring shall be made w.e.f. 1.1.2006, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure. (c) Highly Skilled Grade I shall be en-bloc senior to Highly Skilled Grade II.

4. (i) The post of Master Craftsman shall be part of the hierarchy and the placement of Highly Craftsman of Highly Skilled Grade I in the grade of Master Craftsman will be treated as promotion.

(ii) In the case of Defence Establishments where there is no category of Skilled Workers and direct recruitment's made 100% at the level of Highly Skilled, the posts of Master Craftsman existing as on 1.1.2006 will be placed in PB-2 + GP 4200 and the remaining posts of Highly Skilled Workers may be bifurcated in HS-I in the ratio of 50:50.

(iii) In view of the above re-structuring, the artisan staff may be allowed to give revised option for pay fixation w.e.f. 1.1.2006 within these months from the date of issue of orders in this regard.

(iv) The existing recruitment rules for the Tradesman may be amended and RRs for the post of MCM may be framed accordingly."

12. It is noted that there is no provision for reversion of the employee earlier promoted as MCM in the letter dated 14.6.2010. The guidelines at Annexure A/12 dated 14.3.2011 issued regarding implementation of the restructuring vide letter dated 14.6.2010, stated that the employees promoted earlier as MCM would be protected provided it was within the ratio fixed as per the letter dated 14.6.2010. It is noted that the ratio as per the letter at Annexure-A/3 under which the applicants were promoted and the ratio as per the letter dated 14.6.2010 (A/5) are same as far as the number of MCM posts is concerned. Further, it is averred in para 4.6 that as per the OM dated 13.9.2012 of the DOPT, the employees who were promoted between 1.1.2006 and 22.9.2008 are to be protected.

13. Learned counsel for the respondents had pointed out at the time of hearing that the letter at Annexure- A/13 have not been issued by the Ministry of Defence and hence, the protection given to the employees promoted between 1.1.2006 to 14.6.2010 will not be applicable for the applicants. However, the said letter at Annexure-A/13 has not been overruled by the Ministry of Defence.

14. In view of the submissions above, we dispose of this OA with a direction to the respondents to consider the case of the applicants treating this OA as their reply to the show cause notice issued to them at Annexure-A/8 series and take an appropriate decision in the matter keeping in mind the OM dated 13.9.2012 (Annexure-A/6) of the DOPT and other documents furnished by the applicants in this OA as well as the observations made in this order and pass a speaking order, copy of which is to be communicated to the applicants within three months from the date of receipt of this order and till that time, the applicants are not to be reverted.

15. The OA is disposed of as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

