

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **16.09.2016**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P.No.355 of 2011
and M.P.No.1 of 2012

1. Union of India
Rep. by the Secretary
Ministry of Defence Production
& Supply,
DHQ (PO),
New Delhi - 110 011.
2. The Chairman
Ordinance Factory Board,
10-A, S.K.Bose Road,
Kolkatta - 700 001.
3. The General Manager
Cordite Factory,
Aruvankadu - 643 202,
The Nilgiris.

.... Petitioners

Vs.

1. K.J.Pathan
 2. P.Rangaswamy
 3. V.Sankaran
 4. Y.B.Mathan
 5. G.Ruban
 6. P.Mani
 7. The Registrar
The Central Administrative Tribunal
Madras Bench, Chennai.
- Respondents

....

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorari or any other writ or order or direction in the nature of writ, calling for the records in respect of the impugned order passed by the Central Administrative Tribunal, Madras, vide its Order, dated 31.03.2010 made in O.A.No.11 of 2009 on the file of the 7th respondent and quash the same.

For Petitioners : Mr.G.Rajagopalan, Addl Solicitor General
assisted by Mr.K.Gunasekar, SPCCG

For Respondents : No appearance for R1 to R5
Mr.V.Parthiban for M/s. Aiyar & Iyer
for R6

R2- Tribunal

ORDER

(Order of the Court was made by **P.KALAIYARASAN, J**)

The writ petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records in respect of the order of the Central Administrative Tribunal (Madras Bench), dated 31.03.2010 in O.A.No.11 of 2009 and quash the same.

2. The facts of the case in brief are as follows :

(i) The respondents 1 to 6 in this writ petition are applicants before the Central Administrative Tribunal. The

applicants were originally employed as Group 'D' Labourers on various dates during 1961 and 1962 in third petitioner's factory, namely Cordite Factory, Aruvankadu. They retired as CPW LMHS-II during 2001-2003. The Government of India introduced the scheme of grant of financial upgradation to employees on completion of 12 and 24 years in their orders, dated 09.08.1999.

(ii) The benefits under the scheme was not extended to the applicants. The applicants already moved the Tribunal by filing Original Applications in 2007 and got a direction to consider their representation. Pursuant to the above order, the authority considered and rejected the applicants' plea in its order, dated 20.12.2001.

3. Aggrieved by the same, the applicants, filed O.A.No.11 of 2009. As per the clarifications issued by the Government, movement from semi skilled to skilled post should not be treated as promotion for the purpose of Assured Career Progression (ACP) Scheme. The Tribunal accepted the above contention of the applicants and allowed their claim. The writ petitioner contends that out of three promotions obtained by the applicants, at least two are the promotions for the purpose of ACP Scheme.

4. The learned Additional Solicitor General appearing for the writ petitioners strenuously contends that clarification, dated 11.01.2008 issued by the DOP & T referred to by the Tribunal, in its order is no way related to the respondents / applicants and the same is only in respect of removing the disadvantageous position of CWP employees, who were recruited prior to 1989 and that the promotion given to the applicants from CPW-A to Overlooker Gr.A and then to CPW-LMHS-Gr.II are certainly promotion with higher grade as well as higher scale of pay from unskilled to skilled category and skilled to highly skilled category and therefore, the order is liable to be quashed.

5. The learned counsel appearing for the sixth respondent per contra contends that the Central Administrative Tribunal has rightly decided the dispute by citing the admission of the writ petitioners in their reply statement and the clarifications issued by the DOP&T, dated 11.01.2008.

6. There is no dispute that the respondents / applicants were initially appointed as CPW-B during 1961-1962 and all the applicants except R3 were made as CPW-A during 1972-1973. As

per the recommendations of the Expert Classification Committee (ECC), semi skilled, skilled, HS-II and HS-I Grade posts were introduced w.e.f 16.10.1981. Prior to the introduction of this post, the next promotional avenue for the CPW-A workers was Overlooker Gr.A. Prior to 16.10.1981, the applicants excepting R3 were promoted as Overlookers. 3 out of 6 applicants were promoted as HS-II in 1984 and 1990. As far as R3 is concerned, he was given promotion as Maistry in 1978 and then as Line Maistry (Skilled) in 1985 and from that post to Overseer (Highly Skilled) in 1997.

7. As rightly contended out by the Tribunal in its order, the writ petitioners herein in their reply statement filed before the Tribunal, indicated in the Tabular statement enclosed therein that the movement from CPW-B to CPW-A is not treated as promotion, as per the instructions in DOP&T ID Note No.4970/)S(RR)/07, dtd 11.01.2008 conveyed in MOD ID No.6(5)/2005 D(Cir-I), dated 04.02.2008. Thus admittedly the movement from CPW-B to CPW-A is not to be treated as promotion for the purpose of ACP Scheme.

8. The short point that is to be decided is whether the movement from unskilled to skilled is to be treated as promotion

for the purpose of ACP Scheme or not.

9. It is to be noted that admittedly semi skilled-HSII skilled-HSI posts were introduced only as per the recommendations of the Expert Classification Committee appointed in the year 1988 and those two posts were introduced w.e.f 16.10.1981. Three of the respondents even before introduction of the above semi skilled-HSII, skilled HS-I posts were moved to the post of Overlooker and they were moved to HS-II in 1984-1990.

10. The operative instructions for guidance issued by the Ministry of Defence, Govt. of India, dated 20.12.2001 reads thus :

"(i) In factories industrial employees are appointed to the Semi-skilled grade post against the posts sanctioned in the skilled grade by way of promotion or direct recruitment. In case of such incumbents the placement from semi skilled to skilled grade, after fulfilling the norms for placement in the skilled grade will not be treated as promotion for the purpose of financial upgradation under ACPs.

(ii) These orders are applicable only to the IEs who were appointed / recruited to semi-skilled

grade against post sanctioned in skilled grades on or after 16.10.1981. It is pointed out that the concept of semi-skilled, skilled, HS-II and HS-I were introduced in pursuance of ECC recommendations which were implemented w.e.f 16.10.1981."

11. The Ministry of Defence in I.D.Note No.11(5)/99-D(Civ.I), dated 30.10.2001 clarified certain points by quoting the orders in U.O.Note No.4970/US(RR)/07, dated 11.01.2008 as follows :

"2. Following two references were sent to DOP&T for clarifying the position :

(i) grant of ACP to employees recruited against skilled posts but were appointed in the pay scale applicable to semi-skilled and passed Trade Test beyond a period of 2/3 years.

(ii) anomaly in the grant of ACP in respect of employees of Chemical Process Workers (CWP) recruited before and after 1989.

3. DOP & T have clarified these points as under vide U.O.Note NO.4970/US(RR)/07, dated 11.01.2008 : -

"... As regards issue No.1, our instructions provide that where an employee is appointed in a semi-skilled pay scale against a skilled post and subsequently appointed in the pay

scale of skilled post within a period of 2 years for DRs and 3 years for promotes subject to possessing certain qualifications and passing of trade test, etc., in such cases) appointment to skilled pay scale is not treated as promotion and appointment in the semi-skilled pay scale is treated as a training period. However, in the present case, the employees have taken a longer period say 7 to 8 years to pass the trade test before they were placed in the pay scale of skilled post. The proposal is that in the event of passing the trade test beyond the prescribed period of 2/3 years should be relaxed and as in the normal course their appointment to the skilled post should not be counted towards promotion for the purpose of ACP. Similar dispensation has already been extended in the Railways. In view of this, we may agree in the case of MOD also.

The 2nd issue relates to CPW employees and in view of the anomalous situation where the senior employees recruited before 1989 would be put to disadvantages vis-a-vis their juniors appointed subsequent to 1989 in view of restructuring. We may also agree to treat the pro-1989 entrants at par with post-1989 for the purpose of ACP in order to remove serious anomalous situation..."

4. The concerned organisations may take

necessary action accordingly."

12. It is clear from the above clarifications and orders of the Govt. of India that the movement from unskilled to skilled posts should not be treated as promotion for the purpose of ACP Scheme.

13. The contention of the learned Additional Solicitor General appearing for the petitioners that clarification issued was in no way related to the respondents herein and it was issued only in respect of removing the disadvantageous positions of CPW employees is not acceptable.

14. When clarification is issued with respect to the ACP Scheme with an object to upgrade the pay of employees who have been languishing in one post without promotion, the scheme is equally applicable to all employees concerned. Thus the respondents / applicants are entitled to the benefits under the ACP Scheme, as the movement from CPW-B to CPW-A and the promotion from semi-skilled post to skilled post should not be treated as promotion and accordingly, the respondents 1 to 6 are

entitled for second financial upgradation.

15. The Central Administrative Tribunal (Madras Bench) has rightly decided the claim of the respondents 1 to 6 / applicants and it does not warrant any interference of this Court under Article 226 of the Constitution of India and accordingly, the writ petition is liable to be dismissed.

In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. The petitioners are directed to extend the benefits to the respondents 1 to 6 under the ACP Scheme within a period of three months from the date of receipt of a copy of this order.

(A.S., J.) (P.K., J.)

16.09.2016

Index : Yes

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To

The Registrar
The Central Administrative Tribunal
Madras Bench, Chennai.

**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

tsvn

**Order in
W.P.No.355 of 2011**

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