

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 556/2004 and 777/2004

TUESDAY this 2nd day of May 2006

CORAM

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

OA 556/2004:

- 1 P.S.Vikraman S/o Sivanandan aged 40 years
T.No.800, AM II, NAD, Aluva residing at
Kannattukonam House, Thaikkattukara PO
Aluva.
- 2 A.K.Muraleedharan S/o Krishnan Nair,
Aged 38 years, T.No.876, AM II, NAD
Aluva residing at Arakkal House,
South Vazhakulam PO, Aluva.Applicants

(By Advocate Mr.M.Rajasekharan Nayar)

V.

- 1 Union of India, represented by the
Secretary, Ministry of Defence,
New Delhi.
- 2 The Chief of Naval Staff,
Navy Bhavan, New Delhi.
- 3 Flag Officer Commanding in Chief,
Southern Naval Command,
Kochi.2.
- 4 General Manager,
Naval Armament Depot,
(NAD),Aluva.Respondents

(By Advocate Mr. TPM Ibrahim Khan SCGSC)

OA 777/2004:

- 1 N.M.Philip,
Ammunition Mechanic,
Grade II, Ticket No.677,
Ammunition Workshop,

Naval Armament Depot,
Aluva.

2 K.K.Ayyappan,
Ammunition Mechanic,
Grade II, Ticket No.801,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

3 P.K.Vijayan
Ammunition Mechanic,
Grade II, Ticket No.917,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

4 I.B.Sasidharan
Ammunition Mechanic,
Grade II, Ticket No.797,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

5 P.R.Sanathanan,
Ammunition Mechanic,
Grade II, Ticket No.831,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

6 T.N.Surendran
Ammunition Mechanic,
Grade II, Ticket No.916,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

7 K.S.Haridas
Ammunition Mechanic,
Grade II, Ticket No.833,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

8 P.N.Somasundaran Nair
Ammunition Mechanic,
Grade II, Ticket No.835,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

9 V.Gopalakrishnan
Ammunition Mechanic,
Grade II, Ticket No.860,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

10 K.K.Sasidharan
Ammunition Mechanic,
Grade II, Ticket No.861,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

11 P.C.Madhusoodhanan,
Ammunition Mechanic,
Grade II, Ticket No.862,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

12 E.Ramachandran
Ammunition Mechanic,
Grade II, Ticket No.962,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

13 G.Chandran Nair
Ammunition Mechanic,
Grade II, Ticket No.864,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

14 P.Radhakrishnan
Ammunition Mechanic,
Grade II, Ticket No.874,
Ammunition Workshop,
Naval Armament Depot,
Aluva.

(By Advocate Mr. K.Shrihari Rao)

V.

1 Union of India, represented by its
Secretary, Ministry of Defence,
New Delhi.

2 Chief of Naval Staff,
Naval Headquarters
New Delhi.

3 Flag Officer Commanding in Chief,
Southern Naval Command,
Cochin.4.

4 The General Manager,
Naval Armament Depot,
Aluva.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

Both these applications having been heard jointly on 4.4.2006, the Tribunal
on ..2..5..06....delivered the following:

ORDER

HONBLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA No.556/2004

In this OA applicants are seeking a declaration that they are entitled to the post of Ammunition Mechanic (HS)(AM in short) w.e.f. 1/10/2000 in the case of first applicant and from 1/9/2003 in the case of the second applicant and further promotion to the first applicant as Master Craftsman (AM) (MCM in short) (AM) w.e.f. 1/10/2003. They have also sought declaration to hold that the Annexure A-1 and Annexure A-2 letters dated 1/3/2004 and 6/7/2004 respectively are illegal and void and they will not affect the rights already granted to them by the order dated 20/5/2003. (Annexure.R.1). According to this letter, the restructuring of the cadre of the Artisan Staff in Defence Establishment have been ordered by the respondents. It says as under:-

"The grade structure in the industrial as well as in the non-industrial trades, wherever already available and the pay scales of the Defence artisan staff shall stand modified w.e.f. 1/1/1996 as under:-

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(i)	Skilled	Rs.3050-4590
(ii)	Highly Skilled (HS-I + HS-II)	Rs.4000-6000
(iii)	Master Craftsman	Rs.4500-7000"

In para-3 of the said letter it is further stipulated as under:-

"The placement of the individuals in the grade resulting from the restructuring and ratio revision shall be made w.e.f. 1.1.1996 in relaxation of the conditions, if any, i.e. trade test etc. on one time measure.

The above provision may also be made applicable, as a special case, in relaxation of the existing rules/instructions to the employees who have either retired or died after 1/1/1996. "

2. The applicants were originally working as Fitter Ammunition Repairs (FAR in short) under the fourth respondent. The Fifth Pay commission in paras 63. 317 and 63.318 of its report recommended the restructuring of the category of employees described as Ammunition Mechanic (AM) and Fitter Ammunition Repairs (FAR). The pay commission suggested that the existing post of FAR and AM may be distributed equally between the two suggested grades of AM-I and AM-II. The said recommendations are reproduced below:

"63.317: In the navy Industrial Staff are employed in Naval Clock yard, ship repair yards, Aircraft yards and ammunition workshops, etc. While the demands relating to extension of three grade structure have been made in case of Naval Industrial Staff also, specific suggestions have made with regard to Fitter ammunition Repair and Naval Aircraft Technicians. It has also been suggested that ITI qualified tradesman be upgraded to scale of Rs.1200-2040. We have considered the demands and for Fitter ammunition Repair whom three grade structure has been sought, we suggest following restructuring

<u>Existing</u>	<u>Proposal</u>
Ammunition Mechanic (Rs.950-1500)	Ammunition Mechanic I (Rs.1320-2040)
Fitter Ammunition Repair (Rs.950-1500)	Ammunition Mechanic II (Rs.950-1500)
Ammunition Repair Labour (Rs.800-1150)	Ammunition Repair Labour (Rs.800-1150)

63.318: It is suggested that the existing posts of Fitter Ammunition Repair and Ammunition Mechanic may be distributed equally between the two suggested grades of Ammunition Mechanic."

3. Since the aforesaid recommendations were not implemented, two persons, namely, Shri P.P.Gopinathan Nair and Shri G.Ramachandran have moved this Tribunal vide OA No.357/2000. Meanwhile the post of Ammunition Mechanic and Fitter Ammunition Repair in the Navy were restructured as under vide Ministry of Defence letter CP (P)/7837/Report/AM/NHQ/569/D(N.II) dated 13th May, 2002, a copy of which has been produced as Annexure A-5 by the applicants:-

<u>Existing Designation</u>	<u>No. of posts</u>	<u>Revised Designation</u>	<u>No. of posts</u>
Ammunition Mechanic (Rs.4000-6000)	42	Ammunition Mech I (Rs.4000-6000)	136
Fitter Ammunition Repair (Rs.3050-4590)	231	Ammunition Mech II (Rs.3050-4590)	137
Total			273
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On the basis of above order, the existing sanction of 14 posts of ammunition Mechanic and 40 posts of Fitter ammunition Repair in Naval Armament Depot, Alwaye have been restructured as under:-

- (a) Ammunition Mechanic I : 27
(Rs.4000-6000)
- (b) Ammunition Mechanic II : 27

Thereafter a statement was filed in the said OA on behalf of the respondents that there were 273 posts of FAR and 136 posts are designated as AM-I and 137 posts as AM-II. Noting that since the

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recommendations of the Central Pay Commission was accepted by the Government during the pendency of the OA, the OA was disposed of on 10.7.2002. It has been stated in paragraph 02 of the Annexure A-5 order that the posts of Ammunition Mechanic I and Ammunition Mechanic II will be filled up as per the existing Recruitment rules of Ammunition Mechanic and Fitter Ammunition Repair respectively till revision of the existing Recruitment Rules. As per existing Recruitment Rules of ammunition Mechanic, Fitter Ammunition Repair has to pass Departmental Qualifying Test to become eligible for promotion.

4. While recommendation of the Pay commission was not granted to the first applicant, alongwith another person filed OA No.752/2002 and during its pendency before this Tribunal the Ministry of Defence had issued orders restructuring the cadre of Artisans and Defence Estt. vide Annexure R-1 order dated 20/5/2003. In para 2(d) and (e) of the said letter it has been prescribed that for placement of individuals as a result of restructuring, conditions of trade test may be relaxed. In order to give effect to the relaxation, the applicants, who were in category of Ammunition Mechanic, have also been considered for placement amongst other categories, although they have not passed Departmental Qualifying Test. In the light of above relaxation, Annexure A-3 Civilian Establishment List dated 3.11.03 was issued. This position was communicated to Tribunal and as such the OA 752/2002 filed by the applicants was disposed of by the Tribunal. The applicants are among the 136 persons classified as AM-I in the scale of pay of Rs. 400-100-6000. The first applicant's name appears at Sr.No.47 and that of the second applicant at Sr.No.65 in the category of AM. The applicant no.1 has been placed as AM(HS) w.e.f.

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1/10/2000 and MCM(AM) w.e.f. 1/10/2003. The second applicant has been placed as AM(HS) w.e.f. 1/9/2003. But ignoring the statement filed in OA 752/2002, the respondents have now issued Annexure.A1 and A2 letters according to which the Ministry of Defence had clarified that the Ministry of Defence letter dated 20.5.2003 (Annexure.R.1) relates to restructuring of Artisan Staff only and not to the Ammunition Mechanic cadre. The said letter further directed the department to implement that the restructuring of AM and FAR in Navy as per Ministry of Defence letter dated 13.5.2002 (Annexure.A5). By the Annexure.A2 letter dated 6.7.2004 the placement of Ammunition Mechanic in the grade of AM(HS) and AM(MCM) ordered vide Sr.Nos.39 to 65 of CE List No.139/2003 dated 3/11/2003 (Annexure A-3) has been cancelled.

5 The applicants have challenged the aforesaid Annexure A-1 and A-2 impugned orders on the ground that those orders were in violation of the aforesated recommendation of the Fifth Pay commission contained in para 63.317 and 63.318. The above recommendations were accepted by the Government by restructuring the posts of Ammunition Mechanic and Fitter Ammunition Repair into two categories as AM-I and AM-II with the strength of 136 posts and 137 posts respectively. The applicants were also assigned various dates from which they have to get promotion as AM (HS), AM (MCM) and this fact was also recorded in the orders of this Tribunal in Annexure A-4. Therefore, there was no scope for review of that order by means of a clarification which is against law laid down by the Supreme court in the case of Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsinghji reported in AIR 1970 SC 1273, wherein it was held as under:-

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"It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication."

They have also alleged hostile discrimination on a section of persons covered by the recommendation of the Vth Pay Commission which was accepted by the Government in toto except the monetary benefits which was allowed only prospectively. In such circumstances, the contention of the respondents that it will apply only to one section of workers that is, only to Artisan staff and not the Ammunition Mechanic cadre amounts to violation of fundamental right under article 14 and 16 of the constitution.

6. The respondents in their reply has submitted that the applicants are now working as FAR (Skilled) and they have not passed Departmental Qualifying Test for promotion to the post of Ammunition Mechanic as envisaged in the Annexure.A5 letter dated 13.5.2002 and as such they are not eligible for consideration to the post of Ammunition Mechanic. (Annexure A-5) letter has clearly stipulated that posts of ammunition Mechanic I and Ammunition Mechanic II can be filled as per recruitment rules which states Departmental Qualifying Test is mandatory for promotion. The Ministry of Defence has clarified vide Annexure.A1 letter dated 1st March 2004 that the Industrial restructure under Ministry of Defence letter dated 20th May 2003 is not applicable to "Ammunition Mechanic" cadre. In view of this clarification, relaxation in qualification test was not allowed as far as Ammunition Mechanic cadre was concerned. Since Annexure A-3 was prepared under bonafide belief that qualifying test can be exempted for Ammunition Mechanic cadre, the respondents had to cancel Annexure A-3 by Annexure A-1 to comply with recruitment rules.

The placements in respect of Ammunition Mechanic ordered earlier have, therefore, been cancelled by the 3rd Respondent. The respondents have also submitted that the OA 752/2002 was filed seeking direction to declare that the applicants (the first applicant is the same person in this OA also) are eligible to be placed as AM I without passing qualifying departmental tests as they came in 135 posts classified as Ammunition Mechanic in the Navy out of which 27 posts are in the NAD, Alwaye. Further, it has been clarified that Ammunition Mechanics are not entitled to benefits envisaged in Government order dated 20/5/2003 as the cadre of Ammunition Mechanics, who were categorized as non-industrial has already been restructured with effect from 13th May, 2002 and the new incumbents have been re-categorized as "Industrial". Hence the contention of the applicants that Annexure A-2 is by way of review of Annexure R-1 is incorrect as Annexure A 2 is only a clarification to Annexure R-1.

OA 774/2004

7. This OA has been filed during the pendency of aforesaid OA 556/2004 challenging the Annexure A-1, A-2 and A-3 letters. By Annexure A-1 letter dated 5/10/2004, the respondents have invited applications from the AM II (Industrial) staff who possess the required qualification for filling up the post of AM I (Industrial). The qualification required for appearing the exam was as under:-

<u>Post</u>	<u>Scale of Pay</u>	<u>Qualification/Eligibility</u>
Ammunition Mechanic I (Industrial)	Rs.4000-100-6000	Ammunition Mechanic II (erstwhile FAR(SK) who have passed VIII standard with not less than 5 years service in the grade and have passed in a departmental trade test failing which

Ammunition Mechanic II
(Erstwhile FAR (SK) with not less than five years service in the grade and have passed in a departmental trade test.

8. Annexure A-2 letter dated 1/3/2004 is regarding restructuring of cadre of artisan staff in defence establishments in modification of the recommendation of the fifth Central Pay Commission {Ammunition Workshop staff in NAS Organization (Left out trades)}. It says that the Ministry of Defence has clarified that letter dated 20/5/2003 relates only to restructuring of Artisan Staff and not to Ammunition Mechanic Cadre and therefore, the restructuring of Ammunition Mechanic and FAR be implemented in Navy in terms of Ministry of Defence letter dated 13/5/2002. Annexure A2 letter dated 6/7/2004 is only a corrigendum to the C.E.List No. 139/2003 dated 3/11/2003 according to which placement in respect of Ammunition Mechanic in grade Ammunition Mechanic (HS) and Ammunition Mechanic (MCM) have been cancelled.

9. Prayer in this OA is to declare that the first applicant is entitled to get the post of Ammunition Mechanic (HS) w.e.f. 1/8/2001, 2nd Applicant from 1/6/2002, 3rd applicant from 1/8/2002 and applicants 4th to 14th from 1/2/2003 with all consequential benefits including the monetary benefits from the above date on the basis of Annexure A-5 Civilian Establishment List No.139/03 dated 3.11.2003. The Annexure A-5 letter dated 3/11/2003 in this OA is the same letter annexed by applicants in OA No.556/2004 as Annexure A-3. The first respondent issued letter dated 20/5/2003 accepting the recommendation of the 5th Central Pay Commission. Thereafter the respondents issued the Annexure A4 letter dated 16.10.2003 ordering placement of Tradesmen in terms of the

aforesaid Ministry of Defence Letter dated 20.5.2003. On the basis of the Annexure.A4 letter the respondents have issued the Annexure.A5 C.E.List No.139/2003 dated 3.11.2003. The applicants are at Sl.Nos .48, 50, 51, 52, 55,56, 57,58, 60, 61, 62, 63 and 64 and they were granted the benefits with the issuance of the Annexures.A4 and A5 letters, the grievance of the applicants got redressed and OA 752/2002 was accordingly closed vide Annexure.A6 order dated 21.11.2003. The respondents have now issued letter dated 1/3/2004 (Annexure.A1) ignoring Annexures A-4 and A-5 wherein it was stated that letter dated 20/5/2003 is applicable only to artisan staff and not to Ammunition Mechanic and the fourth respondent has issued the Annexure.A3 corrigendum as Civilian Establishment List No.86/2000 dated 6/7/2004.

10 We have heard Ms.Manjusha Mohandas,Shri K.Sri Hari Rao for the applicants and Mr. TPM Ibrahim Khan, SCGSC on behalf of the respondents in both the O.As. It is an admitted fact that the Government has accepted the recommendation of the Vth CPC for restructuring the category of employees described as Ammunition Mechanic (AM) and Fitter Ammunition Mechanic (FAR). The first applicant and another employee have earlier approached this Tribunal vide OA 752/02 for extending the benefit of the said recommendation to him and similar persons also. During this period the respondents have issued Annexure.R.1 order dated 20.5.03 for placement of the individuals in the restructured posts relaxing the condition of passing the Trade Test. As the benefit of the said order has been extended to the applicants also by way of Annexure.A3 Civilian Establishment List dated 3.11.03, the OA 752/02 itself was closed noting that the respondents have granted the relief to the applicants. Now the

respondents have turned around and say that they have issued the Annexure.A3 list under a bonafide belief that the qualifying test can be exempted for Ammunition Mechanic cadre also and decided to cancel the same. This is nothing but a strange and unacceptable stand of the respondents when the understanding of the issue was the same for both the applicants and the respondents and it was on this basis that the said OA 752/02 has been disposed of by this Tribunal. The respondents are now estopped from taking any other view unilaterally. Further, as against what has been stated by the respondents now, there was reason for the respondents to issue the Annexure.A3 list dated 3.11.03. It was because the respondents in the similar circumstances relaxed the conditions of passing the trade test for placement of individuals in the restructured posts in the cadre of Artisan Staff in Defence Establishments vide Anenxure R.1 letter dated 20.5.03. Therefore, it is nothing but an after thought by the respondents that in the case of Ammunition Mechanic Cadre such relaxation is not applicable. Moreover, the Annexure.A.1 and Annexure.A2 letters now issued by the respondents amount to hostile discrimination between the employees belonging to the Artisan Staff cadre and the Ammunition Mechanic Cadre by exempting one from passing trade test and insisting the other to pass the test in order to place them in the restructured post.

11 In the result, we quash and set aside Annexure.A.1 letter dated 1.3.04 and Annexure.A2 letter dated 6.7.04 in OA 556/04 and Annexure.A.1 Memo dated 5.10.04, Annexure.A:2 letter dated 1.3.04 and the Annexure.A3 list dated 6.7.04 in OA 777/2004. We also declare that the applicants in both the O.As are entitled to the post of A.M.(HS) and

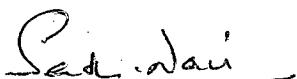
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MCM(HS) with effect from the relevant dates in accordance with the Annexure A.3 Civilian Establishment List No.13903 dated 3.11.03 with monetary benefits. The respondents are directed to issue necessary consequential orders within a period of two months from the date of receipt of this order. There is no order as to costs.

Dated this the 2nd day of MAY, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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