

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE 8<sup>th</sup> DAY OF October, 2010)

*Hon'ble Dr. K.B.S. Rajan, Member (J)*  
*Hon'ble Mrs. Manjulika Gautam, Member (A)*

**Original Application No.893 of 2006**  
(U/S 19, Administrative Tribunal Act, 1985)

1. Mohd. Yamin S/o Late Lal Mohammad Ex. Ticket No. 7220/P Tailor R/o Mohalla Katia Tola Shahajahanpur.
2. Sultan Ahamad Ex. Ticket No. 4269/P Tailor S/o Mohammad Husian R/o Mohalla Bhardwaji Shahajahanpur.
3. Smt. Aamana Khatoon W/o Late Mohammad Hanif<sup>e</sup> Ex. Ticket No. 4435/P Tailor R/o Mohalla Dilazak Jalalnagar, Shahajahanpur.
4. Zaqiudding Khan S/o Late Shymuddin Khan Ex. Ticket No. 5440/P Tailor R/o Mohalla Sinjai Shahajahanpur.
5. Iqbal Ahamad S/o Shri Basir Ahamad Ex. Ticket No. 5518/P Tailor R/o Baragaon Shahajahanpur.
6. Abid Hussain Khan S/o Late Tasadduk Hussain Khan Ex. Ticket No. 6434/P Tailor R/o Chawk Ala Khan Chawkin Hadaf Shahajahanpur.
7. Khyali Ram S/o Moola Prasad Ex. Ticket No. 8018/P Tailor R/o Lala Teli Ki Bazariya Shahajahanpur.
8. Abid Ali S/o Shri Azan Ali Ex. Ticket No. 8531/P Tailor R/o Mahmand Jalalnagar Shahajahanpur.
9. Smt. Aasib Bagam W/o Late Rahmat Ullah Ex. Ticket No. 11337/P Tailor R/o Mohalla Mahman Shah Shahajahanpur. ---

..... *Applicants*

**Present for Applicants :** *Shri M. Lal, Advocate*

*Versus*

1. Union of India, through the Secretary Ministry of Defence Production New Delhi.
2. Additional Director General Ordnance Factories (O.E.F. Group) Head Quarters G.T. Road Kanpur – 208013.
3. General Manager Ordnance Clothing Factory Shahajahanpur.

..... *Respondents*

**Present for Respondents :** *Shri R. K. Srivastava, Advocate*

ORDER

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

The applicants 9 in numbers, all of whom had retired from service between 1997 to 1999 have their grievance that when in 2004, the respondents had revised the pay scale of about 1103 tailors all of whom had either retired/died, giving them the benefits w.e.f. 01-01-1996, such a benefit had not been afforded to them. Representations made in 2006 was rejected, vide Annexure A-1 order dated 11-07-2006. They have, therefore, claimed the following relief/s:-

- "A. *This Hon'ble Tribunal may graciously be pleased to quash the order of the respondent no.3 issued to the applicants denying benefits of up gradation of pay scale as filed Annexure No.1 and 2 as a sample reply in the compilation book no.1. Similar request is made to quash the orders of the respondent no.3 given to other applicants listed in this petition.*
- B. *This Hon'ble Tribunal may further graciously be pleased to issue writ or direction commanding the respondent no.3 to extend the benefits of up gradation to the applicants in the manner as it was extended to others including their juniors.*
- C. *To issue further order writ or direction as may be considered best in the interest of the justice.*
- D. *To award the cost of this application to the applicants."*

2. The brief facts of the case are as under:-

(a) The applicants were appointed to the post of Tailor/D between 15-09-1961 to 03-08-1963 and were later redesignated as Machinist (Knitter)/C and Embroider/B between the period from July 66 to July 1970. They were again redesignated as Tailor/D between 1967 and 1973. By

an order dated 16-10-1981, the pay scale of the tailor/D (semi skilled) was fixed at Rs 210 – 290. The next promotion was to the post of Line Mistry in the scale of Rs 260 – 400 and the applicants got this promotion in December, 1981

(b) On the basis of the recommendations of the Expert Classification Committee those Tailor/B in the grade of Rs 210 – 260 were all upgraded to the scale of Rs 260 – 400 w.e.f. 16-10-1981. The applicants who were holding a different designation, continued in the lower pay scale and as stated above, they could be placed in the grade of Rs 260 – 400 only we.f. December, 1981. As stated earlier, these applicants retired in 1991.

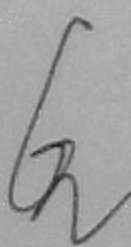
(c) In 2003, there was an inter-grade ratio as 35% 65% in the High Skilled and Skilled, effective from 01-01-1996 upto 19-05-2003 which was further revised to 55% and 45% w.e.f. 20-05-2003. 25% of the Highly skilled were placed in the grade of Master Craftsman. Employees who had come in the zone of consideration and seniority were promoted to the post of Highly Skilled grade from Skilled Grade, vide order dated 19-06-2004. This gave promotion to more than 3000 employees from Skilled to High Skilled grade. One of the applicants Shri Abid Ali ticket No. 8531/P who retired in the last among all the applicants (30-04-1999). As others were not promoted they represented in May and June 2006 who were intimated as to the reason why they could not be promoted (as they were not within the consideration zone).

(d) Aggrieved by the rejection orders vide Annexures A-1 and A-2, this OA has been filed. To hammer home their

claim, the applicants have also annexed a comparative statement containing the details of juniors to the applicants who have been afforded the benefit of upgraded pay, vide Annexure A-13.

3. Respondents have contested the O.A. According to them, apart from the fact that the OA is hopelessly time barred (promotion from 01-01-1996 being agitated in 2006), on merit also the applicants do not have any case as it was only those who became highly skilled upto 16<sup>th</sup> October, 1981 fell within the consideration zone and in so far as the applicants were concerned, their date of promotion being 28<sup>th</sup> December, 1981 they could not fall within the zone of consideration and hence, they are not eligible. It is also their case that none of the junior to the applicants was promoted.

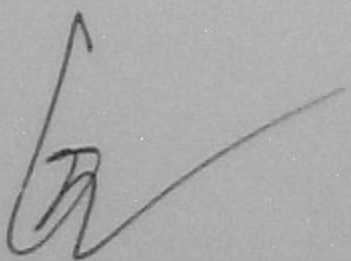
4. The applicants have filed the rejoinder in which they have explained that while the expert classification committee had considered upgradation of pay scale of various trades from Rs 210 – 290 to 260 – 400 w.e.f. 16-10-1981, the trade of tailors were not recommended and thus the pay scale of Rs 260 – 400 for the applicants which was effective from 28-12-1981 was not advanced. In fact when the Committee had recommended the upgradation, the same applied to all trade, whereas the respondents had not afforded the benefit to the tailor trade. The applicants were Line Mistry on 28<sup>th</sup> December 1981 and their pay as on 16<sup>th</sup> October, 1981 being Rs 210 – 290, the same ought to have been

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upgraded to Rs 260 – 400 in which event, they too would be the beneficiary of higher pay scale w.e.f. 01-01-1996 as others. The applicants have also contended that determination of seniority in the Trade test Grade wise/Tradewise had not been done in accordance with the order dated 11<sup>th</sup> /13<sup>th</sup> July 1979

5. Supplementary affidavit had been filed by the respondents in which the following points have been highlighted:-

- “(a) The applicants Machinist (Knitter/C) got the scale of 260-400 by virtue of promotion.*
- (b) Tailor/B grade the scale of Rs. 260-400 by virtue of upgradation wherein the entire scale got upgraded to the next higher level.*
- (c) The promotion and upgradation are two different things. Promotion is a routine channel for getting a higher scale in the existing scheme of cadre, whereas upgradation raises the scale of the entire grade base on specialized study, done by an expert body such as Expert Classification Committee.*
- (d) Applicants got the scale of Rs. 260-400 on 28.12.1981 by promotion whereas Tailor/B Grade got the scale of Rs. 260-400 at a subsequent date with retrospective effect Viz. 16.10.1981 by upgradation.*
- (e) The applicants, when got an early promotion in their redesignated scales, there was no point of grievance. However when they have seen their earlier counterparts getting the benefit of scale from retrospective effect, they want to avail that too.*



(f) *This opportunism on the part of the applicants does not find relevance in Government procedures, where seniority is maintained in respective trades at any point of time, and seniority of a person in one trade is not comparable to any other person in any other trade, irrespective of the fact that the individual one belonged to that particular trade. Any change in this settled system of industrial seniority is likely to unsettle seniority of 25 years and therefore pleaded to be barred by the Limitation Act."*

6. It has further been contended that the ante-dating of upgradation in respect of Tailor/B was done for relevant trades only based on specific government Orders and as such cannot be given retrospective effects for trades not upgraded by the ECC nor can their seniority compared with employees in other trades. Further seniority of the applicants, once re-designated, cannot be compared with their peers in their erstwhile trade, nor can the service conditions and scales of the erstwhile trade can be made applicable to them. Re-designations are a function of departmental requirement and keep happening from time to time keeping employees' interest in tact. Similarly policy guidelines keep on changing for different category of employees and so do their service conditions. In case each individual starts asking benefits of its erstwhile trade with retrospective effect, the entire structure of industrial employees is likely to collapse. As per the government letter Machinist/Knitter/C remained in the same pay scale of Rs 210 – 290. On 16-10-1981 all the applicants were holding the post of Machinist (Knitter)/C in the pay scale of Rs 210 – 290. On 28-

120=1981 they were promoted to the post of Line Mistry (knitter)/B in the pay scale of Rs 260 – 400 against regular vacancies, whereas in so far as Tailor/B, their pay scale underwent upward revision w.e.f. 16-10-1981 itself. This benefit applicable to Tailor/B has not been extended in the Government order to the trade of Machinist/Knitter/C due to non recommendation by the Expert Classification Committee.

7. Counsel for the applicant invited the attention to the order dated 11/13<sup>th</sup> July 1979 annexed to the rejoinder and contended that redesignation in their case was the act of the respondents and that the applicants had no control over such a re-designation. As such, their conditions of service got affected due to the act of the respondents for which the applicants cannot be penalized. In fact, the Apex Court has in clear terms, in C.A. No. 492 of 1991 decided on 3<sup>rd</sup> October, 1991 observed as under:-

*“Before we part we would like to state that the department should grant the benefit uniformly to all those trades which were to be upgraded after the Deputy Secretary’s letter dated October 15, 1984. We do hope that they will not be driven to Court to receive the benefit of which they are entitled as per the Instructions put by this Court in Bhagwant Sahai’s case (supra).”*

8. The applicants’ counsel also relied upon the following decisions of the Apex Court:-

(a) *Bhagwan Sahai Carpenter v. Union of India*, (1989) 2 SCC 299, at page 302 :

11. Considering all the facts and circumstances of the case we are unable to accept the contentions advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled grade

cannot be treated different i.e. by allowing higher scale of pay to employees of some of the trades from an earlier date and giving the same benefit to members of other trades in the skilled grade from a later date. This will per se be discriminatory and it will be contrary to the equality clause envisaged in Articles 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work. The petitioners are entitled to get the benefit of the skilled grade of Rs 260-400 from 16-10-1981 instead of 15-10-1984 as has been given to the employees of other trades in the skilled grade.

(b) *Assn. of Examiners, Muradnagar Ordnance Factory v. Union of India, 1993 Supp (2) SCC 311* :

1. Rule nisi.

2. The learned counsel Mr Hemant Sharma, appears on behalf of the respondents and waives service of rule. We have heard counsel on both sides and have gone through the relevant papers, the Anomalies Committee Report and the counter filed on behalf of the respondents. We find from Chapter VIII of the Anomalies Committee's Report that the Committee decided that "the existing incumbents in the semi-skilled category, who were in position as on October 16, 1981 in the grade of Rs 210-290, may be upgraded to the skilled category Rs 260-400, commensurate with the point-score given by the Committee". So far as fresh induction to the skilled category was concerned, the Committee formulated certain propositions which are to be found in clauses 'a' to 'c' of clause (IV) of the recommendations of the Anomalies Committee in Chapter X of the report. It is, therefore, obvious that those employees who belong to the semi-skilled category and were in position on October 16, 1981 in the grade of Rs 210-290 were to be upgraded to the skilled category carrying a scale commensurate of Rs 260-400 with the point-score given by the Committee.

3. This writ petition has been filed by the Association of Employees and the names of the members on whose behalf it is filed have been set out in Annexure 'B' to the petition. The total number of the members shown in Annexure 'B' is 60. However, it is not known who out of them were in position on October 16, 1981. We would, therefore, direct the respondents to verify the service records of these employees and grant the benefit to those who were in position on October 16, 1981 in the grade of Rs 210-290 by upgrading them to the skilled category of Rs 260-400 w.e.f. that date on the ratio of this Court's decision in *Bhagwan Sahai Carpenter v. Union of India* vide paragraph 11 of the judgment. Those who were not in position as on October 16, 1981 in the semi-skilled grade of Rs 210-290 will be entitled to placement in the skilled category of Rs 260-400 if they satisfy the requirements of clauses 'a', 'b' and 'c' of clause (IV) in Chapter X of the Anomalies Committee's Report to the extent of its acceptance, with or without modifications, by the Government of India. This should be finalised not later than October 31, 1991. The rule is made absolute accordingly with no order as to costs.

9. Counsel for the respondents insisted upon the limitation. On merit, the counsel submitted that (a) seniority is based on trade and on re-

designation, such a seniority is granted only on the trade which one is holding and not with reference to the earlier trade and (b) such a seniority cannot also be based on Ticket No. as compared by the applicants. Upgradation was afforded to only those who came within the zone of consideration. As the applicants did not come within the consideration zone, they were not entitled to such upgradation of pay w.e.f. 16-10-1981. Revision of pay as claimed by the applicants, w.e.f. 01-01-1996 is available to only those who were in pay scale of Rs 260 – 400 w.e.f. 16-10-1981. Admittedly the applicants had this pay scale only w.e.f. 28-12-1981.

10. Arguments were heard and documents perused. First as to limitation. It is seen that the benefit of pay w.e.f. 01-01-1996 was given on the basis of order dated 19-06-2004, vide para 4.3 of the O.A. This averment has not been rebutted by the respondents, who, in reply to this para have stated that this is a matter of records. And the applicants claim parity in pay only on the basis of this communication. Hence, though the pay scale revision is sought from 01-01-1996, as the basic document to afford this pay scale is of 2004, limitation has to be reckoned with reference to this letter. The applicants are retired employees and one cannot expect them to have access to such communication immediately on their publication. The applicants represented in May 2006 and the respondents replied to their representation in July 2006 vide Annexure A-1. And the application came to be filed in August, 2006. Thus the OA is well within limitation. The contention of the respondents as to limitation is therefore, rejected.

11. Next is as to the contention of the respondents that on re-designation, the applicants' seniority changes without any regard to the erstwhile designation. Paragraph 10 of the supplementary counter affidavit refers. This contention has to be summarily rejected. For, it is not at the instance of the employees that the redesignation changes. It is understandable that if there is a change in the functional responsibility, the seniority could correspond to the date from which such a change in the functional responsibility took place. Mere change in nomenclature cannot dictate the seniority. Change from Tailor to Machinist (Knitter) and back again to Tailor (see para 5 of the counter) not once but on many occasions, if affected the seniority on the basis of the designation, the same cannot be allowed. Seniority should be uniform with reference to the pay scale then obtaining and on the basis of date of entry into service. Thus, if the respondents contend that the applicants' promotion on the basis of their seniority fell only w.e.f. 28<sup>th</sup> December, 1981, the applicants cannot be blamed for the belated promotion. Had their seniority been maintained irrespective of the re-designation, certainly the applicants would have got the pay scale of Rs 210 – 260 well before 16-10-1981 in which event their pay scale would have been upgraded to Rs 260 – 400, and correspondingly to the higher pay scale w.e.f. 01-01-1996 from tailor skilled (3050 – 4590) to tailor Highly skilled (4000 – 6000). Their claim is strengthened by the fact that their juniors as contained in Annexure A-13 have all been the beneficiaries whereas the applicants were denied the same. CA 4, indicating the seniority position on the basis of the redesignated post has to be held incorrect.



12. Apart from the above, the mandate of the Apex court in the case of Prabhu Lal CA No. 492/1991 (extracted above) is to be regarded and respected. For the purpose of understanding the spirit behind such a mandate, the entire order is reproduced as hereunder:-

*"The petitioners, who are boot-makers, claim that by virtue of the letter dated October 15, 1984 wherein it has been mentioned that the President has accorded sanction to the upgradation of certain jobs (one of which is that of boot-makers, from semi-skilled grade (Rs. 210-290, to skilled grade (Rs. 260-400) w.e.f. October 15, 1984, they too are entitled to be placed in the higher scale. This question was considered by this Court in Bhagwan Sahai Carpenter & Ors. Vs. Union of India & Anr. (AIR 1989 SC 1215). In paragraph 6 of that Judgment, the various categories jobs which belonged to the semi skilled grade of Rs. 210-290 to be upgraded to skilled grade Rs. 260-400 have been set out. In paragraph 11 of the judgment, this court after holding that the cut-off date fixed under the order impugned was discriminatory proceeded to direct that the petitioners be granted the benefit of the skilled grade of Rs. 260-400, from October 16, 1981 instead of October 15, 1984.*

*A mandamus to that effect was issued in the said proceedings, subsequently, in writ petition No. 40/91 (association of examiners, Moradnagar Ordnance Factory Vs. Union of India & Ors.) the same benefit was extended to other similarly placed employees. We, therefore, do not see any reason why that benefit should not be granted to the petitioners.*

*Counsel for the respondents, however, invited our attention to the notifications Nos. SRO 1 of 1988 and SRO 130 of 1989 produced as Annexures 'A' & 'B' to the counter affidavit and submitted that boot-makers belong to two*

*categories and since the petitioners herein belong to non-industrial category, they are not entitled to the benefit sought by them. On a plain reading of these notifications, we do not think that they have any retrospective operation. This distinction between non-industrial and industrial workmen belonging to the same trade is not shown to have existed earlier when the benefit was granted to certain employees, including the petitioners of the aforesaid two earlier cases. We, therefore, do not see any merit in this contention. We therefore, direct a mandamus to issue to the Union of India a grant to the petitioners the benefit of the skilled grade of Rs. 260-400 w.e.f October 16, 1981 to those who were in service then. Arrears of salary, etc. will also be granted on that basis within three months. The is made absolute accordingly with no order as to costs.*

*Before we part we would like to state that the department should grant the benefit uniformly to all those trades which were to be upgraded after the Deputy Secretary's letter dated October 15, 1984. We do hope that they will not be driven to Court to receive the benefit of which they are entitled as per the interpretation put by this court in Bhagwant Sahai's case (Supra)."*

13. In the above judgment, the Apex Court has observed, **"This distinction between non-industrial and industrial workmen belonging to the same trade is not shown to have existed earlier when the benefit was granted to certain employees....."** This observation applies not only to the boot making trade (to which the petitioners in the afore said W.P. belonged) but to all the trades. It is for this reason, the last paragraph of the judgment stated, *"Before we part we would like to state that the department should grant the benefit uniformly to all those trades which were to be*

upgraded after the Deputy Secretary's letter dated October 15, 1984. We do hope that they will not be driven to Court to receive the benefit of which they are entitled as per the Instructions put by this Court in *Bhagwant Sahai's case (supra)*.”

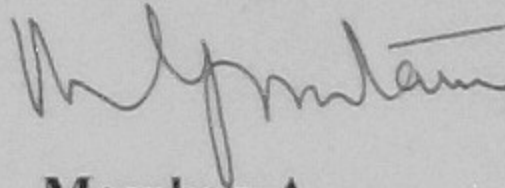
14. The respondents have adopted a pedantic approach in respect of the case of the applicants. The legitimate entitlement of the applicants has been scuttled by the respondents on unreasonable and irrational ground. The applicants' claim is legitimate and had their seniority been worked out correctly, without any regard to re-designation, they would have been within the zone of consideration. The Apex Court has held in the case of *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363*, “The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants.”

15. In view of the above the OA is allowed. It is declared that the applicants are entitled to the same benefits to the extent as afforded to the skilled workers as in the Government order dated 19<sup>th</sup> June, 2004 (Annexure A-12). If the individuals who were the beneficiaries of the afore said order were granted arrears of pay and allowances, the applicants are also entitled to the same. If not, their entitlement would be to the extent of notional fixation of pay for the purpose of pension and other retirement benefits.

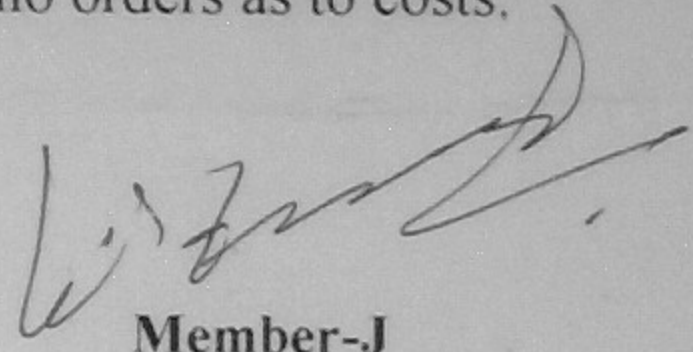
16. We are aware that the task involved in complying with this order is tedious and time consuming, as the service records of the applicants have

to be located and their entitlement worked out. As such, sufficient time is needed by the respondents. At the same time, the fact that the applicants are senior citizens cannot be eclipsed from consideration. As such, a period of six months is granted to the respondents for compliance of this order.

17. Under the circumstances, there shall be no orders as to costs.



**Member-A**



**Member-J**

Shashi