

2

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.818, 819,820, 821 & 822/1996
Cuttack, this the ~~20~~ ¹¹ day of July, 1998

Babaji Charan 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*

Sd/- G. Narasimham,
Member (Jud)

Sd/- Somnath Som
Vice-Chairman

8
8
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.818,819,820,821 & 822 OF 1996
Cuttack, this the 30th day of July, 1998

CORAM:

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

.....

In OA 818/96

Babaji Charan Barik, s/o late Kelu Barik,
aged about 42 years, at present working
as Electrician HS II, in the office of the
Garrison Engineer (1) R & D,
Military Engineering Service,
At/PO-Chandipur,
Dist.Balasore.

IN OA NO.819/96

Kasinath Sahoo, s/olate Harekrushna Sahoo,
aged about 46 years, at present working
as Fitter, in the office of the Garrison
Engineer (1) R & D, Military Engineering
Service, At/PO-Chandipur, Dist-Balasore.

IN OA NO.820/96

Banamali Das, s/o Giridhari Das
aged about 45 years, at present working
as Pipe Fitter, HS II, in the office
of the Garrison Engineer (1) R & D,
Military Engineering Service,
At/PO-Chandipur, Dist.Balasore.

IN OA No. 821/96

Ratnakar Behura, son of late Birabhadra Behura,
aged about 55 years, at present working as
Refrigerator Mechanic, HS II,
in the office of the Garrison Engineer (1) R & D,
At/PO-Chandipur, Dist.Balasore.

IN OA NO.822/96

Shakti Peda Paire,son of Pramothnath Paire,
aged about 39 years, at present working as Fitter,
General Mechanic, HS II, in the office of the
Garrison Engineer (1) R & D,
Military Engineering Service,
At/PO-Chandipur, Dist.Balasore

By the Advocates

....APPLICANTS

- M/s K.B.Panda &
S.K.Jethy.

Versus

IN ALL THE CASES

1. Union of India, represented by the Secretary in the Ministry of Defence, New Delhi.
2. The Garrison Engineer (1) (R&D), At/PO-Chandipur, Dist.Balasore, Orissa-756 025

RESPONDENTS

By the Advocate - **Mr. S.Ch.Samantray**
Addl.C.G.S.C.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

These five cases have been heard separately. The facts of these cases are similar though not identical, but the point for adjudication is the same. Therefore, one order will govern these cases. In these cases the applicants have prayed for fixation of their pay under F.R. 22-A(1). The factual aspects of these cases are not in dispute. Facts of each case are indicated below separately.

2. In OA No.818 of 1996, the applicant Babaji Charan Barik was appointed on 30.3.1979 as Switch Board Attendant in the scale of pay of Rs.210-290/-. In order dated 28.9.1992 at Annexure-1 of the O.A., he was, according to him, promoted to the post of Electrician with effect from 13.5.1985 in the scale of pay of Rs.260-400/-. He states that this promotion was based on selection and he had to appear at a written test and interview and was placed in the merit list of successful candidates and thereafter promoted in his turn on a vacancy being available to the post of Electrician. In 1993 he was promoted to the post of Electrician, Highly Skilled II. His grievance

is that on his promotion from Switch Board Attendant to Electrician, he was called upon to discharge duties of greater importance, but his pay was not fixed under Rule 22-A(1) of Fundamental Rules. He further states that he continued to represent and his last representation dated 27.3.1996 is at Annexure-2, but no orders were passed to fix his pay in the scale of pay of Electrician under FR 22-A(1). He prays for such pay fixation in accordance with the above Rule.

2.1 In OA No. 819/96, applicant Kasinath Sahoo was originally appointed as Pipe Fitter (later on re-designated as Plumber) in the scale of Rs.210-290/- with effect from 10.9.1972. In order dated 3.8.1987 (Annexure-1) he was promoted from the post of Plumber to the post of Fitter in the scale of Rs.260-400/-. For this promotion, he sat in a written test and on being successful in the written test, appeared at an interview. According to him, his name was in the merit list of successful candidates and he was given promotion in his turn on availability of a vacancy. On promotion to the post of Fitter, he was assigned the duties of greater importance, but his pay was not fixed in accordance with FR 22-A (1). The petitioner states that he submitted several representations and his last representation dated 27.3.1996 is at Annexure-2, but no orders were passed on his representations and that is why he has prayed for fixing his pay in the scale of Rs.260-400/- on his promotion to the post of Fitter in accordance with FR 22-A (1).

2.2 In OA No.820/96, applicant Banamali Das was appointed as a Pipe Fitter in the scale of Rs.210-290/- on 1.6.1972. In order dated 11.7.1986

(Annexure-1) he was promoted from the post of Pipe Fitter to the post of Fitter in the scale of Rs.260-400/- . For this promotion, he had to appear at a written test and interview, and on promotion to the post of Fitter, he was assigned duties of greater importance, but his pay was not fixed in the scale of Fitter under FR 22-A (1). He was later on promoted from Fitter to the post of Pipe Fitter, H.S.II. He states that for fixation of his pay in the scale of Fitter under FR 22-A(1) he submitted several representations, the last of which is dated 27.3.1996 and is at Annexure-2. But no orders were passed and accordingly he has prayed that on his promotion to the post of Fitter from 11.7.1986 his pay should be fixed under FR 22-A(1).

2.3 In OA No.821/96, petitioner Ratnakar Behura was appointed as Motor Pump Attendant in the scale of Rs.210-290/- in 1970. In order dated 6.5.1985 (Annexure-1) he was promoted to the post of Refrigerator Mechanic in the scale of Rs.260-400/- with effect from 30.4.1985. For this promotion, he had to appear at a written test and interview, and on promotion he was assigned duties of greater importance, but his pay was not fixed under FR 22-A(1). He further states that in the year 1985 (date not mentioned) he was further promoted to the post of Refrigerator Mechanic, Skilled. He states that he had been representing for fixing his pay in the scale of Rs.260-400/- as Refrigerator Mechanic under FR 22-A(1) and his last representation dated 27.3.1996 is at Annexure-2. But no orders have been passed on his

representations and that is why he has prayed for fixing his pay under the above Fundamental Rule in the post of Refrigerator Mechanic with effect from 30.4.1985.

2.4 In OA No.822/96 applicant Saktipada Paira was appointed on 26.8.1981 as Diesel Engine Static (mentioned by the respondents in the counter as Driver Engine Static) in the scale of Rs.210-290/-. In order dated 7.5.1985 at Annexure-1 he was promoted with effect from 30.4.1985 as Engine Fitter in the scale of Rs.260-400/-. For this promotion, he had to appear at a written test and interview and on promotion, was assigned duties of greater importance, but in the scale of Rs.260-400/- his pay was not fixed in accordance with FR 22-A (1). He filed several representations, the last of which is dated 27.3.1996 and is at Annexure-2. He also states that in the year 1995 (date not mentioned) he was further promoted from the post of Engine Fitter to the post of Fitter General Mechanic H.S.II. In the context of the above facts, his prayer is that with effect from 30.4.1985 in the rank of Engine Fitter in the scale of Rs.260-400/- his pay should be fixed under FR 22-A (1).

2.5 From the above recital of facts of these five cases, it is seen that cases of the petitioners are identical. They were originally in the scale of Rs.210-290/- and later on they were promoted to different posts in the scale of Rs.260-400/-, but their pay was not fixed in accordance with FR 22-A(1).

3. Respondents have filed separate counter in each case and in the counters they have not contested the dates given by the petitioners with regard to their appointment ~~and promotion~~ to posts in

different scales. The points taken by the respondents in their counters in these five cases are identical. In OA No.818/96 the respondents have stated that the post of Switch Board Attendant in the scale of Rs.210-290/- was treated as Skilled at par with the post of Electrician in the scale of Rs.260-400/- with effect from 16.10.1981. Earlier the posts of Wireman and Switch Board Attendant were the feeder category for the post of Electrician(Skilled). As a result of recommendations of the Expert Classification Committee, Ministry of Defence issued orders on 11.5.1983 in which the post of Electrician and Switch Board Attendant have been sanctioned the scale of Rs.260-400/-. In addition, Switch Board Attendant and Wireman have been sanctioned higher scale of Rs.330-480/- for 10% of the authorised strength of these posts. The respondents' stand is that the post of Electrician cannot be considered as a promotional post for Switch Board Attendant. The respondents state that in the order at Annexure-1, the word "promotion" has been wrongly and inadvertently used as per the recruitment rules existing prior to merger of these categories. Those promoted after 16.10.1981 were given notional promotion or a higher fitment. The applicant got his promotion with effect from 13.5.1985. The respondents have stated that Shri Abhaya Kumar Sahoo and another of the same office as applicants approached the Cuttack Bench of the Tribunal in OA No.151 of 1994 with the same prayer which was allowed. The respondents implemented the judgment to avoid contempt of Court. But in order dated 1.1.1997 (copy enclosed to the counter) the order of promotion was amended and the word "promotion" was substituted by

"reclassification". The respondents have admitted that the applicant was trade-tested for higher promotion and qualified for promotion to the higher post in the scale of Rs.260-400/-. But in the meantime, the Ministry of Defence issued orders for fitment of the semi-skilled category into the skilled category in the scale of Rs.260-400/-, in which they have qualified in the trade test. They have further stated that this promotion is a notional promotion and the applicant is not entitled to have his pay fixed in the scale of Rs.260-400/- under FR 22-C. It is stated that the matter was referred to the audit authorities who turned down the request. The respondents have also contested the averment that a large number of representations have been submitted by the applicant. It has been stated that only one representation dated 23.7.1996 had been received from the applicant and forwarded to the higher authorities. The respondents have also stated that the application is barred by limitation because cause of action had allegedly arisen 14 years ago.

3.1 In OA No.819/96, in the counter, the respondents have not contested the factual aspects about the dates of the applicant coming over to different scales. They have taken the stand that with effect from 16.10.1981 the posts of Pipe Fitter and Plumber in the semi-skilled category have been treated as skilled at par with Fitter in the scale of Rs.260-400/- in the circular dated 16.10.1981 issued by Ministry of Defence. As per earlier recruitment rules, the posts of Pipe Fitter and Plumber were the feeder category for the post of Fitter (Skilled). On the basis

of recommendation of Experts Classification Committee, the Ministry of Defence issued orders in letter dated 11.5.1983 where the posts of Fitter, Pipe Fitter and Plumber have been sanctioned the scale of Rs.260-400/-.

In addition, Pipe Fitter and Plumber have been sanctioned the higher pay scale of Rs.330-480/- for 10% of the authorised strength of these posts. The respondents' stand that post of Fitter cannot be considered as a promotional post for Pipe Fitter and Plumber and in the order at Annexure-1, the word "promotion" has been wrongly and inadvertently mentioned as this was a promotional post according to the earlier recruitment rules. The respondents have stated that A.K.Sahoo and another of the same office approached the Cuttack Bench of the Tribunal in OA No.151/94 seeking the same relief as the applicant on the basis of similar facts. This petition was allowed and the judgment of the Tribunal was implemented by the respondents in order to avoid contempt of Court. In order dated 1.1.1997, the word "promotion" was changed to "re-classification". The respondents have taken the stand that the applicant was reclassified from the post of Pipe Fitter to Fitter Skilled and therefore, has no claim for fixation of his pay under FR 22-A(1). It is stated that the applicant was trade-tested for higher promotion and qualified for promotion to the higher post in the scale of Rs.260-400/-.

But in the meantime the fitment order of Government of India came and he was fitted in the higher scale of Rs.260-400/-.

His case was referred to audit authorities who turned down the proposal for pay fixation under FR 22-A(1).

The respondents have stated that the applicant has not submitted any representation. They have also stated that the applicant's claim is barred by limitation.

3.2 In the counter filed by the respondents in OA No.820/96, the stand taken is the same as in the other two cases. They have indicated that the posts of Pipe Fitter and Plumber in the semi-skilled category have been treated as Skilled at par with Fitter (Skilled) in the scale of Rs.260-400/- with effect from 16.10.1981. As per the earlier recruitment rules, posts of Pipe Fitter and Plumber were feeder category for the post of Fitter (Skilled) . On the recommendations of the Expert Classification Committee, Ministry of Defence issued orders in letter dated 11.5.1983 in which posts of Pipe Fitter and Plumber have been sanctioned the scale of Rs.260-400/-. In addition, Pipe Fitter and Plumber have been sanctioned higher pay scale of Rs.330-480/- for 10% of the authorised strength of these posts. Therefore, post of Fitter in the scale of Rs.260-400/- cannot be considered to be a promotional post. Mentioning of the word "promotion" in the order at Annexure-1 is a mistake which has been corrected in order dated 1.1.1997. The respondents have stated that the order of the Tribunal in OA No.151/94 in the case of A.K.Sahoo and another was implemented by the respondents in order to avoid contempt. They have admitted that the applicant was trade-tested for higher promotion to the post of Fitter in the scale of Rs.260-400/-. But in the meantime, the fitment order of Government of India came and the applicant's case was referred to the audit authorities for fixing his pay under FR 22-A(1), but this was turned down. The respondents have denied to have received any representation of the applicant. They have also taken the stand that the application is barred by limitation.

3.3 In OA No.821/96 the stand taken in the counter is the same. Here the point taken by the respondents is that the post of Motor Pump Attendant was originally in semi-skilled category, but has been treated as skilled at par with Refrigerator Mechanic Skilled in the scale of Rs.260-400/- with effect from 16.10.1981. In this counter also, they have referred to the order dated 11.5.1983 of the Ministry of Defence and have pointed out that the mention of the word "promotion" instead of "reclassification/redesignation" is a mistake which has been corrected in order dated 1.1.1997. They have also stated that the order of the Tribunal in OA No.151/94 was implemented to avoid contempt. It has also been pointed out that the claim has been turned down by the audit. The respondents have denied to have received any representation from the applicant. They have also taken the stand that the application is barred by limitation.

3.4 In their counter in OA No.822/96, the stand taken by the respondents is exactly the same in the other cases. The basic post was Driver Engine Static which the petitioner held in the scale of Rs.210-290/-. The respondents' case is that this semi-skilled post was treated as skilled at par with Engine Fitter in the pay scale of Rs.260-400/-. They have also referred to the Ministry of Defence's order dated 11.5.1983. The respondents have also taken the stand that in Annexure-1 the word "promotion" was wrongly mentioned instead of "reclassification / redesignation". This has been corrected in order dated 1.1.1997. The other points taken by them with regard to the order in OA No.151/94, the trade-testing of the applicant, the turning down of the proposal

by the audit authorities, the non-submission of any representation by the applicant, and the point of limitation are the same as in the other cases.

4. From the above recital of facts as set out by both sides, it is clear that in these cases, the applicants, besides other facts, have relied on the order of the Tribunal in OA No.151/94. We have perused the records of this case which was allowed in order dated 17.5.1995. The two applicants there were Wiremen in the pay scale of Rs.210-290/- . The pay scale of Wireman was revised to Rs.260-400/- and brought on par with that of Electrician. The applicants therein were promoted to the post of Electrician and their grievance was that their pay was not fixed in accordance with FR 22-A(1). In that case, the two points considered by the Tribunal were whether the promotion of Wireman to Electrician was purely notional in the same pay scale and if the Wiremen on promotion/redesignation to Electricians were given higher responsibilities to discharge. The Tribunal came to the conclusion that promotion of the applicants in that O.A. was not notional but of a substantive nature. On the second point also the finding was that on promotion to the post of Electrician, they discharged higher responsibilities. The Tribunal also considered several other decisions of other Benches of the Tribunal and allowed the applicants' prayer in that case.

S. N. M.

5. We have heard Shri K.B.Panda, the learned lawyer for the petitioners, and Shri S.Ch.Samantray, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records.

6. Learned Additional Standing Counsel has raised two preliminary points which have to be considered first before going into the substantive points raised by the parties. Firstly, it is submitted that the decision of the Tribunal in OA No.151/94 is a judgment in personem and it has no application to the petitioners' case. In the cases before us, we find that the petitioners went over from the scale of Rs.210-290/- to the scale of Rs.260-400/-. Whether it is by way of notional promotion or reclassification/redesignation or by way of substantive promotion is a matter which has to be considered. This very point in identical circumstances was considered by the Tribunal in OA No.151/94. It cannot, therefore, be said that the order of the Tribunal in OA No.151/94, which incidentally was implemented by the respondents, is applicable to that case only and the same consideration will not be applicable in the case of the present applicants. This is not to say that the present applications will have to be allowed only on the strength of the decision of the Tribunal in OA No.151/94. But the petitioners being in the same position as the applicants in OA No.151/94, though the designations of the two sets of petitioners are different, the decision of the Tribunal in OA No.151/94 will certainly have to be taken into account while deciding the case of the petitioners in the present O.As. before us. The second point urged by the learned Additional Standing Counsel is that the applications are clearly barred by limitation.

In OA No. 818/96 the petitioner was promoted/fitted as Electrician in 1985. In OA No. 819/96 the applicant was promoted/fitted in the post of Fitter in August 1987. Similarly, in OA Nos. 820, 821 and 822 of 1996, these promotions/fitments had come in 1986 and 1985. It has been submitted by the learned Additional Standing Counsel that when on their promotion or fitment in the scale of Rs. 260-400/-, the pay of the applicants was not fixed in accordance with FR 22-C, the cause of action had arisen at that time and the petitioners have come up before the Tribunal only in 1996. It has also been submitted that most of them had not submitted any representation to the departmental authorities and in one or two cases representations have been filed only in 1996. It has been submitted by the learned Additional Standing Counsel that just because in a similar case certain relief has been allowed, the applicants cannot come up to claim the same relief even though their claims are barred by limitation. In support of his contention, the learned Additional Standing Counsel has relied on the decision of the Hon'ble Supreme Court in the case of State of Karnataka and others v. S.M. Kotrayya and others, 1996 (7) SUPREME 512. In that case, the respondents before the Hon'ble Supreme Court were working as Teachers in the Department of Education. They had availed Leave Travel Concession in 1981 and 1982. It had come to light later on that they had never utilised the benefit of L.T.C. but had drawn the amount and used it. Because of this, recoveries were effected from them in 1984 and 1986.

Some of these persons filed applications before the Karnataka Administrative Tribunal questioning the power of the Government to recover the amount. In August 1989, the Tribunal allowed the claims and held that State of Karnataka could not recover the same from the respondents. On coming to know of it, the respondents filed applications in August 1989 before the Tribunal with an application to condone the delay. The Tribunal had condoned the delay and against that order the State Government came on appeal before the Hon'ble Supreme Court. In this decision, after analysing the provisions of Section 21 of Administrative Tribunals Act, 1985, their Lordships of the Hon'ble Supreme Court held that the respondents' explanation that they came to know of the relief granted by the Tribunal in August 1989 and they filed the petitions immediately thereafter was not a proper explanation. They were required to explain under sub-sections (1) and (2) of Section 21 of Administrative Tribunals Act, 1985 why they could not avail of the remedy of redressal of their grievances before expiry of the period prescribed under sub-sections (1) and (2). In that view of the matter, the Hon'ble Supreme Court allowed the appeals of the State of Karnataka. It is submitted by the learned Additional Standing Counsel that in these cases, the petitioners have come up only after the decision of the Tribunal in OA No.151 of 1994. They have also not filed any application for condonation of delay and therefore, the petitions should be rejected at the outset on the question of limitation.

7. We have considered the above submissions of the learned Additional Standing Counsel very carefully. The first point to be noted in this connection is that in the case of **State of Karnataka & others v. S.M.Kotrayya and others (supra)** the point at issue was recovery of L.T.C. advance drawn by the respondents before the Hon'ble Supreme Court. This was an one time payment. In the instant case, the petitioners have prayed for fixation of their pay under FR 22-A(1). If they are entitled under law to have their pay fixed under FR 22-A(1), then their pay would be fixed at a higher level than what has been done and all future payments to them would also be governed accordingly. Thus, in the case of the present applicants, the injury alleged by them is a continual one in so far as, according to them, they have been denied proper fixation of their pay on their promotion to the scale of Rs.260-400/-. Thus, the decision of the Hon'ble Supreme Court in the case of **State of Karnataka and others v. S.M.Kotrayya and others (supra)** would not be applicable in the facts and circumstances of these cases. Moreover, a Five-Judge Bench of the Hon'ble Supreme Court in the case of K.C.Sharma and others v. Union of India and others, 1998 (1) SLJ 54, have held that applications filed by similarly placed persons should not be rejected for bar of limitation. In that case, the applicants came up before the Hon'ble Supreme Court against the order of the Principal Bench of the Tribunal. The appellants were employed as Guards in the Northern Railway and retired during the period between 1980 and 1988. They felt aggrieved by the notification of the Railway reducing certain emoluments for the purpose of calculating average emoluments with retrospective operation. The validity of such

23

retrospective amendment was considered by a Full Bench of the Tribunal in a batch of earlier applications and the notifications were held to be invalid in so as these gave retrospective effect to the amendments. These applicants were also adversely affected by the retrospective amendments. At the first instance they sought the benefit of the decision of the Full Bench of the Tribunal by filing representations before the Railway administration. But as their grievances were not redressed, they filed applications before the Tribunal seeking relief. These applications were dismissed by the Tribunal, taking the view that the applications were barred by limitation, and the Tribunal refused to condone the delay. The Hon'ble Supreme Court took note of the fact that the decision of the Full Bench of the Tribunal striking down the retrospective effect of the notifications of the Railways was upheld by the Hon'ble Supreme Court. In the case of these applicants, who came up later in **K.C.Sharma's case (supra)** the Hon'ble Supreme Court held that having regard to the facts and circumstances of the case, this was a fit case where delay should have been condoned and the "appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal". In the instant case, on analogous facts this Bench of the Tribunal have granted certain relief to two earlier applicants in OA No. 151/94. The present applicants before us are claiming the same relief on the basis of the said order. We have also noted that the injury, as alleged by them, is one of continuing duration and therefore, we hold that in line of the decision of the Hon'ble Supreme Court in **K.C.Sharma's case (supra)**, the petitioners are entitled

to be heard on the merits of their submissions and the petitions are within the period of limitation.

8. Coming to the merits of the matter, admittedly the applicants were originally in the scale of Rs.210-290/-. According to the applicants, they were promoted to different posts, as mentioned earlier, in the scale of Rs.260-400/-. For this promotion, they had to appear at a trade test involving a written examination and an interview. In the orders, it was specifically mentioned that the petitioners are promoted to different posts in the scale of Rs.260-400/-. The petitioners have further stated that on their promotion to different posts in the scale of Rs.260-400/-, they were called upon to discharge duties of greater importance and as such, they have claimed fixation of pay under FR 22-A(1). The respondents, on the other hand, have stated that originally the posts which were held by the applicants in the scale of Rs.210-290/– were the feeder grade for promotion to the posts to which the petitioners were re-classified/re-categorised with the scale of Rs.260-400/-. Mention of the word "promotion" in the orders was a mistake. This was a case of fitment and not promotion and as such, they are not entitled to have their pay fixed under FR 22-C. In any case, the mistake has been corrected by orders issued on 1.1.1997. The respondents have also stated that the petitioners were trade-tested before fitment in the scale of Rs.260-400/-. But this was done before the Government of India order about upgrading of the posts in the scale of Rs.210-290/- from semi-skilled to skilled category came and after the orders came, they

25 25

were fitted in higher scale and not promoted. We have considered the rival submissions of the learned counsels on this point. The first point to be noted is that in spite of the averment of the applicants on their induction in the scale of Rs.260-400/- by way of promotion as they claimed, they were called upon to discharge duties of greater importance. This point has not been specifically denied by the respondents. On the other hand, they have averred that originally the posts which were held by the applicants in the scale of Rs.210-290/- were feeder category posts for promotion to the posts in the scale of Rs.260-400/-. This, to our mind, proves that the posts which were held by the applicants after their induction in the scale of Rs.260-400/- were posts where the applicants were called upon to discharge higher responsibilities. Otherwise, these posts would not have been originally promotional posts from the posts in the feeder category posts in the scale of Rs.210-290/-. As regards the submission of the respondents that this was not a case of promotion, but a case of fitment or re-categorisation or re-classification, we are unable to accept this contention because it has been mentioned by the respondents in their counter filed in different O.A.s. that the Ministry of Defence in their letter dated 16.10.1981 treated the posts held by the applicants in the semi-skilled category in the scale of Rs.210-290/- at par with the posts to which they were re-categorised, according to the respondents, in the scale of Rs.260-400/-. They have also stated that as a result of recommendation of Experts Classification

26
26

Committee, the Ministry of Defence have issued orders in their letter dated 11.5.1983 where the posts in the scale of Rs.210-290/- have been sanctioned the scale of Rs.260-400/-. Had it been a case of simple re-categorisation or re-classification, then there would not have been any need for a trade-test involving a written examination and an interview. The respondents have tried to explain this away by saying that the written test and interview were held in accordance with the old recruitment rules. But in the meantime, the Government of India have issued orders for fitment of semi-skilled category in the scale of Rs.260-400/-. The respondents' case is that originally the posts held by the applicants in the scale of Rs.210-290/- were treated as semi-skilled and Government of India in their order dated 16.10.1981 treated this as skilled at par with Fitter, Electrician and other posts to which the applicants were re-categorised, according to the respondents, in the scale of Rs.260-400/-. If the lower posts were treated as skilled, with effect from this order dated 16.10.1981 there would not have been any need to subject the applicants to a trade-test involving a written examination and interview for fitting them in another skilled category post with a higher scale of pay. Unfortunately, neither of the parties has mentioned when such trade-tests were held and whether these were held prior to 16.10.1981 when the lower category posts were treated as skilled instead of earlier status of semi-skilled or after 16.10.1981. Moreover, if we are to accept the contention of the respondents that the lower category of posts of Switch

Board Attendant, Plumber, Pipe Fitter, Motor Pump Attendant, etc., were treated as skilled with effect from 16.10.1981, then the applicants should have been fitted in the higher scale of Rs.260-400/- with effect from 16.10.1981. The respondents have further mentioned that as a result of recommendation of the Expert Classification Committee, the Ministry of Defence issued orders on 11.5.1983 wherein the lower category of posts was sanctioned the scale of Rs.260-400/-. Had it been a case of fitment in the sense of giving a higher scale of an existing set of posts, then the applicants would have been fitted in higher scale if not from 16.10.1981 but at least from 11.5.1983. But as a matter of fact, they were inducted in the higher scale in 1985 and 1986 and that too, after they qualified in trade-tests. In view of all the above, it is not possible to hold that the case of the applicant is a case of mere fitment or notional promotion. It has to be held that this is a case of substantive promotion, as has been held by the Tribunal in OA No.151/94. The respondents have further stated that reference ^{to "promotion"} in the orders at Annexure-1 of these applications is a mistake and this has been subsequently corrected in orders issued on 1.1.1997. These orders at Annexure-1 have been issued in 1985, 1986 and 1987 and in case of applicant in OA No. 818/96 in 1992 with effect from 13.5.1985. If this is a genuine inadvertent mistake, there is no explanation in the counters as to why it had taken the respondents five years in the last and more than 10 years in other cases to correct this mistake. It must, therefore, be held that this order dated 1.1.1997 is an afterthought and can have no impact on the claims of the applicants in these O.As.

28

9. In consideration of all the above, we hold that the applicants' induction in the scale of Rs.260-400/- in different posts is by way of substantive promotion and on such promotion, they are entitled to have their pay fixed in accordance with Rule 22-C. One word has to be said at this point. The applicants have all along mentioned in their petitions that their pay should have been fixed under FR 22-A(1). This has been referred to by us earlier. But actually FR 22-A(1) came into existence with effect from 30.8.1989. The applicants were promoted to the different posts in the scale of Rs.260-400/- in 1985, 1986 and 1987 and therefore, the earlier FR 22-C would be applicable in their cases. The respondents have correctly mentioned FR 22-C in their counters.

10. In the result, therefore, the original Applications are allowed. The respondents are directed to fix the pay of the applicants in the scale of Rs.260-400/- on the date of their promotion to the posts in that scale in accordance with FR 22-C and give them the consequential financial benefits. All this should be done within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order. There shall be no order as to costs.

Sd/- G. Narasimhan
Member (Jud)

Sd/- Somnath Som
Vice-Chairman

AM/PS