

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 23rd Day of April 2014)

Hon'ble Mr. Justice S.S. Tiwari, Member (J)
Hon'ble Ms. B. Bhamathi, Member (A)

Original Application No.638 of 2004

1. Parachute Factory Employees Union, Kanpur, a trade Union, registered under the Trade Unions Act, having its office at 11/42 (15) Krishna Nagar, Kanpur Nagar 208007, through its President Sri Supriya Roy, son of Sri Hara Prasad, resident of House No.124, Rampuram Teachers' Housing Society, 80' Road, Shyam Nagar, Kanpur Nagar.
2. Sri Raj Kishore Yadav, aged about 31 years, son of Sri Bachu Lal, resident of House No.818, Gandhi nagar, Unnao, presently employed as Tailor Skilled, T. No.8531/L, P-6, Ordnance Parachute Factory, Kanpur.
3. Sri Prem Kumar, aged about 33 years, son of Sri Chotey Lal, resident of House No.L5/1, Ganga Vihar, K.D.A. Colony, Jajmau, Kanpur Nagar presently employed as Tailor Skilled, T. No.8438/L, M-4C, Ordnance Parachute Factory, Kanpur.

..... Applicants

By Advocate: Shri M.K. Upadhyay

Versus

1. Union of India through the Secretary Ministry of Defence, Department of Defence Production & Supplies, Government of India, New Delhi.
2. The Chairman, Ordnance Factory Board/Director General of Ordnance Factories, 10-A, Shaheed Khudi Ram Bose Road, Koklata.



3. The General Manager, Ordnance Parachute Factory, Napier Road, Cantt. Kanpur Nagar.

..... Respondents

By Advocate: Shri Himanshu Singh

O R D E R
(Reserved on 11.02.2014)

Delivered by Hon'ble Ms. B. Bhamathi, Member (A)

This O.A. has been instituted for the following relief/s:-

The Respondents be directed to grant promotion to the employees listed in the Tailors against vacancies of Skilled Tailors in the Ordnance Parachute Factory, Kanpur, to the Highly Skilled Grade with effect from 20.05.2003 or at least from the date from which they were subsequently made Skilled Tailors and the required ratio of 55% of the Authorised/Sanctioned strength of Tailors, in the grade of Highly Skilled be maintained by ordering the requisite promotions to the said employees by granting relaxations in regard to trade test, DPC, qualifying service etc. as a one-time measure, as was done in the case of those who were placed as master Craftsman, in terms of the Ministry of Defence Order dated 20.05.2003 and the DGOF instructions dated 12.07.2003.

The pleadings of the applicant as follows:-

2. On 13.3.1995 respondents issued guidelines SRO 185 of 1994 superseding the earlier SRO of 1989 which provided for minimum qualifying service in the feeder cadres for promotion from Semi Skilled grade to Skilled grade, Skilled grade to HS grade. Such promotions are granted on passing of Trade Test. Direct



recruitment in the Semi Skilled grades given in Annexure A of SRO were given from N.C.T.V.T. certificate holders in the relevant trade failing which by I.T.I. or equivalent Diploma or Certificate holders. The employees named in Schedule-I of SRO are N.C.T.V.T. passed candidates and few others who were recruited as labourers and who subsequently passed the trade test and were promoted to Tailors Semi Skilled after working for a qualifying period of three years as labourers. All of them were appointed as tailors Semi Skilled against the vacancy of tailor Skilled in 2001/2002. The SRO also gave government the power to relax conditions for such promotions with respect to any class or category of employees. Before the recommendation of the Vth Pay Commission, Industrial employees in defence establishment under the Ordnance Factory Board were categorized into Skilled, HS II and HS I in the ratio 65:20:15. They were inducted as Semi Skilled. After qualifying service of two years, they were promoted to Skilled before further promotion as HS II and HS I. However, for the trade of tailors there was only one sanctioned strength and no inter grade ratio was prescribed. There was also no post of Master Craftsman (MCM) in the Tailor Trade. The Government of India issued the restructuring orders w.e.f 20.5.2003 in respect of artisan staff in the light of the recommendation of the Vth Pay Commission by which



grades/pay scales of industrial and non industrial trades were modified. The merger of HS II to HS I was treated to come into effect from 1.1.96 and the grade structure of Skilled and Highly Skilled were prescribed in the ratio 65:35 (20+15) and it was mentioned that the selection from Highly Skilled grade to the grade of Master Craftsman i.e. 10% of 35% would be w.e.f. 1.1.96 upto 20.5.2003. Thereafter, placement of individuals in the post resulting from restructuring and ratio revision was to be made w.e.f. 20.5.2003, relaxing the condition relating to the Trade Test, DPC qualifying service etc. as one time measure. It was also provided in the said order that w.e.f. 20.5.2003 all trades classified as Skilled shall be modified in the inter grade ratio of 45:55 for Skilled and HS respectively with 25% of 55% placed as Master Craftsman, although, Master Craftsman was not treated as part of the hierarchy. It was further stipulated that the inter grade ratio shall be worked out based on sanctioned/authorized strength. On 12.7.2003, the operating instructions were issued by the MoD carrying out the revisions from 20.5.2003, inter alia, stating that inter grade ratio in respect of all Skilled trades including all erstwhile ratio trades and left out trades shall be in the revised ratio. The factories were directed to calculate inter grade ratio on the basis of the then existing authorized/sanctioned strength. It was further directed that

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the promotion of the individuals in the posts resulting from restructuring and ratio revision shall be made on seniority basis w.e.f. 20.5.2003 in relaxation of Trade Test, DPC qualifying service etc. as one time measure. This was to be implemented within one month of issue of instructions. The case of the applicants is that the authorized strength/ sanctioned strength of tailors has been 2572. On this basis they should have been Skilled and Highly Skilled Tailors in the ratio 45:55. On such strength there should have been 1157 tailors of the Skilled grade i.e. 45% of sanctioned strength and 1415 of the HS grade i.e 55% of sanctioned strength and 25% of HS grade ought to have been placed as MCM. Thus 354 persons should have been given promotion/placement as MCM out of HS grade 1415, leaving the strength of HS grade at 1061. This strength was not maintained for the HS grade by giving one time relaxation. The respondent gave placement to 354 persons in the grade of MCM, but there remained only 556 Highly Skilled tailors against the required strength of 1061 as per the amended ratio. The remaining post of Highly Skilled and Skilled categories was not filled up by Semi Skilled tailors to make up the deficiency and giving the benefit of one time relaxation in accordance with the prescribed inter grade ratio as was done in the case of MCM. When only 320 Highly Skilled Tailors were available, to make up the deficiency of



34 members in the required strength of 354 MCM, they promoted 34 tailors by giving one time relaxation by which they got double promotion from Skilled to Highly Skilled and further MCM, in one go. However, the respondents omitted to maintain the ratio in the lower grade categories of Highly Skilled and Skilled by not promoting all the applicants by granting them similar relaxation as was done in the case of MCM. When the applicants approached the respondents with representations the issue was not conceded. Hence, this O.A. was filed.

3. The case of the respondents is that the Semi Skilled grade is treated as trainee scale and their placement from Semi Skilled to Skilled is done only after completion of two years of service. Not all trades were categorized into Skilled, HS II and HS I grades. Among the trades that were so categorized, the ratio of 65:20:15 was not applicable to all. For example the trade of tailors had three grade structure but not the prescribed ratio. It has also been submitted that 10 % of the 25% of the Highly Skilled was provided for only those trades for which the provision of MCM already existed which was not applicable in the case of tailors. The one time relaxation, from 20.5.2003 upto the date stipulated for implementation of cadre restructuring and revised inter grade ratio,

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was not to be replicated. For the IEs who have been promoted to Skilled grade after implementation, the relaxation is not applicable. These employees will be eligible for promotion only after completing 2/3 years of service in the Skilled grade and after meeting other criteria. It was vide order dated 12.7.2003 that the new inter grade ratio was made applicable for all trades. The restructuring scheme effective from date of issue of order was a one time measure to promote from Skilled to Highly Skilled grade and placement from Highly Skilled to MCM. Since the movement of tailors from Semi Skilled to Skilled grade is not a part of the above restructuring or ratio revision, no relaxation can be given to Semi Skilled category, which is a trainee scale and the placement of individuals from Semi Skilled to Skilled can be done only after two years of service. Those Semi Skilled employees, who completed prescribed two years of service before the date of implementation of the order have been placed in Skilled grade and promoted to HS grade as per the revised inter grade ratio under the relaxation provided as one time measure. The remaining Semi Skilled tailors, who had not completed two years, cannot be given such relaxation. Hence, one time relaxation was not applicable to employees who have been promoted to Skilled grade after the implementation of the revised inter grade ratio. These employees will be eligible for promotion to HS grade after

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completing three years in Skilled grade as required by SRO subject to the vacancy being available when they become eligible.

4. In the Rejoinder Affidavit, the applicants have submitted that after undergoing trade apprenticeship training for 1 and ½ years and after qualifying the NCTVT, they were selected for appointment against the vacancies of Skilled grade though they were initially designated as Semi Skilled Tailors. They got all the facilities available to regular employees and got such facilities that are not available to trainees. It has also been mentioned by respondents that for purpose of counting period of service for upgradation under ACP scheme, the length of service in the Semi Skilled grade cannot be offset against the entitlements under the ACP schemes. In the appointment letters issued to the applicants as tailor Semi Skilled, there was no mention that they would be treated as trainee. They were appointed on probation, as in the case of other appointees on higher post. Applicants have annexed RA-1, RA-2 and RA-3 to clarify this point. Annexure CA-1 of the respondents also states that in respect of Skilled grade, recruitment is made against posts sanctioned in Skilled grade but incumbents are allowed Semi Skilled grade for the first two years for those who came after training and NCTVT and three years for persons who are promoted from lower grade viz



labourers after passing the prescribed trade test. Applicants who were appointed as Semi Skilled were appointed against Skilled posts with 2 or 3 years probation, as the case may be. It was only in view of the requirement of specified length of service that provision of relaxation has been given by the government in the matter of cadre restructuring. There was no category of Semi Skilled in cadre restructuring scheme and they were treated Skilled just as HS Grade II and HS grade I have been treated as Highly Skilled. The Tailor Trade was one of the left out trades after expert classification committee report, hence the ratio was not applicable to them till after 20.5.2003, when the ratio of 45 (Skilled) and 55 (HS) was provided for. In the tailor trade Highly Skilled posts were required to be filled up against the strength of sanctioned post and applicants have only demanded compliance of such a requirement. The applicants have not admitted that for Industrial employees, who came in Skilled grade no relaxation is applicable, as there is no such embargo in the Government order. Skilled cadre posts include Semi Skilled and Skilled as those inducted as Semi Skilled mere taken against Skilled cadre. They were also working against Skilled post and recruited against sanctioned strength of Skilled post and hence cannot be denied the benefit of promotion to HS category to make good the gap in the prescribed ratio. This is precisely the objective of

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the order of 20.5.2003. No other criteria is required other than what has already been mentioned by the applicant for obtaining the benefit of one time relaxation. It is matter of discrimination that only the trade of tailor is not being considered for similar implementation of one time relaxation although they have been included in the cadre restructuring scheme. If nothing, the one time relaxation could in any case be given to the applicants at least w.e.f. from the date on which the applicant were designated as Skilled. The provisions of relaxation are meant for every employee who came in Skilled category and there cannot be any cut off date for denying such benefit to the applicants.

5. We have gone through the O.A., Rejoinder Affidavit of the applicant and also annexures A-1 to A-12 accompanying the O.A.

6. We have also gone through the Counter Affidavit filed by the respondents accompanying the Annexure CA-1.

7. We have heard the learned counsels on behalf of the applicant and respondents and perused the facts and circumstances of the case.

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8. The main issue in question is whether applicants qualify for one time relaxation to be promoted from Skilled to HS and from HS to that of MCM as per the policy notified by MoD with the approval of President of India. It is an admitted position that they were appointed as Semi Skilled for whom the qualifying years of service is 2 years for promotion to Skilled category and minimum of 3 years of service for promotion to HS Grade II. SRO prescribes qualifying years of service for each level of promotion upto HS I and then for placement as MCM from HS I. The respondents' claim is that at the time the benefit of relaxation was to be made available w.e.f. 20.5.2003 only those, who had completed the required years of service in the Skilled grade were considered for promotion/placement to HS grade and above. The applicants had not completed the qualifying years of service as Semi Skilled at the time of implementation of orders. Neither was the Semi Skilled grade covered in the restructuring scheme nor was the revised inter grade ratio applicable in the case of the applicants. Hence, they were not entitled to relaxation. To counter this line of argument, the applicants have also not pointed out with documentary support whether any of the applicants, who had not completed the qualifying years of service in the Skilled grade were wrongly included in the promotion/placement to HS and above. Nor they have shown

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whether any of the applicants have been wrongly excluded, even though, they have completed the qualifying years of service for implementation of the orders w.e.f. 20.5.2003. Also, as per the respondents, the case of 34 persons, who were promoted to HS and above grade were those cases, who had completed the qualifying years of service at each level i.e. Semi Skilled to Skilled and Skilled to HS etc. and therefore were entitled for relaxation as per the one time relaxation. No case with documentary support has been made out by the applicants that any of those 34 persons were not qualified on the basis of qualifying years of service in the concerned grade, to be promoted/placed in HS and above grades. Hence, the case of these 34 persons also cannot be claimed to be similarly situated to that of the applicants, as the 34 persons have completed qualifying years of service, while the applicants had not. So long as it is not established that either category of wrong inclusion or wrong exclusion has taken place, no case of discrimination can be considered to have been made out. The principle of discrimination only applies to discrimination in similarly situated cases.

9. On the issue of the status of the applicants as Semi Skilled, the respondents have stated that they were in the trainee scale when they were first appointed. On the other hand, the case of

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the applicants is that they were inducted against the sanctioned posts of Skilled grade and that the Skilled grade and Semi Skilled grade were actually part of Skilled category just as that of HS I to HS II were merged as part of HS category. Neither statements of the respondents and applicants are borne out by records. From SRO dated 1994, it is clear that Semi Skilled workmen were above that of un-skilled workmen and below that of Skilled workmen. Unskilled workmen were promoted as Semi Skilled on completion of 3 years of service and Semi Skilled workmen were to be given promotion as Skilled workmen on completion of 2 years of service. The Restructuring scheme/policy does not mention the Semi Skilled, which is a distinct category and therefore, the claim that Semi Skilled and Skilled were interchangeable because they were appointed against Skilled posts does not bring them under the purview of the Restructuring scheme with the accompanying stipulation to implement the inter grade ratio based on sanctioned/authorized strength. The fact is also that the inter grade ratio in respect of tailors has, admittedly, been made applicable only after 2003 and the requirement to fill up the posts against the sanctioned/authorized strength in the ratio of 45:55 became applicable much later.

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10. It has to be kept in mind that on the recommendation of the 5th Pay Commission the restructuring scheme was introduced and under powers conferred upon by the order of the President of India in SRO by which the competent authority i.e. Government was empowered to take a policy decision to relax the provisions of the recruitment rules with respect to any class or categories of employees. This notification of restructuring was applicable only to a certain set of employees who were covered in the special scheme of one time relaxation made effective from 20.5.2003 and the scheme cannot be replicable beyond that. The applicants were not covered in that scheme. Unless the restructuring scheme specially mentioned the designation of Semi Skilled it cannot be assumed that they would automatically qualify for inclusion as Skilled in the one time relaxation without completing 2 years of minimum qualifying service.

11. The prayer of the applicant in the Rejoinder Affidavit that the applicants may be given the benefit from the date on which the applicants were designated as Skilled as a *de novo* measure will involve giving retrospective effect in cases not covered by the restructuring scheme of 2003 that will open a Pandoras' box by giving a complete go by to the SRO. There is no legal, administrative or any other ground to make the one time relaxation applicable to

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the applicants and render the scheme open-ended, even as other successive restructuring schemes have since come into effect subsequently, some of which invariably follow Pay Commission Report. Hence, it will not be appropriate to accept the prayer of applicants.

12. In view of the above we have no grounds to interfere with the impugned order and hence, the **O.A. is dismissed.** No costs.

B. Bhamathi
(Ms. B. Bhamathi) ✓
Member-A

S.S. Tiwari
(Justice S.S. Tiwari)
Member-J

Sushil