

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 1343 of 2014

IN THE MATTER OF:

1. AJITESH DAS, son of Sri Mihir Kumar Das, aged about 45 years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ichapur, Brahminpara, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin- 743144;
2. SANJAY BASU, son of Late Chittaranjan Basu, aged about 42 years, working as Madchinist (High-Skilled-II) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Monosatala, Majherpara, Post Office- Ichapur Nawabganj, Police Station- Noapara, District 24-Parganas (North), Pin- 743144;
3. RAJESH PRAMANICK, son of Late Paresh Chandra Pramanick, aged about 25 years, working as Labour (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 22No. Lakri Mohal, Orderly Bazar,

Barrackpore District-24-Parganas, Kolkata-
700120;

4. **SANJOY DEBNATH**, son of Late Sushil Kumar Debnath, aged about 42 years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 19 No. B.S. Banerjee Road, Shibtala, Mistryghat, Monireampur, Post Office- Barrackpore, District-24-Parganas (North), Kolkata- 700120;

5. **JATINDRA NATH DUTTA**, son of Late Harendra Nath Dutta, aged about 51 years, working as Mechanist (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ichapur, Sastitala, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

6. **SUBRATA SARKAR**, son of Late Nityagopal Sarkar, aged about 45 years, working as operator Material Handling Equipment (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ichapur, Sastitala, Post

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Office-Nawabganj, Police Station- Noapara,
District-24-Parganas (North), Pin-743144;

7. **LIAKAT ALI**, son of Late Karimullah, aged about 38 years, working as Operator Material Handling Equipment (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 78, Central Road, Shyamnagar, Post Office- Shyamnagar, District-24-Parganas (North), Pin-743127;
8. **SUBRATA KUMAR NATH**, son of Late Ganesh Chandra Nath, aged about 45 years, working as Examiner (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 2/1, Bazar Para Lane, Post Office- Bhatpara, Police Station- Jagatdal, District-24-Parganas (North);
9. **SAMIT MAJUMDER**, son of Late Aloke Majumder, aged about 44 years, working as Examiner (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Village - Jashra Mitra para, Post Office and Police Station- Chakdaha, District-Nadia;

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10. **SUKLAL SOREN**, son of Late Somra Soren, aged about 40 years, working as Rigger (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Village- Bhaluka, Post Office- Majhipara, Police Station- Amdanga, District-24-Parganas (North), Pin-743145;
11. **JAY PRAKASH MANJHI**, son of Late Bal Kumar Manjhi, aged about 38 years, working as Rigger (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at C/o. Motilal Dushad, Ichapur, Kumharpura, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;
12. **KAMAL CHOWDHARY**, son of Late Ram Kishun Pasi, aged about 40 years, working as Rigger (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Quarter No., 1326, W.L.. New Building, Ichapur, Post Office- Nawabganj, Police Station- Noapara, District- 24-Parganas (North), Pin-743144;

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13. **MANGRU KUJUR**, son of Late Mole Kujur, aged about 40 years, working as Rigger (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Kamalpur, Baishalipara, Post Office-Shyamnagar, Police Station- Jagatdal, District-24-Parganas (North);

14. **BIJAN KUMAR PAUL**, son of Late Naresh Chandra Paul, aged about 54 years, working as Rigger (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Laxminath Colony (Nagar), Holding No. 11, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

15. **SITARAM YADAW**, son of Late Kishori Yadaw, aged about 36 years, working as Labour (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 3 No. Brickfield, Anandamath, Ichapur, Post Office- Nawabganj, Police Station- Noapara, District- 24-Parganas (North), Pin-743144;

16. **SHYAMAL MALAKAR**, son of Late Naresh Chandra Malakar, aged about 63 years,

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working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ramchandra Poath, Kanthadhar, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

17. **BIDYA SAGAR SHAW**, son of Late Ram Parai Shaw, aged about 47 years, working as Examiner (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Quarter No. CE/58, Type-III, Eastland Ichapur Post Office-Bengal Enamel, District-24-Parganas (North), Pin-743122;
18. **SWAPAN KUMAR NATH**, son of Late Subodh Kumar Nath, aged about 32 years, working as Rigger (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 50/1/1, Station Road, Bhatpara, Post Office- ZBhatpara, Police Station- Jagatdai, District-24-Parganas (North), Pin-743123;
19. **MANISHA BHATTACHARJEE**, wife of Late Arun Kumar Bhattacharjee, aged about 58 years, working as Tool Setter (Skilled) under

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General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Madhuripur Pally, near Milan Sangha Club, P.O. Rahara, P.S. Khardaha, District-24-Parganas (North), Pin-700118;

20. **PRABIR DAS**, son of Late Paritosh Das, aged about 44 years, working as Examiner (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ichapur Prantik, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

21. **BIPLOB KUMAR SAHA**, son of Late Gour Chandra Saha, aged about 36 years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ichapur, Niranjan Nagar, 'A' Block, Post Office-Garulia, Police Station- Noapara, District-24-Parganas (North), Pin-743133;

22. **PRADIP KUMAR SAHA**, son of Late Manindra Chandra Saha, aged about 48 years, working as Machinist (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at

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Ichapur - West - Manicktala, Post Office-
Nawabganj, Police Station- Noapara, District-
24-Parganas (North), Pin-743144;

23. **PRATIK BHATTACHARJEE**, son of Late Pravath Bhattacharjee, aged about 36 years, working as Examiner (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Village- Vivekananda Pally, Post Office- Chakdha, Police Station- Chakdha, District- Nadia, Pin-741222;
24. **RAJ KUMAR BAHADUR**, son of Shri Nar Bahadur, aged about 39 years, working as Fitter (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at CE-156, Eastland, Ichapour, Post Office- Bengal Enamel, District-24-Parganas (North), Pin- 743122;
25. **ANUP KUMAR DAS**, son of Late Adhir Ranjan Das, aged about 32 years, working as Machinist (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Subhas Nagar Colony, Post Office-

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Nonachandanpukur, Barrackpore, District-24-Parganas (North), Kolkata- 700122;

26. **PARIMAL NASKAR**, son of Late Monoj Naskar, aged about 40 years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Village-Nityanandapur, POost Office- Belsingha, Police Station- Falta, District-24-Parganas (North), Pin-743504;
27. **SONIA ORAON**, son of Late Sibra Oraon, aged about 32 years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Kaugachi, Adibasipara, Shyamnagar, District-24-Parganas (North), Pin-743127;
28. **SOUMITRA SHARMA**, son of Late Gangadhar Sharma, aged about 39 years, working as Mechanist (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 38/2, A.B. Road, Post Office- Fingapara, Police Station- Jagatdal, District-24-Parganas (North), Pin-743129;

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29. **SUMIT KUMAR RAHA**, son of Late Prabhat Chandra Raha, aged about 53 years, working as Rigger (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District-24-Parganas (North) and residing at 100/A, Manicktala Main Road, Block No. 'C", Flat No. 59, Kolkata- 700054;

30. **BIKASH KUNDU**, son of Late Gobinda Prasad Kundu, aged about 44 years, working as Examiner (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 11/2, Authpur Sarat Chandra Roy Path, Post Office-Authpur, Police Station- Jagatdal, District-24-Parganas (North), Pin-743128;

31. **LAKSHMI KANTA ADAK**, son of Late Sanatan Adak, aged about 38 years, working as Mechanist (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District-24-Parganas (North) and residing at Village- Nalikul, Post Office- Nalikul, Police Station- Haripal, District- Hooghly, Pin-712407;

32. **ARUN KUMAR SUTRADHAR**, son of Late Anil Kumar Sutradhar, aged about 41 years,

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working as Examiner (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 70/A, Bilayal Ali Road, Post Office- Talpukur, Police Station- Titagarh, District-24-Parganas (North);

33. **SAMBHU BANERJEE**, son of Late Dulal Banerjee, aged about 83 years, working as Mechanist (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Village and Post Office-Joypul, Police Station- Barasat, District-24-Parganas (North), Pin- 743234;

34. **RABINDRA THAKUR**, son of Late Gulab Chand Thakur, aged about 42 years, working as Mechanist (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 73/15, Rajpukur Path, Post Office- Authpur, Police Station- Jagatdal, District-24-Parganas (North);

35. **AMAR BATKEY**, son of Late Anil Chandra Batkey, aged about 32 years, working as Examiner (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District-

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24-Parganas (North) and residing at Uchhagar,

Village- Shyamnagar, Post Office- East
Bidyadahaspur, District-24-Parganas (North),
Pin-743127;

36. TAPASH KUMAR MUKHERJEE, son of Late

Raghu Nath Mukherjee, aged about 44 years,
working as Examiner (Semi-Skilled) under
General Manager, Rifle Factory, Ishapore,
Nawabganj, District- 24-Parganas (North) and
residing Ichapur, Brahminpara (Bansbagan)
Post Office-Nawabganj, Police Station-
Noapara, District-24-Parganas (North), Pin-
743144;

37. RABINDRA NATH SUTRADHAR, son of Late

Ajit Kumar Sutradhar, aged about 39 years,
working as Tool Setter (Skilled) under General
Manager, Rifle Factory, Ishapore, Nawabganj,
District- 24-Parganas (North) and residing at
Sur Bazar, G.B. Mondal Road, Ichapur, Post
Office-Nawabganj, Police Station- Noapara,
District-24-Parganas (North), Pin-743144;

**38. UTPAL CHAKRABORTY, son of Late Sunil
Chakraborty, aged about 42 years, working as
Tool Setter (Skilled) under General Manager,
Rifle Factory, Ishapore, Nawabganj, District-**

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24-Parganas (North) and residing at Majherpara, Jatin Das Road, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

39. **PRASANTA BARMAN**, son of Late Nakul Chandra Barman, aged about 41 years, working as Chemical Process Worker (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Debitala Road, Majherpara, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

40. **UJJAL HALDER**, son of Late Ajit Kumar Halder, aged about 56 years, working as Heat Treatment Operator (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Sur Bazar, Nawabganj, G.B. Mondal Road, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

41. **BHANU CHAKRABORTY**, son of Late Subodh Chakraborty, aged about 48 years, working as Welder (Semi-Skilled) under General Manager,

Rifle Factory, Ishapore, Nawabganj, District-24-Parganas (North) and residing at 573 No. Anandamath, Block-'C', Ichapur, Post Office- Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

42. **SUNIL KUMAR DAS**, son of Late Ajit Das, aged about 37 years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Chota Kanthlia, Devpukur, Post Office- Sewli, Police Station- Titagarh, District-24-Parganas (North);
43. **SANJIB PAUL**, son of Late Niranjan Paul, aged about 36 years, working as Grinder (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at C/58, KMDA Housing Project, Lake Gardens, Post office- and Police Station- Charu Market, Kolkata- 700033;
44. **GORU CHANDRA ROY**, son of Late Gopal Chandra Roy, aged about 39 years, working as Electrician (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District-24-Parganas (North) and residing at Prantik, Ichapur, Post Office-Nawabganj, Police

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Station- Noapara, District-24-Parganas (North),
Pin-743144;

45. **UTPAL DEBNATH**, son of Late Gopal Debnath, aged about 40 years, working as Labour (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District-24-Parganas (North) and residing at Sasyanagar, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;
46. **SANJOY KUMAR DAS**, son of Late Sudhir Ranjan Das, aged about 40 years, working as Chemical Process Worker (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ramnagar, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;
47. **SABITRI DEVI**, wife of Late Durga Prasad, aged about 41, years, working as Tool Setter (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Shyamnagar, Kamalpur, Post Office- Shyamnagar, District-24-Parganas (North);

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48. **SUSILA BANSFORE**, wife of Late Sitaram Bansfore, aged about 43 years, working as Mechanist (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing Ashok Mitra Road, Dangapoara, Railway Quarter No., R.M. 2/G, Kanchrapara, Post Office-Kanchrapara, District-24-Parganas (North), Pin-743145;

49. **SANJIB DEY**, son of Late Sankar Kumar Dey, aged about 37 years, working as Labour (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at 359/1/B, Anandamath, Ichapur, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

50. **MITHU DEBNATH**, wife of Sri Jagabandhu Debnath, aged about 38 years, working as Examiner (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Old Ambagan, 19 No. Rail Gate, Post Office-Bengal Enamel, District-24-Parganas (North), Pin-743122;

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51. GOPAL CHANDRA ROY, son of Late J.C.

Roy, aged about 44 years, working as Examiner (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Basudevpur Road, Post Office-Shyamnagar, District-24-Parganas (North), Pin-743127;

52. DHARMENDRA TIWARI, son of Late S.N.

Tiwari, aged about 35 years, working as Chemical Process Worker (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Rupanjali Apartment, 3rd Floor, Jatin Ghosh Road, Manicktala, Ichapur, Post Office- Nawabganj, Police Station- Noapara, District- 24-Parganas (North), Pin-743144;

53. SUJIT ROY CHOWDHURY, son of P.R.

Chowdhury, aged about 45 years, working as Examiner (Semi-Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at Ichapur Bidhanpally, Post Office-Nawabganj, Police Station- Noapara, District-24-Parganas (North), Pin-743144;

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54. **BENGKATASH**, son of Sri B.K. Nagrajan, aged about 44 years, working as Mechanist (Skilled) under General Manager, Rifle Factory, Ishapore, Nawabganj, District- 24-Parganas (North) and residing at CE-88, Eastland, Ichapur, Post Office-Bengal Enamel, Police Station- Noapara, District-24-Parganas (North), Pin-743122

...Applicants

-Versus-

1. **UNION OF INDIA** service through the
Secretary, Ministry of Defence
(Department of Production & Supplies),
Government of India, South Block, New
Delhi-110001.

2. **THE CHAIRMAN**, Ordnance Factory
Board, 10A, Shaheed Khudiram Bose
Road, Kolkata- 700001;

3. **THE GENERAL MANAGER**, Rifle Factory,
Ishapore, Post Office-Ichapore-Nawabganj,
District-24-Parganas (North), Pin-743144;

...Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01343/2014

Reserved on: 4.3.2020

Date of order: 4-5-2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

AJITESH DAS & ORS.

VERSUS

UNION OF INDIA & ORS. (Defence)

For the Applicants : Mr. P.C. Das, Counsel

For the Respondents : Mr. S. Paul, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants are presently working as either Semi-Skilled or Skilled Workers with the Office of the General Manager, Rifle Factory, Ichapore and their primary claim is for antedating of their promotion on the basis of their respective seniority positions.

The applicants have approached the Tribunal in 3rd stage litigation primarily challenging the speaking order dated 1.9.2014 vide which the authorities had rejected their claim.

2. The applicants had initially approached this Tribunal in O.A. No. 1142 of 2011 which was subsequently permitted to be withdrawn with liberty to file afresh. The applicants, thereafter, approached this Tribunal in O.A. No. 750 of 2013 which was disposed of on 25.7.2013 with the following directions:-

“3. Accordingly we hold that the applicants will be at liberty to submit their individual representations to the competent authority within a period of four weeks from the date of receipt of the order, taking all the points taken in the O.A. The respondent authorities are directed to consider the said representation



in accordance with law and within four weeks from the date of receipt of the copies of the representation in accordance with law and relevant Govt. order dated 13.7.2011 and pass a reasoned and speaking order giving opportunity of hearing to one of the applicants."

Thereafter, they filed a CPC No. 83 of 2013 alleging violation of the directions of this Tribunal in O.A. No. 750 of 2013. The CPC was dismissed with liberty to the applicants, who had not preferred individual representations as per Tribunal's earlier orders dated 25.7.2013, to prefer individual representations within a specified time period. Applicant No. 1 had preferred his representation on 8.7.2014 following which other applicants represented to the authorities (Annexure A-11 colly. to the O.A.). In response to the same, and, also in compliance to the orders of the Tribunal, the respondent authorities issued a speaking order on 1.9.2014 (Annexure A-12 to the O.A.) which is impugned in the present Original Application. The applicants would hence join to claim the following relief in particular:-

- (a) Leave be granted to move on single application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have got a common grievances and all of them are similarly circumstanced persons;
- (b) To quash and/or set aside the impugned speaking order being No. 1986/I-C/LB/RFI dated 1st September, 2014 issued by the General Manager, Rifle Factory communicated to the applicant No. 1 whereby and whereunder the claim of the applicants has been rejected by violation of the Statutory Rules and Orders (SRO) being Annexure A-12 of this original application.
- (c) To pass an appropriate order directing upon the respondent authority specially upon the respondent No. 3 to pass orders on entitlement of antedated promotion of the applicants on the basis of their respective seniority position vis-à-vis those of the private respondents Nos. 4 and 5 and alike others on the basis of the own orders of the respondents dated 15.10.1984 (Annexure A-4) and 24.12.2002 (Annexure A-5) dated 13.1.2003 (Annexure A-6) and dated 13.7.2011 (Annexure A-2).
- (d) To pass an appropriate order directing the respondent authority to modify and/or set aside the order dated 7.6.2010 (Annexure A-3 of this original application) so far as the same contradicts the above orders as mentioned in Annexure A-2, A-4, A-5 and A-6 of this original application;
- (e) To pass an appropriate order directing the respondent authority to notionally antedate the date of promotion of the applicants from Semi-Skilled to Skilled Grade and Skilled Grade to High-Skilled Grade in their respective trades vis-à-vis to those of the private respondent No. 4 and 5 and alike others taking into consideration the respective dates of joining in the semi-skilled grade of both the applicants and the private respondents similarly so compared to each other with all consequential benefits of seniority pay etc. as admittedly there was no question to give

any extra weightage to the said categories of private respondents as per Recruitment Rules and orders of various court cases.

- (i) To pass an appropriate order directing the respondent authority to consider the case of the applicants for promotion to the post of Skilled Grade from the date when their juniors has got the same along with all consequential benefits accordingly."

The prayer seeking joint prosecution under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987 is allowed on grounds of commonality of interest and common cause of action.

3. As the speaking order is primarily under challenge, we would, at the outset, refer to the representation of applicant No. 1 dated 8.7.2014 (Annexure A-11 to the O.A.) culminating in the speaking order.

The following transpires upon an examination of the representation:-

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- (i) That, despite the fact that there were a large number of vacancies in the department, the respondent authorities did not promote the applicant to the post of Semi Skilled/ Skilled grades, consequent to which the applicant lost his right to be considered for promotion.
- (ii) That, recruitment rules and relevant circulars had not been followed by the respondent authorities in denying such promotion to the applicant.
- (iii) The respondents forced applicant No. 1 to perform duties to the post of Semi-Skilled which is a non-existent post as Semi-Skilled has already been merged with the Skilled category, and, accordingly, the applicant should have been promoted outright to a skilled category post.
- (iv) The respondent authorities recruited 386 number of Semi-Skilled Machinists directly while no opportunity was given to the departmental candidates, such as the applicant, to avail of such posts after qualifying in a trade test, and,

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- (v) That, the recruitment rules followed by clarifications dated 13.7.2011 (which the applicant No. 1 would vehemently rely upon) states that for the purpose of filling up vacancies in Semi-Skilled and, in absence of adequate candidates from 20% quota, the respondents shall consider the case of unskilled labourers for promotion to the Semi-Skilled Grade. Such avenue, however, was not offered to the applicant and, accordingly, provisions of SRO No. 185 of 1994 have been ignored in the case of the applicant.
- (vi) That, the applicant would challenge the order dated 7.6.2010 on grounds of violation of the respondents' clarificatory order dated 24.12.2002 and that dated 13.1.2006 respectively.

4. The speaking order responds to the issues raised by the applicant No. 1 (who was granted a personal hearing) in his representation. The speaking order is reproduced below:-

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No. 1986/I-C/LB
LB/RFI
Dated, the 01st Sep 2014

Shri Ajitesh Das
Pistol T. No. 853. Per. NO.101751

(Through :- IWM/HOS, Pistol)

Sub :- Speaking Order

- Ref :- i) Hon'ble CAT, Calcutta Order dated 25/07/2013 in MA 320 of 2013/
OA 750 of 2013
ii) Hon'ble CAT, Calcutta Order dated 15/05/2014 in CPC 83 of 2013
(OA 750 of 2013)
iii) An application dated 08/07/2014 received from Shri Ajitesh Das,
T/Setter (SKD), PS-853, 101751
iv) Personal hearing Dated 23/08/2014 with GM/RFI

With reference to the direction of Hon'ble CAT, Calcutta as in reference (i) and (ii), the personal hearing has been given to Shri Ajitesh Das, T/Setter (SKD), PS-853, 101751 on 23/08/2014. Hon'ble CAT, Calcutta has given the direction to give personal hearing to one of the applicants in the OA. Since, Ajitesh Das was the first among the applicants, personal hearing has been given to him. Now, a Speaking Order is also to be issued as per direction of the Hon'ble CAT. In the Speaking Order, the orders of Hon'ble CAT, Calcutta, the application of the applicants and the points discussed in the personal hearing have been carefully considered.

02. Mainly you have raised the following issues -

- i) A large number of vacancies were available in the post of Skilled Grade and yet you have not been promoted from Semi-Skilled to Skilled Grade even you were eligible for such promotion.
- ii) The Semi-Skilled is a non-existent post. It has been merged with skilled Grade and yet the General Manager, RFI has forced you to work in the Semi-Skilled Grade.
- iii) In the year 2010 (07/06/2010) 386 Nos. have been appointed in the Semi-Skilled Grade by direct recruitment process without taking the trade test of the applicant and other similarly placed employees of the factory.
- iv) In terms of OFB letter dated 13/07/2011, which the applicant has mentioned as SRO, "for the purpose of filling up of 100% vacancies in Semi Skilled Grade and in absence of availability of adequate candidate from 20% quota, the respondent shall consider the case of the Lab.(US) for promotion to the Semi Skilled grade"

v) In terms of SRO 185 of 1995, 80% of the vacancies are to be filled in by transfer from Lab(SS) failing which by direct recruitment or by way of promotion from Lab (US) to the extent of 20% of sanction strength in the skilled category. This has not been followed in RFL.

vi) In the OA the applicants has made two private respondents as parties - Shri Saikat Dutta, Highly Skilled Grade-I and Shri Tapas Chandra Das, Highly Skilled Grade-I.

03. The reply on each point is furnished below -

i) It has not been mentioned in which year a large number of vacancies in the Skilled Grade were available and you were not considered for promotion from Semi Skilled to Skilled Grade. However, you may note that you have been appointed as Lab.(US) under the scheme of compassionate appointment on 28/09/1999 in the pay of Rs. 2550-3200 (5th CPC).

In terms of SRO 185 of 1995 Lab. (US) is the feeder post for promotion to Trade Semi Skilled in the pay scale of Rs.2650-4000 (5th CPC) --- 100% if the trades are listed in Annexure-“B” of the relevant schedule of SRO and 20% if the trades are listed in Annexure-“A” with minimum required years of service. You may further note that mere completion of the residency period does not make you entitled for promotion, it makes you eligible for consideration.

Semi Skilled is the feeder post for promotion to the Skilled Grade in the pay scale of Rs. 3050-4590 (5th CPC).

From the above you may see that the promotions are made in stages. You cannot expect promotion directly from Lab.(US) to Skilled grade as you have claimed.

ii) The Semi Skilled is neither a non-existent post nor merged with Skilled Grade as is evident from the SRO itself. Semi Skilled is the training post of recruits from trade apprentices and after 2 years (in case of Annexure-“A” trades) and 3 years (in case of Annexure-“B” trades), as the case may be, become eligible for promotion to Skilled Grade. Only the sanction is given in the skilled both for Semi Skilled and Skilled Grade. One incumbent in the Semi Skilled trade carries his/her own vacancies from Promotion/placement to Skilled Grade after completion of 2 years or 3 years, as the case may be. For ACP/MACP purpose movement from trade Semi Skilled Grade to Skilled Grade should not be treated as a promotion as per the Order of the Govt. issued from time to time. So the Semi Skilled is not a non-existent post as stated.

iii) You have been appointed in the post of Lab.(US) on 28/09/1999. Thereafter, you have been appointed by transfer to Tool Setter (Semi Skilled) on 15/12/2009. Tool Setter is an Annexure-“B” trade. Hence, for you residency period for promotion to Skilled grade is 3 years and you have been promoted to Skilled Grade on 15/12/2012. You were not eligible for promotion to Skilled Grade in 2010. You are confusing promotion and direct recruitment.

Handwritten signature

iv) & v) OFB letter dated 13/07/2011 is not the SRO it is a clarificatory letter on MACP.. This letter has no relevance for you since you have already been appointed by transfer to Semi Skilled (Tool Setter) on 15/12/2009. Every time the quota is calculated. and apportioned according to the percentage among direct recruitment, promotion and transfer.

vi) You have compared your position with two individuals who have been appointed by Direct Recruitment. Their trades are also different from yours. Whereas, your trade is Tool Setter, their trade is Machinist.

Further, your trade Tool Setter is an Annexure "B" trade and the persons compared with belong to Annexure "A" trade. Such type of comparison cannot be made. Such comparison can be made only among the incumbents of the same Trade, Grade and of same Annexure.

For your understanding, the career status of yours and of the other two against whom you have made the comparison are reproduced below in tabular form.

Shri Ajit Das, the Applicant

SL. NO.	MODE OF APPOINTMENT AND SUBSEQUENT MOVEMENT	DATE	SCALE
01	Appointed as Labour (U.S) on compassionate ground	28.09.1999	Rs. 2550 - 3200
02	Re-designated as Labour (S.S) and both Labourer (U.S) and Labourer (S.S) have been merged together to Labourer (S.S).	01.01.2006	PB-1 (5200-20200) plus Grade Pay Rs. 1800/- (the replacement pay scale of Rs. 2650-4000 in the 6th CPC w.e.f: 01.01.2006)
03	MACP -1	28.09.2009	PB-1 (5200-20200) plus Grade Pay Rs. 1900/-.
04	Appointed by transfer(re-designation) as Tool Setter (S.S) (Annexure-'B' Trade)	15.12.2009	PB-1 (5200-20200) plus Grade Pay Rs. 1900/-.
05	Promoted to Tool Setter (Skd.)	15.12.2012	PB-1 (5200-20200) plus Grade Pay Rs. 1900/-.

Those with whom have been compared

SL. NO.	SAIKAT DUTTA, (MACH., HS-1)	DATE	SL NO.	TAPAS CH. DAS, (MACH., HS-1)	
				MODE OF APPT. & SUBSEQUENT MOVEMENT WITH PAY SCALE	DATE
01	Appointed as Mach. (S.S) in the pay scale of Rs. 2650-4000	25.07.2000	01	Appointed as Mach. (S.S) in the pay scale of Rs. 2650-4000	03.04.1999
02	Promoted to Skd. grade in the pay scale of Rs. 3050-4590.	27.07.2002	02	Promoted to Skd. grade in the pay scale of Rs. 3050-4590.	02.04.2001
03	Promoted to H.S. grade in the pay of Rs. 4000-6000.	20.05.2003	03	Promoted to H.S. grade in the pay of Rs. 4000-6000.	20.05.2003
04	Promoted to H.S. Gr-1 in the PB-1 (5200-20.00) plus	01.01.2006	04	Promoted to H.S. Gr-1 in the PB-1 (5200-20.00) plus	01.01.2006

4/2/14

G.P. of Rs. 2600..

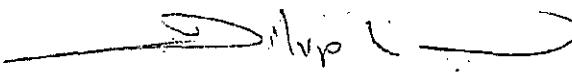
G.P. of Rs. 2800..

04. From the above tables, you may see that your trade and other two candidates' trade are different. Hence, you have made a wrong comparison.

ORDER

05. Hence I pass this order that there is no merit in your application and the same is disposed accordingly without any benefit.

06. Since other 53 applicants in the OA have agitated on and with identical issues, this is a common Speaking Order applicable for all.


(D. V. GONDALE)
GENERAL MANAGER

Copy to:- The other applicants in the OA No. 750 of 2013.
Ajitesh Das & Ors. Vs. UOI & Ors.

Shri Pratik Bhattacharya SC/1178 Through ~~1178~~ ¹¹⁷⁸ 6/7/14

Designation : Examiner skilled (Annexure - A)

Upon an analysis of the same, following is inferred:-

- (i) Applicant No. 1 had been appointed on compassionate grounds on 28.9.1999 in the pay scale of Rs. 2550-3200 (as per 5th CPC). As per SRO No. 185 of 1994, Lab. (US) is the feeder post for promotion to Semi-Skilled (Rs. 2650-4000/- in 5th CPC) of which 100% of the trades listed as per Annexure 'A' and 20% of the trades listed in Annexure 'B' are to be filled up as per Recruitment Rules upon completion of requisite years of service.
- (ii) Applicant No. 1 had not specified the specific year in which reportedly, although a large number of vacancies in the

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Skilled Grade were available, the applicant was denied his rightful claim to promotion.

- (iii) The completion of residency period by the applicant creates a right for him to be eligible for consideration, but does not necessarily entitle him to such promotion.
- (iv) The Semi-Skilled Grade is the feeder post to Skilled Grade in the scale of Rs. 2650-4000/- (as per 5th CPC). Accordingly, as the promotional ladder involves movement from Unskilled to Semi-Skilled to Skilled, promotions cannot be accorded directly from Lab. (US) to Skilled Grade as claimed by the applicant.
- (v) The Semi-Skilled Grades are not non-existent posts nor have they been merged with Skilled grades as evident from SRO 185 of 1994. Such holder of Semi-Skilled Grades are the trainee recruits from trade apprentices and two years residency (in case of Annexure "A" trades) and 3 years residency (in case of Annexure - "B" trades) confers on them eligibility for promotion to Skilled Grade. Hence, an incumbent in the Semi-Skilled Grade carries his/her vacancies for promotion / placement to Skilled Grade after completion of 2 years or 3 years as the case may be.
- (vi) For ACP/MACP purpose, movement from Semi-Skilled/Skilled Grade is not to be treated as promotion.
- (vii) Applicant No. 1 was appointed to the post of Lab (US) as a compassionate appointee, and, thereafter appointed by transfer as Tool setter (Semi Skilled) (Annexure "B" trade) on 15.12.2009. Hence, as the residency period for promotion to Skilled Grade is 3 years, upon completion of such period, the



applicant No. 1 was promoted to Skilled Grade on 15.12.2012. The applicant was, accordingly, not eligible for promotion to Skilled Grade in 2010 as 7.6.2010 circular refers to filling up of vacancies by direct recruitment.

- (viii) OFB's letter dated 13.7.2011 is not a SRO, but a clarificatory letter on MACP which does not apply to applicant No. 1, who had already been appointed on transfer to Semi-Skilled (Tool Setter) on 15.12.2009 on the basis of apportionment among direct recruits, promotees and transferees.
- (ix) Applicant No. 1 has alleged that two employees (private respondent Nos. 4 and 5) have superseded him unfairly in their appointment in the Skilled Grade. Private respondent Nos. 4 and 5, however, are direct recruits who were engaged as Machinists (Annexure A trade) as compared to Applicant No. 1, who is a Tool Setter (Annexure B trade). Trades listed in Annexures "A" and "B" of the SRO 185/95 not being comparable, any comparison could only have been made by referring to juniors belonging to the same trade but promoted ahead of the applicant.

6. The respondent authorities have provided a comparative chart to distinguish applicant 1 from respondent Nos. 4 and 5. The same would reveal that while the applicant No. 1 was promoted as Tool Setter (Skilled) on 15.12.2012, respondent No. 4 was promoted in Skilled Grade on 27.7.2002 and respondent No. 5 on 2.4.2001 respectively. Respondent Nos. 4 and 5 are both Machinist HS I and are direct recruits unlike the applicant No. 1 who is a compassionate appointee initially appointed as Lab. (US). *WAF*

7. SRO 185 of 1994 dated 1.11.1994 is annexed at Annexure A-1 to the O.A., the relevant extracts of which is quoted as under:

"New Delhi, the 1st November, 1994

SRO 185 – In exercise of the powers conferred by the proviso in Article 369 of the Constitution and in supersession of the Ordnance Factories Group C and Group D Industrial posts Recruitment Rules, 1989, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the posts of industrial employees in Group C and Group D in Ordnance Factories and Ordnance Equipment and Clothing Factories and other offices/establishments under the Ordnance Factories Organisation, namely:-

Short title and commencement – (1) These rules may be called the Ordnance Factories Group C and Group D Industrial Posts Recruitment Rules, 1994.

(2) They shall come into force on the date of their publication in the Official Gazette.

Application – These rules shall apply to the posts specified in Column I of the Schedule annexed to these rules. The trades and grade of these posts shall be as per the Annexure A and B of the said schedule.

Number, classification and scale of pay – The number of the said posts, their classification and the scales of pay attached thereto shall be as specified in columns 2,3 and 4 respectively of the said schedule.

Method of Recruitment, age limit, qualifications etc. – The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in the columns 5 to 14 of the aforesaid Schedule.

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Name of the post	No of posts	Classification	Scale of pay	Whether Selection Or Non-Selection Post	Whether benefit of added years of service admissible Under Rule 30 of Central Civil Services (Pension) Rules, 1972
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4. Skilled workman (list of trades at Annexure A and B	71532 (1994)	Civilian in	Rs. 950-20- *Subject to variation Dependent on Gr. 'C' Work load	Non selection Defence Service 1150-EB- 25-1500 Industrial	Not applicable
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7	8	9	10	11
Age limit for Direct recruits	Educational and other qualifications Prescribed for Direct recruits Will apply in the Case of promotes	Whether age and other qualifications prescribed for direct recruits Will apply in The case of Promotes	Period of probation, if any	Method of recruitment whether by direct rectt. or by promotion or by deputation/ transfer and percentage of The vacancies to Be filled by various methods

30 years	4. Same as for semi-Skilled but with trade Test prescribed for Skilled group	No	2 years	By promotion after adjustment of surplus and transfer failing which by direct recruitment
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12	13	14
In case of rectt. by promotion/ Deputation/transfer grades From which promotion/ Deputation/transfer to be Made	If a DPC exists, what is its	Circumstances in which UPSC is to be consulted in making recruitment

Promotion from persons in The Semi-skilled grade in pay Scale of Rs. 800-15-1010-EB 20-1150 in the same trade With a minimum regular service Of 2 years for trades listed at Annexure A and with a minimum Regular service of 2 years for trades Listed at annexure A and with a Minimum regular service of 2 years for Trade listed at Annexure B and on Posting the trade test. Transfer on passing the trade test.	Not applicable	Not applicable
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1	2	3	4	5	6
Semi-skilled Workman	*Subject to variation dependent on workload (list of trades at Annexure A and B).	Civilian in Defence Service Group	Rs. 800-15-1010 -EB-20-1150	Non-selection	Not applicable
7	8	9	10	11	

30 years	(a)(i) For the Trades At Annexure A National Council Of Trades for Vocational Training	No	For Promotees: Nil for direct recruits: 2 years	(i) For trade listed at Annexure A-80% by transfer failing which by direct recruitment. 20%
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Certificate in the
Relevant trade failing
Which by ITI or equivalent
Diploma/
Certificate holder

by promotion for
each trade
including allied
trades after
adjustment of
Surplus.

(ii) For trades listed
At Annexure B -
100% by
promotion for each
Trades after
Adjustment of
surplus and
transfers. In any
trade (such as new
trade on failure of
recruitment by
promotion by
transfer failing
which by direct
recruitment."



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Sl No	Name of Trade	Grade in which post exists
1.	Black Smith	Semi Skilled to Master Craftsman
2.	Boiler Attendant	Semi Skilled to Skilled Promotion HS Gr-II and HS I in Line Mistry
3.	Book Binder	Semi Skilled to Master Craftsman
4.	Cable Joiner	Semi Skilled to Master Craftsman
5.	Carpenter	Semi-skilled to skilled promotion
6.	Compositor	to HS Gr-I and HS Gr-II in Line Mistry trade
7.	Die-sinker	Semi Skilled to Master Craftsman
8.	Electrician	Semi Skilled to Master Craftsman
9.	Electropipe	Semi Skilled to Master Craftsman
10.	Fitter (with all trades)	Semi Skilled to Master Craftsman Semi Skilled to Master Craftsman
11.	Grinder	
12.	Machinist (with all trades)	Semi Skilled to Master Craftsman Semi Skilled to Master Craftsman
13.	Miller	Semi Skilled to Master Craftsman
14.	Millwright	Semi Skilled to Master Craftsman
15.	Moulder	Semi Skilled to Master Craftsman
16.	Mason	Semi Skilled to Master Craftsman
17.	Painter	Semi Skilled to Master Craftsman
18.	Pattern	Semi Skilled to Master Craftsman
19.	Sheet Metal	Semi Skilled to HS Gr. I
20.	Switch Board	Semi Skilled to HS Gr. I
21.	Tailor	Semi Skilled to Master Craftsman
22.	Tool Maker	Semi Skilled to Master Craftsman
23.	Turner	Semi Skilled to Master Craftsman
24.	Welder	Semi Skilled to HS Gr. II. Promotion to HS Gr. I in the Line Mistry
25.	Wireman	
26.	Examiner (with all trades)	Semi Skilled to Master craftsman as in Annexure B so far NCTV and apprentices / ITI are concerned
27.	Chemical	Semi Skilled to Master Craftsman
28.	DB Worker	Semi Skilled to Master Craftsman
29.	Optician	Semi Skilled to Master Craftsman
?	Insetted	
#	Insetted	

Annexure - B

Sl No	Trade	Grade in which post exists
1.	Armature Winder	Semi-skilled to Master Craftsman.
2.	Bar Mill Operator	Semi-skilled to Master Craftsman.
3.	Borer	Semi-skilled to Master Craftsman.
4.	Borer Gun	Semi-skilled to Master Craftsman.
5.	Cane Worker	Semi-skilled - Further line of promotion in the Trade of Carpenter.
6.	Chemical Plumber	Semi-skilled to Master Craftsman.
7.	Counter	Un-skilled
8.	Driver Locomotive (Steam and Diesel)	Semi-skilled to HS-II, - promotion to HS Gr I and Gr.II shall be in Line Mistry trade.
9.	Driver Tractor	Semi-skilled and skilled Promotion to HS Gr.II and Gr.I shall be in Line Mistry trade.
10.	Engraver	Semi-skilled to Master Craftsman.
11.	Extrusion Press operator	Semi-skilled to HS Gr.II, - promotion to HS Gr.I and Gr.II shall be in Line Mistry trade.
12.	Forge man	Semi-skilled to HS Gr.I
13.	Heat Treatment Operator	Semi-skilled to HS Gr.I
14.	Jig Borer	Semi-skilled to Master Craftsman.
15.	Kiln Operator/Kiln Attendant	Semi-skilled and Skilled
16.	Labour	Un-skilled and Semi-skilled
17.	Lead Burner	Semi-skilled to HS Gr.I
18.	Leacher Worker	Semi-skilled and skilled.
19.	Leather Process Worker	Promotions to HS Gr.I
20.	Line Mistry	Semi-skilled and skilled Promotions to HS Gr.II and Gr.I shall in Line Mistry trade.
21.	Marker Off	Semi-skilled to HS Gr.I
22.	Melter (Ferrous/Non ferrous)	Semi-skilled to Master Craftsman.
23.	Overseer	Semi-skilled . promotion to skilled, HS Gr.II and Gr.I shall be in Line Mistry trade.
24.	Operator Material Handling Equipment	Semi-skilled to HS Gr.II Promotion in HS Gr.I Shall be in Line Mistry trade.
25.	Photo Etcher	Semi-skilled to HS Gr.II Promotion

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26	Pointman	to HS Gr.I shall be in Line Mistry trade. Semi-skilled.
27	Printing Machine operator/ Mistry C.C Printer	Semi-skilled to HS Gr.I.
28	Kigger	Semi-skilled to HS Gr.II - Promotion in
29	Rope Slicer	Semi-skilled. Promotion to skilled, HS Gr.II
30	Saw Doctor	Semi-skilled to Master Craftsman.
31	Sand and Shot Blaster	Semi-skilled. Promotion to skilled. H Gr.II and HS Gr I shall be in Line Mistry trade.
32	Telephone Mechanic	Semi-skilled and Skilled
33	Ticket Sorter	Un-skilled
34	Tool Setter and Tool Setter (Fitter)	Semi-skilled to Master craftsman.
35	Type Writer (Technical)	Semi-skilled to skilled.

Note 1: The number of posts indicated in Column 2 in the Schedule are subject to variation dependent on workload.



Note 2: The age limits indicated under Column 7 are relaxable for Government servants, up to 35 years in accordance with the instructions or order issued by the Government of India.

Note 3: Wherever the words 'Appointment of surplus' occur in Column 11 of this Schedule, it shall mean appointment in public interest by the Management, of persons already holding posts same or identical or nearly equivalent scale of pay in any factory or office or anywhere in the Ordnance Factories Organisation, whom it is necessary to adjust in the posts, in the exigencies of service consequent on the persons or the posts held by them being found surplus by the Management.

Note 4: Wherever the words 'Transfer' occur in Column 11 or 12 of this Schedule it shall include transfer in public interest by the Management of persons (already holding posts in the same or identical or nearly equivalent scale of pay) to posts in the same factory or office in the Ordnance Factories Organisation and also Transfer within the same factory or office at the request of the persons concerned where agreed to by the Management. The transfers in public interest will include Transfers from one grade, interse promotions from another grade where from two different grades. The transfer in public interest will also include filling of posts by transfer of persons holding post from which there is no promotion to any other posts or grade whether or not such posts are declared equivalent posts and such appointments by transfer may be made prior to filling of posts by promotion from other grades or by direct recruitment. The transfer in public interest will also include Transfer of persons in the Trades to be abolished or merged with other trades on administrative grounds.

Relevant provisions of SRO 185 of 1994 establishes the following:-

- (i) For promotion of persons in Semi-Skilled grade (in the pay scale of Rs. 800-15-1010-EB-20-1150) in the same trade with a minimum regular service of 2 years for trades listed at Annexure A and with a minimum regular service at Annexure 'B' are the qualifying criteria for promotion to Skilled Grade. The said SRO further clarifies that for direct

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recruitment to semi-skilled workers, the recruitment procedure is as follows:-

"(i) For trades listed at Annexure A-80% by transfer failing which by direct recruitment. 20% by promotion for each trade including allied trades after adjustment of surplus.

(ii) For trades listed at Annexure B-100% by promotion for each trades after adjustment of surplus and transfers. In any trade (such as new trade on failure of recruitment by promotion by transfer failing which by direct recruitment.)"

8. We would hereinafter examine the contents of the MACP clarification dated 13.7.2011 (Annexure A-2 to the O.A.) which states as follows:-

"1. Consequent upon implementation of sixth CPC recommendations and merger of Un-Skilled and Semi-Skilled grades, the movement from Unskilled to Semiskilled is not to be treated as promotion and is to be ignored while granting financial upgradation under the MACP Scheme.

2. As per provisions contained in SRO 185/1994, movement to the post of Tradesman (SS) is either through 80% transfer from Labourer (SS), failing which by DR or by way of promotion from Labourer (US) to the extent of 20% of sanctioned strength in the skilled category. Furthermore, all the movements to the Tradesman Semi-skilled being a training post only. Therefore, movement from Semi-Skilled Grade (GP Rs. 1800/-) to Skilled Grade (GP Rs. 1900), irrespective of the mode of entry, is not to be treated as promotion for the purpose of MACP, and is to be ignored while granting financial upgradation under the MACP Scheme."

Clearly, this is a clarification for the purpose of MACP and not for recruitment and underlines that the movement from Semi-Skilled Grade (being a training post) to Skilled Grade would not be treated as promotion for MACP.

9. The respondents had referred to the issues raised by the applicant No. 1 in his representation and had clarified that the orders dated 7.6.2010 (Annexure A-3 to the O.A.) was nothing more than a circular for direct recruitment of Industrial Employees, that the clarification dated 13.7.2011 had only stated that the movement from Semi-Skilled to Skilled should not be treated as promotion for the purpose of MACP benefits. Further, orders dated 24.12.2002 (Annexure A-5 to the O.A.) refers to counting of seniority of Industrial Employees who hold trades

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applicable to applicant No. 1, who is engaged in a trade listed in Annexure 'B' of said SRO and, that, the directions of 13.1.2003 (Annexure A-6 to the O.A.) further refers to seniority in Annexure 'A' trades of SRO 185 of 1994 and obviously does not apply to the applicant.

10. Ld. Counsel for the applicant, during hearing, however, would refer to the submissions made in his rejoinder dated 2.12.2015 to particularly refer to Annexure R-1 which contains a circular dated 14.6.2010, and which states as follows:



6th

No. 11(5)/2009-D (Civ.I)
Government of India
Ministry of Defence

New Delhi, the 14th June, 2010

To

The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff
The DGOF
& all Heads of Inter Services Organizations.

Subject:-Restructuring of Cadre of Artisan staff in Defence Establishments
in modification of recommendations of 6th CPC.

Sir,

The matter regarding revision of pay scale of Master Craftsman in Defence Establishments has been under consideration of the Government for quite some time. Now in partial modification of the 6th CPC recommendations made in para 3.8.27 of its report and amendment made in Civilian in Defence Services (Revised Pay) Rules, 2008, vide SRO 11(E) dated 28.3.2009, I am directed to convey the sanction of the President for restructuring of Cadre of Artisan Staff in Defence Establishments 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. 1.1.2006 as under:-)

(i) Skilled - Pay Band PB-1 Grade Pay Rs.1900

(ii) Highly Skilled Grade II - Pay Band PB-1 Grade Pay Rs.2400

(iii) Highly Skilled Grade I - Pay Band PB-1 Grade Pay Rs.2800

(iv) Master Craftsman - Pay Band PB-2 Grade Pay Rs.4200

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3. (a) Wherever the grade structure in the Industrial as well as Non-Industrial trades is already existing in the ratio of 45:55, the erstwhile Skilled and Highly Skilled, and 25% of Highly Skilled in the grade of Master Craftsman, the following will apply:

- * 45% of the posts may be granted the pay scale of Skilled Worker (Grade pay of Rs.1900 in the Pay Band PB-1);
- * 25% of the remaining 55% may be granted the pay scale of MCM (Grade Pay of Rs.4200 in the pay band PB-2); and
- * The remaining posts may be divided in a ratio of 50:50 and redesignated as Highly Skilled Worker Grade-II (Grade Pay of Rs.2400 in Pay Band PB-1) and Highly Skilled Worker Grade-I (Grade Pay of Rs.2800 in Pay Band PB-1).

(b) The placement of the individuals in the posts resulting from the restructuring shall be made w.e.f. 1.1.2006, in relaxation of the conditions, if any, i.e. trade test etc. as one time measure.

(c) Highly Skilled Grade I shall be on-block senior to Highly Skilled Grade II.

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

(ii) In the case of Defence Establishments where there is no category of Skilled Workers and direct recruitment is made 100% at the level of Highly Skilled, the posts of Master Craftsman existing as on 1.1.2006 will be placed in PB-2 + GP-4200 and the remaining posts of Highly Skilled Workers may be bifurcated in HS-I and HS-II in the ratio of 50:50.

Contd. ... 3/-

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(iii) In view of the above re-structuring, the artisan staff may be allowed to give revised option for pay fixation w.e.f. 1.1.2006 within three months from the date of issue of orders in this regard.

(iv) The existing recruitment rules for the Tradesman may be amended and RRs for the post of MCM may be framed accordingly.

5. The expenditure involved will be debitable to the respective Heads of Defence Services Estimates.

6. To the extent of provisions indicated in the paragraphs above MoD letter No.11(1)/2002-D (Civil) dated 20.05.2003 stands amended.

7. This issues with the approval of DOP&T U.O.No5358/10/CR dated 25.2.2010 and Ministry of Finance I.D.-No.2(16)E.III/Desk/2008 dated 10.06.2010 and concurrence of Ministry of Defence(Finance AG/PB) vide their U.O.No164/AG/PB dated 14.06.2010.


(M.S. Sharma)

Under Secretary to the Government of India
Tele No.23012414.

Copy to:-

- | | | |
|----------------------------------|------------------------|------------------|
| 1. AG/MP-4(Civ)(d) | 2. DGNCC/Pers(c) | 3. DGDE/Admin |
| 4. Air HQrs./PC-5 | 5. DGA/MS/DG-2(B) | 6. DGA/QA |
| 7. NHQ/CP Dte. | 8. OFB,Kolkata | 9. DGQA/Admin-7B |
| 10. R&D/Orgn./DOP
&CAO/Coord. | 11. E-in-C Branch /EIC | 12. JS(Trg. |
| 13. DPR | | |
| 14. Hqrs. IDS, (Dte. of Pers.) | | |

Copy also to:-

1. D(Appt)/ D(Fy-II)/ D(R&D)/ D(GS-I)/ D(GS-II)/ D(GS-III)/ D(QS)/
D(Q&C)/ D(JCM)/ D(AG)/ D(N.II)/ D(Air.III)/ D(Works)/ D(O-II)/
D(Med)/ D(Civ.II)/ D(GS-V)/ D(Mov)/ D(QA)/ D(HAL)

Contd...4/-



3. The DOP&T vide its Office Memorandum of even number dated the 10th February, 1997 had imposed a temporary ban on framing/amendment/relaxation/modification/notification of Recruitment Rules/Service Rules in respect of Group 'A', 'B', 'C', 'D' posts/services/cadres till necessary orders to this effect are issued by the Government. The Revised Pay Rules, 1997 have since been notified by Ministry of Finance vide their notification dated the 30th September, 1997. (As a sequel to this, Government have decided to lift the aforesaid temporary ban on framing/amendment/relaxation/modification/notification of Recruitment Rules/Service Rules in respect of Group 'A', 'B', 'C', 'D' posts/services/cadres with immediate effect.)

4. The Recruitment Rules/Service Rules are of statutory nature. Therefore, the changes brought out by other relevant instructions have to be incorporated in the Recruitment Rules/Service Rules by suitable amendments so that necessary steps like holding of DPC etc. are taken to fill the posts carrying the revised scales, particularly merged scales, on regular basis. All the Ministries/Departments are, therefore, requested to effect necessary amendments to the Recruitment Rules/Service Rules notified by them after following the normal procedure of furnishing proposals to the Department of Personnel and Training and the UPSC in the format (Annexure-III) prescribed in the general guidelines on recruitment rules circulated vide the DOP&T O.M. No.14017/12/87-Estt(RR) dated the 18th March, 1988 and also in consultation with the Legislative Department.

5. In view of the urgency for amending the Recruitment Rules/Service Rules on the above lines, it is expected that Ministries/Departments would complete the review in this regard and furnish necessary amendment proposals to the Department of Personnel and Training/the Union Public Service Commission in the case of Group 'A' and 'B' posts within two months from the date of issue of this Office Memorandum. Simultaneously, they will, no doubt, be taking similar action for amending the recruitment rules for Group 'C' and 'D' posts, which is within their competence under the delegated powers.

6. Hindi version will follow.

21-3-95 S-11

(HARINDER SINGH)

Joint Secretary to the Government of India

To

All Ministries/Departments of the Government of India

Copy to:-

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110011 with reference to their communication No.F.2/14/97-RR dated April 17, 1998.
2. The Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi 110002.
3. The Manager, Government of India, Press, Mayapuri, Ring Road, New Delhi.

(e)

Ld. Counsel would insist that the applicants were Unskilled labourers whose posts were merged with Skilled trades. Accordingly, the provisions of the said circular will apply in case of the applicants.

Ld. Counsel for the respondents would counter such claim stating that the circular dated 14.6.2010 refers to cadres of Artisan Staff and, as the applicant No. 1 was a compassionate appointee with no technical background, the abovenoted circular fails to apply to him.

It is settled law that although an employee has no right to be promoted, he has a right to be considered for promotion. Such right, as guaranteed under Article 16, however, will be available only if he falls within the prescribed zone of consideration, as held in **Sarabjit Singh v. Ex. Major B.D. Gupta, (2000) 7 SCC 67.**

In **Ajit Singh v. State of Punjab, (1999) 7 SCC 209**, the Hon'ble Court ruled that if an employee otherwise eligible for promotion or who comes within zone of consideration is not considered for promotion, then there will be a clear infraction of his fundamental right under Article 16(1) and that Article 16 obligates the State to eschew arbitrary deviation from rules or norms.

In the instant matter, the respondents would reason that the applicant No. 1 did not come within the zone of consideration as per provisions of SRO 185 of 1994, a contention that the applicant would controvert by citing applicability of circular dated 14.6.2010 in as much erstwhile Semi-Skilled had to be converted to Skilled grade in terms of O.M. dt. 14.6.2010 (supra).

11. We would, however, observe that in the representations annexed collectively at A-11, no reference has been made to circular of 14.6.2010 and in particular in seeking benefits therefrom.

hsc

12. Accordingly, we would accord the applicants liberty to make fresh representations justifying applicability of circular dated 14.6.2010 in their claims for antedating promotion to Skilled Grade, within a period of 4 weeks from the date of receipt of a copy of this order. Once so received, the respondent authorities will, particularly, confine themselves in examining the relevance of the circular dated 14.6.2010 to the applicants in this O.A. The issues raised by the applicants placing reliance on the circular of 13.7.2011 and SRO 185/1994 need not be reopened as each of the issues have been comprehensively addressed by the respondent authorities in their speaking order.

The concerned respondent authority will decide on the applicability of 14.6.2010 (supra) in accordance with law within a period of 12 weeks and convey his decision in the form of a reasoned and speaking order to the applicants thereafter.

With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP