

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A. No. 350/703/2012

Date of order : 11.06.2019

Coram : Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. N. Neihsial, Administrative Member

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Sri Sagar Kumar Das, son of Late Sashi Mohan Das
Aged about 52 years, working for gain as Examiner
Highly Skilled Grade-II, under the Controller
Quality Assurance (SA), P.O. – Ichapur-Nawabganj
North 24 Parganas, West Bengal, and residing at
Dr. Lal Mohon Banerjee Road, Gouranga
Pally, Panihati, Kolkata – 700114.

... Applicant

For the Applicant : Mr. N.P. Biswas

- Versus -

1. Union of India service through the Secretary
Ministry of Defence, Department of Defence
Production, having its office at South Block
New Delhi – 110011.
2. The Director General Quality Assurance
Nirman Bhavan, New Delhi – 110011.
3. The Controller Quality Assurance (SA)
P.O. – Ichapur-Nawabganj, North 24 Parganas
West Bengal, Pin – 743144.
4. The Junior Scientific Officer/Admin Officer
Controller Quality Assurance (SA)
P.O. – Ichapur-Nawabganj, North 24
Parganas, Pin – 743144.

5. Shri Biswnath Nath, Highly Skilled Grade-II
 T.No. 110, Controllerate of Quality Assurance
 (SA), Ichapur-Nawabganj, North 24 Parganas
 Pin – 743144.

..... Respondents

For the Respondents : Ms. R. Basu

ORDER (ORAL)

N. NEIHSIAL, MEMBER (A):

This O.A. has been preferred by the applicant under Section 19 the Administrative Tribunal Act, 1985 seeking the following reliefs:

8.i) An order/direction do issue to modify, cancel, withdraw and/or rescind the impugned Order Part-II, No. 204 dated 08.11.2011 issued by the JTO/Admin Officer for Controller Quality Assurance (SA) and as contained at Annexure-A/4 to this application.

ii) An order/direction do issue to cancel, withdraw and/or rescind the impugned order No. 11130 dated 16.07.2012, issued by the JSO/Admin Officer, for Controller Quality Assurance (SA), rejecting the representation of the applicant and as contained at Annexure-A/7 to this application.

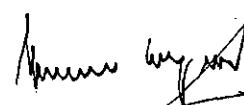
iii) An order/direction and/or declaration that the impugned seniority be rectified and the applicant be placed above the private respondent in the HS-II grade in the 'Viable Group'.

iv) An order and/or direction to the respondents and each of them, their subordinates and/or their agents not to make any further promotion to higher grade and/or to extend any service benefit to any member of the Viable Group on the basis of the impugned seniority list.

v) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue.

vi) And to pass such further or other order or orders as this Hon'ble Tribunal deems fit and proper.

vii) Costs pertaining to this application."



2. **Grounds of relief are as follows:**

- (i) That the order passed by the respondents placing the applicant below the private respondent in the seniority list of Highly Skilled grade of the 'Viable Group' is totally arbitrary, illegal and malafide and deserves to be quashed and set aside.
- (ii) That the impugned order dated 16.07.2012, passed by the Junior Scientific Officer, Controller Quality Assurance (SA), Ichapur, rejecting the representation of the applicant is arbitrary, unlawful and unsustainable.
- (iii) That by the impugned orders, the respondents have caused grave injury to the applicant by jeopardizing the future prospects and service career of the applicant.
- (iv) That on restructuring of industrial cadre, the applicant was promoted to HS-II grade with effect from 01.01.2006, while the private respondent was promoted to the said grade with effect from 25.03.2006 and therefore, the private respondent cannot supersede the applicant in the matter of seniority in the promoted grade.
- (v) That it is the settled principle of law that seniority in a post/grade shall be counted from the date of promotion and/or appointment to the post or grade.
- (vi) That the impugned orders of the respondents are against the general rules and orders of the Government issued from time to time regulating the seniority of government servants.
- (vii) That the order dated 04.11.2011 regarding restructuring of industrial cadre in Defence Establishments travels back to 01.01.2006 for all its purpose that is distribution of posts in four grades, allocation of Pay Band and Grade Pay, promotion of Skilled employees to Highly skilled grade etc., taking into the ground condition existing as on 01.01.2006 including the vacancies available as on that day consequent upon the restructuring in accordance with the revised ratio prescribed by the Government.
- (viii) That the private respondent was in the skilled category of Fitter General/Mechanics trade on the crucial date and the trade having a strength of 25 employees is a viable trade in itself and the revised ratio has to be applied within the said Group and none of the employee of the ground can be combined/clubbed with any other non viable group for the purpose of restructure in terms of the Govt. order dated 04.03.2011.
- (ix) That the Controller Quality Assurance (SA) does not have any authority to include the private respondent within the non-viable trades having less than sanctioned strength of five for the purpose of restructure and higher promotion.

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(x) That the action/actions by the respondents constitute colourable exercise of power, absolute favouritism and nepotism and hence, deserve to be condemned and declared unlawful and set aside.

(xi) That no authority acting bonafide and on good faith and upon consideration of material facts can or could pass the impugned order.

(xii) That malice of law and malice of fact are patent from the face of the records of the case.

(xiii) that the balance of convenience and inconvenience rests entirely in favour of the applicant in passing necessary orders as prayed for.

3. Facts of the case are that the applicant was appointed to the post of Orderly with effect from 06.10.1990 under the Ministry of Defence, Dte General Quality Assurance, The Controller Quality Assurance (SA), P.O. – Ichapur-Nawabganj, North 24 Parganas. He was thereafter, appointed/re-designated as Labour (Un Skilled) with effect from 12.09.1994. Having rendered satisfactory services and after passing the prescribed Trade test, the applicant was promoted to the higher post of Fitter General, Mechanical, in the Semi Skilled Grade with effect from 29.04.1999. He was subsequently promoted to the higher grades of Examiner (Skilled) with effect from 15.07.2004, Examiner (Highly Skilled) with effect from 03.06.2009. The Ministry of Defence, Department of Defence Production, Dte Gen Quality Assurance (Adm), Nirman Bhavan, New Delhi, vide Order No.

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A/92163/Revision/MCM/DGQA/Adm-7B dated 04 Mar 2011, issued detailed instructions regarding 'Restructuring of Cadre of Artisan Staff' in Defence Establishments in Modification of Recommendation of 6th CPC, as a sequel to MOD Letter No. 11(5)/2009-D (Civ-I) dated 14.06.2010 and dated 13.10.2010.

According to these instructions, the Grade structure of industrial cadre and Pay Bands and Grade Pays shall stand modified w.e.f. 01.01.2006 as under:-

<u>Sl. No.</u>	<u>Grade</u>	<u>Pay Band with Grade Pay</u>
I	Skilled	Pay Band-I with Grade Pay Rs. 1900
II	Highly Skilled	Pay Band-I with Grade Pay Rs. 2400
III	Highly Skilled Grade-I	Pay Band-I with Grade Pay Rs. 2800
IV	Master Craftsman	Pay Band-2 with Grade Pay Rs. 4200

4. According to para 4(c) of the above mentioned instructions vide order dated 04.03.2011, the revised ratio/percentage of different grades in industrial trades in the establishment would be as follow:-

<u>Sl. No.</u>	<u>Grade</u>	<u>Percentage</u>
1.	Skilled	45
2.	HS-II	20.625
3.	HS-I	20.625
4.	MCM	13.75

5. It was further instructed vide para 5 of the said order dated 04.03.2011 that the establishment should work out the trade wise inter-grade ratio on the sanctioned/authorised strength as on 01.01.2006 in the ratio as mentioned in para 4

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of the letter and as clarified vide MOD ID note dated 13.10.2010. If there are non-viable common category trades listed at Annexure-I to MOD letter dated 15.10.1984 (i.e. Core Trades) having meagre number of workers (say less than seven); those trades should be grouped together as far as possible, with trades of an allied nature (listed at Annexure-I to MoD letter dated 15.10.1984) in absence of which the non-viable trades may be merged with largest viable trade. Where there is no viable trade of any sort, all the non viable trades/Jobs listed in Annexure-I to MOD letter dated 15.10.1984 should be put together and treated as one Group. The grouping once finalised should not be altered without approval of the DGQA HQ.

6. According to above scheme as submitted by the applicant, 'Viable Group' in respect of the department to which the applicant belong, has been restructured and notified vide order dated 04.03.2011 and their seniority has been shown w.e.f. 01.01.2006. In the notified order, applicant's name was indicated in the 'Viable Group' and effective date of placement/promotion as HS-II was shown as 01.01.2006 and the private respondent No. 5, Sri Biswanath Nath was putted ^{at} 2nd steps below and shown in the HS-II i.e.

W.M.W. W.M.

W.M.W. W.M.

Highly Skilled Grade II and effective date of placement/promotion was shown as 25.03.2006. However, at the bottom of the order with note NB, following remark has been given:-

"As on 20 Jun 2006 the seniority of the above HS-II employees will be as under:

- (i) BN Nath
- (ii) Indrajit Kr Dey
- (iii) Sagar Kr Das
- (iv) Ganesh Hela."

In the Part-II order No. 204 dated 08.11.2011 also, Sagar Das was placed at Sl. No. 9 with the same effective date of promotion/placement as 01.01.2006. But with the same remark at the bottom as above indicated their changed positions as of 20 Jun 2006.

7. The main contention of the applicant is that since the seniority position was determined with reference to the effective date of 01.01.2006, it is not justified on the part of the respondent authority to indicate separately in their office order the changed positions as on 20.06.2006 putting private respondent No. 5, two steps above him which implies nothing but changing of their seniority position from 01.01.2006 to 20.06.2006.

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The respondents filed their reply on 01.03.2013. Amongst others, they have pointed out the relative position of the respondent No. 5 as under:-

	Applicant (Sagar Kumar Das)	Respondent No. 5 (Biswanath Nath)
1	Appointed as an orderly on 06-10-90	Appointed as an Orderly on 22-06-88
2	Converted into labourer (USK) on 12-09-94	Converted into Labourer (USK) 2-12-91
3	Promoted to F/GM(SS) on 29-04-99 (By holding DPC)	Promoted to F/G/M(SS) on 30-7-98 (By holding DPC)
4	Promoted to Examiner (SK) on 15-07-04 (By holding DPC)	Promoted to F/G/M(SK) on 15-11-02 (By holding DPC)
5	Promoted to Examiner (HS) on 03-06-09 (By holding DPC)	Promoted to P/Inst/Genl (HS) on 20-6-06 (By holding DPC)
6	Placed on Examiner (HS-II) on 01-01-06	Placed on Fitter General Mechanic (HS-II) on 25-3-06
	(owing to implementation of four grade structure under newly formed viable group)	(owing to implementation of four grade structure but not in fitter Instrument General (HS-II)).
	Note Actually individual (applicant) got promotion from F/G/M (SK) to Fitter Instrument General (HS) w.e.f. 20.6.06 before implementation of the present four grade. Hence he has been transferred to the newly formed Viable group as F/1/Genl having less than five sanctioned workers.	

8. The main contention is that private respondent No. 5 i.e. Sri BN Nath was senior to Sagar Kumar Das, applicant herein, in all respects ranging from appointment to all

Amrit Nath

subsequent promotion till implementation of four grade restructuring w.e.f. 01.01.2006. Similarly this concept also applied to all other employees reflected in "viable group" as well as in other trades also.

9. In rejoinder, filed by the applicant on 22.05.2013, the applicant has contested that as on 01.01.2006 i.e. the date of restructure of grade and industrial cadre, the private respondent No. 5 Sri BN Nath was holding the trade of Fitter General/Mechanical (Skilled) and the applicant was holding the Trade of Examiner (Skilled), which are two separate and distinct trades having different technical and skill requirement as also separate channel of promotion and therefore comparison as shown by the respondents is not relevant for the purpose of deciding the question in issue in the present application. The applicant also pointed out that the order travels back to 01.01.2006 for all its intents and purposes. The restructure has to be effected taking into account the ground conditions as was existing on 01.01.2006. Therefore, all promotions/upgradations which took place between 01.01.2006 and the date of issue of the order become non est.

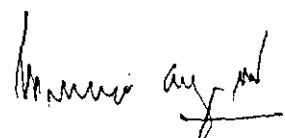
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The respondents have also filed additional supplementary reply on 27.11.2013. They have also submitted written note of arguments on 04.06.2015.

The applicant also submitted written argument on 01.03.2016.

10. We have heard the learned counsel, perused pleadings and records as well as documents placed before us by both the parties. The issue of dispute regarding the seniority of the applicant with respondent No. 5 essentially arise from the order No. 204 dated 08.11.2011 wherein the effective date of the applicant is being shown as 01.01.2006 and that of respondent No. 5 being shown as 25.03.2006. In the note below in the said order, recorded position of seniority has been shown differently.

11. After careful consideration, it is felt that in case their position of seniority has to be changed based on facts and relevant orders, including recommendation of the DPC, the applicant should have been given opportunity to make representation under the principles of natural justice. We found that this opportunity was not given to the applicant to make representation, if any, against the change of the seniority as indicated in the office order No. 204 dated

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08.11.2011 which gives confusing picture thereby giving more rooms for disputes amongst the individuals/employees.

12. Keeping in view of this, we feel that the office order Part - II No. 204 dated 08.11.2011 and also letter No. 1113000 dated 16.07.2012 i.e. Annexure – A/7 are liable to be set aside and quashed. Accordingly, these two orders are hereby set aside and quashed.

13. The O.A. is allowed. It is however, left open to the respondents to take steps to re-fix the seniority, if they so wish, by issuing notice to the applicant and other affected parties. No costs.

(N. Neelambari)
Administrative Member

(Justice L.Narasimha Reddy)
Chairman