

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2017
Pronounced on : 08.08.2017

Coram

THE HON'BLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition Nos.10936 and 10937 of 2015

V.Vijayakumaran ... Petitioner in
W.P.No.10936 of 2015

M.Mathiazhagan (FMT) ... Petitioner in
W.P.No.10937 of 2015

/versus/

1.Union of India rep.by the
Secretary to Government of India,
Ministry of Defence,
New Delhi 110 011.

2.The AOC-in-C,
Head Quarter Maintenance Command,
Nagpur 440 007.

3.The Commandant,
No.8BRD Air Force Station Avadi,
IAF Avadi, Chennai 600 055.

4.Air Officer in Personnel,
Air Headquarters, Vayubhavan,
Rafi Marg, New Delhi 110 011.

5.Senior Accounts Officer,
Accounts Section,
8BRD AF, Avadi,
Chennai 55.

6.Mr.M.Subramaniam (PA No.36527'A'),

7.Mr.R.Panneer Selvam (PA No.36529'H')
(now deceased) represented by his wife & legal heir
C.P.Malarkodi

8.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai 600 104.

..Respondents in both WPs

Prayer in W.P.No.10936 of 2015: Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 8th respondent in its order dated 16.02.2015 made in O.A.No.1006 of 2012 quash the same in so far as it denies the relief of placement of the petitioner as Master Craftsman with retrospective effect from 20.05.2003 and consequently allow the O.A., as prayer for.

Prayer in W.P.No.10937 of 2015: Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 8th respondent in its order dated 16.02.2015 made in O.A.No.1005 of 2012 quash the same in so far as it denies the relief of placement of the petitioner as Master Craftsman with retrospective effect from 20.05.2003 and consequently allow the O.A., as prayer for.

For Petitioner :Mr.Karthik Rajan for
(in both WPs) M/s Menon, Karthik,
Mukundan & Neelakandan

For Respondents :Mr.K.Raja, CGSC for R1 to R5
(in both WPs) M/s C.S.Monica for R6
No appearance for R7
Tribunal -R8

COMMON ORDER

(Order was made by Dr.Justice G.Jayachandran)

Thiru.V.Vijayakumaran(petitioner in W.P.No.10936 of 2015) and Thiru.M.Mathiazhagan(petitioner in W.P.No.10937 of 2015) have preferred these writ petitions against the order of the Central Administrative Tribunal passed in O.A.Nos.1005 and 1006 of 2012, since their plea (a) to set aside Depot Routine bearing S.No.49, dated 19.06.2012 issued by 3rd respondent in so far as it fails to include the name of the petitioner and includes the names of respondents 6,7,8 herein; (b) to set aside Depot Routine Order bearing S.No.57, dated 17.06.2012, issued by 3rd respondent in so far as the petitioner is concerned; (b) to set aside Depot Routine Order bearing S.No.57, dated 17.06.2012 issued by 3rd respondent in so far as the petitioner is concerned; (c) to set aside order No.8BRD/3336/1/Accts. dated 16.7.2012 issued by the 5th respondent in so far as the petitioner is concerned and (d) consequently direct the respondents to consider the petitioner for placement as Master Craftsman and further include the name of the petitioner in the revised list of Master Craftsman placed with retrospective effect (20.05.2003) with all consequential benefits flowing therefrom were declined.

2. The case of the writ petitioners is that they entered into service as Skilled Grade Employees and got

promoted as Highly Skilled Grade created in the Defence Establishment. Pursuant to the 3rd Pay Commission Recommendation, post of Master Craftsman (MCM) was created, which has to be filled up from among the eligible Highly Skilled Grade I Employees. The method of selection to the post of Master Craftsman(MCM) is also laid down by the 1st respondent. While so, on the 5th Central Pay Commission Recommendation, Cadre restructuring was effected. As per the order of the 1st respondent dated 20.05.2003, the grade structure and grade ratio between the skilled, Highly Skilled and Master Craftsman(MCM) were re-casted with effect from 01.01.1996 retrospectively. The order dated 20.05.2003 also prescribes the mode of filling up the post of Master Craftsman (MCM) in the vacancies arising after 20.05.2003. Accordingly, Selection Committee was constituted and the writ petitioners were placed as Master Craftsman (MCM) vide, order dated 03.08.2004. This order was challenged by the private respondents 6 and 7 along with few other High Skilled Grade Employees in O.A.No.787 of 2004. The Tribunal allowed the application set aside the selection of the writ petitioners as Master Craftsman (MCM) and remitted the matter for fresh consideration.

3. The order of the Tribunal passed in O.A.No.787 of 2004 was challenged in W.P.No.6633 of 2006 and the same was dismissed on 22.09.2010. The private respondents, who are the writ petitioners herein preferred Special Leave Petition before the Hon'ble Supreme Court and it was dismissed with leave to file review before the High Court. The Review Petition No.75 of 2011 was also dismissed. However, in the Special Leave Petition filed by the Official respondents challenging the order in W.P.No.6633 of 2006, the Supreme Court on 14.10.2011 set aside the order dated 22.09.2010 and remanded the matter back for fresh disposal on merits, since the earlier dismissal order in W.P.No.6633 of 2006 was on latches and non-prosecution. Later, on remand, the High Court heard W.P.No.6633 of 2006 and dismissed it on 16.04.2012. Meanwhile, pending disposal of the above said Special Leave Petition preferred by the official respondents, a Review DPC was conducted during the month of September/October 2011 in compliance with the direction of the Tribunal in O.A.No.787 of 2004 subject to the outcome of pending Special Leave Petition. Since Special Leave Petition was allowed and on remand, the Writ Petition was dismissed confirming the order passed by the Tribunal in O.A.No.787 of 2004, the Official respondents released the list of MCM on 19.06.2012. In the said list, the names of the writ petitioners were not included, but the names of respondents 6 and 7 were included. Aggrieved by non-inclusion of their names for the placement as Master Craftsman (MCM), O.A.Nos.1005 and 1006 of 2012 were filed by the writ petitioners on the ground that less meritorious persons viz., respondents 6 and 7 were recommended for placement as MCM leading to their reversion to the post of Highly Skilled from MCM with effect from 20.05.2003 is perverse and unjust. It was

contended that while merit should be the criteria for placement as MCM, the review DPC has not assessed the performance of the candidate at all. The 6th respondent, who is now placed as MCM with effect from 29.06.1996 completed only 7 years of service in Skilled Grade whereas, the Rule says, for MCM one should have completed 10 years in Skilled and High Skilled Grade with 3 years in High Grade Skill 1. Apart from reversion, the direction to refund the excess salary paid was ordered to be recovered from the salary was also challenged before the Tribunal.

4. The Tribunal, after taking into consideration the rival contentions of the parties, held that the issue of placement as Master Craftsman consequent to restructuring of the Artisan Staff Cadre in defence establishment had already been considered in the earlier round of litigation and attained finality. Hence, it declined to interfere with the placement of the private respondents 6 and 7 as MCM. As far as recovery of excess payment, relying upon the judgment of the Hon'ble Supreme Court in State of Punjab and ors. v. Rafiq Masih (White Washter) etc [Civil Appeal No.11527 of 2014 and batch rendered on 18.12.2014], quashed the portion of the impugned order relating to recovery of excess money paid.

5. Learned counsel for the writ petitioners contents that the observation of the Central Administrative Tribunal (CAT) that issue of placement as MCM has reached finality in the earlier round of litigation, is not legally and factually correct. In the earlier round of litigation, which arose from O.A.No.787 of 2004 it was decided and directed to consider the case of applicants as well as private respondents afresh in terms of the existing conditions in force vide, Annexure A1, A2 and A3 the communications dated 21.09.1982 and 17.06.2003 with liberty to the officials to amend the conditions, if necessary to ensure greater harmony in the interpretation and application. Whereas the present grievance of the writ petitioners is that, the assessment in the review, DPC was not made on merits and without going into the relative merits of the candidates and eligibility, respondents 7 and 8 were placed as MCM. Therefore, the issue raised was never heard or decided in any of the earlier proceedings.

6. Per contra, the learned counsels appearing for the respondents contended that the Central Administrative Tribunal (CAT), in O.A.No.787 of 2004, set aside the earlier appointment of MCM, Thereafter, a new Department Selection Committee was constituted. The DSC found that respondents 7 and 8 as FIT for placement to the post of MCM. Based on their recommendation, the post were filled up. The writ petitioners' name were not recommended by DSC. Therefore, they were reverted to High Skill Grade, which they held prior to 2004.

to the post of MCM was done is consonance to the order passed in O.S.No.787 of 2004 and confirmed by High Court in W.P.No.6633 of 2006. On reading of Annexures A1, A2 and A3 as well as the clarification issued by the Head Quarters MCIAF dated 19.05.2005 it is seen that

(i) the selection from Highly Skilled Grade to the Grade of Master Craftsman shall be up to 25 % of total number of sanctioned posts in the Highly Skilled Grade after 20.05.2003 pursuant to restructuring of Grade and 10% prior to 20.05.2003;

(ii) The post of MCM shall continue to be considered as Highly Skilled Grade for the purpose of promotion to the Grade of Chairman-II (Rs.5000-8000);

(iii) The placement of the individuals in the posts resulting from the restructuring and ratio revision shall be made from the date of issue of the orders, in relaxation of the conditions, if any, as one time measure; and

(iv) The workers should have rendered a total service of at least 10 years continuously in the same or allied trade in the Skilled Grade. Out of which, 3 years of service should be in the Highly Skilled Grade-I.

8. As per the procedure laid down for selection to the Grade of Master Craftsman,

"(3) each Defence Establishment will constitute a Departmental Selection Committee consisting of the Head of of the Department as the Chairman and two Technical Officers and one Administrative Officer. The Departmental Selection Committee shall keep before them the following criteria for selection:-

(a) Standards of craftsmanship will be judged more on the basis of persistent attainment of very high skill levels in job execution over a length of period rather than a single achievement which may not represent the true level of skill attained by a particular individuals; and

(b) achievements attributed to the persons(s) recommended for the job of Master Craftsman should be available for inspection by Members of Departmental Selection Committee, if necessary, so as to ensure that the recommendations are based on sufficiently high standard to render elevation of such individual(s) to the post of Master Craftsman."

9. It is seen from the letter of the 1st respondent dated 19.05.2005, when a query was raised regarding whether unit seniority should be followed in granting MCM, it has been clarified that principle of unit seniority is applied only for the purpose of placement in High Skilled Grade MCM being a selection by merit, the authorized establishment of a particular trade should consider only viable traders of the unit. On the above said principle and guidelines, the Department Selection Committee has recommended the

Mr.K.Janakiraman (7th respondent) and Mr.R.Panneerselvam (8th respondent) for placement as MCM, who belong to FMT (A) trade. These two candidates also belong to schedule caste community and the instruction relating to DPC says that for SC/ST candidates, when they are considered for vacancies falling to their quota, there is no bench mark and whichever candidate is declared fit by DPC must be empaneled.

10. Admittedly, private respondents 7 and 8 are seniors to the appellant. The Rule never says placement should be only on merit and seniority should not be taken note. In fact, Clause 3(a) of the Procedure, while prescribing standard for judging, emphasis that persistent achievement of very high skill levels in job execution over a length of period rather than a single achievement, which may not represent the true level of skill attained by a particular individuals. Thus, it is incorrect to say that for placement of MCM, seniority has no place. In fact, persistent achievement is given more weightage as against single achievement.

11. For the said purpose, length of service has a bearing and the selection of 6th and 7th respondents based on their seniority cannot be found fault. Therefore, we find no merit in the submissions made by the learned counsel appearing for the petitioners.

12. Hence, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Secretary to Government of India,
Union of India,
Ministry of Defence,
New Delhi 110 011.

2.The AOC-in-C,
Head Quarter Maintenance Command,
Nagpur 440 007.

3.The Commandant,
No.8BRD Air Force Station Avadi,
IAF Avadi, Chennai 600 055.

4.The Air Officer in Personnel,
Air Headquarters, Vayubhavan,
Rafi Marg, New Delhi 110 011.

5.The Senior Accounts Officer,
Accounts Section,
8BRD AF, Avadi,
Chennai 55.

6.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai 600 104.

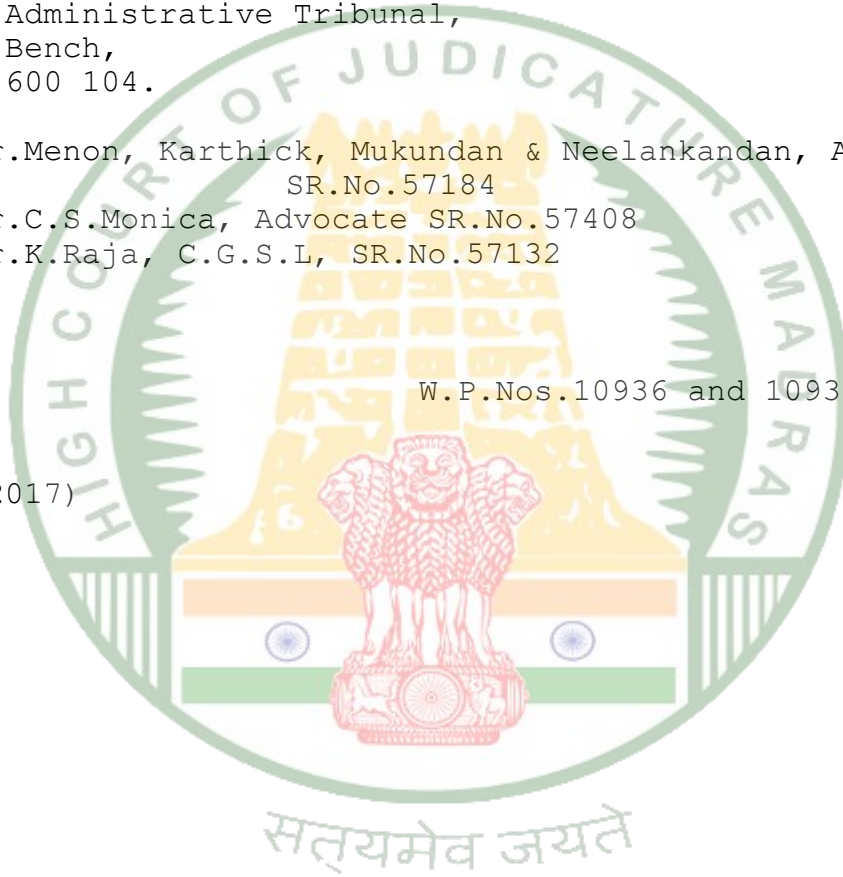
+2cc to Mr.Menon, Karthick, Mukundan & Neelankandan, Advocate
SR.No.57184

+2cc to Mr.C.S.Monica, Advocate SR.No.57408

+1cc to Mr.K.Raja, C.G.S.L, SR.No.57132

W.P.Nos.10936 and 10937 of 2015

GR(CO)
GN(22/08/2017)



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