

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2200/2003

New Delhi this the 6th day of MAY, 2004.

Hon'ble Sh. V.K. Majotra, Vice-Chairman(A)
Hon'ble Sh. Shanker Raju, Member(J)

1. Ashok Kumar Atri,
S/o Sh. B.K. Atri, C.M.II,
Personal No.146921580,
J-162, Vikas Puri,
New Delhi.
2. Manohar Lal,
S/o late Sh. Sardari Lal,
C.M.II, P.No.3950
R/o RZ 26/P/131A,
Gali No.7,
Indra Park Ext.,
Palam Colony,
Delhi-45.
3. Avtar Singh,
S/o late S. Suduger Singh,
CM-II, 48/6,
P.No.3953,
C.V.D. Line,
Delhi Cantt.10.
4. Bhoop Singh,
S/o late Sh. Nathu Ram,
C.M.II P.No.14691581,
H.No.505, Village Kaithwala,
Seelampur,
Delhi-53.
5. Jai Karan,
S/o Sh. Bhagwan Dass,
CM-II, P.No.3940,
R/o Village Sultanpur,
Dabas, Delhi-39.
6. Ajeet Singh,
S/o late Sh. Tulsi Ram,
CM-II, P.No.3955,
R/o CB-21, Narayana,
Ring Road, New Delhi.
7. Chaman Lal,
S/o late Rangi Ram,
CM-II, P.No.1469152,
R/o Vill.&P.O.Shahbad Mohd.Pur,
New Delhi-61.
8. Vishambar Dayal,
S/o Sh. Mansha Ram,
CM-II, P.No.14691623,
R/o H.No.537,
Darya Pur, Delhi-39.

9. Ram Sewak,
S/o Sh. Chandra Hans,
CM-II, P.No.14691657,
R/o 47/7, C.V.D. Line,
Delhi Cantt.10.
10. R.K. Budbola,
S/o late Sh. Gugan Ram,
CM-II P.No.14691593,
R/o Village Maazri,
P.O. Gubhana, Dist.Jhajjar,
Haryana. Applicants

(through Sh. Narendra Kaushik, Advocate)

VERSUS

1. Union of India through
the Secretary,
Ministry of Finance,
North Block,
Central Secretariat,
New Delhi.
2. Chief of Army Staff,
Sena Bhawan,
New Delhi.
3. Officer Incharge Records,
EME Records,
Secunderabad-500 021.
4. Radhey Shyam Aggarwal,
T-2505 Inst. Mech.(E),
509 Army Base,
Workshop Agra.
5. Vijay Singh Yadav,
T-3814 TCM,
505, ABW Delhi Cantt.
6. Anup Singh,
T-6186, Reader Mech.,
509 ABW Agra.
7. G.B. Mishra,
T-6231 Radar Mech.,
509, ABW Agra.
8. K.D. Tahkur,
T-3617 Inst. Mech.,
505 ABW Delhi Cantt.
9. Vinod Kumar Singh,
T-6068 Radar Mech.,
509 ABW Agra.
10. BA Srinivasa Rao,
T-3817, Inst. Mech.(TT),
509, ABW Agra.
11. Vir Mohindha Singh,
T-2861 TCM(R),
509 ABW Agra.

12. Ram Prasad Sone,
T-180 TCM,
509, ABW Agra.
13. Sukhdev Singh Jassal,
T-178 TCM,
509 ABW Agra.
14. Kuldip Singh Aleg,
T-188 TCM,
509 ABW Agra.
15. Kailash Kumar,
T-2865 Inst. Mech.,
510 ABW Meerut.
16. Sarvesh Kumar Jerath,
T-177 TCM,
509 ABW Agra.
17. Krishna Kumar Soni,
T-248 TCM,
509 ABW Agra.
18. Hure,
T-2550 Armt. Mech.,
506 ABW Jabalpur.
19. A.H. Jaddala,
T-5580 Veh (AFV),
512 ABW Pune.
20. R.B. Gidde,
T-5892 Veh (FAV),
512 ABW Pune.
21. Virendera Prasad Saxena,
T-2083, Inst.Mech.(OPT)
509 ABW Agra.
22. A.P. Sathe(SC),
T-2083 Inst. Mech(OPT),
509 ABW Agra.
23. C.M. Binsode(SC),
T-5954 VM(AFVO),
512 ABW Pune.
24. Suraj Bhan Meena(ST),
T-6138 Tool Maker,
509 ABW Agra.
25. D.R. Patil,
T-5856 Veh(AFV),
512 ABW Pune.
26. SV Sulakha/Julake,
T-5926 Veh (AFV),
512 ABW Pune.
27. KC Chavan,
T-5942 VM/AFV,
512 ABW Pune.

28. Ashok Kumar Sharma,
T-6166 Inst. Mech.(E),
509 ABW Agra.

29. Narinder Singh,
T-1842 Elect.(AFV),
505 AVW Delhi Cantt.

30. R.B. Bhosale,
T-5952 VM AFV,
512 ABW Pune.

31. B.K. Satras,
T-5964 VM AFB,
512 ABW Pune.

32. S.B. Kakhile,
T-5971 VM AFV,
512 ABW Pune.

33. M.V. Ayochit,
T-5972 VM AFV,
512 ABW Pune. Respondents

(Respondent Nos. 4 to 33 are through Respondent No.2)

(through Sh. Madhav Panikar, Advocate)

O R D E R
Hon'ble Sh. Shanker Raju, Member(J)

Applicants have prayed for the following
reliefs:-

"(i) to quash the new panel list for promotion dated 8.7.2003 issued by Respondent No.3 on behalf of Respondents and to direct the Respondent No.2 to prepare a list after due consideration of applicants by placing them in appropriate seniority as per rules.

(ii) to award the cost of O.A.

(iii) pass such other or further orders as this Hon'ble Tribunal thinks fit and appropriate in the facts and circumstances of the case."

2. By an order dated 16.09.2003 affected parties have been impleaded and despite service have not responded to, have been proceeded ex-parte.

3. Applicants who were promoted as Senior Chargemen on amalgamation of Chargemen and Senior Chargemen are designated as Chargemen-II. High Power Devanath Committee made recommendations on 10.10.1996 for restructuring the cadre of supervisors. On various Committee's recommendation, Vth Pay Commission's recommendation for 4-stage structure for EME workshop was accepted in so far as designation of Chargeman Grade-II & Grade-I, Assistant Foreman as well as Foreman is concerned vide circular dated 26.12.2001 on acceptance of recommendations applicants who were Chargmen since 1994 deserve to be promoted to the post of Chargeman-I in 1997 on qualifying 3 years experience and Assistant Foremen in 2000 and for further consideration in 2002 as alleged by them. Respondents in April 2002 while implementing the said 4 stage structure reserved 33 vacancies for Industrial Personnel Part-I and remaining for Part-II for which applicants are entitled to.

4. A select panel was formed on 26.08.2002 containing 23 names for promotion to the post of Chargeman-I from MCM. This has been represented to by the applicants.

5. Vide impugned order dated 8.7.2003 a select panel for promotion to the post of Assistant Foreman was prepared which inter alia included Master Craftsman, herein referred to as MCM, who have become

CMI contrary to the rules. This gives rise to the present O.A.

6. Learned counsel of the applicants contend that the panel dated 8.7.2003 is contrary to the promotion rules. MCMs who were considered for Assistant Foremen have been illegally promoted to the post of Chargeman-I.

7. Learned counsel states that as per restructuring of cadre of Assistant staff on the modified recommendation of Vth Pay Commission promulgated by Ministry of Defence through letter dated 20.5.2003?, Clause-2(b) provides that the post of Master Craftsman shall not form part of heirarchy and placement in this grade was not to be treated as promotion for highly skilled grade either under the rules or under ACP Scheme. According to him MCM cannot be promoted as Assistant Foreman as well cannot be considered for the post of Foreman.

8. Learned counsel places reliance on a decision of Apex Court in Parmeshwar Prasad Vs. U.O.I. & Ors. (2002(2)SCC 145) to contend that it is only the competent authority to make the rules. A communication of UPSC without amending the recruitment rules cannot be given effect to & would not be operative.

9. Learned counsel also places reliance on a decision of the Apex Court in Syed T.A. Naqshbandi

and Ors. Vs. State of J&K & Ors. (2003(9)SCC 592 to contend that conditions of service of members of any service is to be governed by statutory rules and orders, lawfully made. In the absence of rules or without amendment, it would not be legal through an executive order or a policy decision to alter, amend or modify the existing Rules. In nutshell what is stated that the old rules which are yet to be amended or superceded hold the field and are to be invoked for giving effect to the restructuring and consequential promotion.

10. Learned counsel of the respondents Sh. Madhav Panikar took exception to the above submissions and stated that as one time measure in the light of UPSC recommendations dated 20.5.2003, MCM have been considered on revised eligibility conditions as CMs to Assistant Foreman. As this is an exception to normal rule there is no infirmity in the decision.

11. Learned counsel further states that the applicant have not agitated the grievance by way of a representation as such they have not exhausted their available remedy.

12. By referring to DOP&T O.M. dated 20.06.1989 clause 6.1 relating to the procedure for holding the DPCs, it is contended that if two alternative eligibility conditions are prescribed the officer satisfying these conditions are to be

considered simultaneously instead of under a "failing which" clause. In this back drop, it is stated that MCM/CM-I grade with 8 years regular service and who have passed supervisory test on 1.1.1996 can be promoted to CM-I directly. In the similar manner CM-I and MCM with 8 years regular service can be promoted as Assistant Foreman as the respondents are senior to the applicants in all respect are promoted to CM-I and Assistant Foremen as per their seniority.

13. On consideration of rival contentions of the parties and having regard to the decisions of the Apex Court (supra) it is no more resintegra that conditions of service which include consideration for promotion cannot be de hors the rules and is to be governed by invoking the statutory rules in vogue. Any executive instruction which has an effect of amending, altering or modifying the rules would not be in consonance with law.

14. We find that the recruitment rules do not bring within its ambit MCM as a feeder cadre for promotion to CM-I as well as Assistant Foreman.

15. Ministry of Defence letter dated 20.5.2003 clearly rules out post of MCM being a part of hierarchy and placement in the grade. As this would not be treated as promotion under normal promotion rules or under ACP, accordingly we have no hesitation to hold that MCM is not a feeder cadre for the post in question.

16. On the stand taken by the respondents on the basis of UPSC letter dated 20.5.2003, we find that earlier a proposal has been made to the UPSC for updating the recruitment rules on the issue whether Chargeman-I with 3 years regular service failing which 8 years regular service as Chargeman-I and Master Craftsman has been made eligible for supervisory post. However, till the old recruitment rules are amended remain effective. Moreover, it is settled principle of law that conditions cannot be relaxed in deviation from normal rules. An exception cannot be against the recruitment rules and should be within its ambit. As such, advise of UPSC one time measure for whatsoever purpose is contrary to law. Till the rules are amended, MCM cannot be treated as feeder cadre. The rules have been altered and an alien has been brought as feeder cadre which is not permissible.

17. For the reasons recorded above, we quash the impugned order dated 8.7.2003 with a direction to the respondents to prepare a fresh list after considering the applicants in the light of their due seniority. This should be done within a period of three months. No costs.

S. Raju
(Shanker Raju)

Member(J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)