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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1363/2017**

Date of Decision : 17th February, 2017

SACHIDANAND

..... Petitioner

Through Mr. A.K. Trivedi with Mr. Abhishek
Tiwari and Mr. Vaibhav
Trivedi, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Mr. Prasanta Varma, Sr. Central Govt.
Counsel with Mr. Vijay Goswami,
Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

By the impugned order dated 22.02.2016 OA No. 1508/2016 filed by the petitioner – Sachindanand has been dismissed by the Principal Bench of the Central Administrative Tribunal.

2. This is the second round of litigation as the High Court in W.P. (C) No. 8939/2007 vide order dated 27.09.2013 had earlier set aside the first order dated 14.02.2007 passed by the Tribunal with remand for fresh consideration. For the sack of clarity and for appreciation of the controversy, we would like to reproduce this order dated 27.09.2013 which reads as under:-

“1. Unfortunately, the Tribunal has not discussed the real issue which arises for consideration. Regretfully, the Tribunal has not even noted the material clauses of the policy circular dated May 20,2003 pertaining to restructuring of the cadre of Artisan staff in Defence Establishment. The Tribunal has not noted paragraph 2, 3 (b) (c) and (e) as also sub-para (vii) of para 4, which we note read as under:-

“2. The grade structure in the industrial as well as in the non-industrial trades wherever already available and the pay-scales of the Defence artisan staff shall stand modified w.e.f. 1.1.96 as under:-

- (i) Skilled : Rs.3050-4500
- (ii) Highly Skilled : Rs. 4000-6000
- (iii) Master Craftsman : Rs.4500-7000

3.(a) xxxx

(b) The post of Master Craftsman shall not be part of hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme.

(c) The selection from Highly Skilled grade to the grade of Master Craftsman shall be 10% of Highly Skilled Cadre (i.e. 10% of 35% of the total and the

placement in this grade shall be w.e.f. 1.1.96 and upto the date of issue of these orders.

(d) xxxx

(e) The above provision may be made application, as a special case. In relaxation of the existing rules/instructions to the employees who have either retired or died after 1.1.96.

4(i) to (vi) xxxx

(vii) The placement of the individuals in the posts resulting from the above restructuring and ration revision shall be made from the date of issue of the orders, in relaxation of the conditions, if any, as one time measure.”

2. Whereas sub-para (vii) of paragraph 4 clearly states that placement of the individuals in the posts resulting from the restructuring would be a onetime measure and shall be made from the date of issue of the order, sub-para © and (e) of paragraph 3 required the cadre restructuring and placement in the grads with effect from 1.1.96. As per sub-para (b) of para 3 the post of Master Craftsman is not a part of the hierarchy. At the same time sub-para (e) of para 3 states that the applicability of the policy circular shall be treated as a

special case and in relaxation of the existing Rules /instructions.

3. Whereas the writ petitioner argues that there being no post of Master Craftsman above the post of Operator Material handling equipment (OMHE) which the respondent was holding and thus would urge that the question of there being any Recruitment Rules for the post does not arise and thus the occasion for applicability of sub-para (e) of para 3 does not even come into being. On the contrary, the respondent would urge that as a result of three grades, irrespective of posts being in existing or not benefit has to flow.

4. It was for the Tribunal to have noted the provisions as also the respective contentions and thereafter dealt with the same.

5. Accordingly, we dispose of the writ petition setting aside the impugned order dated February 14, 2007. We restore OA No. 1508/2006 for fresh adjudication and for which parties shall appear before the Registrar of the Tribunal on November 11, 2013.

6. No costs.

3. The impugned order goes into the factual matrix of the case and

has come to the conclusion that Operator Material Handling Equipment (OMHE) service to which the petitioner belongs did not have the post-cadre of Master Craftsman.

4. This being the factual position, the Tribunal was right in holding that paragraph 4 of the circular dated 20.05.2003 was applicable and promotion/upgradation as Master Craftsman (MCM) would not be retrospective with effect from 01.01.1996 but would be effective prospectively. The post of Master Craftsman was created in the OMHE service for the first time vide circular dated 20.05.2003. Therefore, promotion/upgradation to the said post of Master Craftsman would be prospective.

5. The writ petition has no merit and is accordingly dismissed. There would be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 17, 2017

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