

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

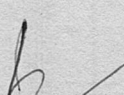
(This The 20th Day Of May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr.D.C. Lakha, Member (A)


Original Application No. 246 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

1. P.K. Chatterjee, aged about 40 years, Son late K.K. Chatterjee, T. No.297 presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance, Equipment Factory, Kanpur.
2. Vishnu Kumar, aged about 39 years, Son of Shri Munshi Lal, T- No.290, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
3. Santosh Kuamr, aged about 44 years, Son of Shri Sripat Lal, T- No.288, presently employed as Machinist (Leather) Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
4. Mahabir Prasad, aged about 42 years, Son of late Kashi Ram, T- 270, presently employed as Machinist (Leather) Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
5. Manoj Kumar Srivastava aged about 41 years, son of Sri M.M. Srivastava, T-294, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
6. Ashutosh Tripathi, aged about 41 years, Son of Sri Kailash Chandra Tripathi, T-293, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.

62

7. Taufiq Ahmad, aged about 41 years son of Late Ali Ahmad, T No.345, presently employed as Machinist (Leather) Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 8. Shri Babu Gupta aged about 39 years, Son of Late Sri Ram Din Gupta, T No.356, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 9. Vinay Prakash Srivastava, aged about 40 years Son of G.S. Lal T. No.284, presently employed as Machinist (Leather) Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 10. Abdul Haleem, aged about 50 years, Son of late Abdul Kareem, T. No.248, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 11. Mahendra Nath Pandey, aged about 40 years, Son of Sri Ram Babu Pandey, T. No.289, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 12. Bindeshwari Prasad Pathak, aged about 40 years, Son of Sri Govardhan Pathak, T. No.456 presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 13. Banney Khan, aged about 54 years, Son of Late Nanhey Khan, T. No.280, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 14. Sanjay Kumar Shukla, aged about 39 years, Son of Sri Y.N. Shukla, T. No.314, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
 15. Ayodhya Prasad aged about 44 years, Son of Sri Babu Lal, Ticket No. 460, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
- 

16. Avnidra Yadav, aged about 40 years, Son of Sri Ram Swaroop, T. No.329, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
17. Viqar Haider, aged about 51 years, Son of Sri Tasadduq Hussain, T. No.303, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
18. Aftab Alam, aged about 44 years, Son of Late Habib Ahmad, T. No.3, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
19. Nasrat Ali, aged about 43 years, Son of Sri Qudrat Ali T No.59, presently employed as Machinist (Leather) Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
20. Anees Ahmad Nizami, aged about 49 years, Son of Late Khawaja Ahmad, T. No.327, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
21. Suraj Bali aged about 54 years, Son of Sri Kanhai, T. No.291, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
22. Alopi, aged about 57 years, Son of Late Bhikha Ram, T. No.339, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
23. Babu Lal, aged about 53 years, Son of Late Ram Jeewan, T. No.306, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
24. Juggi Lal, aged about 53 years, Son of Sri Piarey Lal, T.No.300, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
25. Jagdish Prasad, aged about 45 years, Son of Late Mool Shanker, T. No. 229, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.



26. Arun Prakash Srivastava, aged about 45 years Son of Late D.P. Srivastava, T. No.257, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
27. Jagdish Prasad aged about 52 years, Son of Late Ram Lal, T. No.316, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
28. Satwant Singh aged about 42 years, Son of Sri Mahenda Singh, T. No.422, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
29. Gopi Nath Sinha, aged about 45 years, Son of Late B.K. Sinha, T. No.437, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
30. Sarfraz Husain, aged about 48 years, Son of Late Hamid Husain, T. No.220, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
31. Piarey Lal, aged about 52 years, Son of Late Sri Chhotey Lal, T. No.375, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
32. Ram Ji Srivastava, aged about 43 years, Son of Sri Mister Singh Srivastava, T. No.418, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
33. Shanker Lal aged about 45 years, Son of Sri Ram T. No.421, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
34. Jagdish Prasad, aged about 50 years, Son of Late Kallu, T. No. 438, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.

35. Tauqir Husain, aged about 45 years, Son of Late Sayed Shabbir Husain, T. No.436, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.
36. Chandrika Prasad, aged about 51 years, Son of Late Bhola, T. No.244, presently employed as Machinist (Leather) Highly Skilled, Boot Plant, Ordnance Equipment Factory, Kanpur.

..... Applicants

By Advocates: Shri M.K. Nair
Shri M.K. Upadhyay

Versus

1. Union of India through the Secretary, Ministry of Defence, Department of Defence, Production, Government of India, New Delhi.
2. Chairman, Ordnance Factory Board/Director General of Ordnance Factories, 10-A, Shaheed Khudi Ram Bose Road, Ayudh Bhawan, Kolkata.
3. Additional Director General of Ordnance Factories OEF Group Head Quarters, G.T. Road, Kanpur.
4. General Manager, Ordnance Equipment Factory, Kanpur.

..... Respondents

By Adavocate: Shri Himanshu Singh

ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

1. As the question involved is purely one of interpretation of a part of the order, the requirement of giving full

detail facts of the case is not essential. Suffice it to say that the applicants, who were originally inducted into service as Semi Skilled Machinist 'B', on implementation of certain Government Orders, were placed in upgraded pay scale of 260 - 400 from the date of their appointment to that post. Later on, they were issued with the show cause notice stating that the fixation of their pay scale should have been deferred by 2/3 years in respect of I.T.I. etc, qualified direct recruits/promotees respectively. This was challenged by the Applicants in an earlier O.A. No.1330 of 2001 which was disposed of with a direction to the Respondents to consider the appeal preferred by the applicants. On consideration of the appeal, the Respondents have, vide order dated 26.06.2001, rejected the claim of the Applicant giving certain reasons.. The same has been challenged in this O.A.

2. Respondents have contested the O.A. and they summarized the arguments as given is hereunder:-

- (i) The applicant Nos. 1 to 19 were initially appointed as Machinist 'B' in semi skilled grade in the pay scale of Rs.210 - 290 in 1982 - 83 and subsequently were promoted to machinist 'A' (Skilled grade) in the pay scale of Rs.260 - 400 from the post of Machinist 'B'. Their placement in the skilled grade after putting in the specific length of service in the semi skilled grade was not offset against entitlement for financial up-gradation under ACP-I with effect from 09.08.1999. Therefore, after their service, they were granted the benefit of financial up-gradation under ACP-I.

- (ii) So far as the applicants 20 to 36 are concerned, they were initially appointed as Labour 'B' prior to 16.10.1981 in the pay scale of Rs.196 - 232 and subsequently were promoted to Machinist 'B' in semi skilled grade in November 1981 in the pay scale of Rs.210 - 290 after passing requisite trade test and their promotion from Labour 'B' to Machinist 'B' was not ignored for the purpose of financial up-gradation under ACP-I. Thus the applicants are not entitled for the benefit of financial up-gradation under ACP-I.
- (iii) In terms of paragraph 19 of Chapter 19 of 3rd Central Pay Commission and report of Expert Classification Committee (ECC) accepted by the Government of India vide letter dated 16.10.1981 circulated under Ordnance Factory Board, Kolkata letter No.01/A/ECC dated 30.11.1981/Annexure CA-1, those who were working in semi Skilled on the post of various Trades including Machinist/B as on 16.10.1981, were granted the same pay scale of Rs.210 - 290, which they were holding before issuance of the above said letter dated 16.10.1981.
- (iv) Subsequently, in view of the recommendation of Anomaly Committee, the pay scale of 23 Trades in Semi Skilled grade including Machinist 'B' was revised from Rs.210 - 290 to Rs.260 - 400 vide Ministry of Defence letter dated 15.10.1984 circulated under Ordnance Factory Board, Kolkata letter No.01/A/ECC dated

16.01.1985/Annexure CA-2 and benefit of this pay scale was given effect from 15.10.1984.

- (v) In the letter dated 16.01.1985 the effective date regarding 23 trades has been clarified as under:-

“(a) Semi Skilled categories to be identified by you or feeder categories in the pay scale of Rs.210 – 290 already existing under the present recruitment rules, subject to the workers having rendered a minimum of three years service in the grade and after passing the prescribed trade test and;

(b) Direct recruits with ITI certificate/ Ex Trade Apprentices/ NCTVI etc inducted in the semi skilled grade, who have rendered 2 years service in that grade.
”

- (vi) Thereafter the issue of ante dating of the pay scale of the Skilled Grade of Industrial Workers from 15.10.1984 to 16.10.1981 in respect of 23 categories of Semi Skilled Grade, as mentioned in letter dated 15.10.1984, was drawing the attention of the Government in the wake of the judgment of Hon'ble Supreme Court in the case of **Bhagwan Sahai Carpenter and ors. V. U.O.I. & Ors- AIR 1989 SC 1215**, wherein it was held “Employees of the different trades in the skilled grade cannot be treated differently”.

- (vii) Accordingly, Government of India vide Ministry of Defence O.M. No.17(5)/89-D(Civ-I) dated 19.03.1993/ Annexure CA-3, decided that all the trades, which were granted the skilled Grade from Semi Skilled Grade with effect from 15.10.1984 in terms of Government of India

letter No.3808/DS(O&M) Civ-I/84 dated 15.10.1984 will now be given the benefit of pay scale of Skilled Grade Rs.260 - 400 with effect from 16.10.1981 and all other conditions mentioned in the order dated 15.10.1984 will remain unchanged.

- (viii) The matter of ante dating of the benefit of skilled grade will also not give any retrospective application of the Ministry of Defence letter dated 15.10.1984. It was also clarified by the Ordnance Factory Board, Kolkata vide letter dated 15.04.1993/Annexure CA-4, that while implementing the order, it should be ensured that the individuals, who were holding the trade of semi skilled as on 16.10.1981, were only to be given these benefits.
- (ix) It was clarified by the Ordnance Factory Board, Kolkata vide letter dated 23.09.1993/ Annexure CA-5, that the employees inducted into the semi skilled grade after 16.10.1981 will not be eligible for upgradation of pay scale of Rs.260 - 400 from the date of holding semi skilled grade but shall have to put in minimum years of services as specified in Ministry of Defence letter dated 15.10.1984.
- (x) The applicant Nos. 1 to 19 were appointed as Machinist 'B' Semi Skilled in 1982-83 in the pay scale of Rs.210 - 290 and applicant Nos. 20 to 36 were appointed as Labour 'B' prior to 16.10.1981 in the pay scale of Rs.196-232 and subsequently they were promoted to the post of

Machinist 'B' Semi Skilled in November 1981 in the pay scale of Rs.210-290. Thus none of the applicants were holding semi skilled grade as on 16.10.1981. Therefore, they were entitled to get the benefit of pay scale of Rs.260-400 after completion of 2/3 years service in the semi skilled grade as the case may be. But due to administrative error they were granted benefit of pay scale of Rs.260-400 from the date of their appointment/promotion in the semi skilled grade and this error was detected in 1999, when their eligibility for granting them financial up-gradation under ACP Scheme was checked from their service record.

3. Parties were directed to furnish their written arguments; and accordingly they have submitted the same.

4. Written Arguments were perused along with the pleadings.

5. The only issue involved in this case is whether the applicants' pay scale should be down graded (from Rs 260 - 400 to Rs. 210 - 290) for a period of two years/three years as the case may be, to rectify the (so called) mistake stated to have been committed by the Department caused by omission to take into account certain conditions specified in the order dated 15-10-1984, which mistake was located in 1993 and sought to be rectified in 2001! The question is whether at all there is any such omission. Even if there be an omission, the mistake committed

had admittedly not been due to any statement or misstatement of the applicants and as held in the following cases, in addition to the decision of the Apex Court in Shyam Babu Verma, referred to by the Respondents themselves in their written arguments, recovery of the excess amount has to be and has been prohibited:-

- (a) *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18:
- (b) *Bihar SEB v. Bijay Bhadur*, (2000) 10 SCC 99 :
- (c) *Col. B.J. Akkara (Retd.) v. Govt. of India*, (2006) 11 SCC 709 :
- (d) *Purshottam Lal Das v. State of Bihar*, (2006) 11 SCC 492 :
- (e) *State of Bihar v. Pandey Jagdishwar Prasad*, (2009) 3 SCC 117,
- (f) *State of Bihar v. Pandey Jagdishwar Prasad*, (2009) 3 SCC 117 :
- (g) *Paras Nath Singh v. State of Bihar*, (2009) 6 SCC 314 :
- (h) *Coop. Societies v. Israil Khan*, (2010) 1 SCC 440,
- (i) *Union of India vs .R. Vasudeva murthy* decided on 6th August, 2010, (2010) 9 SCC 30.

6. The part of the order of 1984 stated to have been omitted to be taken into account is as under:-

Fresh induction to the trades listed in (i) shall be from -

- (a) Semi skilled categories to be identified by you or feeder categories in the pay scale of Rs 210 - 290 already existing under the present recruitment Rules, subject to the workers having rendered minimum of three years service in the grade after passing the prescribed trade test and direct recruits with ITI Certificate/Ex

Trade Apprentices/NCTVT etc., inducted in the Semi Skilled grade who have rendered 2 years service in that grade.

(b) Direct Recruits with ITI certificate/Ex Trade Apprentices/NCIVT etc., inducted to the semi-skilled grade, who have rendered 2 years service in the grade.

On a careful consideration of the above stipulations, it would be clear that the very interpretation given to the above part of the order by the respondents and issue, consequently, of the show cause notice are fallacious. The order dated 15-10-1984 does not have an independent existence; it has to bank upon the spinal order (or the 'mother order') dated 16-10-1981. For, the anomalies committee had identified 23 trades which were earlier to have been grouped along with other trades as contained in the "mother order" dated 16-10-1981. (It would be seen that the date of implementation of fitment to the 23 trades, which was initially made effective from 15-10-1984, had been given retrospective effect from 16-10-1981 to bring these trades too at par with the other trades as contained in the earlier order dated 16-10-1981, vide order dated 19-03-1993 - Annexure CA-3) The conditions attached to all other trades alone could therefore be fastened to the 23 trades contained in order dated 15-10-1984. While extending the benefits conferred upon various trades as contained in the order dated 16-10-1981, instead of borrowing the very same words with regard to the attendant conditions, the order dated 15-10-1984 contained different wordings as extracted above. The above stipulation would thus correspond to any of the terms/conditions in the main order dated 16-10-1981. For this purpose, an anatomy of the order dated 16-10-1981 in so



far as the same relates to the issue in this O.A. is a must. The same is as under:-

- (a) on and from 16-10-1981 there would be five categories carrying five distinct scales of pay as under:-

| | |
|---------------|---------------|
| Unskilled: | Rs. 196 - 232 |
| Semi skilled | Rs. 210 - 290 |
| Skilled | Rs 260 - 400 |
| H.S. Grade II | Rs 330 - 480 |
| H.S. Grade I | Rs 380 - 560. |

- (b) The above grades are introduced in various trades as given in Annexure I to the order dated 16-10-1981.
- (c) Rescheduling of the existing ratio of posts upto 5% from Skilled to H.S. Grade II and from H.S. Grade II to H.S. Grade I in respect of certain trades as specified.
- (d) With the revised fitments, ' a number of jobs carrying semi skilled scales will stand upgraded to the skilled grade of Rs 260 - 400 **creating a vacuum in the grade structure at the semi skilled level.** In such cases, viable feeder grades should be identified at the semi skilled level in the same or allied grades or the posts in the jobs should be apportioned between scales of Rs 260 - 400 and 210 - 290.

7. It is with a view to fulfilling the above terms in respect of 23 trades that certain conditions have been provided and the interpretation of the conditions should go in tandem with the above terms only and any other interpretation would lead to imposing additional conditions, which cannot be permitted.

8. The term semi skilled appearing above refers to two distinct situations, vis., "semi skilled prior to upgradation" and

"semi skilled (posterior to the upgradation)". What is contemplated in the condition prescribed for is -

- (i) For induction to the semi skilled prior to upgradation (or skilled grade)
- (ii) the same should be from the newly identified semi skilled grade or those posts which are feeder grade to the already existing semi-skilled grade i.e. feeder grades to the erstwhile semi skilled grade of Rs 210 - 290.

9. At the cost of repetition, the conditions in issue are reproduced (with due interpretation in italics) as hereunder:-

Fresh induction to the trades listed in (i) (i.e. in the grade of Rs 260 - 400) shall be from -

(a) Semi skilled (*posterior to upgradation*)) categories to be identified by you or feeder categories (*to the semi skilled prior to upgradation*) in the pay scale of Rs 210 - 290 already existing under the present recruitment Rules, subject to the workers having rendered minimum of three years service in the grade after passing the prescribed trade test and direct recruits with ITI Certificate/Ex Trade Apprentices/NCTVT etc., inducted in the Semi Skilled(*posterior to upgradation*) grade who have rendered 2 years service in that grade.

(b) Direct Recruits with ITI certificate/Ex Trade Apprentices/NCIVT etc., inducted to the semi-skilled grade (*semi skilled posterior to upgradation*), who have rendered 2 years service in the grade.

10. The above interpretation should be applied in the case of the applicants. The applicants 1 to 19 are working as Machinist 'B' in the semi skilled grade (semi skilled prior to upgradation). Thus, they are, from the very first day entitled to the higher pay scale. Applicants 20 to 36, though these were

initially inducted as labour 'B', in the scale of Rs 196 - 232 and later on promoted from November, 1981 to the grade of semi skilled (semi skilled prior to upgradation). Thus, from the date of their placement in the grade of Semi skilled (prior to upgradation), they would be entitled to the higher pay scale. (In other words, the two years/three years' stipulation are applicable only to those semi skilled (posterior to upgradation) labourers and not to the semi skilled (prior to the upgradation) labourers.) The applicant belongs to semi skilled (prior to upgradation category).

11. Thus there is no error or irregularity in the fixation of pay scale at Rs 260 - 400 from the date the applicants had been posted as semi skilled. For, the post held by the applicants as stated above in the grade of Semi skilled is the semi skilled prior to upgradation. Thus the applicants have made out a cast iron case.

12. In view of the above, the O.A is allowed. The impugned order dated 26-06-2001 is hereby quashed and set aside. It is declared that the applicants' pay had been rightly fixed and there is absolutely no need to have any modification at all. Respondents, shall not therefore, make any attempt to revise the pay of the applicants.

13. Under the above circumstances, there shall be no orders as to cost.


Member-A


Member-J

Sushil