

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 551 OF 1995

Cuttack, this the 12th day of April, 2001
Haridhan Dey and another Applicants

Vrs.

Union of India and another ... 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.4.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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Cuttack, this the 12th day of April, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Haridhan Dey, Chargeman, Grade-II, Proof & Experimental Establishment, Chandipur, Balasore.
2. Madhusudan Das, Chargeman, Grade-II, Proof & Experimental Establishment, Chandipur, Balasore....
..... Petitioners.

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

Vrs.

1. Union of India, represented by Scientific Advisor to the Ministry of Defence and Director General, Research & Development, Defence Research & Development Organisation, Directorate of Personnel (RD Pers-10), Government of India, Ministry of Defence, DHQ P.O. New Delhi-110 011.
2. Commandant, Proof & Experimental Establishment, Chandipur, Balasore

....

Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application, the two petitioners have prayed for a direction to the respondents to revise the pay scale of the petitioners in pursuance of the Government of India letter dated 20.2.1992 (Annexure-2) and to quash the orders at Annexures 4,6,9 and 10.

2. The applicants' case is that on the recommendation of the Departmental Promotion Committee

(hereinafter referred to as "DPC"), they were promoted to the post of Precision Mechanic (Highly Skilled Grade-I) in the pay scale of Rs.380-560/- with effect from 30.11.1982. The orders of promotion are at Annexure 4 series. In 1982 the Expert Classification Committee constituted in terms of the report of Third Pay Commission recommended five categories of scales for industrial workers starting with Unskilled and ending with Highly Skilled Grade-I who were placed in the scale of Rs.380-560/-. Over and above the five categories of pay scales, some Precision Mechanics were placed in the scale of Rs.425-700/- in the order at Annexure-2. Prior to Third Pay Commission all Precision Mechanics of different trades were in the common seniority list and were in the same pay scale. But after giving effect to the recommendation of the Expert Classification Committee, there was discrimination amongst the Precision Mechanics of different trades. Some juniors were placed in the higher pay scale of Rs.425-700/- while others were placed in the pay scale of Rs.380-560/-. This was referred to the Anomaly Committee, and the Anomaly Committee recommended upgradation of the pay scale of all the Precision Mechanics to the scale of Rs.425-700/-. But as this recommendation was not given effect to by authorities of different establishments of Ministry of Defence, some Precision Mechanics filed cases in the Hyderabad Bench and Bangalore Bench of the Central Administrative Tribunal in TA No.156/86 and OA Nos. 793 to 810 and 223 to 236 of 1990 and these cases were allowed in favour of the applicants with direction to upgrade their pay scale

to Rs.425-700/- (pre-revised). Accordingly, the pay scale of the applicants was upgraded to the scale of Rs.425-700/- (pre-revised). After this, Government of India issued order dated 20.2.1992 (Annexure-2) providing that those Precision Mechanics, who were appointed prior to 1.3.1977, should be placed in the scale of Rs.425-700/- notionally from 1.3.1977 but given the actual financial benefits from 1.12.1980. Secondly, those Precision Mechanics who were appointed or promoted between 1.3.1977 and 1.12.1980 should be placed in the scale of Rs.425-700/- notionally from the date of their initial appointment and given financial benefits from 1.12.1980. Thirdly, those of the Precision Mechanics who were appointed/promoted on or after 1.12.1980 should be given the pay scale of Rs.425-700/- from the date of their initial appointment and given financial benefits from that date. The applicants come under the third category. In pursuance of the above letter of Government of India, dated 20.2.1992, the departmental authorities allowed the scale of Rs.425-700/- to the applicants with actual financial benefits from 30.11.1982 to 21.11.1990 for applicant no.1 because after 21.11.1990 applicant no.1 had been promoted to the post of Chargeman-II. This order giving the scale of Rs.425-700/- to applicant no.1 is at Annexure-3. In a similar order at Annexure-3/1 applicant no.2 was allowed the scale of Rs.425-700/- revised to Rs.1400-2300/- with effect from 30.11.1982 notionally and actual benefits from 10.5.1988. In both these orders it was made clear that this pay scale was personal to them. The applicants' grievance is that all on a sudden without prior notice in order dated 5.3.1993 (Annexure-4) the two orders giving the applicants higher

scale of Rs.425-700/-, revised to Rs.1400-2300/-, were cancelled. Against such cancellation, the applicants filed representations which were rejected in the order dated 7.7.1993 at Annexure-6 on the ground that it is not feasible to place the applicants in the new scale of Rs.1400-2300/- due to amendment in the Government of India Recruitment and Promotion Rules. In a further order at Annexure-9 the designation of respondent no.2 was changed with effect from the date of his promotion to the post of Precision and Instrument Mechanic to that of Tradesman-A. Ultimately, in the order at Annexure-10 applicant no.2 was informed that he is not eligible for higher pay scale of Rs.425-700/- as his promotion is regulated under SRO 221/80 which came into force with effect from 7.8.1981 and for all purposes he was treated as Tradesman-A. The applicants have stated that by SRO 221/81 issued on 7.8.1981, industrial workers in the establishment of respondent no.2 were grouped with effect from 19.3.1989 as Tradesman-A for Highly Skilled Grade-I, Tradesman-B for Highly Skilled Grade-II, Tradesman-C for Skilled, and Tradesman-E for Semi-skilled and Unskilled. The applicants have stated that this grouping is for internal convenience. But by such grouping the nomenclature for specific trade was not changed. According to the applicants this is evident from the order dated 10.8.1982 in which syllabus for trade test for the post of Precision Mechanic of different categories have been laid down. The applicants have stated that when the pay scale of a section of employees similarly placed was upgraded, exclusion of the applicants from such benefit is discriminatory and

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hit by Articles 14 and 16. It is further stated that when Government of India have sanctioned similar benefits to all Precision Mechanics, then the same should not have been withheld. It is also stated that the decisions of the Hyderabad and Bangalore Benches of the Tribunal are specifically in relation to the post of Precision Mechanic and the Government order dated 20.2.1992 is also in respect of Precision Mechanics and therefore, the benefit of the circular should have been given to them. It is further stated that the amendment of the orders of promotion after five years is illegal. In the context of the above facts, the applicants have come up with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayers of the applicants. They have not denied the factual aspect of promotion of the applicants on different dates as mentioned by the applicants. They have stated that the circular dated 20.2.1992 relied upon by the applicants which is at Annexure-2 of the OA and is at Annexure-R/1 of the counter has been subsequently amended in the order dated 22.6.1995 at Annexure-R/2 and after amendment it has been provided that those of the Precision Mechanics who were appointed/promoted on or after 1.12.1980 and before coming into force of SRO 221/81 should be placed in the pay scale of Rs.425-700/- from the date of their initial appointment and given financial benefits from that date. It has been further provided that those of the Precision Mechanics who were appointed/promoted after coming into force of SRO 221/81 will remain in the pay scale of Rs.380-560/- and will be treated as Tradesman-A for all

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purposes. The respondents have further stated that after issue of revised Recruitment Rules in SRO 221/81 with effect from 7.8.1981 all industrial posts have been redesignated and Precision Mechanics have been redesignated as Tradesmen-A. But erroneously in the promotion order of the applicants they were mentioned as Precision and Instrument Mechanics. This was rectified in order dated 4.8.1995 at Annexure-9. It is further stated that as per the scale of pay recommended by the Expert Classification Committee and approved by Government, all industrial employees were fitted in their respective pay scales and redesignated prior to such fitment. Certain Precision Mechanics, who were in position as on 31.12.1972 were placed in the scale of Rs.425-700/- as personal to them with effect from 1.3.1977 till such time they were promoted and wasted out in normal manner. Accordingly, such Precision Mechanics were placed in the higher scale of Rs.425-700/- in order dated 12.7.1982 at Annexure-2 of the OA. Giving of same pay scale to the applicants, who were not holders of the post of Precision Mechanic prior to 1.3.1977 does not therefore arise. It is further stated that the grievance of the petitioners were considered by the Grievance Redressal Committee at the departmental level and were rejected. The respondents have enclosed copy of the Ministry's letter dated 11.4.1994 issued in connection with implementation of the decision of the Bangalore Bench of the Tribunal in OA Nos.600/91, 245/92 and 128 to 202 of 1993. In the context of the above facts, the respondents have opposed the prayers of the applicants.

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4. We have heard Shri B.K.Sahoo, 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 filed the decision of Bangalore Bench of the Tribunal in OA Nos.793 to 810 of 1989 and OA Nos. 223 to 236 of 1990 (R.Anbalagan, etc. v. The Director, Aeronautical Development Establishment, etc.) and also SRO No.221/81 which have been taken note of.

5. The admitted position is that the two applicants were promoted to the post of Precision Mechanic on 30.11.1982. The respondents have stated that by mistake they were designated as Precision Mechanics but actually their designation should have been Tradesman-A and this correction was made in order dated 4.8.1995 at Annexure-9. Leaving aside the question of correction, the fact that these two applicants were promoted to the post of Precision Mechanic on 30.11.1982 makes it clear that the above decision of Bangalore Bench is not applicable to their case. In the above decision the Tribunal have noted in paragraph 9 of the order that the cadre of Precision Mechanics was abolished and redesignated as Tradesman-A from September 1981 and the applicants in OA Nos.793 to 810 of 1989 were appointed prior to the abolition of that post in September 1981. The applicants in OA nos.223 to 236 of 1990 were appointed as Precision Mechanics after 1.1.1973 and before 30.6.1980. In the above decision the Tribunal have thus dealt with the cases of those who have been appointed as Precision Mechanics after 1.3.1977 and prior to September 1981. In paragraph 10 of

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their order it has been mentioned that the Government counsel urged the Bench to consider OA Nos. 866 to 899 of 1989 where the applicants were not Precision Mechanics but officials included in Industrial Group-I. Therefore, the Tribunal decided to consider those cases separately. From the above it is clear that the decision of the Tribunal in OA Nos. 793 to 810 of 1989 did not deal with the cases of persons who were appointed as Precision Mechanics after September 1981. The first point made by the learned counsel for the petitioners is that in the promotion order at Annexure-1 series the applicants were promoted as Precision Mechanics from 30.11.1982 and even though the Precision Mechanics were redesignated as Tradesman-A according to SRO 221/81, which became effective from 21.8.1981, this was only done for the purpose of convenience and the specific trade of Tradesman-A as Precision Mechanics continues to remain even after coming into force of SRO 221/81. We are unable to accept this contention because SRO 221/81 is a statutory rule issued under Article 309 of the Constitution and with effect from coming into force of the SRO, further appointment to the post of Precision Mechanic would not have been possible.

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Bangalore Bench of the Tribunal in their above order have also mentioned in paragraph 9 that the cadre of Precision Mechanics was abolished and redesignated as Tradesman-A from September 1981. In the present case the respondents have stated that the SRO came into force from 21.8.1981. The difference in these two dates is not material because the applicants were given promotion on 30.11.1982 which is after both these dates. As at that time the cadre of Precision Mechanics had been abolished

the applicants could not have been given promotion to the post of Precision Mechanics. The learned counsel for the petitioners has stated that once the applicants were given promotion to the post of Precision Mechanics with effect from 30.11.1982, they could not be redesignated as Tradesman-A in the order at Annexure-9. This contention is without any merit because as earlier noted SRO 221/81 is a statutory rule and there is no estoppel against statute and as the cadre of Precision Mechanics was abolished in August or September 1981, the applicants could not have been designated as Precision Mechanics. This mistake has been rightly corrected in the order at Annexure-9 and no fault can be found with this. Moreover, it has been clarified in the order dated 22.6.1995 (Annexure-R/2) that those of the Precision Mechanics, who were appointed or promoted after coming into force of SRO 221/81, would be treated as Tradesman-A for all purposes and will be in the scale of Rs.380-560/- . It cannot, therefore, be claimed that just because the applicants were mistakenly designated as Precision Mechanics, they would get the higher scale of Rs.425-700/-, revised to Rs.1400-2300/-, of the Precision Mechanics who were appointed prior to 1.3.1977 and after 1.3.1977 till the coming into force of SRO 221/81.

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6. The next ground urged by the learned counsel for the petitioners is that by giving the applicants the scale of Rs.380-560/-, they have been discriminated against. Law is well settled that reasonable classification does not result in discrimination. By a statutory rule, all industrial

workers were designated as Tradesman-A, Tradesman-B, Tradesman-C, Tradesman-D and Tradesman-E, and the applicants come under the category of Tradesman-A and have been given the scale of Rs.380-560/- as per the Recruitment Rules. They cannot claim that because of mistake in designating them as Precision Mechanics, they will be entitled to the scale of Rs.425-700/-, revised to Rs.1400-2300/-. No discrimination is, therefore, involved in giving the applicants the scale of Rs.380-560/-, revised to Rs.1300-2040/-.

7. The other ground urged by the learned counsel for the petitioners is that even though the applicants have been designated as Tradesman-A, their basic trade remains as Precision Mechanics and therefore, they should get the higher pay scale. This contention is without any merit because the scale of pay of Tradesman-A is Rs.380-560/- and therefore, they cannot claim a higher pay scale of Rs.425-700/-. This contention is accordingly rejected.

8. The last point urged by the learned counsel for the petitioners is that even as Tradesman-A the applicants are doing the same work as Precision Mechanics and therefore on the principle of "equal pay for equal work" they are entitled to the same scale. In support of his contention, the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Bhagaban Sukla v. Union of India,

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1994(6)SCC 154. For the purpose of considering this question, it is not necessary to go into facts of that decision. The law is well settled that it is not for the Tribunal to undertake job evaluation of different categories of posts, in this case with designation, for the purpose of deciding the question of equal pay for equal work. The Hon'ble Supreme Court have held that job evaluation is to be left to the executive Government or expert bodies like the Pay Commission and the Tribunal can interfere where equal pay scale has been denied on patently unreasonable grounds or extraneous consideration. None of these two factors is attracted in this case. The applicants are Tradesman-A and it is not open for the Tribunal to undertake job evaluation to decide whether or not they are performing the same duties as those of Precision Mechanics who were promoted or appointed to the post prior to coming into force of SRO 221/81. In view of the above, this contention is also held to be without any merit and is rejected.

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9. Before parting with the case, however, it has to be stated that the two applicants were actually allowed the higher scale of Rs.425-700/- and this was denied to them by an order, as indicated earlier, issued several years later. Thus, for getting the higher scale of pay, the applicants are in no way responsible. In view of this, while rejecting the Original Application on the grounds discussed above, we direct that the payments made to the applicants by allowing them erroneously the higher pay scale of Rs.425-700/-, should not be recovered from them.

10. With the above observation and direction, the Original Application is disposed of. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

VICE-CHAIRMAN

12-6-2001

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