

In the High Court of Judicature at Madras

Dated : 21.3.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Writ Petition Nos.25543 & 25650 of 2016

S.Raghuraman, Highly Skilled
Grade II Examiner Engineering
Heavy Alloy Penetrator Project,
Trichy-25. ...Petitioner in WP.No.
25543 of 2016

S.Alexander Highly Skilled
Grade II Machinist, Heavy Alloy
Penetrator Project, Trichy-25. ...Petitioner in WP.No.
25650 of 2016

Vs

1.Union of India, rep.by the General
Manager, Heavy Alloy Penetrator
Project, Trichy-25.

2.The Ordnance Factory Board, rep.by
its Director General, Ayudh Bhavan,
10-A, S.K.Bose Road, Calcutta-1.

3.The Deputy General Manager
(Administration), Heavy Alloy
Penetrator Project, Trichy-25.

4.The Registrar, Central Administrative
Tribunal, Madras Bench ...Respondents in
both WPs

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorarified Mandamus

(i) to call for the records, quash the orders passed by the
4th respondent in O.A.No.1567 of 2012 dated 10.9.2014 and
consequently direct the 1st respondent to elevate the petitioner
to the post of Highly Skilled Grade-I in PB-1 (5200-20200) + GP
2800 w.e.f. 01.1.2006 with all consequential benefits including
monetary benefits flowing therefrom (W.P. No.25543 of 2016) and

(ii) to call for the records, quash the orders passed by the 4th respondent in O.A.No.1568 of 2012 dated 10.9.2014 and consequently direct the 1st respondent to elevate the petitioner to the post of Highly Skilled Grade-I in PB-1 (5200-20200) + GP 2800 w.e.f. 01.1.2006 with all consequential benefits including monetary benefits flowing therefrom (W.P. No.25650 of 2016) (Prayers amended respectively vide WMP.Nos.7408 and 7409 of 2017 on 21.3.2017 by NRRJ and SMSJ).

For Petitioners in both WPs: Mr.R.Pandian

For Respondents 1 to 3 in
WP.No.25543 of 2016 : Mr.N.Rajan, SCGSC

For Respondents 1 to 3 in
WP.No.25650 of 2016 : Mr.Christopher
Kishore Vincent, ACGSC

COMMON ORDER

(Order of the Court was made by NOOTY.RAMAMOohana RAO,J)

Originally, both the writ petitions are directed against the common order dated 10.9.2014 passed by the Central Administrative Tribunal respectively in O.A.Nos.1567 and 1568 of 2012, instituted by the respective writ petitioners as also the common order dated 02.1.2015 dismissing the review applications in R.A.Nos.65 and 66 of 2014 moved in the aforesaid respective original applications. Though separate writ petitions ought to have been preferred against the common order dated 02.1.2015 passed in the review applications, it was not done so. However, subsequently, the prayer in the writ petitions was sought to be amended and the petitions seeking amendment are ordered today. In the amended prayer, the writ petitioners seek to quash only the common order dated 10.9.2014 made in the respective original applications.

2. Both the writ petitioners are working in Heavy Alloy Penetrator Project at Tiruchirapalli, an Ordinance Factory under the control and administration of Ministry of Defence. They are industrial employees. While the writ petitioner in W.P.No.25543 of 2016 belongs to Examiner Engineering Trade, the other writ petitioner belongs to Machinist Trade. The question they rake up is whether they are entitled for fitment as Highly Skilled Grade I industrial employees or not.

3. The Sixth Central Pay Commission made certain recommendations with regard to cadre restructuring. Recommendations made by the Sixth Pay Revision Commission have been accepted by the Government of India and scales of pay have

been revised with effect from 01.1.2006. It is subsequently thereto the Ministry of Defence has taken a decision through their letter No. 11(5)/2009-D (Civ-I) dated 14.6.2010 to restructure the grades in the industrial cadre and also the pay band allowable to them.

4. The Skilled Category were given Pay Band - I (PVI) of Rs.5,200-20,200 with a Grade Pay of Rs.1,900/-, Highly Skilled Grade II Category with the same Pay Band - I of Rs.5,200-20,200 with a Grade Pay of Rs.2,400/- and Highly Skilled Grade I Category with the same Pay Band - I of Rs.5,200-20,200 with a Grade Pay of Rs.2,800/-. Master Craftsman was assigned Pay Band - II of Rs.9,300-34,800 with a Grade Pay of Rs.4,200/-.

5. Thus, hitherto existing Highly Skilled Category of industrial employees had to be organized into various grades and hence, the said letter of the Ministry of Defence dated 14.6.2010 has formulated the proportion, in which, the grades have to be organized. The ratios so fixed are :

(i) 45% of the posts may be granted Pay Band I with Grade Pay of Skilled Worker of Rs.1,900/-;

(ii) 25% of the remaining 55% of the posts (which works out to 13.75%) may be granted Pay Band II with Grade Pay of Rs.4,200/- and be treated as Master Craftsmen (MCM); and

(iii) The remaining (41.25%) posts are ordered to be divided in a ratio of 50 : 50 and are re-designated as Highly Skilled Worker Grade II with a Grade Pay of Rs.2,400/- in Pay Band I and Highly Skilled Worker Grade I with a Grade Pay of Rs.2,800/- in Pay Band I.

6. In other words, 45% of the existing Skilled Category of employees on the shop floors of Ordnance Factories are ordered to be organized as Skilled Workers in Pay Band I with a Grade Pay of Rs.1,900/-. A limited extent of 25% out of the balance 55% alone, which works out to 13.75%, get the fitment as Master Craftsmen in Pay Band II and with a superior Grade Pay of Rs.4,200/-. The balance, which represents the remaining 75% out of 55% of the industrial employees, which works out to 41.25%, have got to be treated as Highly Skilled Grade I and Highly Skilled Grade II, in equal proportions i.e. 50 : 50. While Highly Skilled Grade I will have a superior Grade Pay of Rs.2,800/-, Highly Skilled Grade II will have a Grade Pay of Rs.2,400/- only, but in the same Pay Band I.

7. While working out this fitment formula, certain clarifications were required and accordingly, the Ordinance Factory Board at Kolkatta, through their communication No.01/CR/A/I/658 dated 13.12.2010, addressed to all Senior General Managers and General Managers of Ordinance Factories and Ordinance Equipment Factories as well as the Principal Director of National Academy of Defence Production clarifying that the Highly Skilled industrial employees be re-designated as Highly Skilled Worker Grade I and Highly Skilled Worker Grade II, in equal proportions.

8. Thus, all the Highly Skilled Category employees existing on the rolls as on 01.1.2006 were asked to be re-designated in the above manner. The following clauses in the clarification letter dated 13.12.2010 will give a clearer picture about the scheme of the fitment :

"4 (i) The factory should work out the trade wise revised inter-grade ratio on the sanctioned/ authorized strength as on 01.1.2006 in the ratio as mentioned in para-3 above as clarified vide M of D letter at ref.(ii). If there are non viable trades having meagre number of workers (say less than five), those trades should be grouped together to arrive at a viable ratio.

(ii) The posts of highly skilled shall be split with effect from 01.1.2006 in the ratio mentioned at 3(iii).

(iii) Highly skilled employees (including those who were wasted out due to retirement, death, etc.) shall be re-designated HS I and HS II Grade in the corresponding pay scale/pay band and grade pay due to splitting as per the aforesaid ratio. Necessary factory order may be published accordingly.

(iv) The senior most highly skilled employees shall be placed in HS Grade I as per revised ratio calculated on the sanctioned/ authorized strength.

The remaining highly skilled employees shall be placed in HS Grade II resultant shortfall in HS Grade II due to the said prescribed ratio of the sanctioned/authorized strength shall be filled up by promotion from existing skilled grade from the date of occurrence of vacancies.

(v) Highly Skilled Grade I shall be en-bloc senior to Highly Skilled Grade II and separate seniority list should be prescribed

for Highly Skilled Grade I and Highly Skilled Grade II trade wise. The said seniority list will be circulated to all concerned.

(vi) The placement of the individuals in the posts resulting from the above restructuring shall be made with effect from 01.1.2006, in relaxation of the conditions, if any, i.e trade test, DPC, qualifying service, etc., as one time measure till the date of the issue of this order. However, no relaxation is to be given for DGOF competency test for Electrical Trades/Boiler Attendant Trades except as provided in Rules/Instructions.

(vii) The post of Master Craftsman shall be the part of the hierarchy and the placement of Highly Skilled Grade I in the Grade of Master Craftsman will be treated as promotion.

(viii) Placement of 50% of the existing highly skilled workers (Grade Pay Rs.2,400/-) as highly skilled worker Grade I (Grade Pay Rs.2,800/-) with effect from 01.1.2006 will be treated as promotion for the purpose of ACP.

(ix) While implementing the instructions, factory should ensure that placements are made within the stipulated ratio prescribed vide M of D letter under reference (i)."

(Emphasis is all mine)

9. From the above, it is abundantly clear that the hitherto existing industrial employees called as 'Highly Skilled industrial employees' are now asked to be re-organized into four different groups. By using the expressions 'shall be re-designated', the issue is put beyond any pale of doubt that the fitment or re-organization of the existing highly skilled industrial employees is not involving any promotion inter-se. The senior most highly skilled employees are directed to be placed in Highly Skilled Grade I Category as per the ratio and that such senior most highly skilled employees shall be en-bloc senior to the remaining highly skilled employees, who shall be placed in Highly Skilled Grade II Category and hence, a separate seniority list was ordered to be prepared so far as Highly Skilled Grade I industrial employees were concerned.

10. Clause (vi) of paragraph 4 of the above letter of the Ordinance Factory Board has made the issue further clear by announcing that the placement of individuals in the posts resulting from restructuring shall be made with effect from

01.1.2006 in relaxation of the conditions, if any, i.e. trade test, DPC, qualifying service, etc., as one time measure. Thus, the placement of some of the employees in Highly Skilled Grade I to the extent of 50%, while retaining the other 50% in Highly Skilled Grade II, does not involve a promotion at all. However, in Clause (viii) of paragraph 4 of the letter of the Ordinance Factory Board, such placement is ordered to be treated as promotion for the purpose of ACP (Assured Career Progression Scheme).

11. In other words, the actual placement of 50% of the highly skilled industrial employees, as per the ratio fixed, in Highly Skilled Grade I, does not actually involve any promotion. But, it is only a fitment pursuant to re-organization of the cadre. However, the same will be treated for the purpose of extending the Assured Career Progression benefits as a promotion. The Assured Career Progression benefits are liable to be extended to relieve the employees from the ill effect of stagnation for long periods in the same grade and hence, the benefits of financial upgradation for such stagnant employees were put in place.

12. When once 50% of the highly skilled employees get placed in Highly Skilled Grade I with a superior 'Grade Pay' than the remaining Highly Skilled Grade II employees, they would have enjoyed a financial upgradation in that process. Hence, the ill-effects of stagnation in the same grade for too long a period get automatically neutralized. As a result, the benefits of further financial upgradation, as per the Assured Career Progression Scheme, can be deferred. For that purpose, paragraph 4(viii) has created a fiction of treating the fitment in Highly Skilled Grade I as a kind of promotion for the limited purpose of ACP, though it is a mere fitment pursuant to cadre restructuring.

13. We are, therefore, of the firm opinion that fitment of some employees in Highly Skilled Grade I does not involve any promotion, in the normal sense that word is understood. The fitment undertaken is a result of cadre restructuring, but not by way of creation of an altogether new cadre, for which, certain categories of employees are rendered eligible to stake a claim by way of promotion.

14. In this context, Mr.N.Rajan, learned Senior Central Government Standing Counsel appearing for respondents 1 to 3 in W.P.No.25543 of 2016, has pointed out that the word 'promotion' clearly connotes progression from one lower grade to another superior grade involving additional financial benefits. Since the fitment in Highly Skilled Grade I secures additional financial benefits to the employee concerned, by fetching him the Grade Pay of Rs.2,800/-, in contrast to the Grade Pay of

Rs.2,400/- payable to Highly Skilled Grade II, he, therefore, contended that though it is a fitment of certain candidates from the existing highly skilled cadre to that of Highly Skilled Grade I, it certainly involves promotion securing both an increment in Grade and financial benefit.

15. He has placed reliance upon the judgment rendered by the Supreme Court in the case of State of Rajasthan Vs. Fateh Chand Soni [reported in 1996 (1) SCC 562] wherein the relevant portion reads as follows :

"The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word 'promote' means 'to advance to a higher position, grade or honour'. So also 'promotion' means 'advancement or preferment in honour, dignity, rank or grade.' (See Webster's Comprehensive Dictionary, International Edition p.1009). 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also, the expression 'promotion' has been understood in the wider sense and it has been held that 'promotion' can be either to a higher pay scale or to a higher post'. (See Union of India Vs. S.S.Ranade [1995 (4) SCC 462] at page 468)."

16. There is hardly any doubt in our minds that whenever an employee moves from one grade to a higher or superior grade securing him an additional financial benefit, the same is liable to be treated as a case of promotion. Promotion need not always convey moving of an employee vertically from one post to another. Even a horizontal movement from one grade to another grade, within the same post can also amount to a promotion.

17. But, in the instant case, for the first time, the existing cadre of highly skilled industrial employees of the Ministry of Defence are sought to be restructured. When such restructuring takes place, certain percentage of employees move away and get organized into a separate grade. That was the reason why such movement, pursuant to restructuring of cadre, is not to be treated as a case of vertical movement indicating promotion, but is a matter of fitment in a new grade alone.

18. The existing cadre is sought to be re-organized and hence, the question of involving promotion does not arise. Once the cadre gets re-organized, any subsequent movement from one grade to another would then amount to a promotion. In other words, the initial fitment of the existing highly skilled industrial employees as Highly Skilled Grade I and Highly Skilled Grade II as on 01.1.2006 does not amount to a promotion, as no new cadre is created, but the existing cadre is split up. However, if they were to be considered for further movement as Master Craftsmen or Highly Skilled Grade I, as the case may be, any such later exercise amounts to granting them promotion.

19. We are, therefore, clearly of the view that the petitioners in both the writ petitions being seniors, they ought to have been fitted as Highly Skilled Grade I. It is also clear that on 15.4.2011, when their juniors were granted Highly Skilled Grade I scale, the writ petitioners have suffered an injury. Though they asked for rectification of this error, the same was erroneously rejected. The reason being that there were certain disciplinary proceedings initiated against the petitioners. In so far as the petitioner in W.P.No.25650 of 2016 is concerned, such disciplinary proceedings were initiated in August 2005 i.e. prior to 01.1.2006 whereas the disciplinary proceedings were initiated against the petitioner in W.P.No.25543 of 2016 subsequent to 01.1.2006. In both the cases, they were inflicted with a punishment of reduction in lower time scale for a period of three months, which is a minor punishment.

20. Since the respondents had viewed mere fitment in Highly Skilled Grade I as a promotion and in view of the fact that the disciplinary proceedings were pending, the claims of the writ petitioners were not considered for such fitment in Highly Skilled Grade I. Since we have already come to the conclusion that fitment in Highly Skilled Grade I does not involve any promotion, but is the result of re-organization of the existing cadre, the two writ petitioners could not have been denied fitment in Highly Skilled Grade I on 15.4.2011, when their respective juniors in the Examiner Engineering Trade and the Machinist Trade have been granted such a fitment.

21. It is, therefore, a case where, all due to an erroneous conclusion drawn by the respondents that fitment in Highly Skilled Grade I amounts to promotion, they applied the principle of a person facing disciplinary proceedings cannot secure promotion pending finalisation of the same. In our view, for the fitment of employees pursuant to cadre restructuring, the pendency of disciplinary proceedings will no way come in the way of such fitment, as there is no promotion involved. We are of the view that the Central Administrative Tribunal has totally

erred in its conclusion that there is an involvement of promotion in fitment of the existing highly skilled employees as Highly Skilled Grade I.

22. For the aforementioned reasons, we allow the writ petitions. No costs.

23. However, Sri.N.Rajan, Senior Central Government Standing Counsel and Sri.Christopher Kishore Vincent, learned Additional Central Government Standing Counsel have pointed out that some other employees have already been fitted in Highly Skilled Grade I and they are also paid financial benefits correspondingly, but they are not made party respondents to the original applications moved before the Central Administrative Tribunal or the present writ petitions and that the respondents cannot fit more number of persons in Highly Skilled Grade I beyond the ratio fixed by the Ministry of Defence, which deserves a serious consideration.

24. When once the cadre re-organization has to take place on a structured format, it is not open to us to direct the respondents to depart from any principle relevant for such cadre restructuring. Hence, we direct respondents 1 to 3 to consider placing the writ petitioners in Highly Skilled Grade I by way of re-designation with effect from 01.1.2006 onwards by extending only notional financial benefits, but not the actual payment thereof. The actual payment may commence from 01.4.2016. It shall also be open to respondents 1 to 3 to replace equal number of juniors to the writ petitioners, who have been erroneously fitted in Highly Skilled Grade I with effect from 01.1.2006, duly observing the principles of natural justice, but however without effecting any monetary recovery from them, as they are not at fault in getting fitted as Highly Skilled Grade I and getting paid higher Grade Pay.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The General Manager, Heavy Alloy Penetrator Project, Trichy-25.
- 2.The Director General, Ordnance Factory Board, Ayudh Bhavan, 10-A, S.K.Bose Road, Calcutta-1.
- 3.The Deputy General Manager (Administration), Heavy Alloy Penetrator Project, Trichy-25.

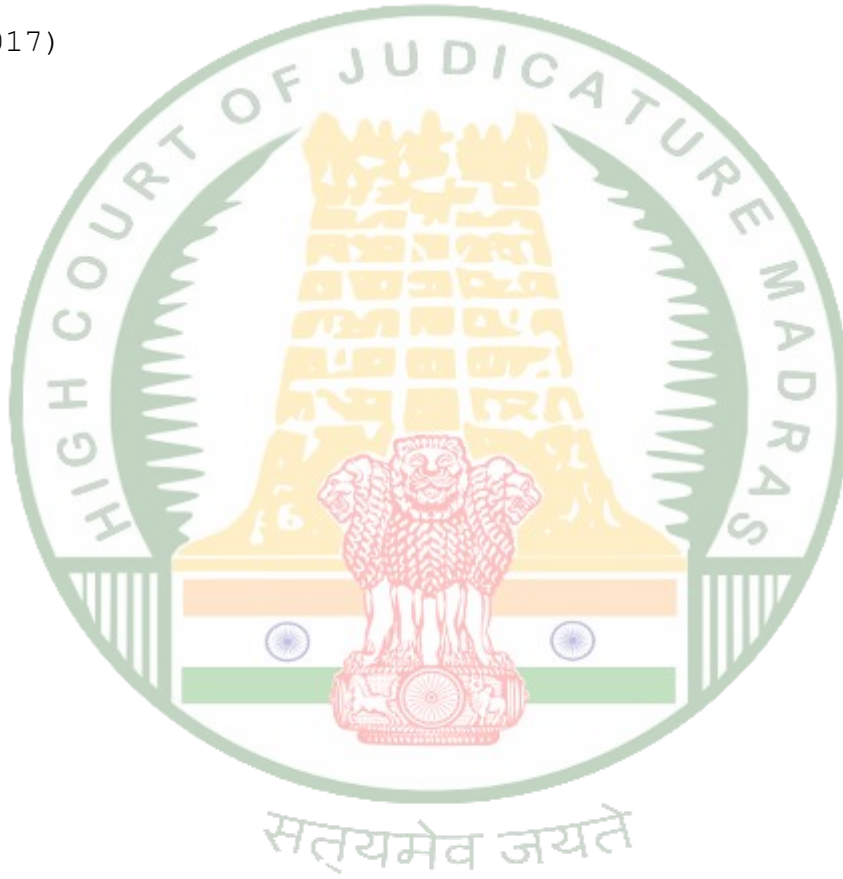
4.The Registrar, Central Administrative Tribunal, Madras Bench

+1cc to Mr.N.Rajan,Advocate sr.18142

+1cc to Mr.Christoper Kishore Vincent,Advocate sr.18095

WP.Nos.25543 & 25650
of 2016

rj(co)
ss(28/4/2017)



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