

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
CIRCUIT COURT AT SHILLONG**

Original Application No. 043/00185/2017.

Date of Order: This, the 14th Day of March, 2019.

THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Mohan Biswa
MES 229404
HS II
O/o. GE, Shillong.

...Applicant.

By Advocates: Sri M.Chanda, Smt U Dutta & Sri H.Das

-versus-

1. Union of India
Through the secretary
Ministry of Defence
Govt. of India
South Block
New Delhi – 110001
2. Union of India
Through the Secretary
Ministry of Finance
Department of Expenditure
New Delhi – 110001.
3. Union of India
Through the Secretary
Ministry of Personnel
Public Grievances and pensions
Department of Personnel and Training
New Delhi – 110001

4. Commander Works Engineer
Spread Eagle Falls.
Shillong – 793001.
5. Garrison Engineer
Shillong Division Shillong – 793002.
6. Assistant Garrison Engineer E/M
Shillong – 793001.

... Respondents

By Advocate: Sri S.K.Ghosh, Addl. C.G.S.C.

O R D E R (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):

By this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking following relief(s):-

“8.1 That the Hon’ble Tribunal be pleased to direct the respondents to grant the applicant promotion/placement to the post of HS II at least w.e.f. 01.05.2004 instead of 01.02.2005 in the grade pay of Rs. 2400/- and to the post of HS I w.e.f. 01.01.2008 in the grade pay of Rs. 2800/- when the junior of the applicant namely, Shri Bijan Dey, Shri Prem Pd Pourel MES, Sri Dharam Ranjan Singh, etc had been extended said promotion/placement to the post of HS II and HS I respectively.

8.2 That the Hon’ble Tribunal be pleased to direct the respondents to grant the benefit of 3rd MACP in

the grade of Rs. 4200/- in the relevant pay band II, or any other appropriate higher grade pay w.e.f. 27.04.2014, on completion of regular service of 30 years which is attached to the next promotional post of master craftsman in the light of CCS (revised) Pay Rule 2008 and OM dated 19.05.2009 with all consequential benefit as well as arrear monetary benefit along with 18% interest with immediate effect as deemed fit and proper by the Hon'ble Tribunal.

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

2. The facts as narrated by the applicant in the OA, in brief, are that the applicant was initially appointed to the post of Mazdoor on 27.04.1984 and thereafter promoted as Mate Electrician on 12.10.1995. The applicant was further promoted as Electrician SK w.e.f. 15.02.2002 in the scale of pay Rs. 3050-75-3590-80-4590/-. The applicant was again promoted to the cadre of Electrician HS-II w.e.f. 01.02.2005 in the scale of 4000-6000 (revised grade pay of Rs. 2400/-). The applicant has provided in the OA a comprehensive list of details of benefit granted to him vis-à-vis his juniors namely Shri Bijan Dey, Shri Prem Pd Pourel MES, and Sri Dharam Ranjan Singh, which is given tabulated as below:-

Applicant	Juniors	Date of appointment as Mazdoor	Promotion to Mate Electrician	Promotion to Electrician SK	Promotion to HS II	Promotion to HS I
Mohan Biswa		27.04.1984	12.10.1995	15.02.2002	01.02.2005	Not yet granted
	Bijen Dey	27.04.1984	12.10.1995	15.02.2002	01.05.2004	01.01.2008; In the grade pay of Rs. 2800/-
	Prem Pd Pourel	27.08.1984	12.10.1995	14.02.2002	01.07.2004	01.01.2008; In the grade pay of Rs. 2800/-
	Dharam Ranjan Singh	31.08.1984	12.10.1995	15.02.2002	01.08.2004	01.01.2008; In the grade pay of Rs. 2800/-

According to the applicant, the above list is however exemplary in nature and not exhaustive. In view of the above, the applicant claimed that he is entitled for benefit of promotion/placement to the grade of HS II at least w.e.f. 01.05.2004 when the junior/batchmates of the applicant got promotion to HS II grade or from such earlier date as due and admissible to the applicant after due consideration of the case of the applicant.

3. In the written statement filed by the respondents, they had denied in toto the claim of the applicant for grant of antedated promotion to HS-II w.e.f. 01.05.2004 instead of 01.02.2005. It is stated that the got promotion-cum-posting from GE(AF) Shillong to GE Shillong w.e.f 15.02.2002 but the applicant assumed the charge of higher post i.e. Elect (SK) on 08.07.2002

at the new unit i.e. GE Shillong where the other individuals got the promotion to the post of Elect(SK) w.e.f. the same date i.e. 15.02.2002 as their promotion was in-situ and they assumed the charge of higher post i.e. Elect(SK) on 15.02.2002 (date of promotion). Hence the applicant became junior in the seniority list of Elect (SK) and his juniors who got the same promotion (in-situ) became senior to him. As per seniority list of Elect (SK) and vacancy available at that time, the other individuals, namely, Shri Bijon Dey, Shri Prem Pd Pourel and Shri Dharam Raj Singh got the promotion to the post of Elect (HS) in the year 2004 as senior to the applicant and the applicant got the same promotion in the year 2005. As regards the claim of the applicant for the benefits of 3rd MACP in the grade pay of Rs. 4200/- w.e.f. 27.04.2014, it is submitted that the applicant is entitled to receive the benefit of 3rd MACP in the grade pay of Rs. 2800/- which had already been granted to him w.e.f. 27.04.2014.

4. In the rejoinder, the applicant has quoted the rules of seniority and promotion. The relevant portion of the General Principle 5(i) is reproduced below:-

“General Principle 5 (i) – where promotions are made on the basis of selection by a Departmental Promotion Committee, the seniority of such promotes shall be in the order in which they are recommended for such promotion by the committee. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of the persons considered fit for promotion at the same time shall be the same as relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior, such person shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior person who had superseded him.”

In view of the aforesaid provision of seniority and promotion, issued by the Govt. of India through DOPT O.M. dated 07.02.1990, applicant categorically claimed that the date of joining in the promotional post of a non-selection post, the seniority of the applicant cannot be downgraded than his juniors merely on the ground that the applicant had joined in the promotional post of electrician (SK) on 08.07.2002 when others including juniors joined on the same day on 15.02.2002 in the promotional post.

5. We have heard Sri M.Chanda, learned counsel for the applicant and Sri S.K.Ghosh, learned Addl. C.G.S.C. for the respondents.

6. During the course of hearing, learned counsel for the applicant has produced before us a copy of the written statement filed by the same respondents in another similar case, namely OA.143/2017 and had drawn our attention to para 6 of the same, relevant portion of which is extracted below:-

"6..... it is submitted that both the applicant and Shri M.P.Choudhury got the promotion from Mate (Elect) to Elect (SK) wef 15 Feb 2002 vide CWE Shillong letter no.1455/DPC/2011/114/E1A dt 15 Feb 2002. But Shri M.P.Choudhury was on leave during that period and he rejoined duty/assumed the charge of higher post i.e Elect on 22 Mar 2002. Hence he is eligible to draw the pay & allowances of higher post wef 22 Mar 2002, but the original date of seniority for the both individuals is 15 Feb 2002. Therefore, Shri M.P.Choudhury is remain senior to the applicant namely Shri Mon Mohan Dutta as per date of initial appointment."

7. In view of the above, it is amply clear that the applicant is entitled to promotion from the date his juniors were promoted i.e. 01.05.2004 instead of 01.02.2005. Accordingly,

respondents are directed to grant the applicant benefits of promotion in the grade of HS-II w.e.f. 01.05.2004 and HS-I w.e.f. 01.01.2008 with all consequential benefits including the benefits of 3rd financial upgradation in the Grade Pay of Rs.4200/- if admissible and the same has been granted to his juniors.

8. The OA is disposed of accordingly. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

/BB/