

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 172 OF 2012

Kolkata this day of

16th January, 2014
~~September, 2013~~

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

Indranil Roy Chowdhury & 162 others.

..... Applicants.

Versus

1. Union of India,
Through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi – 110 001.
2. Union of India,
Through the Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi – 110 001.
3. Union of India,
Through the Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
New Delhi – 110 001.
4. The Director General,
Ordnance Factory & Chairman,
Ordnance Factory Board,
10A, Saheed Khudiram Bose Road,
Kolkata – 700 001.
5. General Manager,
Rifle Factory, Ichapur,
P.O. – Nawabganj – Ichapur,
Dist. North 24-Parganas.



..... Respondents.

For the Applicants : Mr. P. Mukherjee, Counsel
 For the Respondents : Ms. M. Bhattacharyya, Counsel
 Mr. U.P. Bhattacharyya, Counsel



ORDER

Per Ms. Bidisha Banerjee, JM:

This application is filed jointly by 163 applicants who are at present Highly Skilled Grade-I in Rifle Factory Ishapore. They seek a direction upon the respondents not to treat their placement, from Highly Skilled Workman (HS) to Highly Skilled Grade-I (HS-I), as promotion for the purpose of ACP or MACP. They seek quashing of the impugned order dated 1.12.2010 (Annexure-A/4) and its consequent order 20.06.2011 (Annexure-A/5) whereby placement of 50% of the erstwhile Highly Skilled workers as Highly Skilled Workers Grade-I is treated as promotion.

2. The applicants had earlier approached this Tribunal in O.A. 454 of 2011 with the same prayer. It was found by this Tribunal on the earlier occasion that they had not specifically impugned any government order, and that a decision was already taken by the respondents to get the matter re-examined by DOP&T in consultation with the Department of Expenditure. The O.A. was thus treated as premature and it was accordingly dismissed. Subsequently the respondents came out with an order dated 20.06.11. The said order being Annexure-A/5 to the present O.A. enunciates that in terms of the MODID note with DOPT clarification dt. 1.12.2010 ^{B.B.} states the placement of 50% erstwhile Highly Skilled Workers as Highly Skilled Workers Grade-I w.e.f. 1.1.2006, will be treated as promotion for the purpose of ACP/MACP and the decision is taken after re-consideration of the

demand of the staff side. However, no reason has been assigned as to why such movement was treated as promotion for the purpose of ACP/MACP.

3. The admitted facts which could be culled out from the materials on record depicts the following picture:-

(i) Prior to 1.1.1996, in Ordnance Factories and Ordnance Equipment and Clothing Factories, all Group 'C' and Group 'D' Industrial posts as given hereunder were governed by the provisions of SRO 185 dated 1.11.1994. The promotions in the Industrial Cadre of the factory were made in accordance with the provisions of SRO of 1994. The cadre structure and the movement from un-skilled to semi-skilled and further to skilled, Highly Skilled and Master Craftsman, governed by SRO 185/1994 was as hereunder:-

Sl.No	Post	Scale of pay(as per 4 th CPC)	Method of recruitment	Grade from which promotion to be made	Qualifying service
1.	Master Craftsman	Rs.1400-2300	By DR/By Promotion/Deputation/Transfer	Highly Skilled Gr.I	Minimum 3 years regular service in the Grade of 1320-2040. Total service of 7 years in the Grade of
2.	Highly Skilled Grade I)	Rs.1320-2040	By Promotion after adjustment of surplus and transfer failing which by DR	Highly Skilled Gr. II (1200-1800)	Minimum 3 years in the Grade
3.	Highly	Rs.1200-	- DO -	Skilled	- DO -



	Skilled (Grade II) Workman	1800		Grade (950-1500)	
4.	Skilled Workman	Rs.950- 1500	- DO -	Semi Skilled Grade (800-1150)	Minimum 2 years for Trade as per Annexure A & Minimum 3 years for Trade as per Annexure B

Then, the movement from Highly Skilled Grade-II (HS-II in Rs.1200-1800) to Highly Skilled Grade-I (HS-I in Rs.1320 – 2040) was treated as a promotion.


(ii) After the 5th CPC w.e.f. 1.1.96 the following structure emerged:-

Sl. No.	POST	Scale of Pay (as per 5 th CPC)
1.	Master Craftsman	Rs.4500-7000
2.	Highly Skilled Grade Workmen	Rs.4000-6000
3.	Skilled Workmen	Rs.3050-4590
4.	Semi Skilled Workmen	Rs.2650-4000
5.	Un skilled Workmen	Rs.2550-3200

(iii) The restructuring of Artisan cadre was effected vide MOD.OM dt. 20.5.03 w.e.f. 1.1.96. The following structure emerged out of restructuring.

Sl. No.	Post	Scale of pay (as per 5 th CPC)
1.	Skilled Workmen	Rs.3050-4590
2.	Highly Skilled Grade workmen (HS Gr.I +H.S. Gr.II merged)	Rs.4000-6000

3.	Master Craftsman	Rs.4500-7000
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The posts of H.S. Grade-I (Rs. 1320-2040) and H.S. Gr.II (Rs.1200-1800) were merged retrospectively, w.e.f. 01.01.1996, in the pay scale of Rs.4000-6000/-. The promotions made from H.S. Gr.II to HS Gr.I after 1.1.96 became infructuous in view of the said merger. There was a restructuring of cadre of Artisan staff in RFI, which was effected in two phases from 20.05.2003 to onwards. In the first phase, the inter grade ratio between the skilled and the Highly Skilled was 65:35. Out of 35% of the Highly Skilled Grade, 10% of Highly Skilled was given the Master Craftsman pay scale. In the second phase, the ratio between the Skilled and the Highly Skilled Grade was 45:55 and 25% of Highly Skilled Grade was placed to the grade of Master Craftsman.

(iv) As the post of Master Craftsman (MCM in short) was not a part of regular hierarchy, the movement from Highly Skilled Grade (HS) to MCM was not treated as promotion under the ACP^s scheme that was operational between 09.08.1999 and 31.08.2008.

(v) The said ACP Scheme (operational between 9.8.99 – 31.8.2008) came to be modified and superseded by the Modified Assured Career Progression Scheme (MACP in short) in accordance with 6th CPC's recommendations.

(vi) Meanwhile in partial modification of the 6th CPC, a restructuring of Artisan cadre was effected vide OFB letter dt. 13.12.10 w.e.f. 1.1.06. The revised

ratio/percentage of different grades in the Industrial Trades w.e.f. 01.01.2006

were as follows:-

Sl.No.	Grade	Percentage	Scale of pay(6 th CPC) (4000-6000/-)
I	Skilled	45	PB-1:Grade Pay Rs.1900
II	HS-II	20.625	PB-1:Grade Pay Rs.2400
III	HS-I	20.625	PB-1:Grade Pay Rs.2800
IV	Master Craftsman	13.75	PB-2:Grade Pay Rs.4200



The trade-wise distinction was made w.e.f. 1.1.06 in the following manner:-

45% of the posts were granted the pay scale of Skilled worker (PB-1:Grade Pay Rs.1900), 25% of the remaining 5% posts were granted the pay scale of Master Craftsman (PB-2:Grade Pay Rs.4200). The remaining posts were divided in a ratio of 50:50 and re-designated as Highly Skilled Worker Gr.II(PB-1:Grade Pay Rs.2400) and Highly Skilled Worker Gr.I (PB-1:Grade Pay Rs.2800). The placement of the individuals in the posts mentioned above resulting from the restructuring were given effect from 1.1.2006, in relaxation of the conditions under the SRO as one time measure. According to the aforesaid instructions, the post of Master Craftsman had become a part of the regular hierarchy, the placement of HS Grade-I in the grade of Master Craftsman was treated as promotion w.e.f. 01.01.2006. The posts of highly skilled grade were split in a ratio of 50:50 w.e.f. 1.1.2006. Highly skilled employees (including those who were wasted out due to retirement, death etc) were re-designated as Highly Skilled GR. I and Highly Skilled Gr. II in the corresponding pay scales and the Pay band and Grade Pay due to splitting as per the aforesaid ratio. The senior most Highly Skilled employees were placed to the post of Highly Skilled Gr. I as per the revised

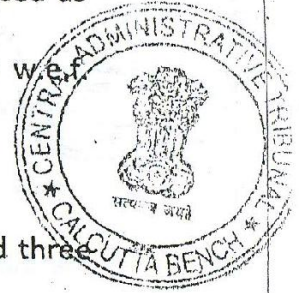
ratio calculated on the sanctioned/authorized strength. The remaining highly skilled employees were placed in the Highly Skilled Gr. II. In view of the restructuring, the artisan staffs were allowed to give revised option form for pay fixation from 1.1.2006 onwards within three months from the date of issue of the aforesaid order i.e. 13.12.2010.

4. The respondents in their reply as well as in their written submission have emphatically admitted that the Highly skilled employees w.e.f. 1.1.06 were re-designated as Highly Skilled Gr.I and Highly Skilled Gr.II in the corresponding pay scale, pay band and grade pay, due to splitting in the ratio 50:50. At the same time they have termed the said splitting and corresponding adjustment of senior most Highly Skilled employees to Highly Skilled Gr.I as 'promotion' and created an ambivalence. No reason has been assigned for such treatment or coinage however.



5. It is argued that the applicants were appointed initially as Machinist/Fitter/Grinder in the semi-skilled grade in RFI between 1996 and 1998 onwards. They were promoted as Machinist/Fitter/Grinder Skilled Grade on completion of two years of regular service from the date of their initial appointment in the semi-skilled grades. They were further promoted to Highly Skilled Grades in their respective trades during 2001, 2002 and 2003. As such as on 1.1.2006 they stood already promoted to Highly Skilled Grade (Rs.4000-6000/- PB-I GP 2400/-). Due to restructuring of 2010 effective from 1.1.06 they became entitled to Grade Pay Rs.2800 by virtue of their seniority. It seems to be not a case where they moved one scale of pay to another higher scale of pay, due to promotion. They simply had to be re-designated according to their seniority, as Highly Skilled Grade-1 or Highly Skilled Grade-II, as the case may be. It appears that the applicants were

unaffected due to merger of Highly Skilled Grade-II to Grade-I upon implementation of the 5th CPC w.e.f. 1.1.96. They were promoted to Highly Skilled Grade by 2003 in the scale of Rs.4000-6000/-. Their pay was revised w.e.f. 1.1.06. After 1.1.06 the movement from Highly Skilled Grade-II to Highly Skilled Gr.I was treated as promotion. The applicants who were already in PB-I GP 2400/- were granted Grade Pay Rs.2800/-. However, the applicants on being placed as Highly Skilled Grade-I exercised their options for revision of their pay w.e.f. 1.1.2006 in terms of CDS (RP) Rules, 2008.



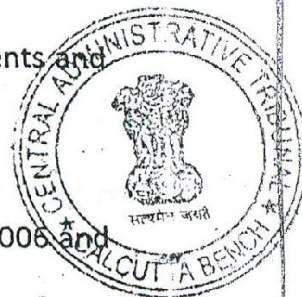
6. The MACP Scheme, introduced vide O.M. dated 19.05.2009, granted three financial upgradations at an interval of 10, 20 and 30 years of regular service and the claim of the applicants is that their placement as Highly Skilled Gr.I from Highly Skilled (Rs.4000-6000/-) could not be treated as a promotion for grant of MACP. It is argued that the said placement was bestowed upon the applicants, without any higher responsibilities. In support of their contentions, the applicants have placed reliance on the decision rendered in **C.C. Padmanabhan and Ors. Vs. Director of Public Instruction and Ors.** [AIR 1981 SC 64] and **Director, Central Rice Research Institution, Cuttack & Anr. Vs. Shri Khetra Mohan Das** [JT 1994(6) SC 482]. They submit that the Hon'ble Apex Court has been pleased to hold that a promotion is different from fitment by way of rationalization and initial adjustment. Promotion means the appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such service or a class. The applicants contend that their placement from Highly Skilled to Highly Skilled Gr.I is a re-designation and not a promotion. The applicants have also relied upon the decision rendered in **Union of India & Anr. Vs. S.S. Rande** [1995 (4) SCC 462] where the Hon'ble Apex Court while re-iterating the finding of

an earlier decision viz. **Lalit Mohan deb Vs. Union of India** [1973 (3) SCC 862] had been pleased to hold that the administration can provide two scales of pay in the same category of posts, but it cannot be considered as a higher post.

7. We have heard Id. Counsel for both sides and perused the documents and material placed on record.

8. We find that the applicants were already in HS Grade prior to 1.1.2006 and they were in receipt of the pay scale of Rs. 4000-6000. W.e.f. 1.1.2006, the Highly Skilled (HS) Grade was only splitted to HS Gr.I and Grade II due to cadre restructuring. HS Grade I was operated in PB-1 with Grade Pay of Rs.2800/- whereas HS Gr. II was operated in PB-I with Grade Pay Rs.2400/-. While Master Craftsman was placed in PB-2. The movement from HS Grade I to Master Craftsman was rightly treated as a promotion as Master Craftsman came to be included in the hierarchy of Artisan Cadre unlike the position that existed prior to 1.1.96, When movement from HS Gr.I to MCM was not considered as a promotion. In the same manner the movement from HS Gr.II to HS Gr.I w.e.f. 1.1.2006 was treated as a promotion as it involved movement from Grade II in PB-1 at GP Rs.2400/- to Grade I in PB-1 at GP Rs.2800/-. Nevertheless for the applicants, as they were already in HS cadre with PB-I GP 2400/-, by virtue of introduction of Grade Pay as well as restructuring of cadre w.e.f. 1.1.06, they were simply placed in GP Rs.2800/- and re-designated as HS Grade II.

9. From the pleadings in the reply and the written notes of arguments, we also find that the respondents have emphatically admitted (at para (c) of their written arguments) that the movement of the applicants from HS to HS Gr.I was a re-designation. The respondents have cleverly evaded to address whether such



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movement involved discharge of higher duties or responsibilities, or payment of higher scale of pay. They have also not indicated whether the applicants under 6th CPC were bestowed with Grade Pay Rs.2400/- as Highly Skilled.

10. The word promotion has a definite connotation. While Black's Law Dictionary defines 'Promote' as 'to advance', the Law Lexicon defines 'Promotion' as —

"Appointment to a post which carries higher responsibility and an additional allowance as special pay is a higher post than the substantive and the appointment to that post will amount to promotion. Maheshchandra Gupta v. General Manager M.P. State Road Transport Corporation, Bairagarh, 1978 Jab. L.J. 473 at p. 479".



11. The concept of promotion not only covers advancement to a higher position or rank but also implies advancement to a higher grade. In **Tarsem Singh —vs- State of Punjab [AIR 1995 SC 384]** the Hon'ble Apex Court succinctly held that promotion is 'advancement in rank or grade or both'. Promotion is always a step towards advancement to a higher position, grade or honour. Hon'ble Apex Court in **Lalit Mohan Deb (supra)** has said that "It is well recognized that a promotion post is a higher post with higher pay" which implies that there must be a feeder post to the said higher post. Here we find that the feeder post to the HS-I as on 1.1.06 is 'skilled' (SK) grade whereas the applicants were already in highly skilled (HS) grade as on 1.1.06. With cadre restructuring the HS have been splitted to HS-I and HS-II but that does not make HS a feeder post to HS-I. Hence their movement cannot be construed to mean movement from a feeder post to a next higher post.

12. The reason why such movement from HS to HS-I due to cadre restructuring, has been treated as promotion for the denial of MACP is *neither given in the*

parent order dt. 1.12.10 nor in the impugned order dated 20.06.2011. Reply also does not indicate the reason for such movement to be treated as a promotion for the purpose of ACP/MACP. The respondents have deliberately created the ambivalence in order to confuse us. They have referred the movement of HS Gr.I to Master Craftsman, which is essentially a promotion entailing denial of MACP but the same has no bearing with the present issue. The present issue is whether movement of erstwhile HS to HS-I w.e.f. 1.1.06 should be treated as a promotion, for the purpose of MACP. We seek to be guided by the ratio of the decisions cited hereinabove, and we are convinced that the applicants have a case.

On the contrary the respondents have failed to convince us that the movement of the present applicants from HS to HS-I involved any assumption of higher responsibilities or that it was a movement from a lower feeder post with lower scale of pay to a higher post with higher scale of pay. On the contrary we find that movement from HS-II to HS-I after 1.1.06, is rightly termed as a promotion, as HS-II became feeder post to HS-I w.e.f. 1.1.06. Similarly skilled grade became the feeder grade to HS-II. But by no stretch of imagination erstwhile HS Grade can be called a feeder grade to HS-II ^{w/ HS-I} under the hierarchy created w.e.f. 1.1.06.

13. The respondents have thus failed to disclose the reason as to why the placement of erstwhile (pre 1.1.06) Highly Skilled workers to Highly Skilled Gr.I in terms of seniority and Highly Skilled Gr.II in the ratio of 50:50 due to restructuring of artisan cadre be treated as a promotion. We find from a clarification dated 10.2.2000 that mobility under ACPs is to be allowed in the existing hierarchy. Any selection grade/ in situ promotion which is not a part of the hierarchy shall not be



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counted as promotion for the purpose of ACPs which fully supports the applicants' case.

14. Being not supported by any cogent reason we hold that the placement of erstwhile (pre 1.1.06) HS to HS I due to cadre restructuring effected on 13.12.10 w.e.f. 1.1.06, should not be treated as a promotion for the purpose of MACP. Consequently, we hold that the applicants shall be entitled to MACP.

15. Accordingly we quash the para 2(1) of the impugned order dt. 1.12.10 and direct the respondents to examine the claim of each of the applicants for grant of MACP benefits as applicable and pass appropriate orders within three months. The OA is allowed in aforesaid terms. The applicants are directed to pay individual court fees.

Member (A)



Member (J)

in

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सत्यापित प्रति प्रमाणित

Court Officer

केन्द्रीय प्रशासनिक अधिकारी

Central Administrative Tribunal

कलकत्ता न्यायपीठ

Calcutta Bench

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