

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

(THIS THE 16 DAY OF January 2012)

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)

HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

Original Application No. 902 OF 2005  
(U/S 19, Administrative Tribunal Act, 1985)

1. Surjit Chatterji, about 40 years, son of Late N. K. Chatterje, resident of 22, M.I.G., Shyam Nagar, Kanpur Nagar, presently employed as Chargeman Gr.-II, Personnel No.835420, Ordnance Parachute Factory, Kanpur.
2. Pawan Kumar Goel, aged about 40 years, son of Shri S. P. Goel, resident of 1/3, H.A.L. Colony, Ramdevi Chauraha, G.T. Road, Kanpur Nagar, presently employed as Chargeman Grade-II, Personnel No.835418, Ordnance Parachute Factory, Kanpur.
3. Mahendra Pal Singh, aged about 50 years, son of Shri Krishna Kumar Singh, resident of 117/K/30, Sarvodaya Nagar, Kakadeo, Kanpur Nagar, presently employed as Master Craftsman (Examiner) ticket No.7840/L, Ordnance Parachute factory, Kanpur.

.....Applicants

V R S U S

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chairman, Ordnance Factory Board/Director General of Ordnance Factories, 10-A, Shaheed Khudi Ram Bose Marg, Kolkata-1.
3. Additional Director General, Ordnance Factories, O.E.F. Group head Quarters, G.T. Road, Kanpur.
4. The General Manager, Ordnance Parachute Factory, Kanpur.
5. Shri Om Prakash, T. No.4351, P. No.835403, Chargeman Grade-II Ordnance Parachute Factory, Kanpur.
6. Shri Rameshwar Dayal, T No.4618, P. No.835104, Chargeman Gr-II, Ordnance Parachute Factory, Kanpur.

.....Respondents





Advocates for the applicants:- Sri N. K. Nair.  
Sri M. K. Upadhyay.

Advocate for the Respondents: Sri H. Singh.

### O R D E R

Instant O.A. has been instituted for the following relief:-

"(1). Order/Decision No.040/OPF/A/01OEF dated 31/1/2005 passed by the A.D.G.O.F., OEF Group Hd. Qrs., Kanpur, rejecting the representation of the applicants, the order No.CF-740/IGR/LB dated 24.7.2004 passed by the General Manager, Ordnance Parachute Factory, Kanpur, rejecting the representation submitted on behalf of the applicants, be quashed (Annexure A-1 and A-2).

(2). The revised wrongful Seniority list of Tailors Highly Skilled published vide O.P.F. Kanpur Factory Order Pt. II no.427 dated 24.3.2004 (Annexure A-3), showing the Junior Tailors who had actually become Highly Skilled, later than the applicants Examiners had become Highly Skilled Grade-II, as seniors by showing ante-dated dates of promotion of such Tailors including the senior-most out of such juniors of the applicants, namely, the respondents No.5 and 6, to the Highly Skilled Grade-II prior to the dates of actual promotions of such Tailors to the Highly Skilled Grade-II as well as prior to the earlier dates of promotion of the applicants to the Highly Skilled Grade-II, be quashed and the seniority positions of the Tailors in the Highly Skilled Grade as shown in the Annexure A-8, be ordered to be maintained as such.

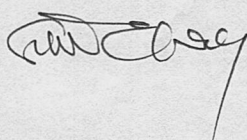
*Singh*



(3). The promotion of the respondents No.5 and 6 and other Junior Tailors to the Chargeman Grade-II superseding the applicant in the matter of such promotions be quashed or the applicants be granted promotions to Chargeman Gr.-II with effect from the dates of promotion of the respondent No.5 and 6 to Chargeman Grade-II with the applicants being treated as seniors to them in the higher Grade of Chargeman Gr.-II also, as required."

The pleadings of the parties may be summarized as follows:-

2. It has been alleged by the applicant in the O.A. that prior to receipt of 5<sup>th</sup> C.P.C., among the Artisan Staff of the Defence Establishment including the Ordnance Equipment Factories, Ordnance Parachute Factory and Ordnance Clothing Factories, the Artisans in the Examiner Trade and some other Trades were among the ratio Trades, in which the promotion of Skilled, Highly Skilled Grade-II and Highly Skilled Grade-I was fixed as 65:20:15.10% out of the Highly Skilled Grade-I were to be upgraded to Master Craftsman (for short MCM). In terms of the recommendations of the 5<sup>th</sup> C.P.C. w.e.f. 01<sup>st</sup> January, 1996, the Highly Skilled Categories, Highly Skilled Grade-II and Highly Skilled Grade-I were merged and they designated commonly as Highly Skilled Workman. The ratio of Skilled and Highly



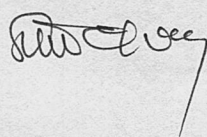


Skilled thereby became 65:35 (20+15). 10% of the Highly Skilled Workman were to be upgraded as Master Craftsmen, that is 10% of the 35% were to be made Master Craftsmen., but in the Trade Tailor was among the non-ratio trades of Artisan Staff there was in existence a 3-Grade Structure, but without any specific ratio, they were categorized into Skilled, Highly Skilled Grade-II and Highly Skilled Grade-I, but without any fixed ratio of benefit of further up-gradation as MCM w.e.f. 01<sup>st</sup> January, 1996, the Highly Skilled Grade-II and Highly Skilled Grade-I Tailors were also merged into a single grade of Highly Skilled Tailors, but there did not exist any prescribed ratio among the Grades of skilled & Highly Skilled and there was no provision for up-gradation of Highly Skilled Tailors into MCM in any ratio or percentage as was the case with erstwhile ratio trades. Govt. of India Ministry of Defence issued instruction vide letter dated 20<sup>th</sup> May, 2003 regarding restructuring of the cadre of Artisan Staff in Defence establishment in modification of the recommendations of the 5<sup>th</sup> Pay Commission. It was mentioned that the grade Structure shall stand modified in the Ratio Trades w.e.f. 01<sup>st</sup> January, 1996 as given in the said circular. The post of MCM shall not be the part of the hierarchy and the

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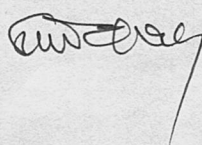


appointment in MCM will not be treated as promotion. Under the normal promotional rules or A.C.P. Scheme the placement of individuals in the post resulting from the restructuring and ratio revision shall be made w.e.f. 01<sup>st</sup> January, 1996 in relaxation of the conditions, if any, i.e. Trade-test, D.P.C. etc. as a one time measure. In respect of the earlier 10% of the Highly Skilled Grade-I, 25% of the Highly Skilled Grade posts will be placed in the Grade of MCM and the existing recruitment rules for Tradesmen may be amended accordingly. Operating instructions were issued after notification of the Ministry of Defence on 12<sup>th</sup> July, 2003 and it was provided that the grade structure in respect of the existing ratio trades was to be as per ratio mentioned in para 3(a) of the MOD's letter dated 20<sup>th</sup> May, 2005 and this was to be for the period 01<sup>st</sup> January, 1996 to 19<sup>th</sup> May, 2003 para 3(a) of the MOD's circular dated 20<sup>th</sup> May, 2003 stated that wherever Grade Structure in the Industrial and non-industrial trade is already existing in the ratio of 65:20:15 in the erstwhile Skilled, Highly Skilled Gr.II and HS Gr.-I, the merger of Skilled and Highly Skilled Gr.-I shall be treated to have come into effect from 01<sup>st</sup> January, 1996 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35





(20+15) generally it was mentioned that as per the guidelines of the Ordnance Factory Board the posts of HS-II and HS-I shall be merged retrospectively w.e.f. 01<sup>st</sup> January, 1996. The existing HS-I and HS-II employees in the strength of the factories including those who were wasted out due to retirement, death etc. after 01<sup>st</sup> January, 1996, but prior to 19<sup>th</sup> May, 2003, shall be re-designated as Highly Skilled and placed in the corresponding scale of pay and such merger shall be effected from 01<sup>st</sup> January, 1996 and in relaxation of trade test, D.P.C. etc. as one time measure. It was clearly mentioned in the operating instructions that from 20<sup>th</sup> May, 2003 onwards, the Inter Grade ratio in respect of all Skilled Trade i.e. erstwhile ratio trades and including left out trades (erstwhile Non-Ratio-Trades) shall be in the ratio and corresponding scale as in para 4(1) of M.O.D's letter dated 20<sup>th</sup> May, 2003 and the Inter-grade ratio shall be for Skilled 45%, Highly Skilled 55% and MCM 25% of the Highly Skilled Grade and it was to take effect from the date of issue of orders i.e. from 20<sup>th</sup> May, 2003 and not from before. The Examiner having been in the ratio trades from before 20<sup>th</sup> May, 2003, were to have the benefit of ratio in the Skilled, Highly Skilled and MCM w.e.f. 01<sup>st</sup> January,





1996 as it existed upto 19<sup>th</sup> May, 2003 and the new ratio was to be applicable to non-ratio trades also (left out trades, such as Tailors) only w.e.f. 20<sup>th</sup> May, 2003 and consequently no question arises of treating the Tailors who have come to Inter-Grade-ratio in terms of the M.O.D. circular dated 20<sup>th</sup> May, 2003 prior to 20<sup>th</sup> May, 2003 and the Ordnance Factory Board instructions dated 12<sup>th</sup> July, 2003 granting any benefit of the requirement of ratio before 20<sup>th</sup> May, 2003, as they were not having any ratio between 01<sup>st</sup> January, 1996 and 19<sup>th</sup> May, 2003. That the ratio revision was to be made on seniority basis w.e.f. 20<sup>th</sup> May, 2003 and the promotions were to be governed directly by existing S.R.O. during the period from 01<sup>st</sup> January, 1996 to 19<sup>th</sup> May, 2003 as they were not getting the benefit of relaxation in qualifying since, D.P.C. etc. at any time prior to 20<sup>th</sup> May, 2003. It was mentioned that the said Instructions of the Ordnance Factory Board with necessary amendment to the existing S.R.O. to the extent as laid down in the Govt. Order that w.e.f. 20<sup>th</sup> May, 2003 the ratio of Skilled and Highly Skilled Artisan Staff was to be fixed as 45:55 and 25% of the Highly Skilled Grade were to be upgraded to M.C.M., but it has not been done inspite of the several representations and issue were raised, ultimately

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circular letters were issued on 27<sup>th</sup> August, 2003. As the respondents were not complying with the order dated 20<sup>th</sup> May, 2003 and they drawn wrong inference and wrongly interpreted the instructions of the Govt.. Respondents while granting the benefits of restructuring under the Inter Grade Ratio in the case of Tailors respondents were not required to disturb the seniority position of the Highly Skilled Artisans of the Factory and the respondent were not to give any financial benefit to the Tailors while giving the benefit of wrongful restructuring. The respondents have illegally and wrongfully jeopardized the seniorities of the Senior Highly Skilled Examiners as compared to their juniors, hence the O.A..

3. Respondents contested the case and filed Counter Reply and denied from the averments made in the O.A. It has further been alleged that the cadre of Artisan Staff (Industrial Employees) was restructured vide Ordnance Factory Board, Kolkata letter dated 27<sup>th</sup> August, 2003 and as per clarification No.16 of the letter it has been provided that "All trades listed in Annexure 'A' of existing SRO are ratio trades and they are to be placed in inter-grade ratio of 65:35 w.e.f. 1.1.1996. That the letter dated 27.08.2003 is

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Anexure-CA-1." It has further been clarified that It has been decided that all trades in Annexure-'A' of the SRO 185 of 1994 should be considered as ratio trades in addition to 23 Trades, which included in the Annexure 'A' of the SRO subsequently, should be treated as ratio trades from the date of its inclusion by amendment SRO. The ratio of 65:35 should be calculated in the first phase from 1.1.1996 to 19.5.2003 as the ratio trades and vacancies should be filled up from 1.1.1996 or from the date of occurrence of the vacancies whichever is later. The sanctioned strength of Tailor in this factory as on 01<sup>st</sup> January, 1996 was 2572 and strength was 99 while calculating vacancies as per ratio w.e.f. 01<sup>st</sup> January, 1996 the Tailor Highly Skilled comes to 900, whereas Examiner Highly Skilled comes to 35. While effecting the promotion of Tailor with retrospective effect i.e. from 01<sup>st</sup> January, 1996, when vacancies arrived and were available, it has happened that the Examiner promoted after 01<sup>st</sup> January, 1996 becomes Junior to these Tailors, as ratio in respect of Examiner was already in vogue and maintained prior to 01<sup>st</sup> January, 1996 and on the basis of this these Examiners were promoted. That the erstwhile Tailors appointed/joined duties much earlier to the

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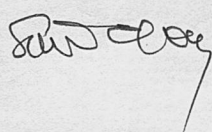


Examiners, but they could not get promotion because of non-availability of ratio. What has been alleged in the O.A. is not justified. The clarifications were issued by the respondents in view of the SRO 185 of 1994 there were ratio trades and they are to be placed in inter-grade ratio of 65:35 w.e.f. 01<sup>st</sup> January, 1996, since the applicants were promoted as Highly Skilled w.e.f. the date after 01<sup>st</sup> January, 1996, hence the Tailors promoted in accordance with the instructions cited above, therefore, Tailors are correctly shown senior to the applicant. That the O.A. lacks merits and liable to be dismissed.

4. In response to the Counter Reply of the respondents, Rejoinder Affidavit has also been filed on behalf of applicant and in the Rejoinder Affidavit what has been alleged in the O.A. has been reiterated.

5. We have heard Mr. M. K. Upadhyay, Advocate for the applicant and Mr. Himansu Singh, Advocate for the respondent and perused the entire facts of the case.

6. Considering the facts of the case we have to decide that whether the notification issued by the MOD regarding restructuring of ratio revision was





complied with as per the instruction of letter dated 20<sup>th</sup> May, 2003, because the applicant alleged that the respondents have not complied with the circulars/letters issued by the MOD w.e.f. 01<sup>st</sup> January, 1996 to 19<sup>th</sup> May, 2003 and the relaxation is to be granted in qualifying prior to the D.P.C.. That clarifications were obtained by the respondents as per their own contention. The circular dated 20<sup>th</sup> May, 2005 is to be followed strictly and respondents were not justified in calling clarification from the Govt. and taking over their own decision regarding the contents of the letter. According to the applicant while granting the benefits of the restructuring in grade ratio and in the Tailors respondents were not required to disturb the seniority position of the Highly Skilled Artisan of the factory and the respondents were not to give any financial benefit to the Tailors while giving the benefit of wrongful restructuring. The respondents have illegally and wrongfully jeopardized the seniorities of the Higher Skilled Examiners as compared to their juniors in the Trade. It will be material to peruse the contents of the circular of issued by the MOD on dated 20<sup>th</sup> May, 2003 Annexure-A-4 is the copy of the circular issued by the MOD on dated 20<sup>th</sup> May, 2003 it has been issued regarding





restructuring of cadre of Artisan Staff in Defence establishment in modification of recommendation of 5<sup>th</sup> C.P.C. and it has been provided in the circular "The grade Structure in the industrial as well as in the non-industrial trades wherever already available and the pay scales of the Defence staff stands modified w.e.f. 1.1.1996 as under:-

(i). Skilled : Rs.3050-1500  
 (ii). Highly Skilled : Rs.4000-6000  
       (HS-I, HS-II)

(iii). Master Craftsman: Rs.4500-7000

(a). Wherever the grade structure in the industrial as well as non-industrial trades is already existing in the ratio of 65:20:15. In the erstwhile Skilled HS-II, HS-I the merger of HS-II and HS-I shall be treated to have come into effect from 1.1.1996 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35(20+15)

(b). The post of Master Craftsman shall not be put of the hierarchy and the placement in the grade will not be treated as promotion for Highly Skilled Grade other than normal promotion rule or under ACP scheme.

(c). The selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Grade (i.e. 10% of 35% of the total) and the placement in this grade shall be w.e.f.1-1-1996 and upto the date of the issue of these orders.

(d). the placement of the individual in the ratio resulting from restructuring, if any, i.e. trade test etc. as a one time measure.

(e). The above provision may also be made applicable, as a special case in relaxation of the existing rules/instructions to the employees who

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have either retired or died after 1.1.1996.

4.(i). From the date of issue of these orders, all the trades classified as Skilled (including left out trades) in the industrial as well as in the non-industrial trade shall now be modified in the following inter-grade-ratio:-

1. Skilled : (Rs.3050-4590/-): 45%
2. Highly Skilled:(Rs.4000-6000/-):55%
3. Master Craftsman: (Rs.4500-7000/-):25%

of the Highly  
Skilled Grade  
posts will be  
placed in the  
grade of the  
Master Craftsman.  
They will,  
however, not be a  
part of the  
hierarchy.

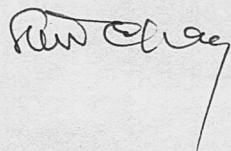
(ii). The above mentioned inter-grade ration shall be worked out based on the sanctioned/authorized strength.

(iii). Since the post of Master Craftsman is not part of the hierarchy, the placement in this grade shall not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP scheme.

(iv). The post or Master Craftsman shall continue to be considered as Highly Skilled grade for the purpose of promotion to the grade of Chargeman-II (Rs.5000-8000).

(v). the benefit of first and second ACP to the skilled workers will be as per the orders issued by the DOP&T under their OM dated 9.8.99 and subsequent clarification issued on the subject.

(vi). Where there is direct recruitment at the level of HS-I/HS-II in Defence Rules, the numbers of Master Craftsmen (not exceeding 25% of Highly Skilled) may be decided considering the functional requirement by the concerned administrative sections in the Ministry of





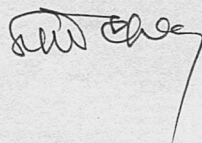
Defence in consultation with their concerned integrated Finance.

(vii). The placement of the individuals in the posts resulting from the above restructuring and ratio revision shall be made from the date of issue of the orders in relaxation of the conditions, if any, as one time measure.

(viii). The procedure for selection to the grade of Master Craftsman shall be as laid in para 2&3 of the Ministry of Defence letter No. 1(2)/80/D(Civ I) dated 21st September, 1982, as amended with the exception that the number of Master Craftsman in each trade shall be upto 25% of the total number sanctioned posts in the Highly Skilled trade in each Organization instead of 10% as was provided in para 2(1) of aforesaid Ministry of Defence letter.

(ix). The existing recruitment rules for the Tradesman may be \_\_\_\_\_ accordingly."

7. In view of this restructuring circular of the MOD the restructuring is to be done w.e.f. 01<sup>st</sup> January, 1996 on the ratio of 65:35. It has been argued by the learned counsel for the respondents that as certain clarifications were required regarding this circular of the MOD hence a clarification was received on 27th August, 2003 and Annexure-CA-1 is the clarification received by the respondents from the MOD. It has been provided in the clarification that 10% of 35% HS posts shall be filled on placement basis. This point has already been clarified vide OFB letter dt.19 Aug, 03. Further that from 1.1.96 to 19.5.03 placement to



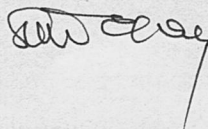


Master Craftsman will be in the trades where grade of MC already exists as per existing SRO. And it has further provided that no relaxation in qualifying service be given for filling up vacancies occurred from 1.1.1996 to 19.5.2003. That one time relaxation is not applicable in the cases where DGOF Competency Test or Boiler Attendant certificate is required however, after the individual passes Competency test or possess Boiler Attn. Certificate, the benefit should be given notionally from 20.5.2003 as one time measure only. Further clarifications were also received on 05<sup>th</sup> November, 2003 and it has been provided in this clarification "it has been decided that all trades listed in Annexure "A" of SRO 185 of 1994 should be considered as ratio trades in addition to 23 trades which were included in the Annexure "A" of the SRO subsequently, should be treated as ratio trades from the date of its inclusion by amendment of SRO. The ratio of 65:35 should be calculated in first phase from 1.1.96 to 19.5.03 on the ratio trades and vacancies should be filled up from 1.1.1996 or from the date of occurrence of the vacancies whichever is later." It has been argued by the learned counsel for the respondents that the restructuring has been done fully in accordance with the circular dated 20<sup>th</sup>

*Sub Chag*



May, 2003 and also in view of the subsequent clarification. And that in view of clarification all trades listed in Annexure-A of the SRO 185 of 1994 should be considered as ratio trades in addition to 23 trades which were included in the Annexure "A" of the SRO subsequently, should be treated as ratio trades from the date of its inclusion by amendment of SRO. The ratio of 65:35 should be calculated in first phase from 1.1.96 to 19.5.03. On the ratio trades and vacancies should be filled up from 1.1.1996 or from the date of occurrence of the vacancies whichever is later. Learned counsel for the respondents further argued that the applicant belonged to the Tailor category and the sanctioned strength of the Tailors in the respondents factory were 2572 post and the strength were 99 and in accordance with the different circular of the MOD while calculating vacancies as per ratio w.e.f. 01<sup>st</sup> January, 1996 the Tailor Highly Skilled comes to 900, whereas Examiner Highly Skilled comes to 35. While effecting the promotion of Tailor with retrospective effect i.e. from 01<sup>st</sup> January, 1996, when vacancies arrived and were available, it has happened that the Examiner promoted after 01<sup>st</sup> January, 1996 becomes Junior to these Tailors, as ratio in respect of Examiner was





already in vogue and maintained prior to 01<sup>st</sup> January, 1996 and on the basis of this these Examiners were promoted. Learned counsel further argued that the erstwhile Tailors appointed/joined duties much earlier to the Examiners, but they could not get promotion because of non-availability of ratio. Under these circumstances when the Examiners were promoted, but there were Tailors who had been working from earlier, but they could not be promoted because of non-availability of ratio. And in view of the circular dated 20<sup>th</sup> May, 2003 the selection from Highly Skilled grade to the grade of the Master Craftsman shall be 10% of Highly Skilled Grade (i.e. 10% of 35% of the total) and the placement in this grade shall be w.e.f.1-1-1996.

8. It is also material as per the arguments of the learned counsel for the respondents that further clarification was also received from the Govt. of India vide letter dated 13<sup>th</sup> October, 2010 and on 01<sup>st</sup> December, 2010. This clarification has also been filed by the respondents' Advocate and it will be material to peruse this subsequent clarification and it has been provided in this clarification that in view of modification of 6<sup>th</sup> C.P.C. it has been held as follows:-

*Subclay*



"(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% Highly Skilled in the grade of Master Craftsman, the following will apply:

\* 45% of the post 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 post may be divided in the ration of 50:50 and re-designated as Highly Skilled Worker Grade-II (Grade Pay of Rs.2400 in Pay Band PB-I) 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.

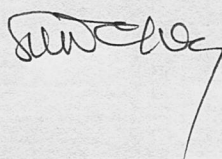
(c). Highly Skilled Grade-I shall be en-bloc senior to Highly Skilled Grade-II."

9. Hence in view of the above clarification the grade structure is to be done as per the existing ratio of 45:55, the erstwhile Skilled and Highly Skilled, and 25% Highly Skilled in the grade of MCM and it has been done accordingly and clarification was also issued subsequently on dated 01<sup>st</sup> December, 2010 and it has been provided that the MOD's letter dated 20<sup>th</sup> May, 2003 still hold good and accordingly, the revised inter-grade ration shall be worked out

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based on the sanctioned/authorized strength. It is a case of the respondents that the movement from HS Gr.-I to MCM, HS Gr.-II to HS Gr.-I and skilled grade to HS Gr.-II are to be treated as promotion w.e.f. 01<sup>st</sup> January, 1996 and reservation roster for promotion will be followed. Learned counsel for the applicant argued that one relaxation was to be granted to the applicant as provided in view of restructuring of cadre. Learned counsel for the respondents argued that as per clarification issued from the MOD one time relaxation will be granted only regarding residency period/qualifying service for promotion from HS Gr.-I to MCM, HS Gr.-II (or HS) to HS Gr.-I Skilled grade to HS Gr.-II from 01<sup>st</sup> January, 2006 to 13<sup>th</sup> December, 2010 only, but no relaxation will be granted from the promotion after 13<sup>th</sup> December, 2010. That this one time relaxation is not applicable in the case where DGOF Competency Test or Boiler Attendant Certificate is required. However, after the individual passes the competency test or possess Boiler Attendant Certificate, the benefit should be given for the period from 01<sup>st</sup> January, 2006 to 13<sup>th</sup> December, 2010, as one time measure. So far as the promotion from HS Gr.-II to HS Gr.-I is concerned, the employees who have already passed in HS Competency Test may be





considered for promotion to HS Gr.-I and no separate competency test is required and it is to be made as per rules. That the respondents have taken action perfectly in conformity with the various rules and instructions issued in this connection.

10. We have also perused the impugned order dated 31<sup>st</sup> January, 2005 passed on the representation of the applicant as per direction of the Tribunal in O.A. No.518 of 2004 and considering the impugned order along-with circular of the MOD this impugned order appears perfectly in accordance with these instructions. W.e.f. 01<sup>st</sup> January, 1996 the ratio of Skilled and Highly Skilled became 65:35 and in view of the circular It has been decided that all trades in Annexure-'A' of the SRO 185 of 1994 should be considered as ratio trades in addition to 23 Trades, which included in the Annexure 'A'. It appears from the circular issued from the MOD that the respondents had done perfectly in accordance of the circular of the MOD.

11. It has been argued by the <sup>Advocate of</sup> applicant that the operative instructions were issued by the MOD on dated 12<sup>th</sup> July, 2003 and in that it was mentioned that the grade structure of the then existing ratio trades (which did not include Tailors) will be as

*[Signature]*



per ratio mentioned in para 3A of the Ministry of Defence letter. It has also been provided that wherever, the grade structure is existing in the ratio 65:20:15 for Skilled HS-II and HS-I the merger of HS-II and HS-I shall be treated to have <sup>come</sup> into <sub>A</sub> effect from 01<sup>st</sup> January, 1996 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35 (20+15). The vacancies existing between 01<sup>st</sup> January, 1996 to 19<sup>th</sup> May, 2003 in the Highly Skilled category to make up the ratio of 35% as to be filled up by promotion, based on seniority without any trade test as a one time measure. But in the clarification it was provided that one time relaxation is not available in the case where competency test is required for promotion. Under these circumstances one relaxation was not granted to the applicant. It has also been argued by the learned counsel for the applicant that erstwhile ratio trades as well as the erstwhile non-ratio or left out trades shall be in the revised ratio of 45:55 i.e. Skilled 45 and Highly Skilled 55 out of the 55% Highly Skilled instead of the erstwhile 10% applicable to erstwhile ratio trades of the 35% Highly Skilled, 25% out of 55% Highly Skilled of the revised ratio trades were to be MCM. It has further been argued that the placement of MCM

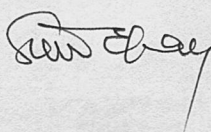
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will be in the factories where MCM cadre already existed as per the existing S.R.O.

12. We have considered the circular of restructuring issued by the MOD on dated 20<sup>th</sup> May, 2003, notification and we have also considered the case of the applicant and we are of the opinion that the respondents have decided the controversy as provided in the circular letter issued by the MOD and it cannot be said that any violation has been committed by the respondents. We disagree with the contention of the applicant that the respondents were not required to disturb the seniority position of the Highly Skilled Artisans of the Factory and the respondent were not to give any financial benefit to the Tailors while giving the benefit of wrongful restructuring. As certain Tailors were senior to the MCM, hence their seniority was also considered and the contention of the applicant appears unjustified that their case has been jeopardized and that seniority has not been considered. We are of the opinion that what has been done by the respondents is fully in accordance with rules.

13. For the reasons mentioned above we are of the opinion that the action of the respondents appears

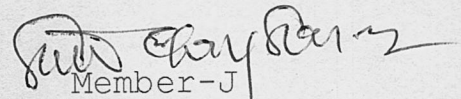




justified they fully considered the restructuring circular dated 20<sup>th</sup> May, 2003 and we have also perused this circular issued by the MOD in this connection and it cannot be said that any injustice has been committed by the respondents. The respondents as per direction of the Tribunal considered the matter of the applicant and passed the impugned order and it cannot be said that the impugned order is against the spirit of the circular. O.A. lacks merits and liable to be dismissed.

14. O.A. is dismissed. No order as to costs.

  
Member-A

  
Member-J

/Dev/