

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 761 of 1996

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member  
Hon'ble Mr. M.K. Mishra, Administrative Member

1. PROMOD CH. ROY
2. DINESH CH. TALUKDAR
3. SWAPAN KR. GHOSH
4. GOPAL CH. DUTTA
5. NANDIJIRAM RAJBAR
6. SHIVNARAYAN MISTRI
7. KARUNESH SRIMANI
8. KRISHNA KUMAR KAR
9. DINANATH SHARMA
10. ANIL CH. SINGHA ROY
11. DEBNARAYAN DEY
12. ALBINAS TAPPO
13. HARIHAR SHARMA
14. DANIEL TAPNO

All are working under Garrison Engineer,  
Sevoke Road.

...APPLICANTS.

VERSUS

1. Union of India,  
service through the Secretary,  
Ministry of Defence, Rakshya  
Mantranalaya, New Delhi.
2. The Engineer-in-Chief,  
MES, Kashmere House, DGQ,  
New Delhi.
3. The Chief Engineer,  
Eastern Command, Fort William,  
Calcutta - 700021.
4. The Chief Engineer,  
Siliguri Zone, Siliguri.  
Dist. - Darjeeling.
5. The Commander Works Engineer,  
Bengdubi, P.O. Bengdubi,  
Dist. - Darjeeling.
6. The Garrison Engineer,  
Sevoke Road, Siliguri,  
Dist. - Darjeeling.

...RESPONDENTS.

7. 212722 Swapan Roy,  
Electrician HS-II
8. 212998 Subir Kr. Dutta,  
Electrician HS-II.
9. 212720 Pradip Kr. Das.  
Electrician HS-II.

*(Signature)*

10.213107 A.K.Majumdar.  
Electrician HS-II.

11.213329 Madan Kr. Roy.  
Electrician HS-II.

All working under GE(A/F), Bagdogra.

...PRIVATE RESPONDENTS.

For the applicants : Mr.N.C.Chakraborty, counsel  
Mr.B.P.Manna, counsel

For the respondents : Mr.M.S.Banerjee, counsel

Heard on : 23.11.04

Date of order : 21.12.2004

O R D E R

M.K.Mishra, A.M.

The applicant Shri Promod Ch. Roy along with 13 others filed this OA seeking reliefs as under :

- a) the applicants may be permitted to join together as prayed for in para 4(ii) of this application under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules.
- b) to direct the respondents to review the cases of the applicants based on the Government direction on 3-grade structure and percentage basis and put them into respective position w.e.f. the date they are entitled to be placed starting from 16.10.81 and refix their pay with effect from the date of upgradation with all consequential benefits.
- c) to direct the respondents to extend the benefits as per the principle enunciated in the judgment in OA 43/91 upgrading the applicants retrospectively w.e.f. 16.10.81 and fix their pay in higher grade with all consequential benefits in the related designation.
- d) to restore the inter se seniority of the applicants according to the initial date of seniority.
- e) to pass such other order or direction as may seem fit and proper in consonance with equity, justice and fair play.

2. The reliefs sought by the applicant is in view of the decision in OA 43/91 of this Tribunal in the case of Swapan Kr.Roy & Ors. -vs- Union of India & Ors. vide order dated dated 17.6.94. The Hon'ble Tribunal held as under :

"We have given careful consideration to arguments advanced by the learned counsel for all the sides and considered the matter in all its aspects. Admittedly, all the private respondents are juniors to the applicants in the cadre of the Switch Board Attendants etc. The applicants were also promoted before the cut off date i.e., 16.10.81 as Electricians and they got the scale of Rs.330-480/- The private respondents

*(Signature)*

were first promoted and while they were enjoying the promotion the benefit of the upgraded scale in the cadre of SBA was given to the private respondents since that benefit was given retrospectively with effect from 16.10.81. Mr.Bag, learned counsel for the respondents emphatically asserted that after the said circular of 1983 was enforced by the respondents the Electricians as well as the SBA etc. for separate cadre and they have separate lines of promotion. He also stated that the private respondents are functioning even now in the grade of SBA (UG) which was denied by the learned counsel for the applicants. However, on going through the reply filed by the private respondents we find that they are functioning as Electricians which shows that they are no longer functioning as SBA (UG) and they are very much functioning as Electricians. This indicates that there was no stagnation so far as the private respondents were concerned. The circular of 1983 gave the benefit of upgraded scale on the ground that the employees having no prospect of promotion and stagnating in the same cadre should be given the benefit of upgraded scale. We find that this view was also taken and in fact, the whole issue was clarified by the respondents in their circular in 1987. But however, during the interregnum period between 1983 and 1987, because of the confusion created by the respondents themselves, the multiple benefits were given to the private respondents and this has created not only an anomalous situation but a situation which may be termed as discrimination. We are, therefore, of the view that the applicants cannot, be allowed to suffer because of certain mistakes on the part of the respondents. All the applicants are now functioning as Electricians and their juniors cannot be allowed to enjoy higher pay than them. This situation must be rectified.

For the reasons given above, the application succeeds. The respondents are directed to step up the pay of the applicants to the level of their juniors with effect from the date their juniors were drawing the higher pay. They should also be given all the consequential benefits. This action shall be completed within 4 months from the date of communication of this order. The application is disposed of accordingly. We pass no order as to costs."

Further the 1d.counsel for the applicant contended that the relief as prayed above should be given to the applicants in view of the decision of the Apex Court in the case of Bhagwan Sahai Carpenter & Ors. -vs- Union of India & Ors. (1989) 2 SCC 299. The Apex Court in the above case held as under :

11. Considering all the facts and circumstances of the case we are unable to accept the contentions advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled grade cannot be treated different i.e. by allowing higher scale of pay to employees of some of the trades from an earlier date and giving the same benefit to members of other trades in the skilled grade from a later date. This will per se be discriminatory and it will be contrary to the equality clause envisaged in Articles 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work. The petitioners are entitled to get the benefit of the skilled grade of Rs.260-400 from October 16, 1981 instead of October 15, 1984 as has been given to the

employees of other trades in the skilled grade.

12. In the aforesaid premises, the writ petitions are allowed. Let a writ of mandamus be issued directing respondent 1 to extend the benefit of the pay scale of skilled grade to the petitioners with effect from October 16, 1981. The respondents are also directed, to pay to the petitioners the higher scale of pay of the skilled grade from October 16, 1981 to October 14, 1984. All arrears of pay be made to the petitioners as early as possible but not later than three months from the date of this judgment.

3. In this connection para 6 of the above decision is relevant on the basis of which the aforesaid judgment was given by the Apex Court

6. On October 15, 1984, a letter was sent to the Chief of the Army Staff, New Delhi under the signature of Deputy Secretary to the Government of India wherein it has been mentioned that the President has accorded sanction to the upgradation of the following jobs from semi-skilled grade (Rs.210-290) to the skilled grade (Rs.260-400) :

Sl.No.	Job Title
1.	Book Binder
2.	Saddler
3.	Boot Maker
4.	Carpenter
5.	Pipefitter
6.	Plumber
7.	Mason
8.	Moulder
9.	Painter/Polisher
10.	Sign Writer
11.	Sawyer
12.	Upholsterer

4. In the reply the ld.counsel for the respondents submitted that all the applicants are not similarly circumstanced and similarly situated. Therefore the OA is not maintainable. It was further contended that the applicants were given the benefits of 3-grade structure recommended by the Expert Classification Committee. The ld.counsel also submitted that the OA has been filed beyond the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The case of the applicants is that their designation and re-designation as given in the OA would indicate that the applicants belong to different categories and are not similarly situated. Therefore they cannot join together in a single application under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987.....

The 3-grade structure was introduced and implemented as per Engineer-in-Chief's branch letter dated 4.7.85. The judgment of OA

43/91 is not applicable in the present case as the applicants were not serving in the category of Switch Board Attendant and the judgment was given only in the case of the Electricians.

5. Regarding the decision of the Supreme Court, the ld.counsel for the respondents submitted that the benefit of that judgment would not be available to the applicants because the Hon'ble Supreme Court gave the decision in the year 1989 and the applicants filed this OA after a lapse of 7 years and most of the applicants had already been promoted from Semi-skilled Grade to Skilled Grade in the normal channel of promotion much after 16.10.81 and since there is no specific order with regard to the post of the applicants the July circular of 1985 cannot be applied retrospectively and since most of the applicants did not pass the Trade Test before 16.10.81 therefore they are not entitled to the benefit which was given to Skilled Grade as per Govt. policy mentioned in the letter dated 11.5.83 with retrospective effect from 16.10.81.

6. In the rejoinder the applicants contended that since the applicants came to know late about the judgement passed by the CAT, Calcutta Bench in OAs 260/91 and 43/91 vide order dated 28.12.92 and 17.6.94 respectively with regard to Switch Board Attendant (SBA)/ Electricians regarding the extension of benefit as recommended by the Expert Classification Committee and accepted by the Govt. of India the representations by the applicants were sent to the competent authority for allowing the same benefit to them. After getting no response to the grievances of the applicants, they filed the OA jointly. Hence it is maintainable.

7. The Hon'ble Tribunal decided the principle that though the cut off date was 16.10.81 those who were promoted or designated in the relevant designations should get their pay refixed at par with their juniors who might have been getting. Although the recommendations of Central 3rd Pay Commission was given effect from 16.10.81 including those of the employees whose grades were upgraded on account of the recommendations of the Expert Classification Committee, the case of

the applicants were not allowed to avail those benefits . Therefore the applicants similarly situated joined together and filed this OA. Further since the matter relates to pay and allowances, therefore the cause of action is perpetual in nature. The OA is therefore maintainable and is not barred by limitation. It was further submitted that for the first time the Central 3rd Pay Commission recommended and Expert Classification Committee introduced the 3-grade structure i.e. Skilled, High Skilled Grade II and High Skilled Grade I and for the first time the Govt. of India accepted those designations as in the Annexures 2 & 3 which are all of common categories. Therefore in all fairness the applicants should have been given the benefit of revised grade and revised pay as recommended by the Third Pay Commission w.e.f. 16.10.81 and since the respondents did not allow their legal right to be exercised despite the fact that each of the applicants submitted their representation for consideration before the competent authority which remained unresponded. The applicants further submitted that the common seniority list is maintained under the Commander Works Engineer level and seniority & promotion are done by the same authority. The ratio introduced by the Govt. of India in promotion in the Grade of Highly Skilled Grade I - 15%, Highly Skilled Grade II - 20% and Skilled Grade - 65% as per circular of the Army Headquarters dated 4.7.85. The matter for examination is that the applicants who were working with the same designations prior to implementations of the Central 3rd Pay Commission recommendations and they have been working in the same grade for last 15-16 years and till now, whether their cases have been duly considered for promotion or they have been left out. The decision of the Apex Court in the case of Bhagawan Sahai Carpenter & Ors. is fully applicable in the case of the applicants based on the principle of equal pay for equal work and the principle of stepping up of pay to the level of the juniors is very much applicable in the case of the applicants. The circular dated 21.7.94 indicates that the existing ratio of Fitment Policy is 65% (Skilled), 20% (H.S.-II) and

(V)

15% (H.S.-I) stands somewhat amended to the effect that as a welfare measure it has been decided that 20% promotion to H.S.-II level and further 15% promotion to H.S.-II level against 15% vacancy of H.S.-I thus a total of 35% vacancies will be filled up by promotion from the existing skilled category. Therefore this segment of workers were entitled to two relaxations, one originally granted in terms of the Govt. letter dated 4.7.85 and this current one 21.7.94.

8. We have heard the 1d.counsel for both the parties and perused the pleadings. It is observed from the reply of the respondents that all the applicants have been placed in different categories with redesignation based on 3-grade structure as per Govt. policy. The details of which are given below :

It is further observed that 8 categories such as Pump House Operator, Driver Engine Static, Mechanic Petrol & Diesel Engine, Driver Mobile Plant, Operator Earth Moving Machinery, Operator Pneumatic Tools, Boiler Attendant, Lift Mechanic have been redesignated as Fitter General Mechanic (Skilled) w.e.f. 6.7.94 as per Engineer-in-Chief's branch letter dated 21.7.94. Accordingly the persons belonging to the above mentioned categories have been redesignated w.e.f. 6.4.94. The applicants are belonging to the trade namely Blacksmith, Carpenter, Painter, Fitter which are of different categories and as such in the absence of specific order of the Govt. of India, retrospective effect in respect of redesignation could not be given to the applicants. It is also observed that many of the applicants have been promoted to the skilled grade after passing Trade Test and after 16.10.81. Therefore they are not entitled to have a double benefit as per Govt. of India's letter dated 11.5.83 with retrospective effect i.e. 16.10.81. Regarding the applicant No.8 Sri Krishna Kumar Kar, no details have been given in the OA as well as in the reply or rejoinder regarding passing of the Trade Test. Therefore it is presumed that he could not be promoted because he did not satisfy the conditions as laid down for getting promotion as per restructured grades.

9. From the above details it is indicated that all the applicants ~~except at Sl.No.8~~ were given the benefits of promotion of internal staff was considered on the authorised strength of CWP area on the basis of laid down percentage as discussed above. In other words no one can claim promotion to higher grade without completion of a particular period of service. We also observe that the 3-grade structure was introduced and implemented as per Engineer-in-Chief's branch letter dated 4.7.85.

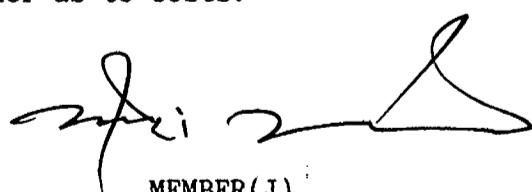
10. We also notice that the decision of this Tribunal in OA 62/91 and OA 43/91 are in respect of Electricians and SBA. Therefore the principle laid down therein are not applicable in the case of the applicants because neither they are Electricians nor they are covered under the category of SBA. As regards the decision of the Hon'ble Supreme Court in the case of Bhagawan Sahai Carpenter (supra) is concerned, it is observed that the Hon'ble Apex Court gave the direction to the respondents that the advantage given in the letter dated 15.10.84 by the Govt. of India are to be made applicable with retrospective effect i.e. the date on which the recommendations of the 3rd Pay Commission became applicable. In the present case the principle is not applicable because the matter which relates to the cause of action arisen before 1.11.82 the jurisdiction of the Tribunal was non-existent. Out of 13 applicants, 8 applicants namely at Sl.No.1, 2, 3, 6, 8, 10, 11 & 12 joined under Garrison Engineer, Sevok Road before 1.10.81 i.e. the date on which the 3rd Pay Commission's recommendations were made effective for implementation. Other 5 applicants joined in 1983, 1987 & 1993.

11. The upshot of the above discussion is that the OA is not maintainable. Hence it is dismissed with no order as to costs.



MEMBER (A)

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MEMBER (J)