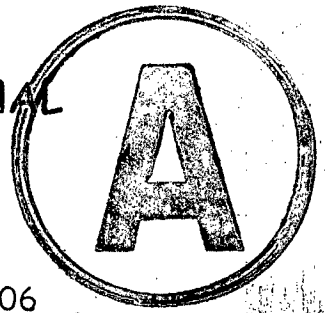


**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**



ORIGINAL APPLICATION NOS. 292/2007,
94/2007, 278/2007, 447/2006, 498/2006, 609/2006

Monday the 10th day of March, 2008

C O R A M:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

[1] O.A.278/07:

Sheela Baby, Fitter Electric Control (SK),
Naval Ship Repairing Yard (K),
Wellington Island,
Cochin -682 004.

Applicant

(By Advocate Shri CSG Nair)
-Vs-

1. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin -682 004.
2. Union of India, represented by the Secretary,
Ministry of Defence, South Block,
New Delhi -110 001.
3. Daisamma Augusthy,
Control Fitter Instrument (SK)
Naval Ship Repairing Yard (K),
Wellington Island, Cochin -682 004.
4. S.Babu Kumar,
Fitter Electric Control (SK),
Naval Ship Repairing Yard (K),
Wellington Island,
Cochin -682 004.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC (R.1&2))

[2] O.A.292/07:

T.R.Gangadharan,
Electronic Fitter (HS),
Naval Ship Repairing Yard (K),
Wellington Island,
Cochin -682 004.

Applicant

(By Advocate : Shri CSG Nair)

-Vs-

1. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin -682 004.
2. Union of India, represented by the Secretary,
Ministry of Defence,
South Block, New Delhi -110 001.
3. N.Muraleedharan,
Electronic Fitter (HS),
Naval Ship Repairing Yard (K),
Wellington Island,
Cochin -682 004.

Respondents

(By Advocate Shri P.S.Biju, ACGSC (R.1&2)
(By Advocate Shri Johnson Gomez (R3)

[3] O.A.94/2007:

1. S.Anil Kumar,
Fitter Electric Control (HS),
Naval Ship Repairing Yard ,
Southern Naval Command, Kochi-4.
2. Stoy Varghese,
Chargeman II Control (HS),
Naval Ship Repairing Yard,
Southern Naval Command, Kochi-4.
3. K.P.Madhusoodanan,
Fitter Electric Control (HS),
Naval Ship Repairing Yard ,
Southern Naval Command,
Kochi-4.
4. C.P.Radhakrishnan,
Chargeman II Control (HS),
Naval Ship Repairing Yard ,
Southern Naval Command,
Kochi-4.
5. T.R.Gangadharan,
Fitter Electric Control (HS),
Naval Ship Repairing Yard ,
Southern Naval Command,
Kochi-4.
6. Tomy Philip,
Fitter Electric Control (HS),
Naval Ship Repairing Yard ,
Southern Naval Command,
Kochi-4.

Applicants

(By Advocate Shri CSG Nair)

-Vs-

1. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin -682 004.
2. Union of India, represented by the Secretary,
Ministry of Defence,
South Block, New Delhi -110 001.
3. C.Rajendran,
Instrument Mechanic (HS-1),
Naval Ship Repairing Yard ,
Southern Naval Command,
Kochi-4
4. C.G.Sarala,
Instrument Mechanic (HS-1),NAY(K),
Southern Naval Command,
Kochi-4.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC(R.1&2)
(By Advocate Shri TCG Swamy (R.3&4)

[4] O. A. 447/06:

1. C.K.Sajeev,
Plater - SK,
Naval Ship Repair Yard,
Naval Base, Kochi.
 2. Jolly Pallipadan,
Sheet Metal Worker - SK,
Naval Ship Repair Yard,
Naval Base, Kochi.
 3. Shaju C. Maprani,
Plater - SK,
Naval Ship Repair Yard,
Naval Base, Kochi.
 4. P.P.Aji, Plater - SK,
Naval Ship Repair Yard,
Naval Base, Kochi.
 5. Benny Antony,
Plater - SK,
Naval Ship Repair Yard, Applicants
Naval Base, Kochi.
- (By Advocate Shri NN Sugunapalan Sr.with S. Sujin)

Applicants

-Vs-

1. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Naval Base, Cochin.
2. Officer in-charge,
Naval Ship Repair Yard,
Southern Naval Command,
Naval Base, Kochi.

3. Union of India represented by
the Secretary, Ministry of Defence,
New Delhi.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

[5] O.A. 498/06:

Bilbert Joseph, Plater (SK),
Naval Ship Repair Yard,
Southern Naval Command,
Cochin-682004.

Applicant

(By Advocate Shri CSG Nair)
-Vs-

1. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin -682 004.
2. Union of India, represented by
the Secretary,
Ministry of Defence,
South Block,
New Delhi -110 001.
3. M.S. Harikumar,
Plater (HS),
Naval Ship Repair Yard,
Southern Naval Command,
Cochin-682004.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)(R.1&2)

(By Advocate Shri Sreejith P.R. (R3)

[6] O.A. 609/06:

1. K.M.Salim,
Miller HS-ii, Old Machine Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-682 004.

2. P.K.Babu,
Miller HS, New Machine Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-682 004.

(By Advocate Shri NN Sugunapalan Sr.with S. Sujin)

-Vs-

1. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Naval Base, Kochi-682 004.
2. The Commodore Superintendent,
Naval Ship Repair Yard,
Naval Base, Kochi-682 004.

Applicants

3. The Administrative Officer Grade-II,
Civilian Administrative Officer,
Office of the Commodore Superintendent,
Naval Ship Repair Yard,
Naval Base, Kochi-682 004.

4. Union of India, represented by
the Secretary to Govt. of India,
Ministry of Defence,
New Delhi. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The applications having been heard on 26th February, 2008
the Tribunal delivered the following:

ORDER

(Hon'ble Smt. Sathi Nair, Vice Chairman)

These original applications have raised a general challenge against the order issued by the Ministry of Defence for restructuring of the industrial cadre of artisan staff in the Defence establishment, dated 20th May 2003 and its consequential implementation by the Respondents in the Naval Ship Repair Yard under Southern Naval Command by order dated 2nd May, 2006. Since the above order dated 2nd May 2006 has been impugned in all these applications, we propose to hear and dispose of the matter by a common order. However, these OAs, inter alia, have also raised issues regarding merger of trades, classification skilled and highly skilled and the inter-se-seniority amongst the merged trades and also within the trade and they are dealt with under the respective OA headings.

The applications are being considered in two different groups for the purpose of clarity on the above mentioned issues. Accordingly the applications viz. OA 278/2007, 292/2007, and

94/2007 are considered in the first group and remaining OAs 447/2006, 498/2006 and 609/2006 are in the second group.

First Group

1. OA 278/07
- 2) This is taken as the leading case. The reliefs as prayed for by the applicant are as follows:
 - (i) To call for the records leading upto the issue of Annexure-A3 & A7 and quash the same,
 - (ii) To direct the respondents to promote the applicant as FEC (HS) with effect from 31.01.2002 or in the first available vacancy,
 - (iii) To direct the respondents to maintain the seniority list of employees in FEC Trade and promote them without taking into account the merger effected as per Annexure-A3,
 - (iv) Grant such other relief or reliefs that may be urged at the time of hearing or that are found to be just and proper in the nature and circumstances of the case;
 - (v) Grant cost of this OA.
- 3) The applicant is working as Fitter Electric Control (SK) in the Naval Ship Repairing Yard (for short NSRY) at Cochin under the first respondent. As per the Recruitment Rules for promotion to Tradesman (Highly-Skilled Grade-II), Tradesman (Skilled) with 8 years regular service and a pass in the Departmental Test is essential. By virtue of Annexure-A2 order dated 20.5.2003, the HS-1 and HS-II cadres were merged and certain percentage of HS posts were merged and placed in a higher scale of pay of Master Craft Men (MCM) giving effect from 01.01.96. This order was not

implemented immediately and it was amended by Annexure-A2 order dated 27.3.06 as a result of the order of this Tribunal in OA 740/03, 741/03, 853/03 and 882/03, disposed of on 17th May, 2005. The respondents then issued Annexure-A3 impugned order clubbing the trades of Fitter Electric Control and Control Fitter Instruments together as one Trade and the applicant was promoted as Control Fitter Instrument (HS) with effect from 01.03.2004 and the 3rd respondent was promoted as Fitter Electric Control (HS) with effect from 31.01.2002. This order has given rise to the following grievances of the applicant:

1. Clubbing of two trades has resulted in getting more advantage for the Control Fitter Instrument Trade;
2. The applicant has been promoted in the Control Fitter Instrument (HS) in which she had no experience and had not passed the Departmental Test for CFI (HS);
3. The 3rd respondent who belongs to Control Fitter Instrument Trade has been promoted in the Fitter Electric Control Trade;
4. Though 8 years regular service is required for promotion as HS Grade this was relaxed in certain cases and persons juniors to the applicant was given promotion as HS w.e.f. 28.1.2005 and the applicant being senior should have been promoted in the natural course in the first available vacancy.

4) Annexures-A5, A6 and A7 are the representations submitted by the applicant, which were rejected by the respondents. The exercise of restructuring itself has been challenged on the ground that the respondents had issued Annexure-A4 order dated 4th August, 06 rationalising the trade structure in the Repair Yards based on the discussions with JCM-III and council members and recommendation of the Apex

Committee, thereby the merger as per Annexure-A3 order being effective only for few months, it is alleged that the promotions have been made to favour certain persons, otherwise there was no urgency in issuing the Annexure-A3 order while the deliberations regarding restructuring were going on.

5) Reply statement has been filed by the 1st respondent. It has been submitted that prior to 1st January, 1996 the Industrial Cadre under Navy was having 3-Tier structure of promotion, viz., Skilled, , Highly Skilled Grade-II and Highly Skilled Grade-I. Based on the 5th Pay Commission Recommendations, the scale of pay of Highly Skilled Grade-II and I were merged into single scale of pay of Rs. 4000-100-6000/- w.e.f. 01.01.96. Subsequently, by Annexure-A3 order the Ministry of Defence had restructured the Industrial Cadre of Navy with retrospective effect from 01.01.96. After many deliberations at various levels, the restructure of the Industrial Cadre was carried out. As per the restructuring, placement has to be made in the post of Master Craftsman outside the promotional hierarchy. Opposing this, OA Nos. 740/03, 741/03, 853/03 and 882/03 was filed before this Tribunal and this Tribunal by order dated 17th May, 2005 quashed the retrospective effect of the restructuring order and in compliance with the Tribunal's directions, the Government of India, Ministry of Defence modified the decision and on the basis of these decisions the impugned order Annexure-A3 has been issued.

As regards the claim of the applicant, it is submitted that the promotional hierarchy of the applicant's trade of Fitter Electric Control is as under:

OLD STRUCTURE

Sr Foreman (Con)	Sr. Foreman
Foreman (Con)	Foreman
Chargeman II (Control)	Chargeman II (Instrument)
Master Craftsman	Master Craftsman
Fitter Electric Control	HS-1Control Fitter HS-I (Instrument)
	<u>Fitter Electric Control HS-II</u>
	! !
Fitter Electric Control (SK)	Control Fitter Instrument (SK)

The above chart would show that prior to 4th August, 06 the promotional hierarchy to the post of Fitter Electric Control HS-I and Control Fitter HS-I (Instrument) were Fitter Electric Control (SK) and Control Fitter Instrument (SK) respectively in the two trades. No dispute with regard to promotional hierarchy in respect of the trade of Fitter Electric Control and Control Fitter had ever been raised by any employee despite of promotions made in the trade. On successful completion of the apprenticeship in the Fitter Trade their name will be registered in the seniority list. As per their seniority, they will be absorbed against the vacancies in the 'Fitter Electric Control' Trade and 'Control Fitter Instrument' on availability. The seniors as well as juniors in the same trades were also promoted alongwith the applicants and no representation against any impugned order was received from anyone.

6) Rejoinder has been filed by the applicant disputing the structure of line of promotion as averred by the respondents. The correct position according to the applicant is below:

Sr Foreman (Control)	Sr. Foreman (Instrument)
Foreman(Control)	Foreman (Instrument)
Sr.Chargeman (Control)	Sr. Chargeman (Instrument)
Master Crafts Man	Master Crafts Man
Fitter Electric Control (HS-I)	Control Fitter Instrument (HS-I)

Fitter Electric Control (HS-II)

Fitter Electric Control (SK)	Control Fitter Instrument (SK)
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From the above, according to the applicant, promotions to the grade of Highly Skilled II were effected from clubbing both the trades of Fitter Electric Control and Control Fitter Instrument, but there was separation at HS-I level. After issue of Annexure-A2 the respondents have merged both the trades for further promotion from Highly Skilled-I and Highly Skilled-II. As per Annexure-A3, the trades of Fitter Electric Control and Control Fitter Instrument have been clubbed together for further promotion. A combined Seniority list was prepared and promotions were made according to that list, without calling any option from the employees as a result most of those, who were in Fitter Electric Control have become juniors and those in Control Fitter Instrument Trade became seniors, thereby their promotions to the Master Crafts Man Grade has been taken away by both the Control Fitter Instrument Trade.

7) We have heard learned counsel Mr CSG Nair for the applicants in all these Os and Mr. Shaji for Mr TPM Ibrahim Khan for the respondents.

Learned counsel for the applicants argued that the issue of Annexure-A3 itself was unwarranted as the restructuring of the cadre ordered by the Government of India vide letter dated 20th May, 2003 was in fact not implemented immediately and had been under deliberations with the Ministry of Defence and JCM Council members. Apex Committee was also formed and the respondents should have awaited the final outcome of these deliberations, which were crystallized by issuance of Annexure-A4 order dated 4th August, 2006. By this order, the merger of the trades itself has undergone change as would be seen from the Annexure-A4. Under the revised trade structure, "weapon and electrical" re-grouped together under which the number of trades are 10. According to this revised trade structure, the control fitter (computer) is to be re-designated as 'Computer Fitter' and the 'Electric (Control) and Control Fitter (Electronic)' to be re-designated as 'Electronic Fitter'. Computer fitter and Electronic fitter to be merged at AFM level and designated as AFM (Weapon Control). Since the trade structure has undergone a drastic change and Fitter Control and Fitter Instrument are no longer clubbed together, and the impugned order which is based on the clubbing on these two trades does not exist and orders to this effect have to be quashed.

8) On the individual grievances of the applicants it is submitted that the applicant who is at serial No. 243 in the impugned list is the lone person, who has been promoted as Control fitter Instrument from her original trade of Electric control and the respondent at serial No. 244, who is junior to the applicant has also been promoted within the same trade though at a later date,

which shows that the applicant was singled out without any rational or cogent reason. On the other hand, the learned counsel for the respondents reiterated the statement that the impugned order is issued on the basis of Annexure-A2 and subsequent modification of the order at Annexure-R2 necessitated by directions of this Tribunal itself in OA 741/2003 and batch cases.

9) First, we shall deal with the general issues raised by the applicants regarding the clash between restructured trades in question arising out of the issue of Annexure-A3 dated 2nd May 2006 and Annexure-A4 dated 4th August, 2006. Prior to 1st January 1996 the industrial cadre under the Navy was having 3- Tier structure of promotion, viz. Skilled, Highly Skilled Grade-II and Highly Skilled Grade-I. On the 5th Pay Commission's recommendation the scale of pay of Highly Skilled Grade-II & I were merged into a Single Scale of pay of Rs.4000-6000/- w.e.f. 1st January, 1996. The revised scale of pay was granted to HS Gr-I w.e.f. 1st January, 1996. Subsequently Annexure-A2 order of restructuring was issued by the Government of India, Ministry of Defence w.e.f. 01.01.96. From the first para of the order itself it is clear that this order was issued in partial modification of the recommendation of the 5th Central Pay Commission. The common pay scale has been recommended as Rs. 4000-6000/- for Highly Skilled HS-I and HS-II. The order also modified the inter grade ratio existing w.e.f. 01.01.96 as 65:35 for Skilled and Highly Skilled as 45:55. The modified trade ratio, according to sub para (i) of para 3 was effective from the date of issue and where the trade ratio is 65 : 35 (20+15) by merger of HS-II and HS-I was to come into effect from 01.01.96 of sub para (a) of Para 3. The post of Master

Craftsman were to be created on the basis of 25% of the Highly Skilled Grade posts and it was ordered that they will not be a part of the hierarchy and placement in the grade shall not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme by sub-para (b) of Para 3. These orders came to be implemented only by Annexure-A3 order dated 2nd May, 2006 after a considerable gap of three years. The respondents by this order directed placement of individuals in the posts resulting from the restructuring and ratio revision which was made effective from 01.01.96. Thereafter, respondents issued Annexure-A4 order dated 4th August, 2006 which also referred to rationalization of trade structure, from which it is revealed that the classification of the trade structure and issue of rationalization had been under discussions of JCM Council meeting from December 2003 and an Apex Committee was moved and the recommendation was deliberated during the 9th, 10th and 11th JCM-III Council meetings. The revised trade structure is common to all the Dockyards and Repair Yards and was brought into effect by this order and 36 trades were categorized in five disciplines. Para 6 of the said order, it has been proposed that different trade structures would follow the same norms in compliance with the directions in Ministry of Defence dated 20th May, 2003 (Annexure-A2) and the distribution of the Skilled and Highly skilled is required to be in the ratio of 45:55 and that 25% has to be designated as Master Craftsman in addition to the above said order. It is, therefore, evident that though the ratio of the grade structure was revised by Annexure-A2 order dated 20th May, 2003, the actual classification of trade and their rationalization had not finally been done and was very

much under consideration from 2003 till the date of issue of Annexure-A4 dated 4th August, 2006. The enclosures Annexure-A1 to this order specify the grouping of trades under 5 disciplines. For the purpose of this OA, the relevant Electronic fitter discipline is contained in enclosure-3.(A4/9). According to this, serial No.3 Electronic fitter and serial No.7 Instrument Fitter have independent channels of promotion though they re figuring brought under the same discipline. According to this order Electronic Fitter Electric (Control) and Control fitter (Electronic) to be re-designated as Electronic fitter, Computer fitter and Electric fitter and merged at AFM level and designated as AFM (Weapon Control). Prior to this, the Fitter Electric (Control) and Control fitter (Electronic) were grouped together as seen from Annexure 3 of para 3. Evidently, there is definite change in the grouping which has occurred within three months from the date of the impugned order. It is not very clear from the pleadings from the Annexure-A4 order whether ^{it} has been brought into effect with retrospective effect from 20th May 2003 or 1st January, 1996 though it is mentioned the norms that to be adopted are those fixed in the 20th May, 2003 order. Therefore, there is some force in the contention of the applicants that since the respondents could have waited for implementation of the order till August 2006, when an Apex Committee was considering the restructuring there was no necessity to issue a promotion order by Annexure-3. Due to change of grouping of two trades done by Annexure-A4 the position having changed again, it could not be given effect to. Respondents should have worked out the inter-se-ratio in the sanctioned and authorized strength after restructuring but this exercise however, appears to

have taken three years and not completed till the issuance of Annexure-A4 order in August, 2006. According to Annexure-A2 order if the ratio was already 65:35 then the restructuring shall be implemented w.e.f. 01.01.96 on the strength of the staff pattern to the new structure from the date of issue of order dated 20th May, 2003. But it was implemented by Annexure-A3 order by the Respondents revising the integrated ratio after rationalization of the trade structure but retaining the old trade structure for all purposes. The impugned order Annexure-A3 is the result for such exercise. Even if it assumed to be in order and in accordance with the norms prescribed in Annexure-A2, promotions seems to have been effected without settling the common seniority as a result of merger of two scale of HS-1. Though the respondents have submitted in their reply statement that a common seniority has been drawn up, the effect of the merger HS I and HS-II, according to which trade and placement has been made accordingly. No such list has been produced nor any defence was taken that in accordance with the settled seniority list the respondent in the OA are seniors to the applicants. On the other hand, it is seen that in the impugned order the 4th respondent who belongs to the trade of electric control has been placed in the Highly skilled category as "Control Fitter" instructor, whereas the 4th respondent who is evidently junior to the applicant has been placed in the same trade of Fitter Electric control. The 3rd respondent on the other hand is Control Fitter Instrument (SK), though of course she is senior to the applicant, but placed as SK in the discipline of Fitter Electric Control. In fact, from the order it is seen that it is only the applicant who has been in a different discipline of Control Fitter

Instrument whereas all others have placed as Fitter (Electric Control) (SK) and no reason is given why the 3rd respondent who belongs to Fitter Instrument category ought not to have been placed in the High Skilled category in the same trade instead of placing the applicant outside her own trade.

10) The respondents have argued that these two trades had to be clubbed together for promotion to the Fitter Electrical Control (HS) which is not very convincing even according to the chart produced by the respondents which shows that the clubbing was only for placement in HS-II and thereafter promotions were to be effected in separate disciplines as Master Craftsman etc. Though Craftsman level is not a promotional hierarchy the two groups were not clubbed together before restructuring. The apprehension of the applicant that she has been affected because as Control Fitter she will have to seek her further promotion in that cadre alone cannot be brushed aside. Moreover, as explained earlier by virtue of Annexure-A4 order this position has also changed as these two trades are no longer grouped together. Therefore, in our opinion, the issue of Annexure-3 is considered to be premature when the entire exercise of restructuring was really not concluded by then. And even if it stood concluded at that time, by virtue of the order dated 4th August, 2006 the whole question of restructuring had to be reopened as Annexure-A4 order is also not specific on this point whether it is the effective only prospectively or that it replaced the trade structuring from 2003 onwards. The respondents would have to take a considered decision on this score also. Secondly, the question of seniority in different trades and groups at the merges level has to be decided first and unless the

basic seniority of the trade at HS level amongst the trades are finally decided once and for all as in 2003 and again as in 2006, any promotion and placement as by the impugned order as the basis of the 20th May, 2003 general order would give rise to such apprehensions. Therefore, the respondents would have to be directed to first decide the seniority in accordance with the merger of trades as existed prior to the reclassification of trades one and for all and prepare a provisional seniority list and circulate it amongst the staff and invite objection, if any, and finalise the same after giving opportunity to them and thereafter only the process of promotion should take place.

[2] OA 292/07

11) The applicant is also working as Fitter Electric Control (HS) in the Naval Ship Repairing Yard at Cochin. He was promoted as HS II in June 1991. According to him as per Annexure-A3 order 10% of HS are to be placed as Master Craftsmen. In Annexure-A4 it is mentioned that the placement in the Grade of Master Craftsmen are not as a part of hierarchy i.e. only 10% of HS are to be placed in Master Craftsmen Grade on the basis of seniority alone. 3rd Respondent was however placed in the Grade of Master Craftsmen w.e.f. 24.1.2006 overlooking many seniors, including the applicant. Again the 3rd respondent was promoted as Charge man Grade-II (Control) overlooking the claim of many seniors. The applicant's claim that the vacancy in which he was promoted was not a reserved one, as such the promotion is illegal, arbitrary and liable to be set aside and he is entitled for placement in Master Craftsman as well as promotion to the cadre of Charge man Grade-II (Control), setting aside the promotion given to the 3rd respondent. The

applicant prays that the respondents be directed to grant him Master Craftsman Grade from the date on which the 3rd respondent was placed as Craftsman and promote him further as Charge man Grade-II (Control).

12) Respondents have filed reply statement reiterating the averments as contended in the aforementioned OA. It is stated that though the 3rd respondent joined the service in the skilled Grade in the trade later to the applicant, but was promoted as Highly Skilled Grade-II w.e.f. 14th August, 1991 against the 'Scheduled Caste Point'. On restructuring, the 3rd respondent was placed as Master Craftsman w.e.f. 24th January, 2006 as he was holding the post of Highly Skilled Grade-II and passed the Departmental Qualifying Test for promotion to the post of Charge man Grade-II. With the approval of the competent authority, 48 Highly Skilled Grade-II Tradesman (including 3rd respondent) who have already qualified for promotion to the higher post of Charge man Grade-II in the hierarchy of the Industrial Cadre, were placed as Highly Skilled Grade-I without any financial benefits.

However, this order has not been produced and it is not known what happened to the applicant and other 48 persons. The respondent also relied on the order of this Tribunal passed in OA 741/2003 and batch and tried to argue that the 3rd respondent got the benefit of this order. Nowhere in the order it is seen that the Tribunal had stated that placement in NCM category is to be treated as promotion only as argued by the respondents. The respondents having not clearly brought out the position of the applicant vis-à-vis the 3rd respondent, we are of the opinion that that the seniority has not been properly determined. Hence the

observations made in the above OA 278/07 shall hold good in this case also.

3] OA 94 of 2007

13) The applicants 1, 3, 5 and 6 in this case are working as Fitter Electric Control (HS) and the applicants 2 and 4 are working as Charge man II Control in the Naval Ship Repairing Yard. They are belonging to the Fitter Electric Control Trade (Electronic Fitter). The applicants while challenging the restructuring order have also stated that by clubbing these trades the applicants became juniors and the Instrument Fitter trade employees got undue advantage by getting MCM Grade promotion on account of their seniority over the employees in Electronic Fitter trade. According to the applicants, both these trades go parallel up to the cadre of Charge man and only for the purpose of promotion to the Master Crafts Man grade alone this clubbing is done. Therefore, the applicants pray for setting aside the promotion to the MCM grade granted to the Instrument Fitter trade employees. It is submitted that the applicants 2 and 4 have already been promoted and the applicants 1, 3, and 6 are aggrieved by the placement of Respondents 3 and 4 who belongs to the Fitter Electric Control.

14) The respondents have reiterated the statements made in the above OA and have further stated that till 4th August, 2006 there existed a combined seniority list in the Highly Skilled Category for these 2 trades and from the date on which the rationalization has been carried out in the industrial cadre, the combined system was followed by the respondents. The applicants further submitted that the combined seniority list was not made available to them and the seniority list is applicable only for placing

them in MCM Grade and not further promotion. According to them this arrangement is only to favour certain persons in the instrument fitter trade. The Respondents have not produced any combined seniority list and unless the seniority list is made available it is not possible to say anything whether the promotions granted to the respondents herein as HS-I and their further placement is in order or not. Hence, our observation in the earlier OA is applicable in this OA also.

15) In the Second Group of cases, viz. OA 447/06, OA 498/06 and 609/06, the applicants not only challenged the Restructuring of the Industrial Cadre order dated 2nd May, 2006 and but also challenged the fixation of inter-se- seniority so fixed on the basis of the restructuring.

4] OA No.447/06

16) There are five applicants who belong to Plater-SK and Sheet Metal Worker in the Naval Ship Repair Yard at Naval Base, Kochi under the Ministry of Defence. The applicants are aggrieved by the action of the respondents in preparing a combined seniority list of all trades as it prejudicially affect their promotions in their own avenue for promotion in the same line of plater HS-II. Aggrieved by the impugned Annexure-A3 provisional combined seniority list the applicants submitted Annexure-A4 representation contending that they are holding senior positions in the trade and will be entitled to get the next promotion in their trade. The respondents have filed a brief reply stating that the applicants that the promotions order are based on the direction of this Tribunal in OA 741/2003 and batch cases. No comments have been offered on the grouping of trades and respective position of the applicants in

the seniority list. The representations filed by the applicants have not been disposed of by the Respondents.

17) Considering the claim and counter claim made by the parties, the official respondents are directed to dispose of the representations filed by the applicants before finalizing the seniority list so prepared, after giving opportunity to the applicants.

5] OA No.498/06

18) The applicant in this OA is working as Plater (SK) and is qualified for promotion as Plater (HS). There are 5 Plater (SK) and 4 Plater (HS) and out of which three vacancies are already filled up. One post of Plater (HS) was filled up by promoting the 3rd respondent w.e.f. 24.1.2006 and according to the applicant, two other posts are vacant. Applicant has prayed for promotion to the post of HS but his prayer has not been considered. The respondents have not controverted the statements made by the applicant, except the statement that the impugned order was issued as per directions of this Tribunal in OA 741/2003 and batch cases. This order incidentally only directed that while the inter-seniority in the merit of HS-II and HS-I cadre those juniors who had passed the trade test in time and got promotion to HS-I before 01.01.96 should be placed senior to those who had not passed the trade test in time and being granted exemption on the trade test as one time measure by order dated 25.3.03. It is not specifically stated whether the 3rd respondent was the beneficiary to these directions and whey they have not been promoted prior to 01.1.96. In fact, the specific case is that the 3rd respondent has not passed the trade test. However, it is seen that the applicant joined the service in 1998 only and he would complete 8 years of service in

2006 only. Therefore, the contention that he should have been promoted in 2003 by virtue of having passed the trade test does not appear to be in accordance with the rules position. The position of the applicant vis-à-vis, the 3rd respondent is vague in the absence of any concrete averments unless the respondents finalise the seniority list and fix the seniority position of the 3rd respondent. We do not find any convincing reason to issue any specific direction in this case. The direction issued in the other cases will also apply in this case.

6] OA No.609/2006

19) The applicants are working as Miller (HS-II) and their next promotion is to the category of Mater Craftsmen. By order dated 20th May, 2003 the Government of India, Ministry of Defence restructured the cadre of Artisan Staff in Defence Establishment. It is further averred that the respondents have prepared a provisional seniority list clubbing together with other trades and the applicants apprehend that this will prejudicially affect their interest and deny their due promotion. The representations filed by the applicants are pending consideration by the respondents. No specific order has been impugned in this OA. The respondents have taken the general plea that they are implementing the restructuring order and for the interest of majority of employees and some employees may be affected and on that basis the decision taken by the official respondents cannot be said to be bad. There are no clear averments and the applicants have also not produced any document or record in support of their averments. Respondents' statements are also vague. The reliefs claimed by the applicants are direction to the respondents to promote them to the category of

Mater Craftsman in the available vacancies according to the seniority in the trade Category of Miller-HS. The direction issued in the above case will apply in this case also.

20) In the totality of the discussions and reasons set out hereinabove, it is seen that the basic grievances of the applicants being the same that of non finalization of their seniority and rationalization of the trade structure and the dates from which this has to be given effect to, we dispose of the OA with the following directions:

1. We quash the Annexure-A3 order dated 2nd May, 2006 issued consequent to the restructuring of the Industrial category and giving retrospective promotions w.e.f. 01.01.96, without finalizing the seniority under various classification of trades. The respondents are directed to take necessary steps for fresh finalisation of the seniority list of all the employees in the High Skilled category after merging HS-II and HS-I w.e.f. 01.01.96 and publish a provisional seniority list by inviting objections and giving reasonable opportunity to file representations, if any, and thereafter finally publish the seniority list.
2. Similarly, the respondents shall also issue separate orders working out the ratio on the basis of the sanctioned and authorised strength of all trades as mentioned in sub-para (e)(i)(ii) of para 2 of Annexure-2 order dated 20th May, 2003.
3. Respondents shall also take decision whether the revised trade structure issued in purported implementation of the order dated 4th August, 2006 by Annexure-A4 should be

made effective from 20.5.2003 or shall have prospective effect only. If it is decided that it would have prospective effect only, then the entire trade ratio will have to be worked out as per revised structural order. The combined seniority list will have to be prepared as per the directions contained in para 7(b) of Annexure-A4 order. The promotions and placement shall be ordered by the respondents only after finalisation of the seniority on the basic merged level of HS within the various groups of trades.

- 21) With the above directions the OAs are disposed of. No order as to costs.

(George Paracken)
Judicial Member

(Sathi Nair)
Vice Chairman

Stn