

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

~~O.A. No.~~

198

T.A. No. Tr.174/87 and 175/87.

DATE OF DECISION 16.3.1989

1. Shri D.V.Ramaiah & 9 ors. (Tr.174/87)
2. Shri M.Afzaluddin & 24 ors. (Tr.175/87)

PetitionerShri S.P.Dharmadhikari.Advocate for the Petitioner(s)

Versus

Union of India & Ors.RespondentShri Ramesh DardaAdvocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J),

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH,
CIRCUIT SITTINGS AT NAGPUR.

Transferred Application No.174/87
&
Transferred Application No.175/87

1. Shri D.Venkata Ramaiah,
R/o Qr.No.2/22/2,
Type-III, Ordnance Factory,
Ambazhari,
Nagpur.
2. Shri T.S.Bandgar,
R/o Qr.No.2/18/7,
Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
3. Shri Abraham Mathew
R/o Qr.No.2/4/5, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
4. Shri K.Rajaram,
R/o Qr.No.1/120/2, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
5. Shri C.Prabhakar,
S/o Varadarajan,
R/o Qr.No.1/117/3, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
6. Shri R.L.Virwani,
R/o Qr.No.2/17/8, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
7. Shri R.D.Degaonkar,
R/o Qr.No. 1/106/1, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
8. Shri S.L.Sharma,
R/o Qr.No. 1/106/4, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
9. Shri Prakash Chandra,
Son of Mangha Ram,
R/o Br.No. 1/104/4, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.
10. Shri Akhilesh Chandra,
Son of Late Shri Chaudhary Pd.
Shrivastava,
R/o Qr.No. 2/17/5, Type-III,
Ordnance Factory, Ambazhari,
Nagpur.

.. Applicants in
Tr.Application
No.174/87

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1. M.Afzaluddin,
son of Late M.L.Khawaja,
Qr.No.2/7/1-III,
Ordnance Factory, Ambazhari,
Nagpur.
2. Shri R.K.Mukhopadhyaya,
Qr.No.7/24/8, Type-II,
Ordnance Factory, Ambazhari,
Nagpur.
3. M.Anand son of M.V.Kondalarao,
Qr.No.7/78/3,
Ordnance Factory, Ambazhari,
Nagpur.
4. Shri A.K.Banerjee,
Qr.No.5/61/3,
Ordnance Factory, Ambazhari,
Nagpur.
5. Ashri A.K.Sinha Biswas,
Qr.No.1/61/2-III,
Ordnance Factory, Ambazhari,
Nagpur.
6. Shri S.G.Bapat,
Qr.No.7/23/4-II,
Ordnance Factory, Ambazhari,
Nagpur.
7. Shri J.Narayanan,
s/o Late N.Jagadisa Iyer,
Qr.No.2/1/1,
Ordnance Factory, Ambazhari,
Nagpur.
8. Shri R.Murugesan,
s/o V.Ramaswamy,
Qr.No.2/22/A,
Ordnance Factory, Ambazhari,
Nagpur.
9. Shri E.P.Bharathan,
s/o E.Kunhambu,
Qr.No.2/15/5,
Ordnance Factory, Ambazhari,
Nagpur.
10. T.R.Mohanram,
Qr.No.1/122/2,
Ordnance Factory, Ambazhari,
Nagpur.
11. Shri S.Samivel,
Qr.No.1/117/2,
Ordnance Factory, Ambazhari,
Nagpur.
12. Shri R.Vaiyapuri,
s/o S.V.Raju, Qr.No.1/112-A/2,
Ordnance Factory, Ambazhari,
Nagpur.



13. Shri A.N.Rao,
s/o A.Sunder Rao,
Qr.No.1/105/A,
Ordnance Factory, Ambazhari,
Nagpur.
14. Shri S.C.Sarkar,
s/o Sailendranath Sarkar,
Qr.No.5/60-A,
Ordnance Factory, Ambazhari,
Nagpur.
15. Shri M.R.Chakravarthy,
Qr.No.7/21/7,
Ordnance Factory, Ambazhari,
Nagpur.
16. Shri M.Raghu s/o Dr.M.S.Narayanrao,
64, Sanjaya Building, Gokulpeth,
Nagpur.
17. Shri T.M.Nathen, s/o T.M.Mathai,
Qr.No.2/15/7,
Ordnance Factory, Ambazhari,
Nagpur.
18. Shri P.S.Bandopadhyay,
Qr.No.2/6/6,
Ordnance Factory, Ambazhari,
Nagpur.
19. Shri D.W.Khadse,
Qr.No.1/45/3,
Ordnance Factory, Ambazhari,
Nagpur.
20. Shri P.K.Thirunagaras,
s/o P.C.Kandaswamy,
Qr.No.1/43/3,
Ordnance Factory, Ambazhari,
Nagpur.
21. Shri A.C.Bhattacharjee,
Qr.No.7/36/8,
Ordnance Factory, Ambazhari,
Nagpur.
22. Shri E.G.Kurup,
Qr.No.2/18/1,
Ordnance Factory, Ambazhari,
Nagpur.
23. Bishweshwar Singh, s/o Rambilas Singh,
Qr.No.5/50/3,
Ordnance Factory, Ambazhari,
Nagpur.

24. Shri R.N. Chakrabarty,
s/o S.L.Chakrabarty,
Qr.No.7/35/7,
Ordnance Factory,
Ambazhari,
Nagpur.
25. Shri S.Venkataraman,
s/o R.V.Seetharamaiyer,
Qr.No.2/4/7,
Ordnance Factory, Ambazhari,
Nagpur.

.. Applicants in
Tr.Application
No.175/87.

V/s.

1. Union of India
through Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
2. The Director General,
Ordnance Factories,
6, Esplanade East,
Calcutta-1.
3. General Manager,
Ordnance Factory,
Ambazhari,
Nagpur.

.. Respondents in
Tr.Applications
No.174/87 & 175/87.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.V.Priolkar.

Appearance:

1. Shri S.P.Dharmadhikari,
Advocate
for the applicants.
2. Shri Ramesh Darda,
Advocate
for the respondents.

ORAL JUDGMENT:-

Dated: 16.3.1989

{PER: Shri M.B.Mujumdar, Member(J)}

By this judgment we are disposing of
Tr.Applications No. 174 and 175 of 1987. These were

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the writ petitions originally filed in the Nagpur Bench of the Bombay High Court where they were numbered as Writ Petition Nos. 179 of 78 and 740 of 78 respectively.

2. The relevant facts for the purpose of this judgment are these: Tr.Application No.174/87 is filed by 10 applicants, while Tr.Application No.175/87 is filed by 25 applicants. When the Writ Petitions were filed in the High Court all of them were serving as Chargeman Grade-II in the Ordnance Factory at Ambazhari, Nagpur. They were promoted as Chargeman Grade-II between 193-75. Before their promotions they were serving as Supervisors Grade 'A'. The ladder of promotions when the Writ Petitions were filed was Chargeman Grade-II, Chargeman Grade-I (including Chargeman Grade-I/design), Assistant Foreman and Foreman. All these fall in the category of Technical Non-Gazetted Officers(NGOs). All of them are Class III personnel.

3. As regards recruitment and service conditions of Class III personnel in the Ordnance Factories are concerned the rules in force are the Indian Ordnance Factory (Recruitment and Conditions of Services of Class III Personnel) Rules, 1956 (briefly, the 1956 rules). According to Rule 16 of these rules the terms and conditions of services in respect of Foreman down to and including Supervisor 'B' Grade are as laid down in Appendix 'D'. According to the terms and conditions laid down in Appendix 'D', Foreman down to and including Chargeman Grade II were entitled to

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free unfurnished quarters ~~of~~ compensation in lieu thereof according to rules (see term ix of Appendix 'D'). We may point out that the Technical NGOs who were in occupation of Government quarters were not required to pay any rent. However, those Technical NGOs who were in occupation of other than Government Quarters were entitled to get compensation in lieu of quarters (CILQ).

4. After the report of the IIIrd Pay Commission was accepted, the President promulgated the Civilians In Defence Services (Revised Pay) Rules, 1973. These Rules were given effect to from 1.1.1973.

5. The IIIrd Pay Commission had recommended that with the substantial improvement in the pay scales, the facility of rent free accommodation enjoyed by the Technical NGOs in Ordnance Factories and Base Establishments should be withdrawn. After accepting this recommendation the Government Published Memorandum F No.36(12)/74/US-II/D(Fy.II) dated 29th November, 1975. As that is under challenge in the present petitions we propose to quote it as it is. The memorandum reads as under:-

"Subject: C.D.S(RP)Rules 1973-Fixation of Pay Tech Supervisory Staff in Ordnance Factories AFD Agra HVF Avadi, R&D Organisation DGI and DTD & D (Air) - Withdrawal of the concession of Rent-Free-Accommodation/CILQ

The Third Pay Commission, in their Report (Volume I, Chapter 19-Para 59) have recommended that with the substantial improvement in their pay scales, the facility of rent free accommodation enjoyed by the Technical Supervisors in Ordnance Factories and Base Establishments should be withdrawn.

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This recommendation has been under the consideration of Government for some time past and it has been decided to accept the same with effect from 1st January, 1973. However, with a view to motivate the hardship arising out of the withdrawal of the concession in respect of Technical Supervisors (i.e. Technical Foreman, Technical Asstt. Foreman and Technical Chargeman) in Ordnance Factories, DGI and other establishments mentioned above and also the staff Assistants Senior Tech., Asstts., and Jr., Tech., Assistants in DGOF Hqurs. Office, who were entitled to rent free accommodation/CILQ as on 31st December 1972, the President to please to decide as under:-

- i) A sum equal to ten percent of pay plus DP. of the concerned employees as on 31.12.72 would also be added to their emoluments and then they should be brought on with effect from 1st January, 1973 on the basis of such emoluments, in accordance with the CDS (Revised Pay) Rules, 1973, ~~to the revised scales notified~~, in the first schedule to CDS(RP) Rules, 1973, promulgated vide SRO No.26-E, dated 24.12.73 and SRO-4-E dated 21st January, 1975.
- ii) The concerned employees, who opt for the revised pay scales with effect from 1st January, 1973 should be charged licence fee for the Government accommodation allotted to them under the normal rules. The arrears of licence fee with effect from 1.1.1973 onwards should be adjusted against the arrears of pay and allowances that may ~~accrue to~~ them as a result of Re-fixation of their pay under the CDS(RP) Rules, 1973. The balance if any, may be deducted in easy instalments, not exceeding twelve from the normal pay and allowances.
- iii) Technical Supervisory Staff, who were in receipt of CILQ as on 31.12.1972, will be entitled to house rent allowance as admissible in classified cities under the existing orders as amended from time to time, from 1.1.1973. The amount of compensation in lieu of quarters drawn during the period from 1.1.1973 would be set off against the arrears accruing as a result of re-fixation of pay under the CDS(RP) Rules, 1973,

and house rent allowance. The balance if any, may be deducted in each instalments, not exceeding twelve, from their normal pay and allowances.

2. The option to come over to the revised pay scales will be exercised by the persons concerned within three months from the date of issue of this office Memorandum in the form as in Annexure 'A'. However, such of the employees entitled to rent free accommodation/CILQ on 31.12.1972 as do not wish to opt for revised pay scales with effect from 1.1.73 will continue to be governed by the then existing orders relating to CILQ/Rent Free Accommodations.

3. This supersedes all previous orders on the subject e.g. this Ministry's letter No.5/(30)58/1838/D/Civ.1), dated 27.2.1962, as amended (partially) No.4 (22)/68/D(Civ.1) dated 4.8.1969; No.4(4)/66/D/(Civ.1) dated 3.10.1969; 781/72/D(Civ.II) dated 26.10.1972 and No.PC 4(2)/74/D (Civ.1) dated 7.5.75.

4. The relevant rules in the existing Regulations, namely, quarters and Rents and Financial Regulations, Part II as well as Pay and Allowances Regulations and any other special orders for individual categories issued in Army instructions/Government letters should be deemed to have been amended accordingly. Formal amendments to the Regulations will be issued in due course.

5. This issues with the concurrence of the Ministry of Finance (Defence) vide their UO No.4270/PB of 1975."

6. We may point out that before their promotion to the post of Chargeman Grade-II the applicants were working as Supervisors Grade 'A'. Supervisors Grade 'A' were not entitled either to rent free accommodation or to CILQ. Hence in view of the memorandum, the respondents held that the applicants were not entitled to these facilities as the rule by which these facilities were given stood repealed w.e.f. 1.1.1973. May it be pointed out that the Chargeman Grade-II who were working as such as on 31.12.1972 were given some

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benefits by para 1(i) of the Memorandum. Broadly speaking that benefit was addition of a sum equal to 10% pay plus Dearness Pay to their emoluments. But this benefit was not given to those who were promoted as Chargeman Grade-II on or after 1.1.1973. According to the applicants this is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

7. The above memorandum was circulated in the Ordnance Factory at Ambazhari by Factory Order dated 3.1.1976. Some follow up action was taken by the letters dated 10.5.1977 and 14.11.1977. The applicants have challenged these letters also in the writ petitions.

8. Though the applicants have made a number of prayers in the petitions, their main prayer is for quashing the Government Memorandum dated 29.11.1975 or in the alternative for directing the respondents to extend the application of that memorandum to them. At the time of arguments before us Shri S.P.Dharmadhikari, learned advocate for the applicants in both the cases stated that the memorandum dated 29.11.1975 be made applicable to the applicants also. In other words, he did not urge for quashing that memorandum because that would not have been in the interest of the applicants.

9. By letter dated 2.1.1980 the Under Secretary to the Government of India, Ministry of Defence, informed the Director General of Ordnance Factories, Calcutta the decision of the President to waive the recovery of licence fee/CILQ enjoyed from 1.1.1973 to 29.11.1975 by Supervisors Grade 'A' (Technical)

promoted as Chargeman Grade-II (Technical) between 1.1.1973 to 29.11.1975 and those Technical NGOs recruited during the said period in the Director General of Ordnance Factory Organisation. But the above decision is of no consequence in this case because by order dated 29.3.1978 injunction in terms of prayer clause 5 was issued. That prayer was for restraining the respondents from withdrawing the applicants' rent free accommodation without compensation during the pendency of the petitions. By subsequent order dated 2.4.1979, in effect that injunction was confirmed on the applicants' giving an undertaking that they shall refund such amounts to the respondents as may be calculated in accordance with the rules which were being enjoyed by them rent free. Mr. Ramesh Darda stated that all the applicants have given an undertaking and hence no licence fee was ever recovered from them.

10. The respondents have filed separate affidavits of the then General Manager of the Ordnance Factory, Ambazhari, Nagpur in each case. In short it is the contention of the respondents that the memorandum dated 29.11.1975 is in no way violative of Articles 14 and 16 of the Constitution of India as there was full justification for making discrimination between Chargeman Grade-II who were working as such on 31.12.1972 and those who were promoted to that post from 1.1.1973 till 29.11.1975.

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11. We have heard Mr.S.P.Dharmadhikari, learned advocate for the applicants and Mr.Ramesh Darda, learned advocate for the respondents. At the time of arguments Mr. Dharmadhikari did not press prayer 36(i) in the petition. That prayer is for quashing the Government Memorandum dated 29.11.1975 and some other consequential orders. Obviously, Mr.Dharmadhikari is not pressing for quashing of the said memorandum because thereby the applicants would not get any advantage, but on the contrary that will take away advantages which are given by that memorandum to those who were promoted as Chargeman Grade-II on or before 31.12.1972. Mr.Dharmadhikari, therefore, urged for granting the alternative relief prayed in para 36(iii) of the petition. In substance, that prayer is for extending the benefits of that memorandum to the applicants though they are promoted between 1.1.1973 and 29.11.1975, i.e. the date on which the Memorandum was issued. Mr.Dharmadhikari submitted that making the same memorandum applicable to those who were promoted earlier than 1.1.1973 and not making it applicable to those who were promoted after 1.1.1973 but before 29.11.1975 causes hostile discrimination against the applicants and hence violates the principles of Articles 14 and 16 of the Constitution.

12. Before considering the legal aspects we may point out that it was stated before us that prior to 1.1.1973 there were approximately 12,000 Technical NGOs,

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while only about 665 Supervisors were promoted to the Grade of Chargeman Grade-II between 1.1.1973 and 29.11.1975. (These figures, we were told are very approximate and not at all accurate.) Hence it is clear that the benefits of the Memorandum in question are given to about 12,000 employees while it is denied to 665 persons. Moreover, according to the memorandum though the benefit of additional amount of 10% of basic pay and dearness pay is given to the persons who were promoted earlier than 1.1.1972, that advantage was set off at least to some extent by taking away the facility of rent free accommodation/CILQ. It may also be pointed out that before the issuance of the memorandum on 29.11.1975 the facility of rent free accommodation/CILQ was available to all Technical NGOs.

13. Then by letter dated 2.1.1980 the President has waived recovery of licence fee/CILQ enjoyed from 1.1.1973 to 29.11.1973 by Supervisors 'A' (Technical) promoted as Chargeman Grade-II (Technical) during the said period. This indirectly shows that the government was aware of the difficulties which were being faced by the persons like applicants. We may point out that Mr.Dharmadhikari stated on behalf of the applicants that if the applicants are given the benefits of the memorandum then the applicants are prepared to pay the licence fee/CILQ which is waived by the said letter.

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14. At one time there was some argument as to whether the Memorandum dated 29.11.1975 has amended relevant Rule of the 1956 Rules which gave the facility of rent free accommodation to Technical NGOs, and if yes whether it was prospective or with retrospective effect from 1.1.1973. But as the applicants are now claiming the benefits under the same memorandum this aspect has become irrelevant.

15. The main question that we are required to decide in this case is whether the Government was justified in making distinction between Technical NGOs who were promoted earlier than 1.1.1973 and those who were promoted thereafter, but before the issuance of the memorandum on 29.11.1975. According to Mr. Dharmadhikari this discrimination is improper and unconstitutional while according to Mr. Darda it is constitutional.

16. In support of his arguments Mr. Dharmadhikari heavily relied on the judgment of the Supreme Court in D.S. Nakara v. Union of India, AIR 1983 SC 130. The questions that arose for the decision of the Supreme Court in that case were - Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would

differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? The Supreme Court has held that the classification in revised pension formula between pensioners on basis of the date of retirement specified in the Ministry of Finance Memorandum dated 25.5.1979 is arbitrary and violative of Article 14. It may be pointed out that under the Government of India, Ministry of Finance Memorandum dated 25.5.1979 the formula for computation of pension was liberalised but made applicable to Government servants who were ^{on} service on 31.3.1979 and retired from service on or [✓]after that date. As regards this distinction the Supreme Court has observed in para [✓]42: "If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits ~~from~~ a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered [✓]it necessary to liberalise the pension scheme, we find no rational

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principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory."

17. Turning to the object of the memorandum in question, it was issued because the Government accepted the recommendation of the Third Pay Commission to withdraw the facility of rent free accommodation enjoyed by the Technical Officers in view of the substantial improvements in pay scales. But at the same time the Government was not unaware of the hardship that would be caused due to withdrawal of the concession in respect of Technical Supervisors in Ordnance Factories and other establishments and also some other categories of employees who were entitled to rent free accommodation/CILQ as on 31.12.1972. In other words, the benefits of the memorandum were given to those who were entitled to rent free accommodation/CILQ as on 31.12.1972. But when the benefits were given to these persons we do not find any justification in denying the same benefits to those who were promoted as Chargeman Gr.II on or after 1.1.1973 but before 29.11.1975. We are mentioning the latter date because according to the rules, the

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Chargeman Gr.II promoted upto that date were entitled to rent free accommodation/CILQ because the provisions in 1956 Rules regarding rent free accommodation/CILQ were amended on that date, though retrospectively. In other words, the rule regarding the facility of rent free accommodation/CILQ was still there in these rules upto that date. The employees like the applicants could not have anticipated about repeal of the rule regarding rent free accommodation/CILQ before the issuance of the memorandum. Hence in our view the discrimination made in the memorandum in favour of the Chargeman Gr.II who were promoted before 1.1.1973 and against those who were promoted after that date but before 29.11.1975 is not in furtherance of the object of the memorandum but it is contrary to the same. As against this Mr.Ramesh Darda, learned advocate for the respondents relied on a recent Judgment of the Supreme Court in State of Uttar Pradesh v. J.P.Chaurasia & Ors. A.I.R. 1989 S.C. 19. In that case it is held that the question as to whether two posts are equal and should carry equal pay is an administrative one and Courts should not normally interfere with the opinion of the Pay Commission. The Supreme Court has further held that when persons performing the same or similar duties in the same cadre are classified into two grades, namely, Grade-I and Grade-II on merit-cum-seniority basis, there can be two scales for different grades and that does not violate Article 14 of the Constitution. Mr.Darda relied on the second principle. But that principle is not applicable in this case because by the memorandum in question the Government has discriminated

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between the same cadre of persons viz. the Chargemen Gr.II on the basis of their date of promotion and not on the basis of merit. Hence in our view this case does not help the respondents in not giving the benefits of the memorandum to the applicants. Mr.Darda then urged that the applicants were Supervisors Gr.'A' on 31.12.1972 and hence not entitled to rent free accommodation/CILQ and the distinction that is made by the memorandum in question is between the officials who were getting the facility of rent free accommodation/CILQ on that day and those who were not getting that facility on that date, ~~and hence it~~ is proper and legal. But, in our opinion, discrimination on this ground will not be proper. Take the case of a person who was promoted from the post of Supervisor Gr.'A' to the post of Chargeman Gr.II on 31.12.1972 and the case of a person who was promoted from the post of Supervisor Gr.'A' to the post of Chargeman Gr.II on the next date that is on 1.1.1973. Can the Government say that the former person should get the benefits of the memorandum because he was getting the facility of rent free accommodation/CILQ on 31.12.1972 and the other ^{who} was promoted on next date should not get it? Even ^{after} hearing the advocates and considering the facts we are unable to find any justification for ^{any} discrimination between them.

18. In result we hold that the applicants and persons similarly placed like them are entitled to the benefits of the memorandum dated 29.11.1975. Of course, if they opt in favour of the benefits given under that memorandum they shall have to refund for the facility of rent free accommodation/CILQ which was waived by the

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Ministry of Defence letter dated 2.1.1980.

18. We, therefore, pass the following orders:-

O R D E R

- (1) The respondents are directed to give the benefits of Government Office Memorandum F.No.36(12)/74/US-II/D(Fy.II) dt.29.11.1975 (at Annexure 5 in Tr.174/87 and at Annexure 6 in Tr.175/87), to the applicants in both the transferred applications.
- (2) The applicants in both ^{the} Tr.Applications should be given some time for exercising the option as mentioned in para 2 of the memorandum.
- (3) In case the applicants exercise their option in favour of getting the benefits under the memorandum then they shall have to refund the amount due to the respondents on account of enjoying the facility of rent free accommodation/CILQ, though it was waived by the Ministry of Defence by letter dated 21.1.1980. It is clarified that after 29.11.1975 they are not entitled to the facility of rent free accommodation/CILQ as provided in Indian Ordnance Factory (Recruitment and Conditions of Services of Class III Personnel) Rule, 1956.
- (4) The respondents may recover the said amount or adjust it towards the arrears, if any, due to the applicants on account of opting in favour of the benefits of the memorandum.
- (5) Interim stay orders passed by the High Court in terms of prayer 36(iv) in both the applications are hereby vacated.

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- (6) The benefits of the above order should be given to persons like the applicants i.e. those who were promoted to the post of Chargeman Grade II between 1.11.1973 to 29.11.1975.
- (7) Parties to bear their own costs.

M.Y. Priolkar
(M.Y. PRIOLKAR)
MEMBER(A)

M.B. Mujumdar
(M.B. MUJUMDAR)
MEMBER(J).

NOTE :-

Date: 16.2.90.

The date 1-11-1973 is corrected to 1-1-1973 as per the order passed today on M.P. 36/90. Inform advocates for both the sides.

(M.Y. PRIOLKAR)
M(A)

(M.B. MUJUMDAR)
M(J)