

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

O.A.No.210/00089/2014

Dated this Friday the 14th day of June, 2019.

**Coram: Dr. Bhagwan Sahai, Member (Administrative).
R. N. Singh, Member (Judicial).**

Kishore Kothandanbani Pillay
Civilian Motor Driver
Grade-II, High Explosives
Factory, Khadki, Pune-411 003.
(R/at:131, Venkatesh Apartment,
Flat No.6, (End Floor), Ghorpadi,
Pune-411 001.

...Applicant.

(By Advocate Ms.Sujatha Krishnan) .

Versus

1. The Union of India, through
The Secretary, Ministry of Defence,
Dept. of Defence Production,
DHQ. P.O., Nwe Delhi-110 011.
2. The Chairman,
Ordnance Factory Board,
6, S. K. Bose Road,
Kolkata-700 001.
3. The General Manager,
High Explosives Factory,
Khadki, Pune-411 003.

... Respondents.

(By Advocate Shri R. R. Shetty) .

Order reserved on: 10.04.2019.
Order delivered on: 14.06.2019

ORDER

Per : Dr. Bhagwan Sahai, Member (A)

1. Shri Kishore Kothandanbani Pillai filed this
OA on 17.02.2014. He seeks relief in terms of setting
aside of impugned orders dated 24.12.2013 and
05.10.2013 issued by respondent no.3 i.e. General

Ordnance Factories consisted of four grades i.e. Civilian Motor Driver Grade-II (Rs.3050 - 4590/-), Civilian Motor Driver Grade-I (Rs.4000 - 6000/-), Civilian Motor Driver (Rs.4500 - 7000/-) and Civilian Motor Driver (Special Grade) (Rs.5000 - 8000/-).

Subsequently, the Civilian Motor Drivers Grade-II were re-designated as Civilian Motor Drivers Ordinary Grade and accordingly the applicant was re-designated as Civilian Motor Driver Ordinary Grade. The next promotional grade was Civilian Motor Driver Grade-II (Rs.4000 - 6000/-)

2 (d). The applicant was then promoted to the post of Civilian Motor Driver Grade-I from 23.01.1999 (Copy of factory order dated 20.11.2004 at Annex A-5). Then, his pay was fixed by the respondent no.3 through the order dated 07.08.2001 (Annex A-6). He further claims that his appointment from the post of Durwan to that of Civilian Motor Driver Ordinary Grade was a direct appointment and not on promotion and thereafter he earned only two promotions i.e. from the post of Civilian Motor Driver Ordinary Grade to Civilian Motor Driver Grade-II and from Civilian Motor Driver Grade-II to Civilian Motor Driver Grade-I.

2 (e). The modified Assured Career Progression Scheme was implemented vide D.O.P.T. OM dated

instalment of Rs.9814/- was recovered from his pay of January 2014. Therefore, this OA has been filed.

3. Contentions of the parties:-

The applicant and his counsel have contended that:-

3(a). from the post of Durwan he was appointed as Civilian Motor Driver Grade-II not on promotion but by direct appointment as per then existing Recruitment Rules of 1956. Therefore, it can not be considered as a regular promotion. Based on orders of the Ministry of Defence dated 30.07.1996, he was re-designated as Civilian Motor Driver Ordinary Grade in the same pay scale i.e. 3050 - 4500/-. Then he was promoted to the post of Civilian Motor Driver Grade-II and again to the post of Civilian Motor Driver Grade-I from 23.01.1999. The last two were his regular promotions and he has not been given third promotion at any time;

3(b). the contention in para 1 of the letter dated 30.09.2013 issued by the respondent no.3 that the applicant had already been granted three regular up-gradations in his service career is not correct. Therefore, the action of the respondent no.3 to cancel the 3rd MACP granted to the applicant earlier is illegal. Because of this earlier OA No.463/2012 was filed by the applicant, which was disposed of by

direct recruitment on regular basis from 14.09.1979. Filling up of posts of Civilian Motor Drivers is regulated by Statutory Rules / Orders published by Government of India on 14.08.1976. A perusal of these rules reveals that the post of Civilian Motor Driver Grade-II is to be filled up by direct recruitment only and therefore the contention of the respondents that the applicant had been appointed as Civilian Motor Driver Grade-II by promotion is not as per law; **3(f)**. the applicant was directly appointed on that post by selection process w.e.f. 23.01.1984 as per the letter of appointment (Annex A-3). The restructuring of the posts of Civilian Motor Drivers in three grades instead of earlier four does not amount to promotion which is given only after the DPC. Since the applicant has been given two promotions, the grant of 3rd Financial Up-gradation under MACP Scheme from 23.01.2009 was correct. Therefore, the OA should be allowed and the impugned orders issued by the respondents should be set aside.

The respondents have contended that:-

3(g). the applicant was promoted from the post of Durwan to Civilian Motor Driver Grade-II through Limited Departmental Competitive Examination. Through this LDCE educationally / technically qualified individuals could apply for a post which was not in

letter dated 08.08.2013, it was replied by the latter that 3rd MACP benefits may not be allowed to the employees who have already crossed three clearly defined hierarchical positions in the available grade pay system. On examination of the case sent by High Explosives Factory, Khadki it appears that the grant of 3rd MACP to Shri K. K. Pillay is irregular. Based on this, the applicant was also informed vide letter dated 30.09.2013 (Annex R-5);

3(k). with reference to representation of the applicant dated 27.01.2014 about the excess payment made to him by grant of 3rd up-gradation under the MACP Scheme, he was already replied on 11.03.2014 (Annex R-6) asking him to deposit the amount of Rs.2,74,776/- in 28 instalments as the selection of the application from the post of Durwan to Civilian Motor Driver Grade-II through Limited Departmental Competitive Examination has been counted as promotion for the purpose of MACP Scheme;

3(1). also when the benefit of 3rd MACP was granted by order of 01.10.2012 to the applicant, in that order it had been specifically mentioned that the above would be subject to revision on receipt of any Government Order / Clarification having bearing in the matter. Therefore, on receipt of orders from Principal Controller of Accounts (Factories), the pay

by the respondents is correct, the applicant is not eligible for grant of 3rd MACP benefits and the amount of Rs.2,74,776/- due from the applicant as paid in excess to him is correct. Hence, the OA should be dismissed;

4. Analysis and Conclusions:-

4(a). We have perused the OA memo, reply of the respondents filed on 17.02.2014, and considered the arguments advanced by both the parties on 10.04.2019 when their counsel remained present and were heard.

4(b). As per the instruction no.55 of 299 (PCC) Ordnance Factories Board, Ministry of Defence, Kolkata dated 14.10.2009 containing clarifications on various issues (Annex R-3), it has been clearly stated that in case induction was made through LDCE (Limited Departmental Competitive Examination), the same is to be treated as promotion. Also, with reference to the Ordnance and Ordnance Equipments Factories, Civilian Motor Driver Special Grade, Civilian Motor Driver Grade-I, Civilian Motor Driver Grade-II and Civilian Motor Driver Ordinary Grade (Group 'C' posts) Recruitment Rules 2005, in the attached note 5, it has been specifically mentioned that the term limited departmental competitive examination is only a method of fast track promotion. Thus appointment through the limited departmental

only internally vide circular dated 07.03.1983 through proper channel upto 16.03.1983 from within the respondent factory. The applicant applied for it accordingly, was selected through the LDCE and was appointed as Civilian Motor Driver Grade-II on 23.01.1984.

4(e). Thus, the movement of the applicant from the post of Durwan to that of Civilian Motor Driver Grade-II through the LDCE was a promotion for the purpose of grant of the MACP upgradation as per the instructions dated 14.10.2009 (Annex R-3). Accordingly, the action has been taken by the respondents.

4(f). The caselaw relied by the applicant i.e. Shyam Babu Verma Vs. Union of India reported in 1994 SCC (L&S) 683 also cannot help him. The Apex Court decision in case of Chandi Prasad Uniyal Vs. State of Uttarakhand and ors dated 17.08.2012 had also considered this caselaw.

4(g). In view of the specific facts of the present case, we agree with the contention of the respondents that the appointment of the applicant as Civilian Motor Driver Grade-II was on promotion and thereafter he got two more promotions. Hence as per the relevant instructions of the Ordnance Factories Board, the applicant was not entitled for benefits of 3rd MACP