

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.Nos.26447, 26448, 26592 of 2016,
3907 of 2017 and 9623 of 2018

W.P.No.26447 of 2016:-

- 1 The Union of India
Rep by Secretary to Government Ministry of
Defence South Block New Delhi
- 2 The Ordinance Factory Board
Rep by its Chariman 10-A S.K.Bose Road
Kolkata-700 001
- 3 The General Manager
Heavy alloy Penetrator Project
Tiruchirapalli-620 025 petitioners

Vs

- 1 H.John Nepomission
- 2 Gajendran
- 3 N.Vijayakumar
- 4 S.Balasubramanian
- 5 S.Subramanian
- 6 S.Varatharaj
- 7 S.Venkatesan
- 8 S.Balachandran
- 9 G.Ramakrishnan
- 10 R.Baskaran
- 11 R.Ravi
- 12 P.Alaguvel
- 13 R.Marimuthu
- 14 B.Shyamal Rao
- 15 R.Veerapandian
- 16 T.Ramamoorthy
- 17 S.Velayutham
- 18 R.Shanmugam
- 19 R.Muthukumar
- 20 A.Christoper
- 21 K.Elangovan
- 22 M.Subramanian

23 A.Kuppakone
24 G.Purushothaman
25 S.Sureshkumar
26 J.Sakthivel
27 V.Thaksnamurthy
28 L.Chinnasamy
29 P.Ganesan
30 R.Vasu
31 S.Muthukrishnan
32 R.S.Jayaraju
33 A.Muralikrishnan
34 V.B.Suresh
35 C.Krishnamurthy
36 S.Ramesh
37 N.Elango
38 A.Balamurugan
39 P.Periasamy
40 P.Athimoolasekar
41 S.Ramaiah
42 C.Sivaramakrishnan
43 A.Kaliamoorthy
44 S.Bennadid
45 R.Guru
46 V.Muthukumar
47 V.Rajendran
48 C.Mani
49 A.Paramasivam
50 The Registrar
Central Administrative Tribunal High Court
Complex Chennai-104

.... Respondents

Prayer in W.P.No.26447 of 2016:-

Writ Petition for a Writ of Certiorari to call for the records on the file of the 50th respondent Tribunal dated 29.01.2016 and made in O.A.403/2014 and quash the same.

For appellant : Mr.V.Balasubramanian

For Respondents : Mr.Karthik Rajan,
for M/s.Menon, Karthik, Mukundan &
Neelakantan
for respondents 1 to 5, 7,8, 10 to 12,
14 to 39, 41 to 49
no appearance for respondents 6, 9 and 13
Not ready in notice for respondent No.40

W.P.No.26448 of 2016:-

- 1 Union of India
rep. by The Secretary Ministry of Defence
Department of Defence Produce,
South Block, New Delhi 110 011
 - 2 The Ordnance Factory Board,
rep.by its Chairman,
10-A, S.K.Bose Road,
Kolkata- 700 001.
 - 3 The General Manager
Heavy Alloy Penetrator Project
Tiruchirapalli-620 025
 - 4 The Secretary
Ministry of Personal,
Public Grievances & Pensions,
Dept. of Personnel and Training,
North Block, New Delhi 110 001 ... Petitioners
- Vs
- 1 Heavy Alloy Penetrator Factory
Employees Union
Rep. by its General Secretary
A.Sathiyavashisan
Type III, E-10, HAPP Township,
Trichy -620 025
 - 2 P.Radhakrishnan
Machginist/HS-I
HAPP, HAPP Township,
Trichy-620 025
 - 3 The Registrar
Central Administrative Tribunal
High Court Complex,
Chennai-104 ... Respondents

Prayer in W.P.No.26448 of 2016:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari or any other appropriate writ or order of the nature to call for the records of the 3rd respondent dated 29.01.2016 and made in M.A.No.734 of 2014 in unnumbered O.A. of 2014 and quash the same.

For Petitioner : M/s.V.Balasubramanian

For Respondents : M/s.A.Abdul Ajeez
for R1

R2 - Not Ready

R3 - Tribunal

W.P.No.26592 of 2016:-

- 1 The Union of India,
Rep. by The General Manager,
Engine Factory, Avadi,
Chennai-600 054.
- 2 The Ordnance Factory Board,
Represented by its Chairman,
10-A, S.K.Bose Road,
Kolkata-700 001. ... Petitioners

Vs

- 1 V.Mohan, (Deceased)
Retired Machinist (MCM),
Engine Factory, Avadi,
Chennai-600 054.
- 2 The Registrar,
Central Administrative Tribunal,
Chennai.
- 3 Mrs.M.Vasantha
- 4 M.Suresh Babu
- 5 M.Ramesh Babu

(R-3 to R-5 are substituted as
LRS of deceased R-1: V.Mohan as per Order
dated:16.03.2017 by KKSJ & MVMJ in WMP.No.
34531/2016 in WP.No.26592/2016)

Prayer in W.P.No.26592 of 2016:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari or any other appropriate writ or order of the nature to call for the records on the file of the 2nd respondent Tribunal dated 29.01.2016 and made in O.A.797 of 2014 and quash the same.

For Petitioner : M/s.V.Balasubramanian
For Respondents : R1 - Died (steps taken)
R2 - Tribunal
R3 to R5 - Not Ready

W.P.No.3907 of 2017:-

- 1 Union of India,
Rep. by The Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi.
 - 2 The Chairman,
Ordnance Factory Board,
10A, S.K.Bose Road,
Kolkata-700 001.
 - 3 The General Manager,
Cordite Factory, Aruvankadu,
The Nilgiris - 643 202. ... Petitioners
- Vs
- 1 Cordite Factory Labour Union,
Rep.by its General Secretary,
Shri G.Vijayakumar,
Aruvankadu, The Nilgiris-643 202.
 - 2 Shri B.Premnath,
Compositor, Highly Skilled,
Cordite Factory, Aruvankadu,
The Nilgiris - 643 202.
 - 3 The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai .. Respondents

Prayer in W.P.No.3907 of 2017:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari to call for the records relating to O.A.No.817/2011 dated 24.11.2015, on the file of the 3rd respondent Central Administrative Tribunal, Madras Bench, Chennai and to quash the same.

For Petitioner : M/s.V.Balasubramanian

For Respondents : R1 & R2 - No Appearance
R3 - Tribunal

W.P.No.9623 of 2018:-

1. Union of India,
Rep.by Secretary,
Ministry of Defence,
Department of Defence Production,
New Delhi
2. The Chairman,
Ordnance Factory Board,
10-A, S.K.Bose Road,
Kolkata 700 001
3. The General Manager
Ordnance Factory,
Tiruchirappalli - 620 016

... Petitioners

Vs

- 1 P.Ramadass
- 2 B.Venkata Subramanian
- 3 K.Sekar Raj
- 4 A.Vellai Kannu
- 5 P.Mathiazhagan
- 6 G.Dhamodharan
- 7 K.Rajendran
- 8 K.A.Singanathan
- 9 R.Perinbam
- 10 R.Ramesh
- 11 M.Thiruvalluvan
- 12 V.S.Manivel
- 13 R.Ravikumar
- 14 R.Prasad
- 15 M.Veeramani
- 16 P.S.Subramanian
- 17 S.Kumar
- 18 N.Swaminathan
- 19 S.Arul Anandam
- 20 S.Santhiagu
- 21 C.Subramanian
- 22 K.Rajeevan
- 23 F.S.Sahayaraaj
- 24 V.Thevarajah
- 25 Kanakasabai
- 26 V.M.Subramaniam
- 27 C.Ramesh
- 28 V.Ravichandran
- 29 P.K.Gunasekaran
- 30 G.Jayakumar

31 N.Muruganantham
32 A.Selvaraj
33 M.Ramamoorthy
34 K.Palani Rasan
35 S.Ganesan
36 M.P.Prem Kumar
37 A.Xavier
38 P.Manoharan
39 R.Sentamil Selvam
40 M.Rengaraju
41 R.Rengasamy
42 M.Ramesh
43 S.M.Periya Samy
44 S.Ravi
45 M.Venkateswaran
46 M.Ravi Mani
47 The Registrar,
Central Administrative Tribunal,
High Court, Madras-104.

Prayer in W.P.No.3907 of 2017:-

Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari or any other appropriate writ or order to call for the records dated 31.01.2017 and made in O.A.No.310/01314/2015 on the file of the 47th respondent and quash the same.

For Petitioner : M/s.V.Balasubramanian

For Respondents : M/s.D.Muthukumar for
M/s.Paul & Paul for
R1 to R4, R6 to R12, R14 to R25,
R27 to R46.

R13 to 26 : Died

R5 : No Appearance

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COMMON ORDER

The common order passed by the Central Administrative Tribunal dated 29 January 2016 in O.A.No.403, 797 of 2014 and M.A.No.734 of 2014 and O.A.No.198/2016 is under challenge at the instance of the Union of India, primarily on the ground that the placement of the Senior Highly Skilled Personnel in the post of Highly Skilled Grade I should be considered as one of promotion and as such, the employees are not eligible for any other

benefit under the Modified Assured Career Progression Scheme (hereinafter referred to as "MACP Scheme").

2. The respondents were all employees of the heavy alloy penetrated project, Trichy. The cadre structure which was prevailing prior to the restructuring included the post of skilled, and highly skilled scale. Pursuant to the order dated 14 June 2010 issued by the Ministry of Defence, the Highly skilled Grade was bifurcated into Grade I and Grade II, the Highly Skilled Grade I being the promotion post to Highly Skilled Grade II. The Highly Skilled Grade I post was placed in Pay Band 1 with a Grade Pay of Rs.2800/-. Similarly, the Highly Skilled Grade II post was placed in Pay Band 1 with a Grade Pay of Rs.2400/-. The post of Master Craftsman which was hitherto not part of the hierarchy was included as part of the promotional hierarchy and placed in Pay Band II with Grade Pay of Rs.4200/-. The order restructuring the cadre was given retrospective effect from 1 January 2006.

3. The Government of India in the meantime, introduced the Modified Assured Career Progression Scheme on 19 May 2009. The scheme was made effective from 1 September 2008. The MACP Scheme provides that every employee is entitled for three financial upgradations upon completion of 10, 20 and 30 years of service respectively. The scheme also envisages placement in the next hierarchical pay band introduced pursuant to the 6th Central Pay Commission recommendations.

4. The respondents were entitled to movement to the pay scale of the next promotional post of Highly Skilled Grade on completion of 10 or 20 years of service. Though a request was made to give them the benefit of MACP Scheme, follow up action was not taken resulting in filing the original application.

5. The Tribunal opined that MACP Scheme does not contemplate any such deemed promotion and as such, the employees were entitled to the benefits of MACP Scheme. The Tribunal observed that there was no departmental promotion committee constituted for giving promotion to the post of Highly Skilled Grade I. It was further observed that the placement of seniors in erstwhile Highly Skilled personnel in the post of Highly Skilled Grade I shall not be construed as promotion for MACP Scheme. The original applications were therefore allowed. Feeling aggrieved, the petitioners are before this Court.

6. We have heard the learned Standing Counsel for the petitioners. We have also heard the learned counsel for the respondents.

7. There is no dispute that the process adopted by the petitioners was one of upgradation simplicitor. There was no process of selection involved. In case it is promotion, the petitioners have to follow the rule of reservation. Here in the subject case, there was no such process involved. The movement from Highly Skilled to Highly Skilled Grade I pursuant to restructuring cannot be construed as one of promotion for the purpose of MACP Scheme.

8. The Hon'ble Supreme Court *Bharat Sanchar Nigam Ltd. vs. R.Santhakumari Velusamy and others*, 2011(9) SCC 510, considered the distinction between promotion, upgradation involving selection and upgradation simplicitor. The Supreme Court on an analysis of the principles, summarized the legal position in the following words:-

29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge :

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(v) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation".

9. We are of the view that the placement of the Highly Skilled personnel in the post of Highly Skilled Grade I would not amount to promotion. The MACP Scheme contemplates promotion and not en masse upgradation. The process of upgradation undertaken by the petitioners would not amount to promotion, within the meaning of MACP Scheme. We are therefore of the view that the Central Administrative Tribunal was correct in allowing the original applications.

10. While dismissing the Writ Petitions, we direct the petitioners to pay the benefits to the employees, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.Nos.22666, 22668, 36103, of 2016, 11544 of 2017, 22781 of 2016, 22782 of 2016, 3970 of 2017 are also dismissed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Registrar
Central Administrative Tribunal High Court
Complex Chennai-104.
2. The Secretary,
Union of India,
Department of Defence Production,
Ministry of Defence, New Delhi.
3. The Chairman,
Ordinance Factory Board
10-A, S.K.Bose Road,
Kolkata-700 001
4. The General Manager,
Ordinance Factory,
Tiruchirapalli.
5. The General Manager,
The Union of India,
Engine Factory, Avadi,
Chennai-600 054.
6. The Secretary
Ministry of Personal,
Public Grievances & Pensions,
Dept. of Personnel and Training,
North Block, New Delhi 110 001

+1cc to M/s.Menon, Karthik, Mukundan, Advocate, S.R.No.51858
+1cc to M/s.Paul & Paul, Advocate, S.R.No.52098

W.P.Nos.26447, 26448,
26592/2016, 3907/2017
and 9623 of 2018

BP (CO)
CS/02/08/2019

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