

Reserved on 24.04.2019

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

Original Application No. 331/00067/2016

Nainital, this the 26th day of July 2019

**Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J**

1. Brij Kishor, S/o Shri Maharaj Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
2. Vijay Prakash Mamgain, S/o Late H.P. Mamgain, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
3. Om Dutt, S/o Shri Nirmal Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
4. Ajab Singh, S/o Shri Sardeep Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
5. Manoj Asthana, S/o Shri K.P. Asthana, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
6. Umesh Kumar, S/o Shri Roop Chand, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
7. Raj Kumar, S/o Late Banarasi Das, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
8. A.K. Gulati, S/o Late Ratan Singh Gulati, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
9. Manvendra Kumar, S/o Late H.S. Rajput presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.

.....Applicants

By Advocates: Sri Devendra Singh Bohra,

Sri Raveendra Singh Bisht.

Vs.

1. Union of India, through Secretary, Ordnance Factory Board, Ministry of Defence, AyudhBhawan, 10 A, Shaheed Khudiram Bose Road, Kolkata-700001.
2. General Manager, General Manager, Opto Electronics Factory, A Unit of Ordnance Factory Board, Government of India, Ministry of Defence, Raipur, Dehradun-248008 (Uttarakhand)
3. Abdul Jamal, S/o Wazid Hussain, presently posted as Chargmen (C.M.) at Opto Electronics Factory, Raipur, Dehradun.
4. Vinod Kumar Saini, S/o P.R. Saini, presently posted as Chargmen (C.M.) at Opto Electronics Factory, Raipur, Dehradun.

5. Vijendra Singh, S/oBabu Singh, presently posted as Chargmen (C.M.) at Opto Electronics Factory, Raipur, Dehradun.
6. PrdhutKundu, S/oSh. A.K. Kundu, presently posted as Chargmen (C.M.) at Opto Electronics Factory, Raipur, Dehradun.
7. Dharmendra Kumar, S/oData Ram, presently posted as Chargmen (C.M.) at Opto Electronics Factory, Raipur, Dehradun.
8. Mohan Singh Rawat, S/oAmar Singh Rawat, presently posted as Chargmen (C.M.)at Opto Electronics Factory, Raipur, Dehradun.
9. Moh. Tayab Ansari, S/o Ahmad Husan, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
10. Rakesh Kumar Pal, S/oJivan Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
11. RadheyShayam, S/o Shree Ram, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
12. Hari Singh, S/oPuran Chand, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
13. Dilip Kumar Sharma, S/oP.N. Sharma, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
14. B. P. Jakhmola, S/oM.D. Jakhmolao, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
15. Shiromani Bhat, S/oV.P. Bhat, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
16. Sanjay Chouhan, S/o R.S. Chouhan, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
17. Rajeev Kumar, S/o Suraj Prakahs, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
18. Vijay Prakash, S/oN.R. Nawani, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
19. N.S. Rawat, S/oR.S.Rawat, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
20. Rajesh Kumar Bhatnager, S/o R.R.Bhatnagar, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
21. Fateh Singh, S/oDhan Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
22. Ashok Goswami, S/oP.G. Goswami, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
23. Ved Prakash, S/oJay Ram, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
24. Hari Om Yadav, S/o K.P. Yadav, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
25. Kamal Singh, S/oChandan Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
26. Sunil Shelton Ram, S/o Balton Ram, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.

27. Gopal Kishan, S/o B.D.Gulati, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
28. Rakesh Chandra, S/o P.N.Dhiman, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
29. Raj Pal Singh, S/o Ram Ji Lal, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
30. Pradeep Kumar, S/o M.L.Agrawal, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
31. Bhagwati Prashad, S/o D.S.Prashad, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
32. Ramesh Kumar, S/o Phool Chand, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
33. Ram Singh, S/o Madan Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
34. Anup Kumar Sinha, S/o A.K.Sinha, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
35. Surendra Singh, S/o Fateh Singh, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.
36. Kripal Singh, S/o Not known to the applicant, presently posted as Master Crafts Man (M.C.M.) at Opto Electronics Factory, Raipur, Dehradun.

.....**Respondents**

By Advocates: Shri D.S. Shukla

Shri P.K. Rai

ORDER

Delivered by Hon'ble Ms. Ajanta Dayalan, A.M.

The present OA has been filed by the applicant – Brij Kishor and 8 others seeking quashing of combined tentative seniority lists dated 25.02.2014/01.01.2014 and 01.01.2015/21.03.2015 issued by respondent No. 2 i.e. General Manager, Ordinance Factory Board, Ministry of Defence, Government of India. This relief was changed in amended OA seeking quashing of combined final seniority list dated 01.04.2017. The applicants have also sought re-fixation of their seniority from the date of holding HS grade upto 31.12.2005 and HS – I grade w.e.f. 01.01.2006. They have also sought quashing of Circular dated 10.05.2016 as well as promotion orders dated 01.06.2015, 29.07.2016, 30.07.2016 and 28.02.2017 whereby juniors to the applicants have been promoted to the post of Chargemen (T). Finally, they have sought promotion of the applicants to the post of Chargeman (Tech./Mechanical) w.e.f. from the date their juniors have been promoted, with all consequential benefits.

2. The applicants have made 34 persons as private respondents on the plea that these respondents have been promoted prior to the applicants, even though they are junior to the applicants.

3. According to the applicants, Government of India vide Statutory Rule Order (SRO) dated 04.05.1989 declared the post of Chargeman (Technical) as promotional post (Annexure A-6). The applicants were initially appointed as Semi Skilled Workman Fitter Instrument (FI) on 01.07.1987 (Annexure A-7) and were promoted to Highly Skilled (HS) Grade on 28.03.1993. The applicants have stated that at the time of their initial appointment, Defence Artisan Staff in Industrial Trade in various defence establishments was following the structure of Semi Skilled, Skilled, Highly Skilled-II, Highly Skilled-I and Master Craftsman. Pursuant to 5th Pay Commission's recommendations, HS Grade II and HS Grade I were merged into a singly category of Highly Skilled w.e.f. 01.01.1996. The post of Master Craftsman (MCM) was not part of hierarchy and the placement in this Grade was not promotion for Highly Skilled Grade. However, the post of Master Craftsman was to be considered as Highly Skilled Grade for promotion to the Grade of Chargeman- II. Further, vide circular dated 14.06.2010 (Annexure-A-8), Government of India restructured the Defence Artisan Staff as Skilled, Highly Skilled – II, Highly Skilled – I and Master Craftsman. This notification further provides that the post of Master Craftsman shall be part of hierarchy and the placement of Highly Skilled – I in the Grade of MCM will be treated as promotion. The applicants were promoted to the post of HS-I on 01.01.2006 and were further promoted as MCM on 11.05.2007. The next promotion / transferred post is Chargeman which is not included in the hierarchy of the Tradesman and is a post of placement. There was never any provision to determine the seniority from the post of MCM.

4. The applicants have further submitted that on 27.01.2010, a combined seniority list of MCM including HS Grade was issued (Annexure A-9), in which the applicants were placed at Sl. No. 19 to 27. Further, circular dated 15.07.2011 (Annexure A-10) was issued which provides that vacancies of Chargeman (Tech.) against promotion quota as prescribed in SRO will be filled up by the incumbents in the grade of MCM and HS – I and seniority will be counted from the date of holding the grade of HS/HS-I. Another circular dated 05.08.2011 (Annexure A-11) was issued providing that seniority for promotion to MCM and Chargeman should be counted from the date of holding the erstwhile HS Grade prior to bifurcation of the grade and thereafter from the date of holding the newly created HS – I. It was further provided that the date of promotion / placement to MCM had nothing to do with their seniority for promotion as Chargeman (Tech). Later, vide circular dated 15.05.2014 (Annexure A-12), earlier circular dated 05.08.2011 was amended and in the new circular it was provided that of all the optees in a particular instance, seniority will be counted from the date of holding HS Grade upto 31.12.2005 and seniority w.e.f. 01.01.2006 shall be counted from the date of holding HS – I Grade.

5. The applicants have further stated that the respondent department vide letter dated 29.03.2011 (Annexure A-13) invited options for promotion / transfer to the post of Chargeman. A seniority list of MCM in the Mechanical Group, who were given Grade Pay of Rs. 4200/- on 01.01.2006 was issued in which the names of the applicants did not figure. On the basis of this list, many juniors to the applicants (21 in all) were promoted / transferred as Chargeman vide order dated 25.08.2011 (Annexure A-14). Some other juniors (4 in all) were also promoted subsequently, whose names figured in seniority list dated 27.01.2010. Before inviting options for transfer to the post of Chargeman, applicant No. 2 made a representation on 04.03.2011 (Annexure A -15) for his promotion / transfer to the post of Chargeman. This was, however, not

considered by the respondents. On 25.02.2014 (Annexure A-1 Colly), the respondents issued a combined tentative seniority list in which names of the applicants figured at Sl. No. 82 to 90. Date of HS – I is not mentioned against persons at Sl. No. 45 to 80.

6. The applicants have further submitted that the respondents have vide their letter dated 16.09.2017 (Annexure A-24) now issued combined final seniority list dated 01.04.2017.

7. The applicants have also stated that applicant No. 2 made several representations (Annexure A-16 Colly), but the respondents have not paid any heed on it. Further, applicant No. 2 sought some information from RTI. The application dated 09.03.2015 and reply dated 18.05.2015 are at Annexure A-17 Colly. The applicants then approached Hon'ble High Court of Uttarakhand on 25.11.2015 in Writ Petition No. 2440 of 2015 (S/S). This was dismissed by the Hon'ble High Court vide order dated 09.12.2015 (Annexure A-18) with liberty to approach this Tribunal. The applicants then approached this Tribunal vide OA No. 331/00076 of 2015, wherein this Tribunal vide order dated 17.05.2016 (Annexure A-19) directed the applicants to submit a detailed representation before Respondent No. 2 who was to decide the same by passing a reasoned and speaking order within a period of 2 months.

8. An officer order dated 16.01.2015 (Annexure A-20) was issued, whereby those who have occupied the post of MCM straightaway without becoming HS-I after restructuring, were to be considered en-block senior to other HS employees. The applicants have stated that this Office order is addressed only to respondent No. 2 and not all ordinance factories. Further, another office order dated 10.05.2016 (Annexure A-2) was also issued, that provides that those IEs who become MCM before 01.01.2006 are en-block senior. This office order ignores the provisions of SRO and OFB Circulars of 2011 and 2014. Also, this circular is addressed only to respondent No. 2 and not to other ordnance and ordnance equipment

factories in India. The applicants have also obtained seniority list from Heavy Vehicles Factories in Chennai, which is placed at Annexure A-23 Colly.

9. The applicants have further stated that the respondents while deciding the representation have stated that the seniority will be counted as per circular dated 15.07.2011 and 05.08.2011, but have not mentioned circular dated 15.05.2014.

10. The case of the applicants is that the seniority list has been prepared by the respondents' authorities in violation of SRO of 1989 and their own circulars dated 15.07.2011, 05.08.2011 and 15.05.2014 that provide that the seniority would be from the date of holding HS grade upto 31.12.2005 and HS – I w.e.f 01.01.2006. They have argued that the applicants have not been given due benefit. Persons junior to them have been promoted. This defect have not been corrected even in the final seniority list, where the applicants have been placed junior to many who were initially appointed after the applicants and who were also promoted to HS Grade after the applicants. Hence, the OA.

11. The respondents have contested the claim of applicants and have filed detailed counter affidavit as well as short counter affidavit. They have stated that the Ordnance Factories are Defence Production units spread across India. Opto Electronics Factory i.e. the factory run by the respondent No. 2 is one such ordnance factory. The functioning of all ordnance factories is centrally controlled by Director General, Ordnance Factory Board (OFB) and all its activities are performed within the ambit of rules and regulation framed by Government of India. The directives/ instructions/guidelines issued by OFB are final and binding upon all ordnance factories. In the ordnance factory, the employees are placed in various groups and the applicants of this O.A. are placed in industrial cadre.

12. The cadre setup of Industrial Establishment up to 31st December 2005 was consisting of two cadres only, which are as under: -

- (i) *Skilled grade in the pay scale of Rs.3050-4590/-*
- (ii) *Highly Skilled grade in the pay scale of Rs.4000-6000/-.*

25% of senior most highly skilled were placed as Master Craftsman (MCM) in the pay scale of Rs.4500-7000. Chargeman-II was in the pay scale of Rs.5000-8000/-.

Consequent to restructuring of cadres as per recommendation of 6th Central Pay Commission w.e.f. 01.01.2006, the industrial cadre got divided into following categories: -

- (i) *Skilled grade in P.B. 1 Rs.5200-20200 with grade pay of Rs.1900;*
- (ii) *Highly Skilled Grade-II in PB-1 with same pay scale of Rs.5200-20200/- with grade pay of Rs.2400;*
- (iii) *Highly Skilled Grade-I in PB-1 with same pay scale of Rs.5200-20200/- with grade pay of Rs.2800;*
- (iv) *Master Craftsman in PB-2 with pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-.*

Further, vide Ministry of Defence letter dated 20.05.2003 received under OFB letter dated 12.07.2003, the post of Master Craftsman was declared as placement post and 25% of senior most Highly Skilled were to be placed as HS (MCM). Para-4 (iv) of the Ministry of Defence (MOD) letter also stated that the MCM shall continue to be considered as Highly Skilled for the purpose of promotion to the grade of Chargeman-II. Para-2 (d) of this letter provided that the seniority would be counted from the date of holding the HS grade.

13. In the subsequent cadre restructuring of Industrial Establishment ordered vide MOD letter dated 14.06.2010 and OFB letter dated 13.12.2010 effective from 01.01.2006, the post of HS was bifurcated into HS-II and HS-I. Further the grade of MCM became independent grade

and part of hierarchy. All the above posts become separate promotional posts and have independent ratio. The new pay band for these posts is as below: -

<i>Sl. No.</i>	<i>Grade</i>	<i>Pay Band</i>	<i>Grade Pay</i>
<i>I</i>	<i>Highly Skilled Grade-II</i>	<i>PB-1, Rs.5200-20,200</i>	<i>Rs.2400/-</i>
<i>II</i>	<i>Highly Skilled Grade-I</i>	<i>PB-1, Rs.5200-20,200</i>	<i>Rs.2800/-</i>
<i>III</i>	<i>Master Craftsman</i>	<i>PB-2, Rs.9300-34,800</i>	<i>Rs.4200/-</i>
<i>IV</i>	<i>Chargeman-II (T)</i>	<i>PB-2, Rs.9300-34,800</i>	<i>Rs.4200/-</i>

Thus, the grade pay of MCM was made equal to grade pay of Chargeman-II (T) but the movement from MCM to Chargeman (T) continued to be treated as promotion.

14. Subsequently, the combined seniority of Industrial Establishment for promotion to the post of Chargeman (T) was formed in terms of OFB instructions dated 13.12.2010 in consonance with the instructions issued by MoD dated 14.06.2010, 13.10.2010 and 01.12.2010 (Annexure CA-1). These instructions inter alia stated as follows:

- (i) *The post of Highly Skilled shall be split w.e.f. 01.01.2006 in the ratio mentioned in the above MoD/OFB instructions.*
- (ii) *Highly Skilled employees (including those who were wasted out due to retirement, death etc.) shall be re-designated as HS-I & HS-II Grade in the corresponding Pay Scale/Pay Band and Grade Pay due to splitting as per the aforesaid ratio.*
- (iii) *The senior most Highly Skilled Employees shall be placed in HS Gr.-1 as per revised ratio calculated on the sanctioned/authorized strength.
The remaining Highly Skilled employees shall be placed in HS Gr.-II.*
- (iv) *Highly Skilled Grade-I shall be en-block senior to Highly Skilled Grade-II and separate seniority list should be prepared for Highly Skilled Grade-1 and Highly Skilled Grade-II trade wise.*
- (v) *Placement of 50% of the existing Highly Skilled Workers (Grade Pay: Rs.2400/-) as Highly Skilled Grade-I (Grade Pay: Rs.2800/-) w.e.f. 01.01.2006 will be treated as promotion for the purpose of ACP.*

15. In terms of above instructions, the incumbents placed in the grade of Highly Skilled as on 31.12.2005 were placed proportionally in the grade of Highly Skilled Grade-I and Highly Skilled Grade-II on 01.01.2006 as per their seniority position in the grade of Highly Skilled prior to 01.01.2006. The incumbents placed in the grade of HS (MCM) as on 31.12.2005 were given the grade pay of Rs.4200/- on 01.01.2006 and were placed in the grade of MCM. They were also placed en-block senior and their inter se seniority was determined as per their date of promotion in the grade of erstwhile Highly Skilled. The brief of modus-operandi for preparation of the combined seniority of Industrial Establishment for promotion to the post of Chargeman (T) as stated by the respondents was as follows: -

- "(a) The workmen holding placement post of MCM upto 31.12.2005 (and directly given the grade pay of Rs.4200/- of the promotion post of MCM) were placed en-block senior. Their inter-se seniority was maintained on the basis of date of holding erstwhile Highly Skilled grade prior to 01.01.2006.*
- (b) Below the abovesaid workmen, those workmen who were graded HS-I as on 01.01.2006 were placed en-bloc. Inter-se seniority of such HS-I was also maintained on the basis of holding erstwhile Highly Skilled grade prior to 01.01.2006.*
- (c) Below the workmen stated at (b) above, the remaining workmen were placed based on their date of promotion to HS-I, after 01.01.2006. In case of date of promotion to HS-I of particular set of employees being same, the inter-se seniority is determined based on holding erstwhile Highly Skilled grade.*
- (d) The workmen who remained as HS-II were not given a place in the said seniority list."*

16. Subsequently, OFB issued instructions with respect to restructuring of cadre of Artisan Staff in Defence Establishment in modification of 6th C.P.C. vide letters dated 15.07.2011 and 05.08.2011 (Annexure CA-2 and CA-3 respectively). The letter dated 15.07.2011 clarified as follows: -

"vacancies of Chargeman (Tech.) against promotion quota as prescribed in SRO will be filled up by the incumbents in the grade of Master Craftsman and HS Gr. I and seniority will be counted from the date of holding the grade of HS/HS Gr. I. In case of Master Craftsman, the seniority should be counted from the date of holding of HS Grade upto 31.12.2005 for those employees who became Master Craftsman prior to 01.01.2006. In case of those who have become Master Craftsman on and after 01.01.2006, the seniority of HS Gr. I should be counted."

Further instruction dated 05.08.2011 stated as follows: -

"The seniority of the incumbents for promotion to Master Craftsman and Chargeman (Tech.) should be counted from the date of holding the grade of erstwhile HS grade (prior to bifurcation of the grade) and thereafter from the date of holding the newly created HS Gr. I as the case may be."

17. After receiving the above instructions, it was noted that the combined seniority list of incumbents for promotion in the grade of Chargeman (Tech.) prepared by the factory was in consonance with the above directives.

18. On 15.05.2014 (Annexure CA-4), OFB issued another clarificatory letter stating as follows: -

"Of all the optees in a particular instance (MCM as well as HS/HS-I), seniority would be counted from the date of holding HS grade upto 31.12.2005. The seniority w.e.f. 01.01.2006 would be counted from the date of holding HS-I Grade."

It was found that the seniority list prepared by the factory was in consonance with these instructions.

19. On receipt of above said clarification, some workmen who were promoted to HS-I grade w.e.f. 01.01.2006, started claiming that their seniority position in combined seniority list be revised as per date of holding erstwhile Highly Skilled grade prior to 01.01.2006. The particular reference was towards those employees who were holding the post of HS (MCM) up to 31.12.2005 and were granted grade pay of Rs.4200/- on 01.01.2006 and placed en-bloc senior to them.

20. The respondents department has admitted that it is a fact that prior to cadre restructuring, such claimants were holding higher place in the combined seniority list since their date of holding H.S. was earlier. Further, the date of placement to MCM was immaterial in pre-cadre restructuring scenario for the purpose of combined seniority list.

21. The respondents department has further clarified that on the other hand, those workmen who were given grade pay of Rs.4200/- for the post of MCM directly on 01.01.2006, insisted that the revised seniority is correct. They claimed that they did not become HS-I on 01.01.2006 in the cadre restructuring exercise and remained as MCM which is now treated as promotional post. They are contending that by virtue of holding higher post of MCM as on 01.01.2006, they should remain en-bloc senior in the combined seniority list and they should not be compared to those workmen who became HS-I on 01.01.2006 due to cadre restructuring exercise.

22. The matter was referred to OFB for clarification. The OFB vide letter dated 16.01.2015 clarified as follows: -

"those who have occupied the post of MCM straightway without becoming HS-I after the restructuring exercise, will be considered en-bloc senior to other HS employees."

23. The respondents department has stated that the representations of the aggrieved employees were disposed of in terms of abovesaid reply of OFB. However, the aggrieved employees not being satisfied with the reply given to them in terms of OFB abovesaid clarification filed O.A. No. 76 of 2016 (Brij Kishor and others v. Union of India and others) before the circuit bench of this Tribunal at Nainital, challenging the tentative seniority list of mechanical stream. The Tribunal vide order dated 12.01.2016 directed the respondents counsel to seek instructions, whether the respondents are going to give promotion to the juniors of the

applicants on the basis of tentative seniority list dated 25.02.2014 or not. In response, the Tribunal was apprised that the DPC had not been convened for promotion to the post of Chargeman T (Mech.).

24. The competent authority at OLF has further decided to obtain clarification from OFB before taking any action in the matter. The issue was again referred to OFB, Kolkata and in reply the Board has again clarified the position vide letter dated 10.05.2016 (Annexure CA-5) that the seniority of the incumbents for promotion to the post of Master Craftsman and Chargeman (Tech.) should be counted from the date of holding erstwhile HS Grade (prior to bifurcation of the Grade) and thereafter from the date of holding the newly created HS Grade-I as the case may be. Hence, those IEs who became MCM before 01.01.2006 are en-bloc senior as they had become HS much prior to 01.01.2006.

25. Meanwhile, this Tribunal vide order dated 17.05.2016 (Annexure CA-6) disposed the O.A. No. 76 of 2015 by directing the applicants to submit a detailed representation/objection against the tentative seniority list within three weeks and the competent authority was directed to decide the same by passing a reasoned and speaking order after providing opportunity of hearing to applicants as well as private respondents within a period of two months thereafter.

26. Consequent to receipt of the order of this Tribunal, a dovetail seniority list was prepared following OFB directives given in letter dated 10.05.2016. The same was forwarded to OFB for confirmation vide letter dated 06.06.2016. The OFB vide letter dated 09.06.2016 (Annexure CA-7) directed them to follow their earlier circulars of 15.07.2011 and 05.08.2011. The OFB has withdrawn its letter dated 16.01.2015 while giving these directions.

27. Subsequent to above, in compliance of the Judgment of this Tribunal dated 17.05.2016, all the applicants preferred their

representations requesting for re-fixing of seniority as per the provisions of SRO dated 04.05.1989, OFB circulars dated 15.07.2011, 05.08.2011 and 15.05.2014. The applicants in the O.A. were given personal hearing and the matter was disposed of by issuing speaking order dated 27.07.2016 (Annexure CA-8). In the speaking order, inter alia, it was communicated to the applicants that the seniority list dated 25.02.2014 published by respondent No. 2 is based on OFB letters dated 15.07.2011 and 05.08.2011. Aggrieved by the above speaking order, the applicants have approached this Tribunal by filing this O.A.

28. A reference was made by the respondents to the OFB letter dated 19.12.2016 (Annexure CA-9). In para-6 of this letter, the OFB was intimated about the modus-operandi adopted by the respondents for preparation of combined seniority list after cadre restructuring of 2006. The OFB vide its letter dated 24.01.2017 (Annexure CA-10) has confirmed and has stated as follows: -

"the method of seniority as mentioned at Para 6 of the above cited OLF letter is in order. Existing rules/instructions can not be deviated on demand of a group of employees of OLF."

29. In view of the above, the respondents have averred that the seniority list prepared by them is in consonance with the directives of OFB. The seniority of incumbents for promotion to the post of Chargeman (T) should be counted from the date of holding erstwhile HS grade prior to bifurcation and w.e.f. 01.01.2006 from the date of holding of newly created HS Grade-I as the case may be. The date of promotion/ placement to the post of MCM has nothing to do with the seniority for promotion to Chargeman (T). It is further stated that the OFB vide its letter dated 24.01.2017 has confirmed the method of seniority to be in order. It is also stated that the existing rules/instructions cannot be deviated on demand of a group of employees of OLF. They have further stated that the combined seniority list of Industrial Establishment for

promotion to the post of Chargeman (T) was prepared after careful and in depth analysis/examination and the same was published for information for all concerned. The DPCs were also convened for promotion to the post of Chargeman (T) on the basis of the above seniority list.

30. The respondents have further submitted that as per SRO dated 04.05.1989 (Annexure CA-11), statutory rules for promotion to the post of Chargeman II (Tech) and now Chargeman (Tech) was as under: -

"Promotion from Draughtsman or equivalent in scale of Rs.1200 with three years of service and promotion from HS Gr. I with 3 years of regular service failing which from HS Gr. II with 6 years regular service in respective category."

31. Further, vide SRO -101 dated 23.05.1994 (Annexure CA-12), the extant statutory rules for promotion to the post of Chargeman-II (Technical) now Chargeman (Technical) were partially amended as under:

-

"Promotion from Sr. Data Entry Operator with 03 years service or Draughtsman or equivalent in scale of Rs.1200-2040 with 03 years service and promotion from HS-I with 03 years of regular service failing which from HS Gd. II with 06 years of regular service in respective category."

32. The respondents have stated that prior to restructuring in 2006, the ratio of Skilled and Highly Skilled grade was 45:55. Further, there was a grade of MCM in which 25% of senior most incumbents of Highly Skilled grade were placed and this placement was not considered as promotion for the purpose of ACP. For the purpose of preparing combined seniority list for promotion in the grade of Chargeman (Tech.), MCM was considered as HS (MCM) and the seniority of HS (MCM)/HS in the combined seniority list was counted from the date of their promotion in the grade of Highly Skilled.

33. The respondents have thus concluded that the seniority list prepared by them is in the light of SRO of 1989 as well as instructions issued by the OFB in 2011 and 2014 and the same is in order.

34. We have heard the arguments of the counsels of the parties and have also gone through the pleadings in the case. We have also given our thoughtful consideration to the entire matter.

35. We observe that the case basically relates to instructions issued by the Ordnance Factory Board (OFB) regarding seniority to be awarded to Master Craftsman (MCM) in Industrial Establishment in Defence Production Units. The instant case relates to the Opto Electronics Factory. However, the instructions being of OFB, concern all the ordnance factories under OFB. The facts of the case regarding cadre restructuring and instructions of OFB are narrated by the applicants in the OA and in their further submissions. The same have also been narrated by the respondents in their counter affidavit and their further submissions. There are slight differences in the facts. However, these are not considered material or substantial for adjudication in this case. As the facts given by the respondents' department are supported by the copies of instructions etc issued by them, we will take these as the basis here.

36. The cadre of Industrial Establishment, inter alia, consisted of Semi-Skilled, Skilled, Highly Skilled and MCM. The applicants were initially appointed as Semi-Skilled workman and were promoted as Highly Skilled on 28.03.1993. The cadre of Highly Skilled consisted of 2 grades – Highly Skilled-II (HS-II) and Highly Skilled-I (HS-I), Highly Skilled Grade-I being higher to Highly Skilled Grade-II. The two cadres of HS-II and HS-I were merged with effect from 01.01.1996 into a single cadre of Highly Skilled. However, w.e.f. 01.01.2006, this cadre of Highly Skilled was again bifurcated into HS-II and HS-I. Thus, prior to 01.01.2006, the cadre consisted of skilled employees in pay scale of Rs. 3050-4590 and Highly Skilled in pay scale of Rs. 4000-6000. 25% of the senior most Highly Skilled employees were placed as Master Craftsman in pay scale of Rs. 4500-7000. Chargeman was in the pay scale of Rs. 5000-8000. After

01.01.2006 and bifurcation of cadre, the skilled employees were in pay band of Rs. 5200-20200 with Grade Pay of Rs. 1900/-. HS Grade-II was in the same pay band with Grade Pay Rs. 2400/-. HS Grade-I was in the same pay band with Grade Pay Rs. 2800/-. MCM was in higher pay scale of Rs. 9300-34800 with Grade Pay Rs. 4200/-. Prior to 2006, MCM was a placement post with 25% of senior most Highly Skilled workmen being placed as MCM. As per the instructions dated 20.05.2003 of M/o Defence, MCM continued to be considered as Highly Skilled for the purpose of promotion to the grade of Chargeman-II, seniority to be counted from the date of holding Highly Skilled grade. After bifurcation of cadre with effect from 01.01.2006, MCM became an independent grade and part of hierarchy. It became a separate promotional post.

37. The issue under contention is the combined seniority list that has been prepared by the respondents' department as per their Statutory Rules Orders (SRO) of 1989 and instructions issued by OFB in 2011 and 2014. The position of SRO is given in para 30 and 31 of this order. We see therefrom that these relate to promotion to the post of Chargeman-II (T) and now Chargeman (T). Both SROs dated 04.05.1989 as well as its amendment dated 23.05.1994 have one thing in common - and this has not been amended in 1994 - i.e. that HS Gr.-I with 3 years of regular service failing which from HS Gr.-II with 6 years of regular service in respective category are eligible for this promotion. Thus, for promotion to Chargeman, regular service in HS Gr.-I was the main criteria.

38. We also observe that the post of MCM - though it was not an independent promotional post earlier - but even then and even prior to 01.01.2006, it was in higher pay scale of Rs. 4500-7000 as against the scale of Rs. 4000-6000 for Highly Skilled. Even after 01.01.2006 and restructuring of cadre with bifurcation of HS grade, the post of MCM was in a much higher scale of Rs. 9300-34800 with Grade Pay Rs. 4200/-.

This is against the pay scale of only Rs. 5200-20200 for Skilled, HS-II and HS-I with Grade Pay Rs. 1900/-, Rs. 2400/- and Rs. 2800/- respectively. Thus, both prior to restructuring of cadre as well as after restructuring of cadre, MCM was always in higher grade than HS or HS-II and HS-I. Equally, both prior to bifurcation and after bifurcation with effect from 01.01.2006, 25% of senior most HS were placed / promoted as MCM. It is true that MCM was not formally a part of hierarchy earlier and placement in MCM was considered as promotion only after restructuring with effect from 01.01.2006. However, the fact still remains that MCM was always in much higher grade than HS before bifurcation and HS-II and HS-I after bifurcation. It is also a fact that 25% of senior most HS/HS-I were placed/ promoted as MCM. Thus, we observe that in substance, MCM was always a higher post than HS or HS-II and HS-I. We also note that only the senior most HS were placed/ promoted as MCM.

39. While preparing combined seniority list consequent to bifurcation, the respondents' department issued various instructions in 2010 (Annexure A-1). The methodology adopted therein is given in para 14 of this order. As per these instructions, senior most HS employees were placed in HS Gr. I and HS Gr. I was placed senior to HS Gr. II enblock. Further, for promotion to the post of Chargeman, the methodology adopted by the respondents' department is quoted in para 15 of this order. As per this, the workmen holding post of MCM upto 31.12.2005 were placed enblock senior with their inter-se seniority being maintained on the basis of their holding erstwhile HS grade prior to 01.01.2006. Below this were workmen graded as HS-I as on 01.01.2006 who were placed enblock with their inter-se seniority being maintained based on holding erstwhile HS grade prior to 01.01.2006. Below this, remaining workmen were placed based on their date of promotion to HS-I after 01.01.2006. HS-II were not given a place in the seniority list.

40. We find that the above method was fair and proper. Workmen who were already MCM upto 31.12.2005, were placed enblock senior. Workmen who were graded as HS-I on 01.01.2006 were placed enblock next below with their inter se seniority being maintained. They were obviously persons who were made HS-I only on 01.01.2006 but were not holding the post of MCM on 01.01.2006. Next below are the workmen who were not graded HS-I on 01.01.2006 but were promoted after 01.01.2006. They were obviously junior to the above 2 categories, having been promoted on HS-I after 01.01.2006. Hence, this method for considering eligibility for preparation of seniority list for promotion to Chargeman (T) is found to be fair and proper.

41. Respondents have categorically stated that the seniority list has been prepared keeping in mind this method. Correctness of method has also been confirmed and re-confirmed by the OFB, which is the final authority in this matter. The applicants have not been able to show any credible evidence for us to believe that these instructions have not been followed.

42. We also note that there are 9 applicants against which there are 34 private respondents who have been impleaded as according to the applicant, their seniority vis-a-vis private respondents has been adversely affected. This is, therefore, basically an application seeking special benefit for one group of employees at the cost of another group of employees. The OA is more in the nature of resolving conflicting interest of different groups of employees. As discussed above, we are of the view that the respondents' department has followed a clear policy and method for fixation of seniority. In our opinion, this method seems fair and proper. No injustice seems to have been caused to the applicants or to any other group of employees due to adoption of this method.

43. We also note that the matter relates to fixation of seniority with effect from 01.01.2006. More than 13 years have passed since then. The method adopted by the respondents' department is uniform for all factories. Hence, to make change only in factory in question i.e. Opto Electronics Factory will itself not be correct and will be discriminatory. In case the method of fixation of seniority is changed, the same may have to be changed for all other factories run by OFB. In that event, it may even adversely affect number of other employees. Going by number of private respondents in the present case, the number of such adversely affected employees would be very substantial. Those employees have not been made party in this case and hence, no decision adverse to their interest can be taken without hearing them. We also note that the respondents' department has followed a clear policy laid down by OFB and hence, any deviation therefrom will not be justified.

44. In view of all above, we do not find any justification for interference in the seniority already prepared by the respondents' department. The OA is dismissed being devoid of merits. No costs.

(Rakesh Sagar Jain)

Member (J)

(Ajanta Dayalan)

Member (A)

Anand...