

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 18th day of ~~August~~^{Sep}, 2005.

Original Application No. 333 of 2004.

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

1. All India Association of E.M.E.,
Supervisor's Technical
through its Branch Secretary,
Kripa Shanker Yadav.
2. Kripa Shanker Yadav,
S/o Late D.D. Yadav,
R/o 150, Fatehpur Bichua,
Distt: Allahabad.

.....Applicants

By Adv: K.P. Singh

V E R S U S

1. Union of India through Secretary,
Ministry of Defence,
NEW DELHI.
2. The Secretary,
Department of Personnel & Training
NEW DELHI.
3. The Chairman,
Union Public Service Commission,
NEW DELHI.
4. The Director General of EME (EME-Civ),
Master General of Ordnance Branch
Army Headquarters, DHQ, PO,
NEW DELHI.
5. Commandant & M.D.
508 Army Base Workshop,
Fort, Allahabad.
6. Officer in Charge,
E.M.E. Records,
Secunderabad.

.....Respondents.

By Adv: Sri S. Singh & Sri S. Chaturvedi

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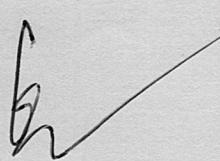
O R D E R

By K.B.S. Rajan, Member (J)

Applicant No. 1 in this case is an Association while applicant No. 2 is an individual and the applicants are aggrieved by order dated 09.04.2003 which is a promotion order whereas, according to the applicants it is no less than an order of demotion.

2. Briefly, the facts of the case are as under:-

- a. In Army Headquarters under M.G.O.'s Branch a Directorate called E.M.E. exists. Of the various functionaries working thereunder, technical supervisors have their own recruitment rules. The hierarchy in this cadre consists of
 - (i) Machinist Trade man,
 - (ii) Senior Chargeman,
 - (iii) Foreman; and
 - (iv) Assistant Engineer.
- b. Applicant No.2 was originally appointed as Machinist Trainee and had been promoted first as Senior Chargeman and, thereafter, as Foreman, the promotion as Foreman having been granted to him in February 1988. As stated earlier the next higher grade in the ladder of promotion is Assistant Engineer, A group 'B' Gazetted post. While he was anticipating this promotion, according to the applicant, in view of the recommendations of V CPC, a four grade structure in respect of the Technical Supervisor Wing has been introduced vide order dated 20.9.2002 (Annexure 15) as per which the four designations are -



- (a) Chargeman Grade II (part I and Part II)
- (b) Chargeman Grade I (Pt I and Pt II)
- (c) Assistant Foreman (erstwhile Asst Engineer)
- (d) Foreman (New post)

c. The ratio of the above post from Foreman to Chargeman Grade II is respectively 5%, 25%, 25% and 45%.

d. Earlier in another OA No. 1353/03 this Tribunal had directed the respondents to consider the representation of the applicant and pass a speaking and reasoned order so that in case by the consideration of the case of the applicant the respondents allow the claim, there is no requirement of the Tribunal deciding the issue and in case the respondents have stuck to their gun, the applicants could move a separate O.A. The respondents have furnished the following decision.

SPEAKING ORDER OF DGEME IN PRESPONSE TO CAST ORDER DATED 06 NOV 2003 IN OA No. 1353 OF 2003 FILED BY SHRI KRIPA SHANKAR YADAV VS UOI AND OTHERS.

1. WHEREAS, Shri Kripa Shankar Yadav, S/o late DD Yadav who is serving as Asst Foreman at 508 Army Base Wksp, Allahabad hereafter referred to as applicant, had approached Hon'ble CAT Allahabad Bench, Allahabad vide Original Application No. 1353 of 2003.
2. AND WHEREAS, Hon'ble CAT Allahabad has ordered Dte Gen of EME, Army Headquarters, vide their Order dated 06 NOV 2003, to decide the representation of applicant dated 03 Jul 2003 and 22 Jul 2003 in consultation with the Respondent No. 2 i.e., The Secretary DOP & T and Respondent No. 3 i.e., The Chairman UPSC by reasoned and speaking order.
3. AND WHEREAS, In his representation dated 03 Jul 2003 and 22 Jul 2003 of the applicant have



been examined and commented in succeeding paragraphs.

4. AND WHEREAS, the applicant was appointed by promotion to the post of Senior Chargeman (Gp 'C' post in pay scale of 250-10-290-15-EB-15-380 pre revised) on 12 Jun 1982 and later promoted as Foreman (Gp 'C' post in the pay scale of 1600-50-2300-EB-60-2660 pre revised) on 22 Feb 1988.
5. AND WHEREAS, the post of Senior Chargeman and Foreman were re-designated as Chargeman II (500-150-8000revised) and Chargeman I (5500-150-9000 revised)respectively vide Govt. of India, Min of Def letter No. B/03420/EME Civ-2/1369(Civ-1) DATED 15 Jul 1998.
6. AND WHEREAS, the applicant was accordingly re-designated as Chargeman-I vide Pt II order No. 161/NI/98 dated 16 Dec 1998 pay fixed Rs. 6725/-.
7. AND WHEREAS, AS PER Vth CPC recommendations Govt. of India, Ministry of Def introduced the revised structure for Technical Supervisory Staff in Defence Establishments vide Govt of India letter No.11(13)/97/D(Civ-1)dated 26 Dec 2001. Accordingly, the posts were sanctioned in the Corps of EME vide Govt of India Min of Def letter No B/03420/EME-1484/D(O-II) dt 20 Sep 2002.
8. AND THEREBY, two additional posts were introduced over existing twp grade of Chargeman Grade-II and Chargeman Grade-I. The revised structure is as follows:

Ser	Grade	Pay Scale	No of Posts	Remarks
			Existing	
			Revised	
a.	Foreman	7450- 225- 11500	- 50	New Grade Introduced.
b.	Asst Engineer	6500- 200- 10500	48} }	
c.	Asst Foreman	6500- 200- 10500	-} 248	New Grade
d.	Chargeman- I	5500- 175- 9000	158 248	Existing Grade
e.	Chargeman- II	5000- 150- 8000	787 447	Existing Grade

			993	
			993	



9. AND WHEREAS, it may now be observed that applicant was Foreman in the pay scale of 1600-50-2660 (equivalent to revised pay scale 5500-175-9000) in the year 1988 and which was redesignated as Chargeman Gd-I in pay scale 5500-175-9000, was a lower post than the post of Asst Foreman in pay scale 6500-200-10500, a Group 'B' Gazetted Post, now introduced vide Govt. of India Min. of Def. letter No. B/03420/EME-1484/D(O-II) dt. 20 Sep. 2002. Hence, the grievance of the applicant that he has been demoted from Foreman to Asst. Foreman is unreasonable and unsustainable. As he has gained in the scale. The designations however, were changed by Vth CPC in order to bring uniformity and to make it common for all Defence organizations.

10. AND WHEREAS, the Govt. vide letter No.11(13)/97/D(Civ-1) dated 26 Dec. 2001, merged the post of AE with supvr and revised the ratio of supervisory staff. Accordingly the new posts were sanctioned and the post of AE was abolished vide Govt. letter No. B/03420/EME-1484/D(O-II) dt. 20 Sep. 2002. However, the existing incumbents of the post of AE were allowed to retain the designation till they are wasted out by promotion/retirement. As per the said Govt. letter AE and Asst. Foreman are in the same pay scale of 6500-10500 and considered as Feeder post for promotion to next post of Foreman in the pay scale of Rs.7450-225-11500. As the post of Asst. Foreman was a new post, RRs were required to be framed before effecting promotions. Therefore, pending finalisation of RRs, a one time relaxation was obtained from UPSC to promote CM-I as Asst. Foreman as Adhoc measure. As Asst. Foreman were promoted on 09 Apr. 2003 and did not completed stipulated two Yrs. service in the grade thereby no individual was eligible for promotion to Foreman from existing Technical Supervisor. However, the Asst. Engineers being Feeder for post of Foreman, they have been considered and promoted. Accordingly, promotion order for 27 AE out of 28 held who have been found fit by DPC were issued vide EME Records letter No.1625/T-10/02/CA-3 dated 09 Apr. 2003. The existing AEs on promotion to Foreman were further redesignated as AE (Selection Grade) vide Govt. of India Min. of Def. Letter No. B/03420/EME/D(O-II) dt. 01 Sep. 2003.

11. AND WHEREAS, it is once again reiterated that the Foreman post existing in the year 1970 in the pay scale of (Rs 550-750, pre revised as per 3rd CPC) and (1660-2660 as per 4th CPC) and re-designated as Chargeman I in the pay scale of Rs.5500-175-9000, prior to 1998 is not equivalent to Group 'B' Gazetted post of Foreman in the pay scale of 7450-11500

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sanctioned by the Govt. of India Min of Def vide letter No. B/03420/EME-1484/D(O-II) dt. 20 Sep. 2002. Hence, Foreman Group 'C' non-Gazetted who were redesignated as Chargeman-I (Non-gazetted) in the year 1998 have been considered for promotion to Asstt. Foreman. The next promotional post in the scale of 6500-10500 (Gazetted post).

12. AND WHEREAS, as per DOP&T instruction, the individual is required to be kept on probation for two years when promoted on selection basis. Hence, accordingly, the Chargeman-I which is Group 'B' non-Gazetted post on promotion to Asstt. Foreman which is Group 'B' (Gazetted) posts have been kept on probation for two years.

13. AND WHEREAS, the post of Foreman, Asstt. Foreman, CM-I and CM-II which forms part of Technical Supervisor staff are non-industrial posts benighted supervisory post.

14. AND WHEREAS, the post of Asst. Foreman being supervisory post, their duties and privileges are different from AE which is a part of Civilian Workshops Officers cadre, the duties of Asst. Foreman are being finalized in consultation with DOP&T.

15. AND WHEREAS, Shri K.S. Yadav, the applicant has been kept on probation from time to time as per provision in recruitment rules. The individual was kept on probation on following promotion as per provisions of Recruitment Rule quoted against each one of them.

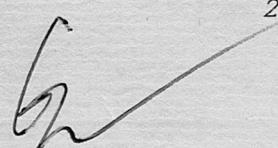
(a)	Machinist	2 yrs probation	Initial Rectt.
(b)	SCM	2 yrs probation	SRO 181 dated 12 May, 1977.
(c)	Foreman	2 yrs probation	-do-
(d)	Asst. Foreman	2 yrs probation	Mode of recruitment as per UPSC letter

No. F.No.5/4(1)/2003 -
RR dated 01 Apr 2003 &

F.No.5/4(1)/2003-RR
dated 28 May 2003.

Since getting promoted
from CM-I, which is group
'C' to Assistant Foreman
Group 'B', post.
Individual placed on
probation for 2 years as
per DOP&T norms.

16. AND WHEREAS, it is hereby clarified to the applicant that promotion avenue for the applicant still shall exists as per Govt. letter No.B/03420/EME-1484/D(O-II) dt. 20 Sep. 2002. Moreover, as per DOP&T OM No.AB-



14017/2/97-Estt (RR) dt. 25 May 1998 the specific qualifying service for promotion from one post (pay scale) to other post (increased pay scale) has been laid down. Hence, no individual can be promoted without completing qualifying service as prescribed by DOP&T. The same provisions will be included in Recruitment Rules under consideration of DOP&T/UPSC.

17. THEREFORE, your grievance, not being genuine, are rejected.

Sd/
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Case No. : B/04318/803/EME Civ-2
(VK Dhir)
Directorate General of EME
Lt. Gen
Master General of Ordnance Branch
DGEME
Army Headquarters, DHQ (PO)
New Delhi - 110011.

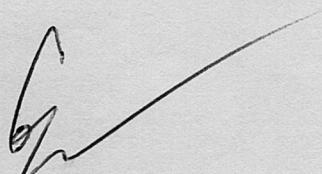
Dated : 20 Feb 2004.

To,

Shri Kripa Shanker Yadav
Assistant Foreman
508 Army Base Wksp
Allahabad-5.

(e) According to the applicant the above restructuring has detrimentally affected the status, the designation, and attendant aspects, which is illegal. The applicant further submits that the respondents, instead of filling up the post prior to restructuring, had kept them vacant and by the impugned order had affected promotion, which is also illegal. The applicant, therefore, inter-alia sought the following relief(s) :-

i. That the department be directed to convene DPC for the preparation of year wise panel for promotion to the post of Assistant Engineer w.e.f. 2001 onwards.

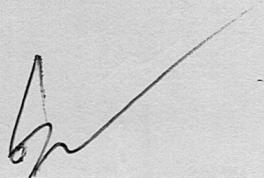


ii. The respondents be directed to accordingly be modify the promotion order dated 9.4.2003 impugned herein.

iii. In respect of those who were promoted so, their status as Group Gazetted that existed prior to the four grade structuring be continued.

3. The respondents have contested the OA. They have stated that the Govt. of India, Ministry of Defence, vide their letter dated 26.12.2001 and 20.9.2002 introduced a new four grade structure of technical supervisory staff in the corps of EME in the ratio of 45:25:25:05 respectively for Chargeman Grade II, Chargeman Grade I, Assistant Foreman/Assistant Engineer and Foreman. According to the respondents his promotion to the post of Assistant Foreman was w.e.f. 7.4.2003 and was placed on probation for a period of two years.

4. According to the respondents the applicant in this case or for that matter any one in the hierarchy has not been placed in a detrimental position and all that has taken place was uniform nomenclature. In some cases the Assistant Engineers may be called Assistant Foreman and as a matter of policy the status of Assistant Foreman and Assistant Engineers has been prescribed as Group 'B' non gazetted. They have therefore contended that no grievance can be made out by the applicants and the

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application being devoid of merits is liable to be dismissed.

5. Arguments were heard and the pleadings perused. The four grade structure has been introduced in pursuance to the V C.P.C and the same is uniformly and universally applicable to the entire Ministry of Defence. Order dated 26.12.2001 refers. The same reads as under.

"No.11(13)/97/D(Civ.I)
Government of India
Ministry of Defence
New Delhi,
the 26th December, 2001

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

*Subject: Recommendations of the Vth CPC
regarding introduction of four Grade
Structure for Technical Supervisory Staff
in Defence Establishments.*

Sir,

The undersigned is directed to refer to the recommendations given by the Vth CPC in paras 54.45, 63.252, 63.302 and 63.303 of its report and to say that the Government have accepted the recommendations to introduce four grade structure for the Technical Supervisory category in Defence Establishments in the ratio of 35:25:25:15 for Chargeman Grade II, Chargeman Grade I, Assistant Foreman and Foreman respectively. Accordingly, the sanction of the President is conveyed the authorization of the revised pay scales and the grade structure as indicated in the Annexure for the

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respective categories. For AOC, EME and OFB (Non-Technical Category) the ratio will be as indicated in the Annexures, as per the specific recommendations of the Pay Commission for these organizations.

2. The existing cadre of Technical Supervisory Staff will be restructured by suitable up gradation and down gradation of the posts. If the revised number of posts is in excess of the existing strength of a particular grade, the difference will be deemed as newly sanctioned post in that grade. Similarly, if the revised number of posts in a grade is less than the existing strength, the number of posts equal to the difference will be treated as having been abolished in that grade. In case any of the existing employees cannot be adjusted within the newly introduced ratio, they will not be reverted and they shall hold the scale as personal to them till they wear out by promotion, retirement etc. However, the period of such retention of scale on personal basis shall not count for the purpose of eligibility for further promotion.

3. Direct recruitment should be introduced to the extent of 33-1/3 % from amongst three years diploma holders in Engineering/B.Sc. at the level of Chargeman Grade.II, wherever, it is not already existing and the Recruitment Rules amended accordingly. Until the recruitment Rules (RRs) are amended, filling up of the post of Chargeman Gr.II through other

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streams shall not exceed 66-2/3% of the vacancies.

4. Recruitment Rules for the new grade (s) which are to be introduced in the respective organizations, should be framed and placement of individuals in that grade(s) be done only after individuals in that grade(s) be done only after fulfillment of the criteria as prescribed in the Recruitment Rules. Action should be taken by the concerned organization, in consultations with concerned administrative section in the Ministry and Integrated Finance for redistribution of the posts and framing of Recruitment Rules for all grades so as to have uniformity in the RRs in all the organizations, for ensuring anomalies-free implementation of the orders.

5. These orders will be effective from the date of issue. The actual benefit would, however, be admissible from the date of actual placement of the individuals in different grades on restructuring.

6. This issues with the approval of Defence (Finance/AG/PB) vide their I.D.No.933 AG/PB dated 26.12.2001.

Yours faithfully

Sd/-

(Piara Ram)
Under Secretary to the
Govt. of India"



6. There have been two further orders passed by the Respondents which reads as under:-

(A) Order dated 20-09-2002

B/03420/EME- /D(O-II)

Government of India
Ministry of Defence
New Delhi, the 20th Sept 2002.

To

The Chief of the Army Staff

Subject : Introduction of Four Grade Structure of Technical Supervisory Staff in the Corps of EME.

Sir,

I am directed to refer Ministry of Defence Letter No. 11 (13)/97/D(Civ-1) dt. 26 Dec, 2001, and to convey6 the sanction of the President to introduce new grades of Technical Supervisory Staff of Corps of EME in the ratio of 45:25::25:5 for Chargemen CM II(both Pt I & II Cadre), Chargemen Gd-1 (both Pt I & II Cadre), Chargemen Foreman/AE and Foreman respectively and to restructure the existing cadre of supervisor staff as indicated in Annexure. The designation of Assistant Engineer would be applicable incase of existing incumbent of the post only who are in position as son the date of issue of this letter.

2. In case any of the existing employees cannot be adjusted within the newly introduced ratio, they will be reverted. They shall hold the scale as personal to them till they wear out by promotion, retirement etc. However, the period of such retention of scale as personal basis shall not count for the purpose of eligibility for further promotion.

3. EME Directorate will take necessary action to framing/amending the Recruitment Rules for the above grades in consultation with DOPT and Union Public Service Commission as per instant instructions on the subject.

4. These orders will be effective from the date of issue. The actual benefit would however be admissible from the date of actual placement of the individuals in different grades on restructuring.

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5. This issue with the concurrence of Defence (Finance) vide their U.O. No. 2026/01B of 2002.

Yours faithfully,
Sd/-
(S.K. Khurana)
Under Secretary
to the Govt. of
India

(B) Order dated 01-09-2003

B/03420/EME- /D(O-II)

Government of India
Ministry of Defence
New Delhi, the 1st Sept 2003.

To

The Chief of the Army Staff

Subject : Introduction of Four Grade Structure of Technical Supervisory Staff in the Corps of EME.

Sir,

In partial modification to Ministry of Defence Letter No.B/03420/EME-1478/D(O-II) dt. 20th September 2002, it is stated the existing incumbents of the post of Assistant Engineer in the scale of Rs.6500-10500 will on promotion to the next grade of Foreman in the scale of Rs.7450-225-11500 be designated as Assistance Engineer (Selection Grade). The re-designation will be personal to them and will stand abolished after their wasting out by way of retirement etc. Further, the re-designation will not have any financial repercussions, whatsoever, directly or indirectly.

Yours
faithfully,

(S.K. KHURANA)
Under Secretary to the Govt. of India

Copy to :- D(Civ)/D(Applt.) Section MOD
The CCDA, All CDAs
MOD (Fin. IB)

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7. The applicant contends that the aforesaid four grade structure is in a way a demotion to them as the nomenclature has changed. For example applicant No. 2 joined duty in January 1963 as a Machinist Trainee and was appointed as Tradesman (Machinist) in June 1964 where after he was promoted as Senior Chargeman (for two cadre) in June 1982 and then promoted as Foreman Part II Cadre in February 1988 and when he has been expecting a higher promotion in a gazetted rank after serving 16 years as Foreman, to the rank of Assistant Engineer, he has now been promoted only as Assistant Foreman, which post he was holding as early as 1982 though in the name of Senior Chargeman. Thus according to the applicant his promotion vide the impugned order is only a demotion.

8. The counsel for the applicant further contended that at every stage he had undergone the requisite probation period and as such while there is no requirement at all for placing him on probation in the recent promotion vide the impugned order at Annexure 1, his being placed so is again illegal.

9. It has further been contended that the four grade structure has been introduced only in December 2001 whereas vacancies in the higher posts had occurred anterior to the introduction of the four grade structure and as such promotion to the higher

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rank should have taken place in accordance with the provisions of the then existing rules. The applicant relies upon the case of Y.V. Rangaiah vs Srinivasa Rao (1983) 3 SCC 284 according to which vacancies should be filled up in accordance with the rules that existed as on that date. It has also been contended by the applicant that though the four grade structure has been introduced through an executive order, no recruitment rules to that effect have been either framed or the existing rules so modified.

10. The respondents, through their counsel have however stated that though the applicant was originally placed as Foreman, preceded by Senior Chargeman, by virtue of change in nomenclature, the erstwhile Senior Chargeman has been re-designated as Chargeman Grade II maintaining the same pay scale/replacement scale. Similarly, the earlier post of Foreman in the grade of 1600-2600 has been renamed as Chargeman Grade I in the same pay scale/its corresponding replacement scale. Thus the earlier Foreman is the present Chargeman Grade I and the immediate higher post to Chargeman Grade I is Assistant Foreman/Assistant Engineer Group 'B' Non gazetted. It is, therefore, perfectly legal in appointing the applicant as Assistant Foreman w.e.f. April 2003. As regards non promotion at the time when the vacancies arose, the counsel for the

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respondents submits that a conscious decision was taken not to fill up and of the vacancies in view of the decision to have the four grade structure. Again in the absence of regular recruitment (amendment) rule, the executive instructions shall hold the field. This has not however been substantiated.

11. The counsel for the respondents on the day of hearing was asked to furnish clarification in respect of the following:-

- a. Whether promotion can be made held even without the existence of Recruitment Rules.
- b. Whether the vacancies for 2001 were kept unfilled with conscious decision of filling the same after revision of the Recruitment Rules.

12. The respondents, through their counsel have however stated that though the applicant was originally placed as Foreman, preceded by Senior Chargeman, by virtue of change in nomenclature, the erstwhile Senior Chargeman has been re-designated as Chargeman Grade II maintaining the same pay scale/replacement scale. Similarly, the earlier post of Foreman in the grade of 1600-2600 has been renamed as Chargeman Grade I in the same pay scale/its corresponding replacement scale. Thus the earlier Foreman is the present Chargeman Grade I and the immediate higher post to Chargeman Grade I is



Assistant Foreman/Assistant Engineer Group 'B' Non gazetted. That the applicant was appointed as Assistant Foreman w.e.f. April 2003 therefore, perfectly legal, contended the counsel for respondents.

13. The respondents could not answer the question raised during the course of arguments. There could be a decision to have five grade structure, but the same could be operative only after the amendment of the recruitment rules. Even if it is assumed that during the interregnum period the executive instructions would fill in the gap, yet, the decision cannot have any ~~prospective~~^{retrospective} effect. Again, the respondents could not satisfy the court that the decision taken to keep all the higher posts vacant till the restructuring took place was a conscious decision. Perhaps, there could not be such a conscious decision as, had there been such a decision, retention of certain posts of Foreman and above would not have been available. In this regard, para 2 of order dated 20th September, 2002, is relevant which reads as under:-

"2. In case any of the existing employees cannot be adjusted within the newly introduced ratio, they will not be reverted. They shall hold the scale as personal to them till they wear out by promotion, retirement etc., However, the period of such retention of scale as personal basis shall not count for the purpose of eligibility for further promotions."

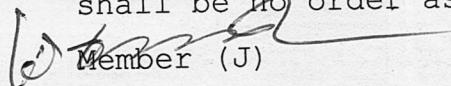
14. In fact the above provisions should have been made applicable to the applicants who wanted to have their position as Foreman and further promotion as available prior to the restructuring kept intact. All that the applicants desired is the same. As such, the respondents should ask the applicants and similarly situated persons, whether they would opt for retention of the old post of Foreman and further

(Signature)

higher posts for their promotion and if so, they should be allowed to continue. Promotion as per law, from the date the vacancies in the promotional posts of Assistant Engineer etc., should be considered and if found fit the applicants and similarly situated persons, who opt for the same should be so promoted notionally from the date the vacancies arose, and actually they are so promoted. In case the applicants and similarly situated have already been afforded the promotion in the restructured grade, then the date of such promotion should be treated as the actual date of promotion from the post of Foreman and actual pay and allowances paid accordingly.

14. The O.A. is disposed of on the above terms and the exercise of conducting DPC for posts higher than Foreman (under the pre-revised structure) should be completed within a period of six months.

Under the above facts and circumstances, there shall be no order as to costs.


Member (J)


Member (A)

/pc/