



भारतीय प्रतिरक्षा मजदूर संघ Bharatiya Pratiraksha Mazdoor Sangh

(AN ALL INDIA FEDERATION OF DEFENCE WORKERS)

(AN INDUSTRIAL UNIT OF B.M.S.)

(RECOGNISED BY MINISTRY OF DEFENCE, GOVT. OF INDIA)

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Dated: 21.04.2023

To,
The Director General (Pers)
Engineer-in-Chief's Branch,
IHQ of MoD (Army).
Kashmir House, Rajaji Marg,
New Delhi – 110011

Subject: Minimum Qualifying Service for promotion from SK to HS-II, HS-II to HS-I and HS-I to MCM of Industrial Cadre.

Reference: Your letter No. 85610/47/MACP/IND(3)/Scheme/CSCC, Dated 24.02.2023

Sir,

I am writing to bring to your attention the recent instruction cited under reference, which has enhanced the minimum qualifying service for promotion from Skilled to Highly Skilled-II, Highly Skilled-II to Highly Skilled-I and Highly Skilled-I to Master Craftsman, as per the DoPT O.M. dated 24.03.2009 & 20.09.2022.

Para 5 & 6 of the DoPT O.M. states that the revised norms prescribing minimum eligibility service required for promotion may be incorporated in the Recruitment Rules/Service Rules by making suitable amendments. All the Ministries/Departments are, therefore, requested to effect necessary amendments to the Recruitment Rules/Service Rules, in this regard, after following the due procedure. It is understood that E-in-C's Branch, Min of Defence have initiated action to complete the amendments in Recruitment Rules for this Industrial Cadre but the same has not been completed yet. Thus the executive instruction (dated 24.02.2023) of E-in-C's Branch is overriding and adversely affecting the provisions of relevant Recruitment Rules published as SRO.

I would like to draw your attention to following various judgments of the Hon'ble Supreme Court of India that stipulate that executive instructions cannot override statutory rules:

“6. It is settled legal proposition that executive instructions cannot override the statutory provisions [Vide B.N. Nagarajan v. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan and Ors., AIR 1967 SC 1910; Union of India and Ors. v. Majji Jangammyya and Ors., AIR 1977 SC 757; B.N. Nagarajan and Ors. v. State of Karnataka and Ors., AIR 1979 SC 1676; P.D. Agrawal and Ors. v. State of U.P. and Ors., (1987) 3 SCC 622; M/s. Beopar Sahayak (P) Ltd. and Ors. v. Vishwa

Nath and Ors., AIR 1987 SC 2111; State of Maharashtra v. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishananiah and Ors. v. Union of India and Ors., AIR 1990 SC 166; Comptroller and Auditor General of India and Ors. v. Mohan Lal Malhotra and Ors., AIR.1991 SC 2288; State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights v. Union of India and Ors., AIR 1998 SC 431; C. Rangaswamaiah and Ors. v. Karnataka Lokayukta and Ors., AIR 1998 SC 96.]

7. Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory Rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide State of U. P. and Ors. v. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu v. M/s. Hind Stone etc., AIR 1981 SC 711).

8. In Union of India v. Sri Somasundaram Vishwanath, AIR 1988 SC 2255, the Hon'ble Apex Court observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

9. Similar view has been reiterated in Union of India v. Rakesh Kumar, AIR 2001 SC 1877; Swapan Kumar Pal and Ors. v. Samitabhar Chakraborty and Ors., AIR 2001 SC 2353; Khet Singh v. Union of India, (2002) 4 SCC 380; Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr., (2003) 5 SCC 413; and Delhi Development Authority v. Joginder S. Monga, (2004) 2 SCC 297, observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

10. In Ram Ganesh Tripathi v. State of U.P., AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Hon'ble Supreme Court observed as under:-

"They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."

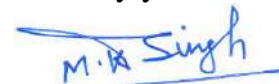
11. Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat.”

It is important to note that the said instruction of E-in-C's Branch (Dated 24.02.2023) is not in conformity with the statutory rules and regulations governing the promotion of employees in the concerned category.

Therefore, I request you to kindly reconsider this instruction and bring it in line with the applicable statutory rules and regulations. I am confident that you will take appropriate action in this matter and ensure that the interests of the concerned employees are protected.

Thank you for your attention to this matter.

Sincerely yours

A handwritten signature in blue ink that reads "M. K. Singh". The signature is written in a cursive style with a horizontal line underneath.

(MUKESH SINGH)

General Secretary/BPMS &
Member, JCM-II Level Council (MOD)