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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS. 425 & 426 OF 1995
Cuttack, this the 21st day of December, 2001


Shyama Sundar Majhi, etc. Applicants

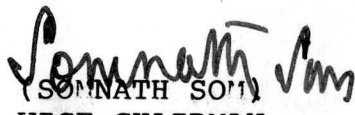
Vrs.

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.


(N. PRUSTY)
MEMBER (JUDICIAL)


(SONNATH SONI)
VICE-CHAIRMAN
21.12.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 425 & 426 OF 1995
Cuttack, this the 21st day of December, 2001

CORAM:

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

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In OA No. 425/95

1. Shyam Sundar Majhi, son of late Fakir Mohan Majhi, presently working as Tradesman "E", Ticket No. 747, Range Wing, Proof & Experimental Establishment, Chandipur, Balasore, a permanent resident of At/PO-Hidiga, District-Balasore.
2. Dhirendranath Sahu, son of Amulya Kumar Sahu, presently working as Tradesman "E", Ticket No. 748, Works Project Section, Proof & Experimental Establishment, Chandipur, Balasore, a permanent resident of Mirzapur, P.O-Chandipur, District-Balasore.
3. Santosh Kumar Mandal, son of Sudhir Chandra Mandal, presently working as Tradesman "E", Ticket No. 754, Drawing Section, Proof & Experimental Establishment, Chandipur, Balasore, a permanent resident of Mirzapur, P.O-Chandipur, District-Balasore

In OA No. 426 of 1995

1. Radhakanta Jena, son of Sri Damodar Jena, presently working as Tradesman "E", a resident of village Mirzapur, P.O-Chandipur, District-Balasore.
2. Raghunath Behera, son of late Gurucharan Behera, presently working as Tradesman "E", Ticket No. 720, a permanent resident of Puruna Balasore, District-Balasore,

S. Som. Both are working in Works Project Section, Proof & Experimentasl Establishment, Chandipur, Balasore

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Applicants.

Advocates for applicants - M/s B. Mohanty
S. Patra

Vrs.

1. Union of India, represented through Secretary to Government of India, Ministry of Defence, South Block, New Delhi.
2. Scientific Advisor & Director General of Researrch & Development,
Defence Research & Development Organisation, "B" Wing,
Sena Bhawan, New Delhi.

3. Commandant, Proof & Experimental Establishment, Defence Research & Development Organisation, Chandipur, District-Balasore.

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Respondents

Advocate for respondents - Mr.A.K.Bose
Sr. C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two O.As. have been heard separately, but the applicants in these two cases are similarly placed and they have approached the Tribunal for similar reliefs. Respondents have filed separate but almost identical counters and the points at issue are the same. Therefore, one order will cover both these cases. Facts of the two cases are, however, set out separately.

2. In OA No. 425 of 1995 the three applicants have prayed for a direction to the respondents to grant them the scale of pay of Rs.210-290/- with effect from 1.3.1983, or in the alternative issue a direction to respondent nos. 1 and 2 to take a decision in the matter which is pending consideration of the Ministry of Defence within a specific time limit. The three applicants were appointed as Helper in Proof & Experimental Establishment under respondent no.3 in November 1982 in the scale of Rs.196-232/-. They have stated that under respondent no.3, two hundred labourers were working whose designation was changed to Helper. They were given duties in different Wings like Ammunition Wing, T.E.Wing, Proof Wing, W.P.Section, N.P.T.Wing, T.C.Cell, Drawing Section, A.P.Wing, Naval Armament Depot., etc. The applicants' case is that all the labourers were doing identical work and their posts were

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interchangeable. They have stated that five Labourers whose names have been mentioned in the O.A. and who had been appointed along with them in November 1982 were given the scale of Rs.210-290/- with effect from 1.3.1983. For giving these five labourers higher scale no test was conducted. After getting the scale of Rs.210-290/- these five Helpers were redesignated as Tradesman "E" during 1989. It is further stated that three other labourers who joined in 1984 and whose names have been mentioned in the O.A., have been allowed the scale of Rs.210-290/- from the date of their initial appointment. As the applicants have been discriminated against by not being given the scale of Rs.210-290/- they have made several representations. Ultimately the applicants were allowed the scale of Rs.800-1150/- with effect from 15.6.1988 (pre-revised Rs.210-290/-). The applicants' grievance is that they were brought into the scale of Rs.800-1150/- (pre-revised Rs.210-290) with effect from 15.6.1988 whereas others who were similarly situated and recruited along with them and three more who were recruited much later were given the scale of Rs.210-290/- which was later on revised to Rs.800-1150/-. It is further stated that scale of pay of those Labourers who were getting Rs.210-290/- was further revised to Rs.260-400/- from 15.10.1984. But as the applicants were not given the scale of Rs.210-290/- from 1.3.1983, they were deprived of getting the higher scale of Rs.260-400/- with effect from 15.10.1984. It is stated that those workers who were getting Rs.260-400/- from 15.10.1984 have been allowed still higher scale of Rs.950-1500/- with effect from 1.1.1986. They have filed several representations. Ultimately, Ministry of Defence in their

letter dated 15.3.1995 informed that the matter is under examination by the Ministry of Defence. As this is a confidential letter it has not been enclosed but the extract of the letter has been quoted by the petitioners in their application. In the context of the above, the applicants have come up with the prayers referred to earlier.

3. Respondents in their counter have admitted that the applicants were appointed in November 1982 and were promoted to Tradesman "E" in the scale of Rs.210-290/- (pre-revised) with effect from 15.6.1988. It is stated that Helpers who were engaged on Ammunition/Heavy Duty were in receipt of special pay of Rs.10/- per month besides the pay in the scale of Rs.196-232/-. All the Helpers who were in the above scale and were engaged on Ammunition/Heavy Duty and were in receipt of special pay of Rs.10/- per month were brought over to the scale of Rs.210-290/- in terms of the Ministry of Defence circular dated 11.5.1983. It is stated that the higher scale of Rs.210-290/- is applicable to only to the Helpers who were engaged on Ammunition/Heavy Duty and therefore, the applicants cannot claim the same. They have further stated that selection of Helpers for being engaged on Ammunition/Heavy Duty is determined having regard to their seniority and physical fitness by a Board of Officers.

On the basis of assessment by the Board of Officers and depending upon the technical necessity Helpers are engaged on such duty. Seniority is not the only basis of engagement of Helpers on Ammunition/Heavy Duty. As the petitioners were not engaged on Ammunition/Heavy Duty, they cannot be allowed the scale of Rs.210-290/- from the date their juniors got the same. It is stated that the five Helpers mentioned by the applicants were all engaged on Ammunition/Heavy Duty and

therefore, they were brought over to the higher scale and were designated as Tradesman "E". As regards other three persons referred to by the petitioners, it is stated that depending upon requirement for work and physical fitness, these three persons were engaged on Ammunition/Heavy Duty and this is not related to their seniority. It is stated that as the applicants were promoted to the scale of Rs.800-1150/- with effect from 15.6.1988, their seniority in the grade of Tradesman "E" counted from 15.6.1988. As regards granting of higher scale to Tradesman "E", it is explained that Expert Classification Committee was set up to scientifically evaluate the industrial and non-industrial jobs in Defence Establishment and to classify various trades getting similar pay scale but performing duties which were different. This was done for fitting them in the Third Pay Commission pay scales. The Classification Committee evaluated 1720 varieties of industrial jobs. Job contents of various factors for each trade were considered and points were awarded. Those trades which were given point scores between 251 and 328 were given the grade of Rs.260-400/- and those trades getting point scores between 206 and 250 were given the grade of Rs.210-290/-. After receipt of the report of the Expert Classification Committee, Government issued orders designating five categories of jobs which were later on designated as Tradesman "A" to Tradesman "E". Because of certain anomalies, an Anomaly Committee went into this and submitted their report in May 1984. Report of the Anomaly Committee was accepted by the Government in their letter dated 15.10.1984 in which 11 semi-skilled trades were upgraded and granted higher pay scale of Rs.260-400/-. After

implementation of the order dated 15.10.1984, some affected Tradesmen of Military Engineering Service went to the Hon'ble Supreme Court with the grievance that their trades were upgraded from 15.10.1984 though the anomaly had arisen in October 1981. This matter went before Hyderabad and Bangalore Bench of the Tribunal and also before Full Bench of the Tribunal which settled the conflicting views of Hyderabad Bench and Bangalore Bench. Basing on this decision, Government of India issued order dated 17.11.1993 directing that as a one time measure all Tradesman "E" existing as on 15.10.1984 were upgraded to Tradesman "C". Respondents have stated that this upgradation cannot be extended to other persons who have been promoted to Tradesman "E" after 15.10.1984. On the above grounds, the respondents have opposed the prayer of the applicants.

4. The applicants in their rejoinder have reiterated that the job of all the workers was interchangeable. They have stated that no Board ever existed for selecting persons for assigning them Ammunition/Heavy Duty and with this they have reiterated their prayer in the O.A.

5. The two applicants in OA No. 426 of 1995 also joined as Labourer in the scale of Rs.196-232/- in 1968 and 1978. They have also made averments that duties of labourers in different Wings of Proof & Experimental Establishent are interchangeable. They have mentioned that in order dated 13.3.1986, six labourers who had joined later than the applicants between February 1979 and January 1982 were allowed the scale of Rs.210-290/- from 16.10.1981 and were designated as Tradesman "E" in 1989. They have also mentioned the names of three labourers who joined in 1984

straightaway in the scale of Rs.210-290/-. The applicants filed representations and ultimately in order dated 16.6.1986 they were allowed the scale of Rs.210-290/- with effect from 6.6.1986. The applicants have stated that even after getting the higher scale, they continued to do the same type of work. The applicants have stated that they became aware that the type of job they were doing was heavy duty. But they were not allowed the scale of Rs.210-290/- from 16.10.1981. They have stated that subsequently the scale of Rs.210-290/- of Tradesman "E" was revised to Rs.260-400/- from 15.10.1984. The applicants have made number of representations and they stated that in confidential letter dated 15.3.1995 the Proof & Experimental Establishment authorities have informed that their representation is under examination by the Ministry of Defence. The applicants have extracted paragraph 2 of this letter. In the context of the above, the applicants have come up with the prayer for a direction to the respondents to allow them the scale of Rs.210-290/- from 16.10.1981 or in the alternative give a direction to respondents 1 and 2 to take a final decision on their representations which are pending.

6. Respondents in OA No. 426 of 1995 have filed counter which is identical to the counter filed by them in the earlier OA and it is not necessary to refer to the averments made by the respondents in their counter.

7. In their rejoinder the applicants in OA No.426 of 1995 have stated that from the order dated 16.6.1986 allowing them the scale of Rs.210-290/-, they came to know for the first time that they were doing

heavy duty. Earlier they were doing the same work and as such they should have been allowed the scale of Rs.210-290/- from 16.10.1981 when their juniors were allowed the higher scale. They have also made averment that no Board was ever constituted for giving Labourers Ammunition/Heavy Duty. On the above grounds, the applicants have reiterated their prayer in the O.A.

8. We have heard Shri B.Mohanty-1, the learned counsel for the petitioners and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of M.R.Gupta v. Union of India, AIR 1996 SC 669 and this decision has also been perused.

9. From the above recital of pleadings of the parties, it is clear that the applicants in both the cases are claiming the scale of Rs.210-290/- from 1.10.1983 in OA No. 425/95 and from 16.10.1981 in OA No. 426 of 1995 on the ground that persons recruited along with them to the post of Labourers, later on redesignated as Helper, were allowed the scale of Rs.210-290/- whereas they were deprived. The respondents have pointed out that all the labourers were getting the scale of Rs.196-232/- and only those Labourers who were given Ammunition/Heavy Duty were allowed a special pay of Rs.10/- per month. Government of India in their order dated 11.5.1983 brought over all Helpers in the scale of Rs.196-232/-, who were engaged on Ammunition/Heavy Duty and were getting monthly special pay of Rs.10/-, to the scale of Rs.210-290/-. The applicants' stand is that the work of all Labourers is interchangeable. This cannot be accepted because admittedly some Labourers were engaged on

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Ammunition/Heavy Duty and were getting special pay of Rs.10/- per month. The applicants in these two cases have not mentioned even in their rejoinder that at any point of time they were in receipt of special pay of Rs.10/- per month. From this it is clear that they were never engaged on Ammunition/Heavy Duty. The respondents have stated that basing on seniority and physical fitness of concerned Labourers, the Board used to select Labourers for engagement on Ammunition/Heavy Duty. The applicants have stated that no Board ever existed and in their rejoinder they have stated that no papers relating to selection by the Board have been produced by the respondents. We are not impressed by this argument because from Annexure-A/2 filed by the two applicants themselves in OA No.426/95 we find that these two applicants were put on Ammunition/Heavy Duty with effect from 6.6.1986 and granted the scale of Rs.210-290/-. In this order enclosed by these applicants themselves it is clearly mentioned that on the recommendation of the Board of Officers the Helpers have been put on Ammunition/Heavy Duty. Thus, from the documents enclosed by the applicants themselves it is clear that Labourers used to be put on Ammunition/Heavy Duty on the recommendation of a Board of Officers and for doing Ammunition/Heavy Duty they were getting the special pay of Rs.10/- per month. Later on Government of India decided that those labourers who are in the scale of Rs.196-232/- and are also getting special pay of Rs.10/- per month for being engaged on Ammunition/heavy Duty would be granted the scale of Rs.210-290/-. As the applicants were not doing Ammunition/Heavy Duty as is evident from the fact that they were never in receipt of special pay of Rs.10/- per month, they cannot claim that

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they should have been put in the higher scale from the date their contemporaries were put in the higher scale. According to the respondents, these persons were selected by the Board of Officers for performing Ammunition/Heavy Duty. As regards the other three Labourers whose names have been mentioned by both sets of petitioners in their O.As., who were straightaway engaged in the scale of Rs.210-290/- in 1984, the respondents have pointed out that persons in the scale of Rs.210-290/- were redesignated as Tradesman "E" and on exigency of circumstances depending upon the need of the Establishment, these three persons were recruited as Tradesman "E" directly in the scale of Rs. 210-290/-. In view of the above, it is clear that the applicants in these cases are not entitled to get the scale of Rs.210-290/- from the date their contemporaries got the scale. Moreover, the

10. Moreover, the contemporaries of the applicants got the higher scale in 1981 and 1983 whereas the applicants have approached the Tribunal in 1995. The learned counsel for the petitioners has relied on M.R.Gupta's case (supra). That was not a case of granting higher scale but of correct fixation of pay in the scale under FR 22-C. In view of this, M.R.Gupta's case (supra) does not lend any support to the case of the applicant. If the contention of the learned counsel for the petitioners is accepted, then in all cases of denial of promotion, a person will be allowed to approach Courts many years after promotion was denied to him on the ground that had he been promoted he would have got higher scale and thus it is a continuing cause of action. This contention is accordingly rejected. In view of this, we find that the applicants have approached the Tribunal after long passage of time.

11. As regards the averments made by the applicants regarding granting of scale of Rs.260-400/- to Tradesman "E" and redesignating them as Tradesman "C", the respondents have made elaborate averments justifying granting of the scale to those Tradesman "E" who were on the rolls on 15.10.1984. But those aspects need not be considered in these O.As. because the applicants have not made any prayer with regard to granting of such higher scale, as already noted.

12. In view of our above discussion, we hold that the first prayer of the applicants is without any merit and the same is rejected.

13. The second prayer of the applicants in both the O.As. is for a direction to respondent nos. 1 and 2 to dispose of their representations. The applicants have only quoted a portion of the confidential letter dated 15.3.1995. Details of this letter are not available. It is not known if the cases of the present applicants before us are being referred to in the letter. The respondents have made no averment in their counter with regard to this. In view of this, we are not inclined to issue a direction to respondent nos. 1 and 2 in this regard more so in view of our finding with regard to the first prayer made by the applicants.

14. In the result, therefore, both the O.As. are held to be without any merit and the same are rejected.

No costs.

(N.PRUSTY)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)

21.12.2001
VICE-CHAIRMAN