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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 306 OF 1995

Cuttack, this the 18th day of June 2001

Naba Kumar Barik and others Applicants

vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SONG)
VICE-CHAIRMAN

18.6.2001

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
....

1. Naba Kumar Barik, aged 45 years,
T.No.766, M.T.Section,
Proof & Experimental Establishment,
Chandipur, Balasore.
2. Gopabandhu Parida, aged 39 years,
Tradesman, T.No.778, A.P.Wing,
Proof & Experimental Establishment,
Chandipur, Balasore.
3. Kishore Kumar Panda, aged 38 years,
Tradesman 'C', Instrument Wing,
T.No.782, Proof & Experimental
Establishment, Chandipur, Balasore.
4. Bidyadhar Patra, Tradesman 'C',
aged about years, T.No.784, A.P.Wing,
Proof & Experimental Establishment,
Chandipur, Balasore.
5. Jagannath Mohanty, aged years,
T.No.819, M.I.Section
Proof & Experimental Establishment,
Chandipur, Balasore.
6. Radhashyam Dutta, aged 35 years.
T.No.836, Inspection Cell,
Proof & Experimental Establishment,
Chandipur, Balasore.
7. Samir Ku.Ray, aged 35 years, T.No.808,
Instrument Wing, P&EE, Balasore.

.....APPLICANTS

Advocates for applicants - M/s B.K.Sahoo
K.C.Sahoo
S.K.Mohapatra

1. Union of India represented by Secretary to Ministry of Defence, New Delhi.
2. Scientific Adviser to the Ministry of Defence and Director General Research & Development Organisation, Ministry of Defence, D.H.Q. New Delhi - 110 011.
3. Commandant, Proof and Experimental Establishment, Chandipur, Balasore.
4. Joint Controller of Defence Accounts, R & D, O.T.Road, Balasore.
5. Controller General of Defence Accounts, New Delhi - 110 056.
6. Shri N.Behera, T.No. 368, Ammunition Wing.
7. Shri S.Jena, T.No. 376, Equipment Wing.
8. Shri D.Sanyasi, T.No.548, Range Wing.
9. Shri R.K.Jena, T.No. 365, Equipment Wing.
10. Shri S.N.Dwari, T.No. 417, Ammunition Wing.
11. Shri B.C.Nayak, T.No. 367, General Store.
12. Shri B.Jena, T.No. 377, Range Wing.
13. Shri S.Das, T.No. 379, NPT PXE.
14. Shri Sk.Samsuddin, T.No. 381, Equipment Wing.
15. Shri B.R.Mandal, T.No. 384, Ammunition Wing.
16. Shri B.P.Mandal, T.No. 385, A.P.Wing.
17. Shri S.Padhi, T.No. 386, Instrument Wing.
18. Shri J.K.Mali, T.No. 389, A.P.Wing.
19. Shri B.C.Patra, T.No. 390, Ammunition Wing.
20. Shri Devi Ram, T.No.655, Ammunition Wing.

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21. Shri G.Appanna, T.No.524,
A.G.Branch.

22. Shri A.Jagannath, T.No.525,
Equipment Wing.

23. Shri G.Apparao, T.No.575,
General Store.

24. Shri K.Behera, T.No.409,
Ammuniation Wing.

25. Shri S.M.Majhi, T.No.408,
Equipment Wing.

26. Shri U.N.Nayak, T.No.414,
Equipment Wing.

27. Shri A.Lima, T.No.478,
Equipment Wing.

28. Shri B.K.Singh, T.No.509,
Equipment Wing.

29. Shri Rama Sewak, T.No.703,
Equipment Wing.

30. Shri Mirza Majhi, T.No.435,
Equipment Wing.

31. Shri L.Majhi, T.No.449,
Equipment Wing.

32. Shri M.Tudu, T.No.451,
Equipment Wing.

33. Shri P.B.Mallick, T.No.452,
General Store.

34. Shri B.Bhora, T.No.531,
Ammuniation Wing.

35. Shri P.Mohapatra, T.No.507,
Range Wing.

36. Shri B.B.Behera, T.No.413,
Range Wing.

37. Shri K.A.Saha, T.No.380,
Proof Wing.

38. Shri Sk.Ekoo, T.No.508,
Instrument Wing.

39. Shri S.Behera, T.No.431,
NAD.

40. Shri G.C.Das, T.No.438,
A.P.Wing.

41. Shri P.Jena, T.No.429,
General Store.

42. Shri G.Jena, T.No.432,
Range Wing.

43. Shri I.C.Mali, T.No.436,
N.A.D.

44. Shri B.Das, T.No.439,
M.T.Section.

45. Shri P.K.Behera, T.No.444,
Security Gate.

46. Smt. Fulla, T.No.446,
Inspection Cell.

47. Smt.Panna, T.No.445,
Inspection Cell.

48. Smt.Bhuski, T.No.447,
Inspection Cell.

49. Smt.Muni, T.No.448,
Inspection Cell.

50. Shri B.N.Jena, T.No.450,
Equipment Wing.

51. Shri Munna Lal, T.No.490,
N.A.D.

52. Shri A.C.Sethi, T.No.552,
T.C.C.

53. Shri SK.Izrail, T.No.553,
Equipment Wing.

54. Shri D.Patnaik, T.No.554,
Ammuniation Wing.

55. Shri P.P.Dandapat, T.No.684,
Ammuniation Wing.

56. Shri R.C.Behera, T.No.544,
Equipment Wing.

57. Shri K.Majhi, T.No.561,
Range Wing.

58. Shri G.D.Mallik, T.No.565,
N.A.D.

59. Shri K.C.Majhi, T.No.567,
A.P.Wing.

60. Shri B.D.Jena, T.No.580,
Range Wing.

61. Shri N.Dey, T.No.584,
C.C.

62. Shri S.L.Rajaji, T.No.586,
Transit Section.

63. Shri M.M.Jena, T.No.591,
Instrument Wing.

65. Shri R.Majhi, T.No.597,
Instrument Wing.

66. Shri S.Majhi, T.No.600,
N.A.D.

67. Shri M.Majhi, T.No.603,
Ammuniation Wing.

68. Shri Okila Singh, T.No.598,
M.E.T.Wing.

69. Shri R.M.Singh, T.No.595,
Range Wing.

70. Shri S.Majhi, T.No.604,
Transit Wing.

71. Shri K.Majhi, T.No.601,
Range Wing.

72. Shri P.Majhi, T.No.602,
N.A.D.

73. Shri S.Majhi, T.No.606,
Range Wing.

74. Shri B.Soren, T.No.607,
Transit Wing.

75. Sri K.Hansda, T.No.634,
N.A.D.

76. Shri L.Tudu, T.No.631,
A.P.Wing.

77. Shri L.Majhi, T.No.635,
Civilion Canteen.

78. Shri K.Majhi, T.No.637,
Range Wing.

79. Shri S.Majhi, T.No.633,
A.P.Wing.

80. Shri G.C.Some, T.No.667,
Range Wing.

81. Shri R.N.Behera, T.No.669,
Range Wing.

82. Shri S.Sahoo, T.No.668,
Range Wing.

83. Shri G.C.Raul, T.No.671,
Range Wing.

84. Shri B.Hembram, T.No.677,
Transit Section.

85. Shri B.K.Majhi, T.No.685,
Instrument.

86. Shri G.Behera, T.No.686,
Inspection.

87. Shri N.C.Prusty, T.No.691,
Finance Section.

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88. Shri S.N.Rout, T.No.693,
Transit Section.

89. Shri G.M.Behera, T.No.696,
T.E.Wing.

90. Shri B.K.Khatua, T.No.708,
Communication Section.

91. Shri H.C.Behera, T.No.712,
Range Wing.

92. Shri K.M.Padhi, T.No.719,
Range Section.

93. Shri B.C.Das, T.No.723,
Range Wing.

94. Shri B.C.Saw, T.No.724,
Ammuniation Wing.

95. Shri Kati Singh, T.No.725,
A.P.Wing.

96. Shri J.Banarjee, T.No.727,
N.A.D.

97. Shri G.Bisoi, T.No.721,
Ammuniation Wing.

98. Shri S.N.Behera, T.No.731,
Equipment Wing.

99. Shri S.Das, T.No.735,
Communication Wing.

100. Shri L.D.Sethi, T.No.387,
Transit Section.

101. Shri P.M.Rao, T.No.704,
Equipment Wing.

102. Shri S.Puniya, T.No.574,
Equipment Wing.

103. Shri M.R.Some, T.No.419,
Equipment Wing.

104. Shri G.C.Dey, T.No.613,
N.A.D.

105. Shri D.Thakur, T.No.625,
Equipment Wing.

106. Shri N.Mallick, T.No.570,
Museum.

107. Sri M.M.Rao, T.No.588,
Equipment Wing.

108. Shri G.Bhimaya, T.No.624,
Equipment Wing.

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109. Shri L.Majhi, T.No.674,
Equipment Wing.

110. Shri J.P.Panda, T.No.726,
Equipment Wing.

111. Shri G.Behera, T.No.734,
Equipment Wing.

112. Shri B.Rout, T.No.741,
General Store.

113. Smt.S.Marandi, T.No.742,
Ammuniation Wing.

114. Sri M.D.Panda, T.No.707,
Inspection Wing.

115. Shri Sk.Isak Alli, T.No.670,
Proof Wing.

116. Shri P.K.Das, T.No.744,
A.Wing.

117. Shri M.R.Das, T.No.743,
Ammuniation Wing.

118. Sri S.C.Mohanti, T.No.750,
Transit Section.

119. Shri Akram Hossain, T.No.755,
Transit Section.

120. Shri N.N.Giri, T.No.749,
Range Wing.

121. Shri R.Behera, T.No.751,
Transit Section.

122. Shri N.Parida, T.No.752,
Transit Section.

123. Shri P.Murmu, T.No.756,
Transit Section.

124. Shri J.B.Dhibar, T.No.619,
T.E.Wing.

125. Shri H.P.Kundu, T.No.757,
Instrument Wing.

126. Shri Sk.A.Rahim, T.No.758,
Equipment Wing.

127. Shri P.K.Das, T.No.762,
Equipment Wing.

128. Shri K.K.Rajak, T.No.760,
A.P.Wing.

129. Shri S.Sahu, T.No.763,
Inspection Cell.

130. Shri S.C.Mahakud, T.No.761,
Range Wing.

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131. Shri R.B.Rai, T.No.759,
Range Wing.
132. Shri C.R.Jena, T.No.753,
Instrument Wing.
133. Shri R.L.Giri, T.No.583
M.E.T.Wing.
134. Smt.M.Jena, T.No.718,
Finance Section.
135. Shri G.Mahesh, T.No.746,
Range Wing.
136. Shri K.Apparao, T.No.769,
Inspection Cell.
137. Shri K.C.Kiskoo, T.No.772,
Instrument Wing.
138. Shri D.R.Behera, T.No.779,
A.P.Wing.
139. Shri S.N.Behera, T.No.785,
Equipment Wing.
140. Shri N.C.Mohapatra, T.No.787,
Range Wing.
141. Shri N.C.Singh, T.No.789,
A.P.Wing.
142. Shri C.Khillar, T.No.791,
Range Wing.
143. Shri Sk.S.Hussain. T.No.790,
N.A.D.
144. Shri L.Singh, T.No.793,
Ammuniation Wing.

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Respondent 6 to 144 all of Proof &
Experimental Establishment, Chandipur,
Balasore.

By the Advocate

.... Respondents.
Mr. S.B.Jena
A.S.C

SOMNATH SOM, VICE-CHAIRMAN

In this Application, the seven petitioners have prayed for quashing the order dated 9.5.1994 at Annexure-7 as also the notice dated 1.6.1995 (Annexure-11) calling eight persons for trade test. The second prayer is for a direction to the respondents 1 to 5 to maintain the seniority of the petitioners above respondent nos.6 to 144.

2. The applicants have stated that they are all matriculates with ITI Certificate and they were directly appointed under Commandant, Proof & Experimental Establishment, Chandipur (respondent no.3) in the semi-skilled grade in the pay scale of Rs.210-290/- prior to 15.10.1984. In order dated 28.12.1984 at Annexure-4 they were upgraded and fitted in the pay scale of Rs.260-400/- basing on Government order dated 15.10.1984 (Annexure-2). Orders of appointment of the applicants are at Annexure-5 series. It is stated that respondent nos. 6 to 144 were initially appointed as Helpers in the scale of Rs.196-232/- and they were engaged as labourers on Ammunition Duty. The applicants have stated that these respondents were not industrial workers of any specific trade. They were labourers who were given a special allowance of Rs.10/-, called Ammunition Allowance. The applicants have stated that these respondents were appointed as Helpers much earlier than the petitioners and after the petitioners joined their trade in the semi-skilled grade, these respondent nos.6 to 144 were working under the petitioners. The applicants have stated that Government of India, Ministry of Defence in their notification dated 16.10.1981 at Annexure-1 approved five categories

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of pay scales for industrial workers on the basis of recommendation of the Expert Classification Committee which was appointed on the suggestion of the Third Pay Commission. In this circular it was mentioned that as a result of such fitment a number of jobs carrying semi-skilled scales would stand upgraded to the skilled grade of Rs.260-400/- creating a vacuum in the grade structure at the semi-skilled level. In view of this, viable feeder grades should be identified at the semi-skilled level in the same or allied trade or the posts in these jobs should be apportioned between the scale of Rs.260-400/- and Rs.210-290/-. It is stated that as there was anomaly in the implementation of the above order, the Government constituted Anomalies Committee which in its report recommended for upgradation of 11 jobs from semi-skilled in the scale of Rs.210-290/- to the skilled grade of Rs.260-400/- with effect from 16.10.1981. This order is at Annexure-2. This order of upgradation of 11 trades was challenged in different Benches of the Tribunal as well as in the Hon'ble Supreme Court of India. The applicants have stated that in all those cases the decisions had gone in favour of industrial workers and as a result, the Government in their letter dated 17.11.1993 at Annexure-3 recommended for upgradation of all industrial workers irrespective of their job title who were in the pay scale of Rs.210-290/- as on 15.10.1984 to the pay scale of Rs.260-400/-. The grievance of the applicants is that the departmental authorities had misinterpreted the letter dated 17.11.1993 (Annexure-3) and extended the same benefit of upgradation

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from the scale of Rs.210-290/- to the scale of Rs.260-400/- with effect from 15.10.1984 to opposite party nos.6 to 144 and accordingly issued the impugned order dated 9.5.1994 at Annexure-7 giving the benefit of higher pay scale to respondent nos.6 to 144 with effect from 15.10.1984. They have stated that these respondent nos. 6 to 144 had already been benefitted once on the basis of report of the Third Pay Commission by being brought to the scale of Rs.210-290/- with effect from 16.10.1981. Extension of further benefit through the impugned order dated 9.5.1994 giving them the scale of Rs.260-400/- amounts to giving double benefits. It is further stated that opposite party nos.6 to 144 were Helpers. They have never been declared as industrial workers. They have no qualification for appointment to skilled or semi-skilled categories. They have also not passed any trade test as per SRO 221, dated 22.2.1981 for consideration for promotion to higher post of semi-skilled grade. But by giving them the higher scale of Rs.260-400/- these opposite parties will become senior to the applicants according to their date of appointment. It is further stated that there are only 63 posts in the skilled category in Proof & Experimental Establishment and 200 posts of Labourers as is seen from Annexure-8 and there is no sanctioned post of industrial worker for these opposite parties. It is further stated that by granting them the pay scale of Rs.210-290/- in place of Rs.196-232/-, the designation of these opposite parties has not been changed. Lastly it is stated that in letter dated 1.6.1995 at Annexure-11, eight persons out of these opposite party nos.6 to 144 have been called upon to face the trade test for the post of Tradesman 'B'. The test was conducted on the same day.

It is further stated that one P.C.Das, Office Superintendent-II, who is dealing with the matter is the staff member of the Joint Consultative Machinery as also the Vice-President of Proof Employees' Union in which respondent nos.6 to 144 are members and because of extraneous reasons the interest of the petitioners has been ignored. In the context of the above, the applicants have come up with the prayers referred to earlier.

3. Out of private respondent nos.6 to 144, about 80 have filed a joint counter opposing the prayers of the applicants. It is not necessary to record all the averments made ⁱⁿ by the counter except to note that they have ^{J.D.W.} stated that under Defence Research & Development Organisation, Ministry of Defence, Groups C and D Industrial Posts Recruitment (Amendment) Rules, 1981, labourers are taken as industrial workers. They have stated that they have been rightly fitted in the pay scale of Rs.210-290/- with effect from 16.10.1981 and allowed the scale of Rs.260-400/- in the impugned order at Annexure-7. The grounds on which they have taken the above stand would be discussed later on.

4. The departmental respondent nos.1 to 5 have filed counter opposing the prayers of the applicants. They have denied the averment of the applicants that they are all matriculates with ITI Certificate. They have pointed out that petitioner no.1 is a non-ITI candidate. They have also stated that all the petitioners were appointed in semi-skilled grade. Petitioner nos.1,2,3 and 4 were appointed in semi-skilled grade, i.e., Tradesman 'E', but applicant nos.5,6 and 7 were appointed in skilled grade, i.e., Tradesman 'C'. It is not correct that all of them were upgraded and fitted

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in the pay scale of Rs.260-400/-. They have stated that SRO 221/81 did not specify any qualification for upgradation of posts and no trade test was also prescribed. All the applicants were upgraded on 15.10.1984 from the grade of semi-skilled Tradesman "E" to Skilled Tradesman "C" without facing any trade test and irrespective of qualification as per Ministry of Defence order dated 15.10.1984 and respondent nos.6 to 144 were also upgraded similarly. The other grounds urged by the departmental respondents would be referred to at the time of considering the submissions of the counsel of both sides.

5. The applicants have filed rejoinder along with which they have filed the copy of the counter filed by the Government in OA No. 369 of 1991 in support of their contention that Expert Classification Committee was constituted on the recommendation of the Third Pay Commission. The other averments refer to the earlier litigations on these points.

6. From the voluminous pleadings of the parties it is clear that in regard to redesignation and reclassification of industrial workers, there have been several Committees and the main question for determination in this case is whether the impugned order issued at Annexure-7 has been rightly issued with reference to the Government order with regard to upgradation of the posts of industrial workers. For determining the question the admitted position will have to be noted first. Admittedly, the Third Pay Commission recommended setting up of an

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expert committee for evaluating the industrial jobs for proper fitment of industrial employees. This has been mentioned by both the parties in their pleadings. Accordingly, Expert Classification Committee was constituted and on their recommendation the order dated 16.10.1981 at Annexure-1 was issued. It is necessary to note in this connection that the applicants have not enclosed at Annexure-1 the entire copy of the order. Annexure-2 issued along with this order and referred to in paragraph (ii) has not been enclosed by the applicants. Private respondents along with their counter have enclosed the Ministry of Defence circular dated 11.5.1983 at Annexure-R.9/1. This circular deals with fitment of industrial workers in pay pay scales recommended by the Third Pay Commission. Paragraph 6 of this circular specifically provides that this circular supersedes the Government orders issued under Ministry of Defence letter dated 16.10.1981 as amended from time to time and this circular dated 11.5.1983 shall take effect from 16.10.1981. Thus, it is clear that fitment of industrial workers has to be done on the basis of circular dated 11.5.1983. In this circular it is provided that upgradation of posts from Skilled Grade/Highly Skilled Grade-II to Highly Skilled Grade II/I respectively in case of jobs enumerated in Annexure-II has to be done in accordance with the formula indicated therein. We are not concerned for the present purpose with the formula. It is only necessary to note that in this circular itself there

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is a reference to Annexure-II. We have already noted that there is also a reference to Annexure-II in the earlier order dated 16.10.1981 which the applicants have not enclosed to their Annexure-I. From Annexure-II to the order dated 11.5.1983 which has come into force in supersession of the earlier order dated 16.10.1981, under serial no.65 it has been mentioned that labourers (on Ammunition Duty) have to be upgraded from existing scale of Rs.196-232/- to the scale of Rs.210-290/-. This has been done by the departmental respondents in respect of private respondent nos.6 to 144 and the applicants have no grievance with regard to such upgradation of the scale of pay of private respondent nos.6 to 144. But what further transpires from this is that labourers on Ammunition Duty are industrial workers because this circular dated 11.5.1983 deals with fitment of industrial workers. In view of this, the contention of the applicants that these private respondents were only labourers and were not industrial workers must be held to be without any merit and is accordingly rejected.

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7. The official respondents have pointed out in page 2 of their counter that private respondent nos.6 to 144 were fitted in the semi-skilled grade of Rs.210-290/- with effect from 16.10.1991. We have already noted that this fitment of private respondent nos.6 to 144 in the scale of Rs.210-290/- has not been questioned by the applicants. Thus the undoubted position is that private respondent nos.6 to 144 were put in the scale of Rs.210-290/- from 16.10.1991 whereas the applicants joined service in that scale much thereafter. Therefore, in the scale of

Rs.210-290/- the applicants must have been rightly reckoned as junior to the private respondents. As earlier noted about fitments there were several litigations in different Benches of the Tribunal and the matter was ultimately referred to the Full Bench in O.A.No.111 of 1991 on 18.6.1993. Basing on that decision, Government of India issued order dated 17.11.1993 in which it was decided that Tradesmen "E" who were in the scale of Rs.210-290/- as on 15.10.1984 may be given the scale of Rs.260-400/- notionally from 15.10.1984 for the purpose of seniority and pay fixation and from 9.2.1988 for the purpose of payment of financial benefit. Accordingly, the private respondent nos.6 to 144 have been rightly fitted in the scale of Rs.260-400/- in the order dated 9.5.1994 (Annexure-7). It is necessary to note that contrary to the averment made by the applicants in paragraph 4(d) of the O.A. all of them had not joined in the scale of Rs.210-290/- prior to 15.10.1984. In any case the private respondent nos. 6 to 144 having got the scale of Rs.210-290/- with effect from 16.10.1981 and some of the applicants having joined that scale later than the private respondents, the private respondents have been rightly shown as senior to these applicants in the scale of Rs.260-400/-. In view of this, the prayer for showing the applicants as senior to private respondent nos.6 to 144 is held to be without any merit and is rejected.

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8. The other prayer is for cancelling the notice dated 1.6.1995 at Annexure-11 calling 8 persons to trade test. The official respondents have pointed out that they have called these eight persons for trade test on the basis of their seniority. We have already held that these private respondents have been rightly declared senior to the applicants.

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In view of this, there is no illegality in calling these private respondents to the trade test. The prayer for cancelling the trade test is also held to be without any merit and is rejected.

9. In the result, therefore, the Original Application is held to be without any merit and is rejected.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

SOMNATH SON
VICE-CHAIRMAN
18.6.2001

AN/PS