

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00689/2015

Wednesday, this the 3rd day of July, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN,

...ADMINISTRATIVE MEMBER

HON'BLE MR.ASHISH KALIA,

...JUDICIAL MEMBER

1. Smt. Leela Vishnu,
MES/196443,
Peon, Military Engineer Services,
O/o The Garrison Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
2. Smt.C.K.Binu,
MES/138246,
Peon, Military Engineer Services,
O/o The Garrison Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
3. Smt. Mini T.K.,
MES/138249,
Peon, Military Engineer Services,
O/o The Garrison Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
4. Shri Chandran Poliyadan,
MES/187924,,
Peon, Military Engineer Services,
O/o The Garrison Engineer (NS),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
5. Smt. Sarala Devi K.P.,
MES/187080,
Peon, Military Engineer Services,
O/o The Garrison Engineer (NS),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.

6. Smt.Jain Philip,
MES/109792,
Peon, Military Engineer Services,
O/o The Commander Works Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
7. Smt.K.Rajamma,
MES/187858,
Peon, Military Engineer Services,
O/o The Commander Works Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
8. Shri P.N.Manoj,
MES/608454,
Peon, Military Engineer Services,
O/o The Chief Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
9. Shri Prathapan N.V.,
MES/DSC/606,
Peon, Military Engineer Services,
O/o The Chief Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
10. Smt. P.K.Usha,
MES/187093,
Peon, Military Engineer Services,
O/o The Chief Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
11. Shri Haridas K.,
MES/608455,
Peon, Military Engineer Services,
O/o The Chief Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
12. Shri Viswambaran,

.3.

MES/187897,
Peon, Military Engineer Services,
O/o The Garrison Engineer (NW),
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.

13. Shri Xavier Cheriyan,
MES/187912,
Peon, Military Engineer Services,
O/o The Assistant Garrison Engineer (I) R&D,
Kakkanad (P.O.) Thrikkakara
Kochi – 682 021.

...Applicants

(By Advocate Mr.P.K.Madhusoodhanan)

V e r s u s

1. The Chief Engineer, Head Quarters,
Southern Command,
Pune – 411 001.
2. The Command work Engineer (NW),
Military Engineer Services,
Kataribagh,
Naval Base (P.O.), Kochi – 682 004.
3. The Engineer-in-Chief,
Engineer-in-Chief's Branch,
Army Head Quarters, DHQ(P.O),
New Delhi - 110 001.
4. The Union of India,
represented by its Secretary,
Ministry of Defence,
Central Secretariat,
New Delhi 110 001.

....Respondents

(By Advocate Mr. N.Anil Kumar, SCGSC for Respondents)

This application having been heard on 28th June, 2019, the Tribunal on
3rd July, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

The applicants in OA No.689/2015 are Smt.Leela Vishnu and 12 others, who are working as Peons in the Military Engineer Services, Office of the Garrison Engineer (NW), Naval Base, Kochi. They are aggrieved by the fact that despite having worked several years in the same post, they continue to be denied promotion on specious grounds. The reliefs sought in the OA are as follows:

(a) Issue necessary directions to the respondents to consider and grant promotions to the applicants in accordance with law as directed in Annexure A2 by the 3rd respondent, within a time limit to be fixed by this Hon'ble Tribunal.

(b) issue necessary directions to the respondents to consider and pass orders on merit on Annexures-A4 and A5 and similar representations received by the first respondent, in accordance with law and in the light of Annexure A2 and the existing recruitment rules in force, within time limit to be fixed by this Hon'ble Tribunal.

(c) Declare that the non-consideration of the applicants for promotion from the post of Peon as per the existing Recruitment Rules in force, alleging pendency of creation of Recruitment Rule for Multi Tasking Staff is highly discriminatory, arbitrary, unconstitutional and bad in law.

(d) Issue necessary directions to the respondents to grant promotions to the applicants at least from the dates the same has been granted to their juniors with all attendant monetary benefits arising therefrom to them.

(e) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The applicants were recruited as Peons in the respective offices under

the Military Engineer Services and all entered service between the years 1992 and 1998. The applicants-2 and 8 have passed SSLC examination, the 1st applicant had passed VI standard, the 3rd applicant, 9th standard, applicants-4 to 7, 9, 11 and 12 have failed in SSLC, whereas applicants-10 and 13 have passed VIII standard. Many of them belong to Scheduled Caste communities. The Peons in Military Engineer Services (MES) belong to non-industrial, non-basic, non-ministerial Group D staff, under regular channel of promotion is to the post of Daftry and Ferroprinter. Those who are educationally qualified are eligible for consideration for promotion as LDC. The relevant extract of notification dated 09.11.2004 issued as SRO 169 by the 4th respondent is presented as Annexure A1. This is MES (Industrial Group D posts) Recruitment Rules, 2004, which regulate the method of recruitment to Group 'D' Industrial posts in MES.

3. The applicants have long and unblemished, years of regular service and have obtained MACP benefits on account of their continuing in the same post without promotion. Further the said benefits which essentially provide the next grade pay cannot be a substitute for regular promotion in service. The respondents in pursuance to the final orders in OA No.109/2012 had ordered two promotions to be granted to Group 'D' staff like Chowkidar/Safaiwala as Mate (Semi skilled) personnel. But the applicants who belong to non-industrial, non-ministerial and non-basic Group 'D' were not considered for absorption in industrial line of promotion as Mate (Semi

.6.

skilled) despite the existence of vacancies.

4. Aggrieved by this state of affairs, the applicants and others like them had submitted representation through proper channel seeking promotions and these representations were forwarded to the first Respondent by the 3rd Respondent duly recommended (Annexure A2). The recommendation in favour of applicants is faithfully narrated in the said communication, which is as follows:

“PROMOTION TO ERSTWHILE GP 'D' STAFF: PEON, DAFTRY ETC.

1. This is with reference to requests made by a lot of Peons. Daftry etc that their promotion should not be held up due to non-finalisation of the case of MTS.
2. It is to be noted that as per 6th CPC recommendation and guidelines of DoP&T a case has already been taken up for merging and redesignating all common categories (erstwhile Gp'D" Non-industrial having Gde Pay of Rs.1800 as per 6th CPC) i.e., Chowkidars, Safaiwalas, Peons, Daftry etc as MTS. However, the case of MTS is likely to take some time to be settled.
3. Until the order for MTS is issued by Ministry of Defence, the interests of existing Peons, Daftry etc. should be taken care of as it is the duty of the organization to boost up the morale of its employees.
4. In the light of above facts, it is directed that needful action may please be taken on priority to grant promotion to Peons, Daftry, as the case may be, as per existing RRs. This office is of the opinion that there would be no harm if such action is taken for the sake of Peons, Daftry etc.
5. Action as shown above may please be taken at the earliest under intimation to this HQ. This will enable the employees to get promotional benefits i.e., increment etc. as applicable. It is, however, emphasized that as per Para 8 Annexure-1 of DoP&T Om No.35034/3/2008-Estt(D) dated 19 May, 2009 reiterated again vide MoD D(Civ-I) ID No.11(5)/2009-D (Civil) dated 23 July, 2012. Promotion earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACP Scheme.”

.7.

5. However, no steps were taken by the second Respondent and the officers subordinate to him, in considering and granting promotion, while the Chowkidars and Safaiwalas were granted promotion to semi-skilled, Skilled and highly skilled grades in pursuance of final order in OA No.109/2012. Annexure A4 and A5 and similar representations submitted by the applicants and others were not given consideration as directed in Annexure A2 and as communicated in Annexure A3. The grounds cited for denying the benefits to the applicants is that the Recruitment Rules for MTS have not been finalised yet. This situation continues unabated till present. It is not understood why when all other categories of Chowkidars/Saffaiwalas/ Daftry etc., were granted promotions as per Recruitment Rules in force, the applicants are being denied the benefits under the same principle. The applicants are being denied on the ground that they have to await new Recruitment Rules for MTS to be brought out. There is injustice in treating equals unequally.

6. The respondents have filed a reply statement in which facts brought out in the OA have been admitted. However, they take the line that given the fact of the applicants not having avenue for promotion, they have been obtaining benefits under MACP and have been granted enhancement in Grade Pay to the next higher grade. It is further stated that “action to promote the category of Peon, as per the existing Recruitment Rules, is in hand with the 1st Respondent for which necessary spade works have already been initiated, pending finalization of Recruitment Rules for MTS in MES.”

7. Heard Shri P.K.Madhusoodhanan for the applicant and learned Senior Central Government Standing Counsel on behalf of the respondents. All pleadings both documentary and oral were examined. Promotion is a genuine aspiration for Government employees and in this context the applicants and the categories of Peons, which they represent, have been an unfortunate lot. They have been denied promotion on the ground that a combined Recruitment Rules to MTS categories is awaited. This wait has proved to be unending. All the applicants have spent several years of service in the same category. They have been pleading their case for promotion on similar lines as Daftries and Saffaiwalas, who were able to take advantage of the order in OA No.109/2012. Again it is unacceptable to argue that the applicant need not clamor for promotion now that they have got MACP benefit. While MACP Scheme is indeed meant to be a relief to categories who do not have scope for promotion, obtaining the benefits under the scheme can never be a true substitute for promotion, for the very reason that while they got enhancement in Grade Pay to the next level, they cannot aspire for higher pay band or higher scale.

8. It is seen that as per Annexure A2 the officials sufficiently at a higher level have been concerned about the state of affairs and have strongly taken up their case. But despite passage of several years nothing appears to have been done. Under the circumstances, this Tribunal is of the view that the OA

.9.

has merit on its side. We direct Respondent-1 to consider the case of the applicants and to promote them in the same manner as was done in the case of similarly placed categories. If the combined Recruitment Rules are not available, they could be considered under the existing Recruitment Rules. The representation filed by the applicants is seen to have been forwarded to Respondent-1. This shall be considered by the Respondent-1 and dealt with in accordance with law within 60 days on receipt of a copy of this order. OA, thus stands allowed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00689/2015

- 1. Annexure A1:** True copy of the Notification dtd. 9/11/2004 issued by the 4th respondent.
 - 2. Annexure A2:** True copy of the letter dated 29.08.2014 by the 3rd respondent.
 - 3. Annexure A3:** True copy of the letter dated 13/9/2014 issued by the 1st respondent.
 - 4. Annexure A4:** True copy of the representation dated 16/2/15 submitted by the 1st applicant.
 - 5. Annexure A5:** True copy of the representation dated 10/2/2015 submitted by the 8th applicant.
 - 6. Annexure A6:** True copy of the letter dated 26.5.2015 issued by the 1st respondent.
 - 7. Annexure A7:** True copy of the Order No.10322/39/EINB, dated 17/3/2014 by the 2nd respondent.
 - 8. Annexure A8:** True copy of the Order No.10322/44/EINB, dated 19/4/2014 by the 2nd respondent.
 - 9. Annexure R1(a):** True copy of the letter dated 20.01.2011.
 - 10. Annexure R1(b):** True copy of the letter dated 15.09.2015.
 - 11. Annexure R1(c):** True copy of the letter dated 26.10.2015.
 - 12. Annexure R1(d):** True copy of the letter dated 10.10.2015.
 - 13. Annexure R1(e):** True copy of the OM dated 19.05.2009.
-