

6

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 369 of 1991 &
455 of 1992.

Date of decision : May 3, 1994.

In O.A. 369/91 Surendranath Rout and others ... Applicants.

Versus

Union of India and others ... Respondents.

In O.A. 455/92. Janardan Behera and others ... Applicants.

Versus

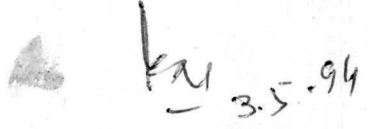
Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? No
2. Whether it be circulated to all the Benches of the No
Central Administrative Tribunals or not ?


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)

03 MAY 94


(K. P. ACHARYA)
VICE-CHAIRMAN.

14

7

In O.A. 369/91

Surendranath Rout and others ...

Applicants.

Versus

Union of India and others ...

Respondents.

For the applicants ...

M/s. B. K. Sahoo,
K. C. Sahoo, Advocates.

For the respondents ...

Mr. Ashok Misra,
Sr. Standing Counsel (Central)

In O.A. 455/92.

Janardan Behera and others ...

Applicants.

Versus

Union of India and others ...

Respondents.

For the applicants...

Mr. Biswajit Mohanty. -1,
Advocate.

For the respondents ...

Mr. Ashok Misra,
Sr. Standing Counsel (Central)

CORAM:

THE HON' BLE MR. K. P. ACHARYA, VICE-CHAIRMAN,

A N D

THE HON' BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

ORDER

K.P. ACHARYA, V.C., Since common question of law and fact are involved in both the cases which were heard one after the other, we would direct that this common judgment would govern both the cases mentioned above.

2. In O.A.369 of 1991 the prayer of the applicants (8 in number) is to direct the respondents to place the applicants in the grade of Tradesman C and to direct the

respondents to pay the differential amount of the scale of pay applicable to the post of Tradesman C with effect from 15.10.1984.

3. Similar is the prayer of the applicants (3 in number) in O.A.455 of 1992.

4. The applicants in both the cases were appointed in different capacities in the establishment of Defence Research and Development Organisation and they were fitted to the pay scale of Rs.210-290/-. Their prayer is that they should be paid pay scale of Rs.260-400/- with effect from 15.10.1984. In this regard, while hearing O.A.369 of 1991 this Bench was of the view that the judgment pronounced by the Hyderabad Bench was contrary to the view taken by a Division Bench of the Central Administrative Tribunal, Bangalore Bench and therefore, this Bench had referred to the Hon'ble Chairman for constituting a larger Bench to resolve the divergent view expressed by two coordinate Benches. By that time it had not come to the notice of the members of this Bench that a similar matter was pending consideration by the Full Bench which formed subject matter of O.A.111 of 1991. The judgment in O.A.369 of 1991 was delivered by this Bench on 16.9.1993. However, later judgment of the Full Bench was brought to the notice of this Bench and therefore, the reference made by this Bench to the Hon'ble Chairman for constituting a larger Bench was withdrawn.

16

5. We are bound by the views expressed by the Full Bench. The Full Bench was of the opinion that the view taken by the Hyderabad Bench was acceptable. Therefore the Full Bench had observed in paragraph 8 of the judgment as follows;

" For the reasons stated above, this application is allowed and is disposed of with the following directions:-

- (a) The respondents are directed to extend to the applicants the benefit of upgradation and according of higher scale of pay of RS.260-400 with effect from 15.10.1984.
- (b) The applicants shall be entitled to seniority and fixation of emoluments on the basis of their upgradation as aforesaid with effect from 15-10-1984.
- (c) The financial benefits from the aforesaid direction shall however, be limited to a period not exceeding three years before the filing of the present application.
- (d) These directions shall be implemented within a period of 4 months from the date of receipt of a copy of this order. "

Accepting the view taken by the Full Bench, Government of India in the Ministry of Defence vide their Memorandum No.96532/IE/CTRE/RD-PERS-3/4692/D(R&D) dated 17.11.1993 directed as follows;

" The question of extension of the benefit of the judgment of Central Administrative Tribunal, Bangalore Bench to the similarly placed trademen in Defence Research & Development Organisation as on 15.10.1984 has been under consideration of Government as the Hon'ble Supreme Court already dismissed an appeal of Govt. of India in similar matter i.e. original application No.363 of 1988 SLP No.12716 of 1989. President is now pleased to decide that the Tradesman 'E' as were in the pay scale of RS.210-290(PR) on 15-10-1984 may be given the pay scale of Rs.260-400(PR) ~~on~~ notionally with effect from 15.10.84 for the purpose of seniority and pay fixation, with effect from 9.2.1988 for the purpose of payment of financial benefits flowing from the above decision. "

4/10

We would therefore, direct ~~to~~ respondents to follow the directives of the President contained in the aforesaid letter and make all benefits available to the applicants in both the cases and we hope and trust the payment will be made ^{available} to the applicants within 90 (ninety) days from the date of receipt of a copy of this judgment.

6. Thus, these two applications are disposed of accordingly leaving the parties to bear their own costs.

.....
MEMBER (ADMN.)

03 MAY 94

.....
VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 3, 1994/Saranghi.

11

18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 369 of 1991

Date of Decision: 16.9.1993

Surendra Nath Rout & Others Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of No
the Central Administrative Tribunals or not ?

16.9.93
VICE-CHAIRMAN

16.9.93
MEMBER (ADMINISTRATIVE)
16 SEP 93

12

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application: No. 369 of 1991

Date of Decision: 16-9-1993

Surendra Nath Rout & Others

Applicant

Versus

Union of India & Others

Respondents

For the applicant:

M/s. B.K. Sahoo
K.C. Sahoo,
Advocates

For the respondents:

Mr. Ashok Mishra,
Sr. Standing Counsel
(Central Government)

...

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

...

13

20

JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN) In this application Shri Surendranath Rout and seven others petitioners, all employed in various semi-skilled trades grouped under what is known as Category E in Proof and Experimental Establishment, Chandipur in Balasore District, under the Director-General, Research and Development, Raksha Mantranalaya, pray that the respondents be directed to promote and place them in the upgraded Category C which carries a higher pay-scale of Rs.260-400/- with effect from 15th October, 1984, and to pay the difference in pay consequent upon such promotion.

2. In order to understand the background of the petitioner's prayer it shall be necessary to enumerate briefly a series of developments occurring during the past nineteen years. Such a recapitulation would serve not merely to put the whole case in a larger perspective of relevant facts but also to indicate the present judicial status of the issues involved besides scrutinizing, even if only provisionally, the validity, or the lack of it, of the petitioner's request.

3. Prior to 1974, there was no attempt at classifying methodically the various trades in the Defence Industrial Establishments. The Third Pay Commission, while recommending a set of five varying pay-scales, felt if necessary to also recommend to the Ministry that an expert body be set up with a view to rectifying the multiplicity of trades and also for fitting them into one or the other of the five scales recommended by it.

4. Accordingly the Defence Ministry ordered the setting up of an Expert Committee in October, 1974, under the


16 SEP 93

Chairmanship of a retired judge of Allahabad High Court. After an in-depth rating and evaluation of more than 1700 jobs, based on certain identifiable parameters such as education, training, experience, job-skills required and effort-mental, physical and visual - involved in the performance of duties relating to different trades, the Committee recommended nine pay-scales to various categories of trades spanning a wide spectrum of unskilled to highly skilled jobs.

5. The Ministry thereupon constituted an internal committee to scrutinize the recommendations made by the Expert Committee, obviously with the intention of determining how far its recommendations could be married-up with the recommendations of the Third Pay Commission which, as mentioned earlier, had suggested only five pay-scales as against the nine recommended by the Expert Committee. This departmental group was called the Committee on Common Category Jobs. After due study, this Committee finally recommended a five-category classification of jobs with pay-scales corresponding to those initially recommended by the Third Pay Commission. It also recommended the adoption of proper ratios among various categories, patterned on the inter-se ratios obtaining in the Railways, besides devoting its attention also to the question of rational promotion-prospects structure.

6. The government accepted these recommendations and ordered^{for} their adoption. At the implementation stage, however, a number of anomalies came to be noticed. Numerous representations were received and grievances began

apparently to pile up. To rectify this ^{un}anticipated development, a new Committee which came to be known as Anomalies Committee, was set up, with suitable representation on it for the representatives of workers as well as of Administration. In this sense, the latest Anomalies Committee was but an extension of the Joint Consultative Machinery of the Ministry and, therefore, came to be regarded as the final ^{††}authoritatively stated on behalf of the present respondents that the Anomalies Committee was itself converted into a proper Expert Committee.

7. The Ministry held a final round of talks with the workmen's Federation on the latest set of recommendations of the Anomalies Committee and decided that there would be five categories and five pay-scales for the whole defence industrial work-force. In an accompanying decision, 11 trades in semi-skilled E category were ordered to be upgraded to skilled Category C, with consequential improvement in the emoluments of the beneficiary trades.

8. Three more related developments need to be listed to complete the picture in so far as they are relevant to the present case:

1) One more committee was appointed subsequently to examine the various problems of workers. This came to be known as Venkatsan Committee. Among its terms of reference was the one relating to exploring ways to meet the demands of such of the semi-skilled trades in Category E which had been left out of the upgradation to skilled Category C already decided upon and announced. This

†† authoritative and authentic verdict as regards the categorisation of industrial trades in the defence establishments in the country as also the attendant pay-scales. In fact, it has been

— 1.3.93
16 SEP 93

Committee recommended that, as a one-time measure, all the trades included in Category E be upgraded to C level, chiefly to mitigate the frustration of the affected staff. These recommendations were, however, not accepted by the Government. Thus, for all purposes, the views and recommendations of this Committee did not acquire anything more than an academic importance. Be that as it may, the unaccepted recommendations of Venkatesan Committee came to figure in a decision of the Hyderabad Bench of this Tribunal. This will be referred to later.

ii) In a parallel development, one Shri Bhagwan Sahai and some of his co-workers in the MES approached the Supreme Court in 1988 with an application that the benefit of revised pay-scales flowing out of the upgradation of 11 select trades from Category E to C had been unevenly applied by the Government, as a consequence of which some tradesmen had been accorded such enhancement from an earlier date/year while some others, including themselves, were getting it from a later date/year. The Apex Court held that the Government's action did indeed amount to discrimination and directed that Bhagwan Sahai and his co-petitioners be given the revised pay-scales from the earlier year as had been done in the case of some others. It is necessary to note at this stage that, in issuing this order, the Supreme Court (a) did not enlarge the ambit of trades which had already been decided upon for upgradation, and (b) did only direct the necessary change in the date/year of implementation of pay-revision in respect of trades already

— 4.24.93

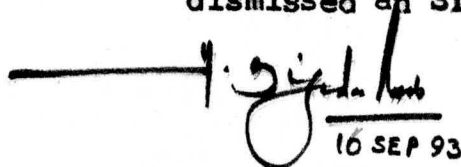
16 SEP 93

approved by the Ministry. It also needs to be noted that Shri Bhagwan Sahai and his co-petitioners were all within the trades which had been duly recommended for upgradation.

iii) In 1989, one Shri Syed Sattar and 73 others, working in DRDL, filed a petition before the Hyderabad Bench of this Tribunal claiming a parity in pay-scales from 15th October, 1984, with those in the selected 11 trades in Category E which had been upgraded to Category C. In allowing the application the Bench thought fit to observe that the facts and claims put forward by Abdul Sattar and others were similar to those projected by Bhagwan Sahai, decided earlier by the Supreme Court (Supra). Referring to Para 10 of the Supreme Court judgment, the Bench observed (OA 363/88) specifically:

"Considering all the facts and circumstances of the case we are unable to accept the contention advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled trades cannot be treated differently, i.e., by allowing higher scale of pay to employees 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 equity 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 October, 1981, instead of October, 15, 1984, as has been given to the employees of other trades in the skilled grade."

In two other cases (O.A.Nos.146 and 208 of 1990) the Bench further extended the same order to cover nine other petitioners on the very same ground(s). It was also added that, the Supreme Court in the meanwhile having dismissed an SLP in this regard, the decision in O.A.No.


10 SEP 93

363 of 1988 had become final.

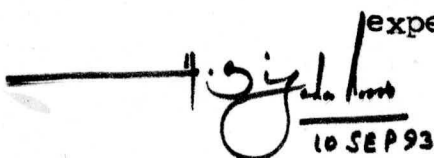
9. In disposing of a Review Application (R.A.No.37 of 1989) the Hyderabad Bench had the following further observations to make:

"The Supreme Court had observed that they were unable to accept the contention advanced on behalf of the Union of India that though the Anomalies Committee had recommended that the benefit of the skilled grade may be given effect to from 16.10.1984 yet it had got no binding force on the Government to decide from which date the Government will apply the skilled grades to the petitioners. The Supreme Court observed that it was unable to accept the contention of the Union of India on the ground that the employees of different trades in the skilled grade cannot be treated, i.e., by allowing higher scale of pay to employees of some of the trades from an earlier date and giving benefit of other trades from a later date as this will be per se discriminatory ..

.. We were of the view that when the Supreme Court did not find justification in the stand of the Government for giving the revised pay scales from different dates to different employees of tradesmen, there is even more justification to hold that denial of revised fixation of pay to some trades and not to other trades. We had also referred to Venkatsan Committee report wherein it had recommended that tradesmen irrespective of their job titles be upgraded as tradesmen 'C' with effect from 15.10.1984"

10. In making these observations and by its directions *the Bench* issued in these cases, in effect:

- a) equated Bhagwan Sahai's case with those of Abdul Sattar and others;
- b) applied the test of equity (in terms of Clauses 14 and 16 of the Constitution) and the concept of Equal Pay for Equal Work between trades which had been categorised differently by expert bodies;


10 SEP 93

- c) obliterated the distinction between jobs requiring higher levels of skill and those which depend on no such skills at all;
- d) made the recommendation of a Committee which had not been accepted by the Government as one of the bases of its verdict; and
- e) totally enlarged the scope and intent behind the division of various jobs and trades in one single sweep.

11. The latest and last link in the chain of developments forming the back-drop of the present case is an application filed before the Bangalore Bench of this Tribunal (O.A.No.111/91) wherein the petitioners, 17 in number, employed in the Gas Turbine Research Establishment, claimed the same relief(s) as were claimed by Syed Sattar before the Hyderabad Bench, based their claim on Bhagwan Sahai's case, invoked the Venkatesan Committee's unaccepted recommendation, and made the decision of the Hyderabad Bench their main plank of argument.

12. In an analytically comprehensive and in-depth survey of facts and all the preceding events, the Bangalore Bench opined that:

- (a) the cause of action in the case before them arose only in 1989 after the pronouncement of verdict in O.A.No.363/89 and cases connected thereto by the Hyderabad Bench;
- (b) the case of Bhagwan Sahai decided by the Supreme Court was clearly distinguishable on at least two counts; that the ratio

— 104.1.11
16 SEP 93

of Bhagwan Sahai's case can at best have a limited application to the present case in deciding the date from which the semi-skilled grades other than the 11 should be upgraded, if and when, that is, it was decided to upgrade them;

- (c) the identification of certain selected trades for upgradation, and the larger question of categorisation of trades, were properly the province of expert bodies;
- (d) the Government's eventual decision to enhance the pay-scales of certain select trades by suitable upgradation on recategorisation was based on the cumulative recommendations of at least three successive committees of experts who had gone into the various ramifications of all issues pertaining to a proper classification of workers in all defence industrial establishments, and ipso facto, carried a stamp of authority and expertise;
- (e) the last of these committees, otherwise known as the Anomalies Committee, which was but an extension of the Joint Consultative Machinery in the Ministry of Defence, and had as its members the representatives of the workers as well, enjoyed on that score the status of the final expert body to assess and decide these issues;
- (f) the Anomalies Committee's recommendations impliedly constituted, therefore, a consensual and eventual finality on the questions of classification, categorisation, identification, upgradation, and inclusion or exclusion of trades, jobs and skills into viable groups;
- (g) the Venkatesan Committee, whose recommendations were invoked before both the Hyderabad and the Bangalore Benches, had approached the problem of recategorisation from only an ameliorative angle and its recommendations were not really based on any empirical study of the problems involved;
- (h) the recommendation of the Venkatesan Committee regarding the upgradation of ALL Category E jobs to a higher category were, in any case, NOT accepted by the Government;
- (i) a blanket or wholesale upgradation of all trades in a particular category, regardless of their technical job-content, might well

— 4. Sigda
10 SEP 93

lead to a situation in which all unskilled labour would find direct promotion to skilled levels;

- (j) the structuring of posts in a department of the Government, which necessarily includes the provisioning of adequate avenues for promotion to different classes of employees[†]
- (k) the basic justification for the upgradation of different trades is necessarily bound-up with duties, responsibilities and skills - in otherwords, the technical job content-of a particular trade;
- (l) the decision such upgradations cannot arise or be based on a simple theory of discrimination that if one semi-skilled trade is upgraded, all others should be likewise upgraded from the same date;
- (m) the applicants had not advanced any valid material or argument in support of their claim for upgradation of their trades,^{or} what, if at all, is the justification, in terms of job content, for such an upgradation, even as a one-time measure; and
- (n) a denial of upgradation to the applicants would not constitute a discrimination solely on the ground that such benefit has been conferred on a group of tradesmen by another Bench of the Tribunal, and no principles of natural justice would be violated.

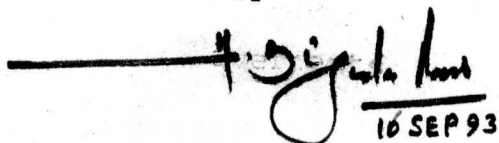
† is an administrative function of the Government itself and not of the law-courts;

Based on the above cited reasons the Bangalore

Bench observed as follows :

" In view of the above discussion, we would like to respectfully state that we are unable to persuade ourselves to agree with the judgment of the Hyderabad Bench dated 23.6.1989 in O.A.363/1988. Even though DRDL and GTRE are different organisations, they belong to the same DRDO functioning under Defence Ministry and since the questions involved in O.A.No.363/1988 (Supra) and the present application are exactly the same, we would like to refer this matter to the Hon'ble Chairman of the Central Administrative Tribunal with a request to constitute a larger Bench to decide and dispose of O.A. No.111/1991."

13. The case of the petitioners in the present application is to be viewed against the facts, events,


16 SEP 93

averments and views enumerated above.

14. The position of facts as revealed and the arguments as pleaded by the present petitioners are exactly identical to those relied upon by Shri Abdul Sattar and others before the Hyderabad Bench in O.A. No.363 of 1988 and related cases, and by Shri G.Narayana and Others before the Bangalore Bench in O.A.No.111/1991. We are in total and unqualified agreement with the views expressed by the Bangalore Bench in O.A.No.111/1991. We respectfully disagree with the view expressed by the Hyderabad Bench.

15. Apart from other aspects, we have taken note of the following view expressed by the learned Sr.Standing Counsel (Central). The same is quoted in full, since we find a considerable force and validity in it.

"Notwithstanding the facts that the extending the benefits of the judgment of C.A.T., Hyderabad in O.A.No.363/88 to all similarly placed persons who are in large numbers would involve a huge financial commitment to the Respondents, it will also lead to a situation where there will be no feeder category as both skilled and semi-skilled categories have to be brought under one pay scale irrespective of their competency to hold that post defeating the very purpose for which ECC and AC were constituted. This affects the basic route of original structure where an employee has to grow from semi-skilled to skilled to professional levels and advances in the career accordingly. Hence the contention of the applicants that there being common seniority list the upgradation, which is based on the scientific study, upgradation should follow without reference to the specific trades, is bad in law and be dismissed."

16. In view of the above discussion and in view of the fact that there is a conflict of opinion between two Co-ordinate Benches of the Central Administrative

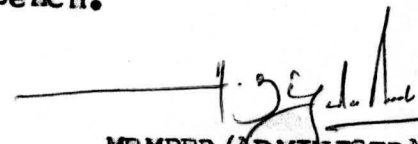
— 16 SEP 93

Tribunal, and we are in respectful agreement with the views expressed by the Bangalore Bench, in all fitness of things the issues involved in this case should be decided by a larger Bench laying down the correctness of the view expressed either by the Bangalore Bench or the Hyderabad Bench.

17. Therefore, it is directed that papers in this case including the judgment be placed before the Hon'ble Chairman for constituting a larger Bench.

18. Registry is directed to place the papers of this case before the Hon'ble Chairman for necessary orders in conjunction with O.A. No.111/1991 already referred by the Bangalore Bench.


16.9.93.
VICE-CHAIRMAN


MEMBER (ADMINISTRATIVE)
16 SEP 93

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 16.9./1993/B.K.Sahoo

