(06)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.Nos.169/87,267/87,278/87,425/87,446/87
493/87,494/87,515/87, 547/87,284/89,468/89
and 488/89.

(1) Abraham Titus,
Foreman,
Ordnance Factory,
Chandrapur,
Maharashtra State
and 25 Others. .. Applicants in O.A.169/87

vs.

1. Union of India
through
Secretary,
Ministry of Defence Production,
New Delhi.

2. Secretary,
Ordnance Factory Board
10-A,Auckland Road,
Calcutta - 700 001.

3. General Manager,
Ordnance Factory,
Chandrapur,
Maharashtra State. .. Respondents in O.A.169/87

(2) O.A.267/87

Satyanarayan Shankarlal Attal
High Explosive Factory
Kirkee,
Pune - 411 003.
and 38 Others. .. Applicants in O.A.267/87

vs.

1. Secretary,
Ministry of Defence,
New Delhi.

2. Chairman
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

3. General Manager,
High Explosive Factory,
Kirkee,
Pune. .. Respondents in O.A.267/87

(3) O.A.278/87

V.Ganapathy,
Ammunition Factory,
Kirkee,Pune. & 61 Ors. .. Applicants in O.A.278/87

vs.

1. Union of India
through
Secretary,
Ministry of Defence Production,
New Delhi.

2. Chairman,
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

..2/-

3. General Manager,
Ammunition Factory,
Kirkee,
Pune. .. Respondents in O.A.278/87

(4) O.A.425/87

A.N.Khedlekar,
Assistant Foreman,
Ordnance Factory,
Varangaon and
two others. .. Applicants in O.A.425/87

vs.

1. Union of India,
through
Secretary,
Ministry of Defence(Production)
D.H.Q, P.O.
New Delhi - 11

2. Chairman
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

3. General Manager,
Ordnance Factory,
Varangaon - 425 308. .. Respondents in O.A.425/87

(5) O.A.446/87

George K .Verghese,
Ordnance Factory,
Dehu Road,
Pune 412 113 & 3 Others. .. Applicants in O.A.446/87

vs.

1. Union of India,
through
Secretary,
Ministry of Defence,
New Delhi.

2. Chairman,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta.

3. General Manager,
Ordnance Factory,
Dehu Road,
Pune. .. Respondents in O.A.446/87

(6) O.A.493/87

Vinayak Gajanan Patankar,
Ram Mandir Lane,
Walkar Road,
Nagpur. .. Applicant in O.A.493/87

vs.

1. Union of India
through
Secretary,
Ministry ofDefence Production,
New Delhi.

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(08)

2. Secretary,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta.

3. General Manager,
Ordnance Factory,
Ambajhari,
Nagpur,
Maharashtra. .. Respondents in O.A.493/87

(7) O.A.494/87

S.Pazhaniappan,
Ordnance Factory,
Jawahar Nagar,
Bhandara Dist.,
Nagpur Maharashtra &
69 Others. .. Applicants in O.A.494/87

vs.

1. Union of India
Ministry of
Defence Production,
New Delhi.

2. Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.
(Through its Secretary)

3. General Manager,
Ordnance Factory,
Bhandara,
Maharashtra. .. Respondents in O.A.494/87

(8) O.A.515/87

A.M.Pandit
Ordnance Factory,
Dehu Road,
Pune 412 113. & 3 Others. .. Applicants in O.A.515/87

vs.

1. Union of India
through
Secretary,
Ministry of Defence,
New Delhi.

2. Chairman,
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

3. General Manager,
Ordnance Factory,
Dehu Road,
Pune. .. Respondents in O.A.515/87

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(9) O.A.547/87

R.C.Ravalani,
Ex.Chargeman Grade I,
PWD/1/5,Pimpri Colony,
Pune - 411 017. .. Applicant in O.A.547/87

vs.

1. Union of India
through
Secretary,
Ministry of Defence Production,
New Delhi.

2. The Chairman,
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

3. The General Manager,
Ordnance Factory,
Khamaria,
Jabalpur(MP)-482 005

4. The General Manager,
Ammunition Factory,
Khadki,
Pune 411 003. .. Respondents in O.A.547/87

(10) O.A.284/89

C.V.Ramana Murty,
C/o.A.G.Abhyankar,
Advocate,
128, Budhwar,
Pune - 2 and Three others .. Applicants in O.A.284/89

vs.

1. Union of India
through
Secretary,
Ministry of Defence,
New Delhi.

2. Chairman
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

3. General Manager,
Ordnance Factory,
Varangaon,
Dist.Jalgaon. .. Respondents in O.A.284/89

(11) O.A.468/89

Bhupendra Pal Singh,
Qr.No.20/A,Type IV,
O.F.Varangaon Estate,
Dist.Jalgaon 425 306. .. Applicant in O.A.468/89

vs.

(10)

1. Union of India
through
Secretary,
Ministry of Defence,
New Delhi.

2. The Chairman,
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory,
Varangaon,
Dist.Jalgaon. .. Respondents in O.A.468/89

(12)O.A.488/89

M.Sundaram,
Ordnance Factory,
Dehu Road,
Pune - 412 013. .. Applicant in O.A.488/89

vs.

1. Union of India
through
Secretary,
Ministry of Defence,
New Delhi.

2. Chairman
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta.

3. General Manager,
Ordnance Factory,
Dehu Road,
Pune. .. Respondents in O.A.488/89

Coram; Hon'ble Member(J)Shri M.B.Mujumdar
Hon'ble Member(A)Shri M.Y.Priolkar

Appearances:

1. D.M.Kakani,Advocate
for applicants at
Sr.No.(1)

2. V.B.Rairkar,Advocate
for applicants at
Sr.No.(2),(3) & (4)

3. V.J.Kalamkar,Advocate
for applicants at
Sr.No.(5),(8) & (12)

4. Jayant G.Gadkar,Advocate
for applicants at
Sr.No.(6) & (7)

5. R.C.Ravalani applicant
in person at Sr.No.(9)

6. A.G.Abhyankar,Advocate
for applicants at
Sr.No.(10) & (11)

(11)

7. Ramesh Darda, Advocate for Respondents at Sr.No.(1)

8. R.K.Shetty, Advocate for Respondents at Sr.No.(2)&(12)

9. M.I.Sethna, Sr.Standing Counsel, for Respondents at Sr.No.(3), (5),(7),(8) & (9)

10. P.M.Pradhan, Counsel for Respondents at Sr.No.(4), (6) & (10)

ORAL JUDGEMENT: Date:4.8.89,10.8.89 & 11.8.89.
(Per M.B.Mujumdar, Member(J)

We are passing this common order in O.A.Nos. 169/87, 267/87, 278/87, 425/87, 446/87, 493/87, 494/87, 515/87, 547/87, 284/89, 468/89 and 488/89.

2. The applicants in these cases are Science Graduates. They were initially appointed as Supervisors Grade B in various Ordnance Factories between 1960 to 1966. Their request is for treating them to have been appointed as Supervisors Grade A from the date of their initial appointment as Supervisor B. In this respect they are relying on some judgements of the Allahabad High Court, Madhya Pradesh High Court and of Jabalpur & Madras Benches of this Tribunal. They have further requested for giving them promotion to the post of Chargeman Gr.II on the expiry of two years from the date of their initial appointment. In this respect also they have relied on the same judgements as well as the judgement of the Supreme Court in Virendra Kumar's case decided on 2.2.1981. They have also prayed for notional seniority on that basis and consequential benefits.

3. O.A.No.169/87 is filed by 26 applicants. They are all Science Graduates. They were appointed as Supervisor B between 1961 to 1965. In due course they were promoted to higher posts, viz., Supervisor A, Chargeman II, Chargeman I and Assistant Foreman.

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Some of them are also promoted to the higher post of Foreman. When the application was filed they were working in the Ordnance Factory at Chandrapur. According to the directions given by the Madhya Pradesh High Court in Misc.Petition No.174, 363, 406, 1055, 1056 of 1981 and 9 of 1982 and the order on review petitions dated 9.12.1983 the Director General of Ordnance Factories has revised the seniority of about 61 petitioners in these cases by his order dtd. 21.10.1986. According to the applicants they are similarly situated like the petitioners before the Madhya Pradesh High Court and hence they should have been given the benefits of the judgement of the Madhya Pradesh High Court. They made several representations for treating them similarly and giving them all the benefits which are given to the petitioners before the Madhya Pradesh High Court. However, their representations were not acceded to and hence they have filed O.A.169/87. The prayers made by them in the application are these: (i) the respondents be directed to grant monetary and seniority benefits to the applicants in the post of Supervisor A from the date of their initial appointment in service as Supervisor B and also direct the respondents to give further promotions to them to the post of Chargeman Gr.II on completion of two years service in the post of Supervisor A and further direct the respondents to promote them to the post of Chargeman I, Asstt. Foreman and Foreman; (ii) direct the respondents to refix the seniority of the applicants in the grade of Supervisor A and in higher grades as has been done by the order dtd. 21.10.1986 passed by the Director General of Ordnance Factories. Respondents have filed their reply resisting these prayers.

4. O.A.267/87 is filed by 39 applicants. They are all Science Graduates and were appointed as Supervisor B between 1961 and 1962. In due course they are promoted to higher posts. All of them are working at High Explosive

Factory at Kirkee. They have made similar prayers as in O.A.169/87. The prayers are resisted by the respondents by filing their reply.

5. In O.A.267/87 six interveners have filed Misc.Petition No.400/87 requesting that they should be allowed to intervene in the application and be heard before passing any final order. Four of them are Science Graduates and one is holding Diploma in Chemical Engineering. All of them were recruited as Apprentices and after satisfactory completion of apprenticeship/training they were absorbed as Chargeman Gr.II and then duly promoted as Chargeman I, Asstt.Foreman. They are all working in the High Explosive Factory at Kirkee. It is their case that if O.A.267/87 is allowed their seniority and prospects of promotion are bound to be affected. Their apprehension is strengthened because two applications(TA 322/86 and O.A.104/86) filed by similarly placed persons like the applicants are allowed by the Jabalpur Bench of this Tribunal.

6. O.A.278/87 is filed by 68 applicants working in the Ammunition Factory at Kirkee. They are all Science Graduates and were appointed between 1962 to 1966 as Supervisors B. Their prayers are more specific as follows: (1)The applicants be treated as Supervisor A from the date of initial appointment as Supervisor B. (2) The difference of pay and other monetary benefits be given to the applicants till the date of promotion to the post of Supervisor A. (3) On completion of 2 years satisfactory service as Supervisor A the applicants be promoted to the post of Chargeman II.(4) The seniority of the applicants be refixed in different grades as Chargeman II, Chargeman I, Asstt.Foreman and Foreman, so that they are not lower than their juniors. (5) The applicants be given notional seniority so that they are not lower than any of their immediate juniors, and their present salary also be refixed accordingly.

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7. In this case 9 persons have filed Misc.Petition No.406/87 for joining them as interveners. Two of them are holding diploma in Production Engineering, one is Licenciate in Production Engineering, one has passed B.Sc.Part I examination and 5 have passed intermediate science examination. Three of them are working in the High Explosive Factory at Kirkee and the remaining are working in the Ammunition Factory at Kirkee, as Asstt.Foremen. According to them they were appointed as Mechanical Engineer Apprentices in the different Ordnance Factories between 1964 to 1966 and on completion of prescribed apprenticeship/training period ranging between 2½ years to 4 years they were examined and graded by the Central Selection Board and absorbed as Chargeman II in 1974 and 1975. They are promoted as Chargeman I in 1978 and 1979. Eight of them are promoted as Asstt.Foreman in 1980 and only one in 1981. It is also their grievance that if the applications are allowed, their seniority and prospects of promotion are likely to be affected and hence they should be heard before passing any final order.

8. O.A.425/87 is filed by three applicants. They are all Science Graduates and were initially appointed between 1961 to 1964 as Supervisor B. In due course they are promoted to higher grades also. Their prayers are similar to the prayers in O.A.278/87. The respondents have filed their reply resisting the prayers.

9. In O.A.446/87 there are four applicants. They are all Science Graduates and were appointed as Supervisor B between 1962 to 1964. They are presently working in higher grades in the Ordnance Factory at Dehu Road. Their prayers are also similar to the prayers in O.A.278/87. The respondents have filed their reply resisting the prayers.

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10. O.A.493/87 is filed by one applicant who is now working as Asstt.Foreman in the Ordnance Factory at Ambajhari,Nagpur. He is a Science Graduate and was appointed as Supervisor A on 11.1.1964. He has also made similar prayers as in O.A.278/87. Respondents have filed their reply resisting the prayers.

11. In O.A.494/87 there are seventy applicants. They are also Science Graduates and were initially appointed as Supervisor B between 1961 to 1966. In due course they were promoted to the higher grades and when the application was filed 30 of them were working as Chargeman I and the remaining were working as Asstt.Foremen in the Ordnance Factory at Bhandara. Their prayers are also similar as in O.A. 278/87. Respondents have filed their reply resisting the prayers.

12. O.A.515/87 is filed by 4 applicants. All of them are Science Graduates and were appointed as Supervisor B in 1961 or 1962. When the application was filed one of them was working as Foreman and others were working as Asstt.Foremen. Their prayers which are similar as in earlier applications are resisted by the respondents by filing their reply.

13. O.A.547/87 is filed by Shri R.C.Ravalani. He is a Science Graduate and was appointed as Supervisor B in the Ordnance Factory at Jabalpur in March,1964. On 31.3.1985 he has retired as Chargeman I from the Ammunition Factory at Kirkee. His prayers are that he should be deemed to have been appointed as Supervisor A from the date of his initial appointment in March,1964 and on completion of two years service therefrom he should be promoted as Chargeman II. He should also be given notional promotions and seniority and on that basis the salary drawn by him at the time of his retirement be refixed. The respondents have filed their written statement opposing the application.

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14. O.A.294/89 is filed by four applicants. They are all Science Graduates and were appointed as Supervisor B in 1962 or 1963. Three of them are now working as Asstt.Foremen and one as Foreman in the Ordnance Factory at Varangaon. Their prayers are similar to ~~them~~ those in O.A.169/87. Though the application is admitted respondents have not filed their reply so far. It is at the request of the advocates for both the sides that it was heard alongwith other applications on the assumption that the respondents contentions are similar to ~~them~~ those in other cases.

15. O.A.468/89 is filed by one applicant who is B.Sc., M.A. He was appointed as Supervisor B in 1962 and at present he is working as Asstt.Foreman in the Ordnance Factory at Varangaon. The application has not yet been admitted. But it was taken up for hearing at the request of advocates for both the sides. We now admit it. Though the respondents are yet to file their reply we propose to decide it on the basis that the respondents contentions are similiar as in the other cases.

16. O.A.488/89 is filed by 5 applicants. The application is admitted. Though the respondents have not filed their reply it is being heard along with other cases on the assumption that the respondents would be raising similar objections.

17. In order to understand the dispute in this case it is necessary to give some facts and refer to some orders and judgements. The facts and orders are given from the record and judgements before us. After the Chinese aggression in 1962 the Government of India decided to make India self sufficient in production of arms,ammunition and armaments in the various Ordnance Factories. It was decided to expand the capacity of the existing factories and to increase the strength of the staff. In order to encourage persons with some technical knowledge to join the Ordnance Factories, Director General

of Ordnance Factories issued a circular dtd. 6.11.1962. As that circular is relevant in this case we quote it below:

"Subject: NON-INDUSTRIAL ESTABLISHMENT PROMOTION

D.G.O.F. has decided that Diploma holders serving as Supervisor 'A'(Tech)/Supervisor 'B'/(Tech) and in equivalent grades should be treated as follos

(i) All those Diploma holders who have been appointed as Supervisor'B'(Tech)(and in equivalent grades)should on completion of one year's satisfactory service in ordnance factories be promoted to Supervisor'A'(Tech) (and in equivalent grades)

(ii)All those diploma holders who work satisfactorily as Supervisor'A'(Tech)or in equivalent grades for 2 years in Ordnance Factory should be promoted to Chargemen.

Kindly acknowledge receipt."

Advertisements were also given in newspapers for filling up of vacancies in the post of Supervisor A in the Ordnance Factories from Diploma Holders in Engineering. By way of clarification another circular dtd. 11.3.1963 was issued by the DG of Ordnance Factories. That circular reads as under:

"Sub: Non-industrial establishment - treatment of Diploma Holders in matter of appointment/promotion.

Ref: This office No.673/A/NI dated 6.11.62

So long the position was that Diploma Holders in Engineering were being recruited as Supervisor 'B' grade and were being promoted to Supervisor'A' grade after satisfactory completion of one year's service as Supervisor 'B' grade.

It has now been decided by the Director General, Ordnance Factories that in future Diploma Holders in Engineering should be straight away appointed as Supervisor 'A' Grade.

(18)

2. In view of the decision stated above all those Diploma Holders who are not yet promoted to Supervisor A grade because they have not yet completed one year service as Supervisor 'B' grade may be promoted to Supervisor'A' grade with effect from 6.3.1963, provided their work as Supervisor 'B' grade is satisfactory so that they do not stand at any disadvantage as compared with those Diploma Holders who are yet to be recruited as Supervisor A grade in view of Director General,Ordnance Factories decision as stated in Para 1 above.

3. Kindly acknowledge receipt."

18. By subsequent circular dated 5.6.1963 it was clarified that "Diploma Holders" mean persons who are in actual possession of Diploma and they alone should be appointed as Supervisor A, and in the absence of production of such Diploma they should be appointed as Supervisor B. Still, as the diploma holders did not respond sufficiently, letters were written to the Principals of various technical institutions in the country requesting them to send diploma holders who had passed final examinations. It was mentioned that the persons who would be selected as Supervisor A would be given quick promotions to the post of Chargeman and they can further rise to the post of Asstt.Foreman and Foreman. In view of the clarification in the circular dtd. 5.6.1963 an incongruous situation arose inasmuch as some of the diploma holders who had passed diploma examination but were not in physical possession of diploma certificates were appointed as Supervisor B. Though clause(ii) of the circular dtd. 6.11.1962 stated that, "All those diploma holders who work satisfactorily as Supervisor'A'(Tech) or in equivalent grades for two years in Ordnance Factory should be promoted to Chargemen", the Government of India,Ministry of Defence subsequently found it necessary to increase the period to 3 years and hence communicated an order to the Director General of Ordnance Factories by letter dtd. 28.12.1965 ~~saying~~ stating

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interalia that the minimum period of three years service in the lower grade should be fixed for promotion to the next higher grade. It was pointed out that this had become necessary not only because it would be in conformity with the practice obtaining in other Ministries but also because on merits this period was necessary to judge the performance in the lower post and the potentialities for promotion to a higher post. Consequently the Director General of Ordnance Factories issued a circular dtd. 20th January, 1966 which reads as under:

> "Sub:- N.G.Establishment - Treatment of Diploma Holders and ex-apprentices serving as Supr.A Gr. or in equivalent grades in the matter of promotion.
>
> Ref:- This office confidential No.673/A/NG dtd. 6.11.62 and 4416/A/NG dt. 29.6.65.
>
> The question of promotion of Diploma holders in Mech/Elec.Engineering and Ex.apprentices serving as Supr.'A' Gr. or in equivalent grades has received further consideration of the D.G.O.F. who has decided that in future promotions of all such individuals will be effected in accordance with the normal rules i.e. on the basis of their listing by the relevant D.P.C. and not merely on completion of 2 years satisfactory continuous service as Supr.A Gr. or equivalent grades."

However before the above circular was issued some of the diploma holders got the benefit of being promoted to the post of Chargeman II on completion of 2 years of service, while after the above circular was issued others were promoted after three years of service.

19. The next important circular in this respect is the circular dtd. 5.3.1966 issued by the Director General of Ordnance Factories to all the General Managers of the Ordnance Factories and other allied factories, which is as follows:

(20)

"Sub: N.I.E. - Promotion of Supervisors'B' Grade to 'A' Grade - Creation of additional vacancies of Supervisors'B' Grade Technical in H.E.Factory.

Taking into consideration the requirements of Supervisory staff for explosives work and the hazards involved in the same, the Director General,Ordnance Factories has decided that the future policy for promotions and recruitment will be as follows.

1. Science Graduates in First and Second Class will be recruited directly as Supervisory'A' Grade Technical.

2. They will be on probation for one year and their progress will be watched carefully during the probation period to eliminate those who do not show satisfactory progress during this period.

3. The existing Supervisors'B' Grade who have completed the probation are to be promoted to Supervisors'A' Grade w.e.f. 1.3.66. Additional posts are to be created in that grade for this requirement after surrendering the corresponding number of 'B' Grade posts. The creation of the posts and surrendering of the posts will be done by the General under his powers.

4. Henceforth the grade of Supervisor'B' will normally be reserved for Industrial Employees and others who possess lower qualifications than a graduate in Science."

20. We may point out that the disputes in all the cases before us as well as before the Allahabad High Court and Madhya Pradesh High Court which will be referred to hereafter were for the period prior to 6.3.1966.

21. In 1972, 75 persons filed a Writ Petition in the Allahabad High Court asserting that they had been appointed as Supervisors A on various dates in pursuance of the circular dtd. 6.11.1962. Their grievance was that even though quite a large number of Supervisors A had been promoted to the post of Chargeman II on completion of two years' satisfactory work they had been discriminated against and had not been so promoted immediately on the expiry of two years in pursuance of the aforesaid circular dtd. 6.11.1962. The relief prayed for in the said writ petition was for the issue of a writ of mandamus directing the Union of India through the Director General of Ordnance Factories to promote them to the post of

(21)

Chargeman II. The Writ Petition was contested by the respondents on various grounds. The learned Single Judge who heard the petition dismissed the petition on the ground of unexplained laches and also on the ground that similar previous petition for similar relief had not been pressed. Against the judgement of the Single Judge the petitioners preferred a special appeal before a Division Bench of that Court. But that was also dismissed on 8.2.1977. Against that judgement the petitioners preferred Civil Appeal No.441/81 in the Supreme Court and the Supreme Court disposed it of by passing the following order on 2.2.1981:

"Heard counsel. Special leave granted.

Our attention has been invited by learned counsel for both the sides to the relevant rules which govern promotion to the post of Chargeman Grade II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The Government now appears to insist that in so far as the appellants are concerned they cannot be considered for promotion unless they complete three years of service. We see no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found unfit to be promoted.

We therefore direct that the concerned authorities will consider the cases of the appellants for promotion as Chargeman Grade II and promote them to the said posts unless they are found to be unfit. If the appellants are promoted they will naturally have to be promoted with effect from the date on which they ought to have been promoted.

This order will dispose of the appeal

There will be no order as to costs."

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22. Thereafter a number of petitioners filed six Writ Petitions in the High Court of Madhya Pradesh at Jabalpur claiming similar reliefs. These petitions were Misc.Petitions No.174,363,406,1055 and 1056 of 1981 and 9 of 1982. The petitioners in all these petitions except the last petition were diploma holders in Engineering, while petitioners in the last petition were holding Degree in Bachelor of Science. All of them relied on the same judgements of the Allahabad High Court and the judgement of the Supreme Court in Virendra Kumar's case. All these Writ Petitions were disposed of by common judgement in M.P.No.174/81 which was filed by Dilip Singh Chauhan and others. Para 5 of the judgement and the judgement of the Madhya Pradesh High Court dtd. 9.12.1983 on review petition filed by the petitioners show that the respondents in their written statements had admitted the claim of the petitioners that they be given notional seniority from the date of their initial appointment as Supervisor B and the respondents in Misc.Petition No.9/82 which was filed by the Science Graduates had in their written statement admitted that they also be given notional seniority as Supervisor A from the date of their initial appointment. Hence the Madhya Pradesh High Court did not find any difficulty in granting that relief to the petitioners irrespective of the fact whether they were holding diplomas in engineering or Science Degrees. Still one of the important question that remained for consideration was whether the petitioners were entitled to be treated as Chargeman II on completion of two years of satisfactory service as Supervisor A. But by following the Supreme Court judgement in Virendra Kumar's case the High Court granted the same relief which was granted by the Supreme Court. Operative part of the judgement reads as under:

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"With the result, the petitions are partly allowed. Those petitioners who were initially appointed as Supervisor Grade-B and then promoted as Supervisor Grade-A are to be treated as promoted as Supervisor Grade-A with effect from 6.3.1963. Those petitioners who were given initial appointment of Supervisor Grade-B for not production of their diploma certificate are to be treated as Supervisor Grade-A from the date of their initial appointment. Malkeet Singh to be treated as Supervisor Grade-A from the date of his initial appointment as Supervisor Grade-B. All those petitioners who are holding B.Sc. degree and are appointed earlier to 11.3.1963 are to be treated as Supervisor Grade- from 6.3.1963 and those petitioners who were appointed later are to be ~~treated~~ so treated from the date of their initial appointment. But petitioners in M.P.No.1056/81 cannot get Supervisor Grade-A from the date of their apprenticeship. And these petitioners are also entitled to be treated as Chargeman Grade-II on completion of two years satisfactory service as Supervisor Grade-A. Consequently, notional seniority of these persons have to be refixed in Supervisor Grade-A,Chargeman Grade-II, Grade-I and Assistant Foreman in cases of those who are holding that post. Those petitioners who have been promoted as Supervisor Grade-A from 6.3.63 or from the date of their appointment thereafter shall get the pay of Supervisor Grade-A from 6.3.1963 or from the date of their initial appointment respectively. The petitioners are also entitled to get their present salary refixed after giving them notional seniority so that the same is not lower than those who are immediately below them. So far as the petitioners in M.P.No.174/81 are concerned, they being appointed prior to 11.3.1963 they are entitled to be treated as Supervisor Grade-A from 6.3.63 and they will get other consequential reliefs as mentioned earlier. There shall be no order as to costs. Security deposits be refunded to the petitioners."

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On review petitons the above order was modified by directing that "these petitioners who were appointed prior to 11.3.1963 are entitled to be treated as Supervisor Grade-A from the date of their initial appointment and not from 6.3.1963 as has been mentioned in the order."

23. More than two years thereafter Shri B.H. Ananthamurthy and thirty others, all science graduates, filed Misc.Petition No.108/84 in the Madhya Pradesh High Court for directing the respondents to treat them as Supervisor A right from their appointment, promote them as Chargeman II and to give them all consequential benefits of seniority, pay and further promotions of the petitioners except two. That Writ Petition was transferred to the Jabalpur Bench of this Tribunal where it was numbered as Tr.Appln. No.322/86. Shri Ravindra Nath Gupta and 18 others who were also Science Graduates and were working as Chargeman I filed similar application before the Jabalpur Bench of the Tribunal on 24.9.1986 under Section 19 of the Administrative Tribunals Act. They also claimed similar reliefs as in T.A.322/86. Both the above applications were heard by a Bench of Shri S.K.S.Chib, Vice-Chairman and Shri K.B.Khare, Judicial Member. They negatived the contention of the respondents that the applications suffered from delay and laches. As regards the main issue in the case regarding treating Science Graduates on par with the diploma holders the Bench relied on the judgement of the Madhya Pradesh High Court in Dilip Singh Chauhan's case. It may be recalled that the petitioners in Misc.Petition No.9/82 before the Madhya Pradesh High Court were Science Graduates and by relying on the admission of the respondents in their return that they should be given notional seniority as Supervisor A from the date of initial appointment, the same reliefs were granted to them which were granted to the diploma holders. On this

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basis and by relying on the Supreme Court judgment in Virendra Kumar's case the Jabalpur Bench passed the following order on 30.6.1987:

> "8. In the net result, in both these petitions T.A.322 of 1986(Ananthamurthy and others Vs. Union of India) and also OA.104 of 1986(Ravindra Nath Gupta and others Vs. Union of India), we direct that petitioners who are Science Graduates and such of the petitioners who are diploma holders shall be treated as Supervisor A from the date of their initial appointment and their notional seniority revised. They shall be entitled to be considered for promotion to the post of Chargeman Grade-II on completion of 2 years of satisfactory service as Supervisor A retrospectively. If found fit and promoted by the DPC-III(C), their notional seniority shall be refixed for the post of Chargeman grade-II, Chargeman Grade-I or that of Assistant Foreman as the case may be. Their present salary shall also be so fixed that it is not lower than the salary of those who are immediately below them in seniority. They shall not be entitled to past arrears of pay, but they shall be considered for further promotion on basis of this revised notional seniority.
>
> Parties shall bear their own costs."

24. The same question arose before the Madras Bench of this Tribunal in Tr.Appln. 1032/86. Shri Kalidasan and 38 others had filed Writ Petition No.11263/84 in the Madras High Court for similar reliefs and it was transferred to the Tribunal where it was numbered as Tr.Application No.1032/86. All the petitioners were Science Graduates and were appointed as Supervisor B from March,1962 onwards in the Ordnance Factories. After completion of two years of service they were promoted as Supervisor A and subsequently they were also further promoted as Chargeman II. Their prayers in the petition were for treating them as Supervisors A from the date of their initial appointment as Supervisor B and for further promotion to the post of

Chargeman II on completion of two years satisfactory service as Supervisor A. They had also prayed for directing the respondents to hold them as being entitled to further promotions and seniority in superior cadres on that basis and grant monetary benefits on the basis that they had been appointed as Supervisor A from the date of their initial appointment as Supervisor B. After referring to the pleadings the Bench formulated the following two points for consideration:(i) Whether a distinction could be made between Science Graduates and Diploma Holders, and (ii) Whether the benefits given to the Diploma Holders of treating their initial appointment in the post of Supervisor B as an appointment to the post of Supervisor A can be extended to the Science Graduates. Relying on the judgement of the Madhya Pradesh High Court in Dilip Singh Chauhan's case and the judgement of the Jabalpur Bench of this Tribunal in B.H.Ananthamurthy's case the Madras Bench answered both the points in the affirmative. In result the Bench held that the applicants were entitled to be treated as Supervisor A from the date of their initial appointment as Supervisor B and their notional seniority was directed to be refixed accordingly. The Bench ~~High Court~~ further held that they were entitled to be considered for further promotion on completion of two years satisfactory service as Supervisor A and if found fit by the DPC their notional seniority was directed to be refixed for the post of Chargeman I[I], Chargeman I or Assistant Foreman, as the case may be.

25. After the judgement of the Supreme Court in Virendra Kumar's case dtd. 2.2.1981, six Writ Petitions were filed by various petitioners in the Supreme Court in 1983. These petitioners claimed to have been appointed as Supervisors A in various Ordnance Factories between 1962 to 1966 and prayed that the same relief may be granted to them also as was granted by the Supreme Court in Virendra Kumar's case by its order dtd. 2.2.1981.

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Then three Civil Misc.Petitions were filed by the appellants in the Virendra Kumar's case asserting that the directions given by the Supreme Court on 2.2.1981 had not been complied with in the manner as it ought to have been by the respondents and they should be consequently required to comply with the said directions. The prayers made by them were these:

"(i) Pass appropriate orders directing the respondents to implement in true letter and spirit, the judgment of this Hon'ble Court dated 2.2.1981 in Civil Appeal No.441 of 1981;

(ii) issue appropriate directions commanding the respondents to promote the appellants to the next higher posts of Chargeman Grade I, Assistant Foreman, and Foreman, with effect from the date they are entitled to, after giving them the benefit of the directions of this Hon'ble Court dated 2.2.1981;

(iii) issue appropriate directions to the respondents to give all consequential benefits to the appellants, including payment of arrears".

26. The Supreme Court decided these six review petitions and three Civil Misc.Petitions by a common judgement dtd. 20.3.1989. It is reported in Judgements Today, 1989(1)SC 595 dtd. 30th March,1989 as Palluru Ramkrishnaiah v. Union of India and another.

27. It is pointed out in para 6 of the judgement that the Writ Petitions had come up for hearing before a Bench of two learned Judges of the Court on 9.9.1987 However, on the view that the judgement of the Court dtd. 2.2.1981 in Virendra Kumar's case may require reconsideration, the petitions were directed to be placed before a three Judge Bench "where interalia the correctness of the judgement could be looked into and the nature of relief available to the petitioners on the facts now stated would also be considered." After referring

to the Government of India Ministry of Defence letters dated 20.12.1965 and the circular dtd. 20.1.1966 issued by the Director General of Ordnance Factories which are referred to earlier and considering the legal position, the Supreme Court has observed in para 17: "For aught we know if the effect of the order dated 28th December,1965 and the circular dated 20th January,1966 had been properly emphasised at the time of hearing of Civil Appeal No.441 of 1981 its result may have been different." Then in para 18, the Supreme Court has observed that,"we find it difficult to grant the reliefs prayed for in the aforesaid writ petitions simply on the basis of the judgement of this Court dated 2nd February,1981 in Civil Appeal No.441 of 1981. These Writ Petitions, therefore, deserve to be dismissed."

28. In para 19, however, the Supreme Court pointed out that its judgement dated 2.2.1981 in Virendra Kumar's case had not been challenged and hence it has become final. Hence the Supreme Court considered the question as to what further relief, if any, should be given to the appellants in Virendra Kumar's case in pursuance of the Civil Misc.Petitions filed by them. After considering the order passed by the Madhya Pradesh High Court dated 4.4.1983, the Supreme Court held that the appellants deserved to be granted the same limited relief. In result the writ petitions were dismissed while Civil Misc.Petitions in Civil Appeal No.441/81 were disposed of by issuing a direction to the respondents to give the same benefits as were given by the Madhya Pradesh High Court to such of the petitioners before that Court who were Supervisors A and were granted promotion as Chargeman II by its judgement dtd.4.4.1982.

29. In 1987, 8 applications were filed before the Jabalpur Bench of this Tribunal under Section 19 of the Administrative Tribunals Act,1985. The first application was O.A.209/87 and it was filed by R.J.Sundara Raman & another v. Union of India and others. The judgement of the

Bench comprising of Shri S.K.S.Chib, Vice Chairman and Shri K.B.Khare, Member(Judicial) was delivered on 24.4.1989. It was the case of the applicants that by order dtd. 21.10.1986 passed by the Director General, Ordnance Factories while implementing the decision of the Madhya Pradesh High Court in Dilip Singh Chauhan's case had changed the seniority at various levels disturbing the inter-se seniority position and hence they should also be granted the same benefits as they were similarly placed. As already pointed out the Madhya Pradesh High Court had mainly relied on the judgement of the Supreme Court in Virendra Kumar's case. In para 5, the Jabalpur Bench has observed that the matter has been settled by the Hon'ble Supreme Court in Palluru Ramkrishnaiah's case decided on 28.3.1989. After quoting its own order in B.H.Ananthamurthy's case dtd. 30.6.1987, Jabalpur Bench has held in the same para that "There is no conflict in our aforesaid decision above and the recent decision of the Supreme Court cited above. This Tribunal unlike the High Court had not directed that automatic promotions should be given to Supervisor'A' to the post of Chargeman Grade-II on completion of 2 years of satisfactory service but only held that he was entitled to be considered subject to selection by DPC etc. In other words the procedure for promotion would be governed not by the circular of DG OF of 6th November, 1962 but by the subsequent order dated 28.12.1969 read with circular of 20.1.1966 a distinction which has been succinctly brought out in the aforesaid Judgement of the Hon'ble Supreme Court in Writ Petition(Civil) No.530 of 1983 decided recently on 28.3.89. In other words while disposing off T.A. 322 of 1986 in the case of B.H.Ananthamurthy and others vs. Union of India and others decided on 30.6.87 this Tribunal had not closely followed the decision of the M.P.High Court in similar cases in the wake of Supreme Court's Judgement in Civil Appeal No.441 of 1981(Virendra Kumar and others vs. Union of India

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and others) but was more in line with the subsequent decision of the Supreme Court in Writ Petition(Civil) No.530 of 1983 cited above.

The applicants in O.A.Nos.51, 53, 209, 215, 270, 201 and 200 of 1987 are, therefore, entitled to get limited benefits in terms of the above quoted orders."

30. On this view of the matter in para 8 the Jabalpur Bench has passed the following operative order:

> "Accordingly, we direct the respondents to treat the initial appointment of Diploma Holders and Science graduates as having been made to the post of Supervisor'A'. On basis of two years experience as Supervisor'A' they shall be entitled to promotion to the post of Chargemen Grade-II on recommendations of a review DPC which may be constituted and further promotions on recommendations of the review DPC from the requisite dates when they were eligible and due to be considered for promotion on the basis of departmental rules or executive instructions in the light of Supreme Court's directions contained in Writ Petition No.530 of 1983 decided on 28.3.1989 (supra) read with their observation in the case of Union of India and others Vs. Somasundaram Vishwanath & Others and decision of this Tribunal in the case of B.M.Ananthamurty and others(Supra).
>
> The applicants in O.A.416 of 1987 are Engineering Apprentices. Some of them are Science Graduates but not Diploma holders. They have been trained by the respondents in the factory and as such they are not entitled to get more benefit than what has been granted to the Diploma holders or Science graduates at the time of their appointments. Therefore, those who on the date of appointment were Science Graduates shall get similar reliefs as have been granted to Science Graduates in O.A.51,53,209, 215 & 270 of 1987. Applicant who are neither Science Graduates nor diploma holders are not entitled to any benefit.

The respondents are further directed to revise the relevant seniority lists and finalise these after circulation and suitable decisions on representations objections if any in the affected cadres of Supervisor 'A', Chargemen Grade-II and Assistant Foreman. On the basis of and subject to the recommendations of the Review DPCs refixation of the applicant's salaries in their respective posts and cadres shall also be done after allowing proforma promotions retrospectively but without payment of back wages on the principle of 'no work no pay'. Necessary action shall be taken by the respondents within a period of six months from the date of communication of this order.

Parties shall bear their own costs."

31. It is obvious that the Jabalpur Bench has granted the reliefs to the applicants by holding that the Supreme Court has upheld its decision in Virendra Kumar's case while deciding Paluru Ramkrishnaiah's case. A careful reading of the judgment of the Supreme Court in Paluru Ramkrishnaiah's case will show that the decision is otherwise.

32. We have already quoted the reliefs claimed by the applicants in these petitions. Material facts are no more in dispute. What we have to consider is the effect of the judgements of the Madhya Pradesh High Court and the Jabalpur and Madras Benches of this Tribunal in the light of the recent judgement of the Supreme Court in Paluru Ramkrishnaiah's case. It must be noted that the dispute in this case is not merely between the applicants and the respondents, because if we allow the applications the seniority and promotional prospects of diploma holders who were appointed as Supervisors B or A and who are recruited as apprentices are bound to be affected. In fact an application of six interveners who were recruited as apprentices is already allowed and they are

permitted to intervene in O.A.267/87. Similarly an application of 9 persons who were recruited as Mechanical Engineer apprentices in different Ordnance Factories is also allowed in O.A. 278/87 and they are also permitted to appear in that case as interveners. There are bound to be innumerable Diploma Holders in various Ordnance Factories whose seniority and prospects of promotion are going to be affected if the present applications are allowed. We cannot ignore them while deciding the legal position. Hence we propose to give our findings on various points that arise in this case.

33. In most of the applications the respondents have filed their replies. The replies were filed before the Supreme Court decided Paluru Ramkrishnaiah's case on 28.3.1989. Till then the judgement of the Supreme Court in Virendra Kumar's case was final and the respondents had no answer to it. They have still taken all the relevant pleas in favour of the Diploma Holders. They have also raised the plea of limitation.

34. In our opinion the following points deserve to be decided in the present applications :-

(1) Whether the applicants who are Science Graduates should be deemed to have been appointed as Supervisors A from the date of their initial appointment as Supervisors B ?

(2) Whether the respondents were justified in making a distinction between Diploma Holders in Engineering and Science Graduates, with regard to their promotion, as they have done by the circulars dtd. 6.11.1962 and 11.3.1963, etc. ?

(3) Whether the applicants are entitled to the benefits of the judgement of the Supreme Court in Virendra Kumar's case dtd. 2.2.1982 in view of the recent

judgement of the Supreme Court dated 28.3.1989 in Paluru Ramkrishnaiah's case ?

(4) Whether the applicants are entitled to the benefits which were given to the applicants before the Jabalpur Bench by its judgement dated 20.4.1989 in R.J.Sundara Raman's case ?

(5) Whether the claims of the applicants are barred by limitation in view of the provisions of Section 21 of the Administrative Tribunals Act,1985 ?

35. After carefully considering the legal position we answer the first,third and fourth points in the negative and second and fifth points in the affirmative. Hereafter we will discuss the points in the same order and indicate why we feel it necessary to refer the points to a larger Bench for decision.

36. First Point:

As already pointed out the applicants in all the applications before us are Science Graduates. There is no order/circular or judgement of the Supreme Court which says that a Science Graduate who was appointed as Supervisor B should be deemed to have been appointed or promoted as Supervisor A from the date of his initial appointment as Supervisor B. However, five writ petitions were filed in the Madhya Pradesh High Court in 1981 and one in 1982. The petitioners in the writ petition filed in 1981 were all Diploma Holders while two petitioners in the petition filed in 1982 viz. MP No.9/82 were Science Graduates. All ~~are decided~~ were disposed of by a common judgement delivered in MP No.174 of 1981 on 4.4.1983. Para 5 of the judgement shows that the petitioner had contended before the High Court that they would be satisfied if they were given the same relief which was given to K.B.Bhir by the Allahabad High Court and Virendra Kumar and others by the Supreme Court.

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Earlier para of the judgment shows that K.B.Bhir was appointed as Supervisor B and Allahabad High Court had allowed his petition on 1.5.1980 directing the respondents to promote him to the post of Supervisor A with effect from 6.3.1963 and confer all the benefits to which he was entitled on the basis of having been so promoted from that date and since he had already been promoted as Assistant Foreman, he was held entitled to refixation of his seniority in that post. We have already quoted the order passed by the Supreme Court in Virendra Kumar's case on 2.2.1981. Observations in para 5 of the judgment of Madhya Pradesh High Court show that the respondents had accepted in their returns to give notional seniority as Supervisor A from the date of initial appointment of all the petitioners including the two petitioners in MP No.9/82 who were Science Graduates. The position regarding admission in the returns is more clarified in the order dtd. 9.12.83 on the Review Petitions filed by some of the petitioners. The judgement shows that it was by relying on the admission of the respondents in their returns that they were directed to treat all the petitioners including the Science Graduates appointed earlier than 11.3.1963 as Supervisors B as Supervisors A from 6.3.1963. Regarding those petitioners who were appointed as Supervisors B after 11.3.63, a direction was given to treat them as Supervisors A from their initial date of appointment. When the attention of the Judge who decided the case was drawn to the admission of the respondents in the returns at the time of hearing of the Review Petitions the Judge modified the order by holding that those petitioners who were appointed prior to 11.3.1963 were entitled to be treated as Supervisors A from the date of their initial appointment as Supervisors B and not from 6.3.63 as mentioned in the order.

37. By following this judgment the Jabalpur Bench of this Tribunal in B.H.Ananthamurthy's case directed that the petitioners who were Science Graduates as well as the

petitioners who were Diploma Holders should be treated as Supervisors A from the date of their initial appointment and their notional seniority should be revised accordingly. Again by relying on this judgement the Madras Bench of this Tribunal in K.M.Kalidasan's case extended the same benefits which were given to the Diploma Holders to the Science Graduates also. We, with respect, disagree with the view taken by the Jabalpur Bench of this Tribunal in B.H.Ananthamurthy's case and Madras Bench of this Tribunal in K.M.Kalidasan's case. In the absence of any order or circular we do not think that it will be proper to give the same benefits to the Science Graduates which were given to the Diploma Holders by the various orders. As already pointed out the Madhya Pradesh High Court has given the same benefits, to the Science Graduates in Dilip Singh Chauhan's case but it was on the basis of the admission in the returns of the respondents. Jabalpur Bench of the Tribunal followed that judgement in B.H.Ananthamurthy's case. It is again followed by the Madras Bench of this Tribunal in Kalidasan's case. As we will show while discussing the second point, the respondents were justified in making a distinction between Science Graduates and Diploma Holders. Hence we disagree with the view taken by the Jabalpur and Madras Benches of this Tribunal and proposed to refer this point to a larger Bench for consideration.

38. Second Point -

We have already quoted the circulars dtd.6.11.62 and 11.3.63. By these circulars certain benefits were given to the Diploma Holders. These benefits were not given to Science Graduates. Hence the question that arises for our consideration is whether the respondents were justified in making a distinction between them and treating them separately.

39. After considering the question carefully in all its aspects we find that the distinction was not arbitrary.

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The persons were recruited in Ordnance Factories. Though Science Graduates may have more theoritical knowledge they lack practical training. On the contrary Diploma Holders are bound to have more practical training which is useful in factories. That appears to be the reason why the Director General of Ordnance Factories had published advertisements in newspapers for filling up of vacancies in the post of Supervisor A in Ordnance Factories from Diploma Holders in Engineering. Inspite of the advertisements and the circulars dated 6.11.62 and 11.3.63 by which incentives were given to the Diploma Holders there was no sufficient response from Diploma Holders. Hence letters dtd. 13.6.63 were sent to Principals of various technical institutions in the country requesting them to assist in obtaining services of Diploma Holders who had passed their final examination. No such letters were issued to the Principals of Science Colleges. This must be because the authorities must have found the practical training taken by the Diploma Holders more useful in the Ordnance Factories.

40. In this connection we may refer to a recent judgement of the Supreme Court in V.Markendeya and Ors. v. State of Andhra Pradesh & Ors. 1989 II SVLR(L) 22: 1989(1) SCALE,April 10-16, decided on 8.4.1989. The appellants were members of the Andhra Pradesh Engineering Subordinate Service as Supervisors in Category 1 of the Engineering Branch. The Engineering Branch category 1 includes officers, namely, Supervisors, Overseers, Head Draftsman,Civil Draftsman, etc. Supervisors are recruited by direct recruitment as well as by promotion from amongst the Overseers. The cadre of supervisors includes degree holders in engineering and diploma or licence holders. Both perform the same duties and functions in the engineering branch. Promotion to the post of Assistant Engineer, the next higher post, is made from amongst the post of supervisors, in accordance with the Andhra Pradesh Engineering Service Rules,1967. Graduate

overseers are given preference in the ratio of promotion to the post of Assistant Engineer inasmuch as the quota of promotion is four to one from amongst the graduate supervisors and non graduate supervisors. In addition to the disparity in the matter of promotion, graduate supervisors and non-graduate supervisors are granted different pay. The grievance of the diploma holder Supervisors regarding grant of higher quota of promotion for graduate Supervisors was considered by the Supreme Court in Mohd.Shujat Ali vs. Union of India,(1975)1 SCR 449 and the Supreme Court rejected the challenge. Thereafter the diploma holders challenged the discrimination in pay between diploma holder Supervisors and graduate Supervisors. This aspect was considered by the Supreme Court in V.Markendeya v. State of Andhra Pradesh decided on 8.4.1989. We are not concerned with this aspect in this case but we may quote observations of the Supreme Court in para 7 with advantage.

> "Classification in service founded on the basis of educational and academic qualifications is now well recognised. It is open to the administration to give preference to a class of employees on the basis of educational qualifications having regard to the nature of duties attached to the post for the purposes of achieving efficiency in public services. It is permissible to give preference to degree holders as was held by this Court in Union of India Vs.Dr.(Mrs.)S.B. Kohli,1973(3)SCC 592, and State of Jammu & Kashmir Vs. Triloki Nath Khosa,1974(1)SCC 19. Since classification on the basis of educational qualification is a valid consideration for discriminating in matters pertaining to promotion to the higher posts, there is no reason as to why the same principle is not be applicable for prescribing scales of pay."

41. We are therefore of the view that the benefits given by the respondents to Diploma Holders by the respondents by circulars dtd. 6.11.1962 and 11.3.1963 or by similar other circulars were not violative of Article 14 and 16 of the Constitution. Hence Science Graduates are not justified in

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claiming the same benefits regarding their promotion which were given to the Diploma Holders by these circulars prior to 1966. Hence we answer the second point in the affirmative.

42. However, a different view is taken by the Jabalpur Bench of this Tribunal in B.H.Ananthamurthy's case and by the Madras Bench of this Tribunal in K.M.Kalidasan's case. As already pointed out B.H.Ananthamurthy's case was decided by relying on the judgement of the Madhya Pradesh High Court in Dilip Singh Chauhan's case which was decided on the admission of the respondents in their returns. It is not clear in what circumstances the admission was given by the respondents. It is possible that the admission might have been given on wrong assumption of law. But as pointed out by the Supreme Court in Union of India v. K.S.Subramanian, (1989)10 ATC 513,(Para 13), the respondents cannot be estopped from contending to the contrary in subsequent cases as they are not bound by admission on wrong assumption of law. Hence no advantage can be taken of the admission or ~~by~~ of the judgement decided on the basis of the admission by the applicants before us. K.M.Kalidasan's case was also decided by the Madras Bench mainly by relying on B.H.Ananthamurthy's case. With respect we disagree with the view taken in these judgements and hence we propose to refer this point to a larger Bench for decision.

43. Third Point

We have quoted the order passed by the Supreme Court in Virendra Kumar's case on 2.2.1982. We have also discussed at some length observations of the Supreme Court in t he recent judgement of the Supreme Court dated 28.3.1989 in Paluru Ramkrishnaiah's case. As already pointed out Paluru Ramkrishnaiah's case was first placed before a Bench of two Judges on 9.9.1987. But on the view that the judgement dated 2.2.1981 in Virendra Kumar's case may require reconsideration the case was placed before a three Judge Bench.

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After considering the various circulars and the legal position, the Supreme Court has observed in para 17 that if the subsequent orders dated 28.12.1965 and the circulars dated 20.1.1966 had been properly emphasised before the Court at the time of the hearing of the Virendra Kumar's case the result might have been different. It is on this view that the Writ Petitions filed in 1983 claiming the same reliefs which was granted in Virendra Kumar's case were dismissed. In otherwords the Supreme Court has in effect held that the order passed in the Virendra Kumar's case was not proper and legal. The applicants before us have claimed the same reliefs which were granted to the petitioners before the Supreme Court in Virendra Kumar's case. However, we cannot grant these reliefs to the applicants in view of the recent judgement of the Supreme Court in Paluru Ramkrishnaiah's case.

Fourth Point -

44. However, Jabalpur Bench of this Tribunal in R.J.Sundar Raman's case decided on 24.4.1989 has taken a different view. We find from the judgement that the Bench did not take into consideration the fact that the Supreme Court had dismissed the writ petitions filed in 1983 claiming benefits given to the petitioners in Virendra Kumar's case. However, judgement in Virendra Kumar's case had become final and hence the Supreme Court granted the reliefs to them which were granted to the petitioners before the Madhya Pradesh High Court in Dilip Singh Chauhan's case. We cannot persuade ourselves to take the same view which the Jabalpur Bench has taken in R.J.Sundar Raman's case. Mr.Ramesh Darda learned advocate for the respondents in O.A.169/87 stated that the respondents in that case are preferring Special Leave Petition in the Supreme Court, but that is not relevent here. Hence we propose to refer this point as well as the earlier point to a larger Bench.

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Fifth Point -

45. So far as Article 226 of the Constitution of India is concerned no limitation is prescribed for granting relief under that Article. However, the High Courts did consider whether the reliefs claimed under that Article were hit by delay and laches. Different views were taken by different High Courts on the point of delay and laches depending on the facts and circumstances of the case. To avoid the confusion atleast so far as service matters are concerned, Article 323-A(2)(c) of the Constitution has specifically provided that a law made under Article 323A may provide for the procedure, including provisions as to limitation and rules of evidence, to be followed by the Tribunals constituted under the Act. Our Tribunal is constituted under the Administrative Tribunals Act,1985 which was enacted by the Parliament in pursuance of Article 323A. Section 21 of the Act makes provision for limitation for applications under Section 19 of the Act. As long back as in 1986 the Principal Bench in V.K.Mehra's case,ATR 1986 CAT 203, had held that the Tribunal has no power to take cognizance of a grievance arising out of an order made prior to 1.11.1982 or to condone delay in such cases. This view is consistently taken by all the Benches since then. Even in a recent judgement the Hyderabad Bench of the Tribunal in C.N.Locanathan v. Union of India and others, 1989 LAB IC NOC 58, has held that Tribunal cannot consider matters where cause of action arose three more than years before the constitution of the Tribunal.

46. In O.A.152/87 of Shri S.A.B.Patil v. Secretary Ministry of Defence and others, decided on 5.12.88 this Bench has taken the same view. The applicant in that case was appointed as Chargeman I in 1964 in the Ammunition Factory at Kirkee,Pune. In August,1970 he was promoted as Assistant Foreman and in 1978 he was promoted as Foreman. When the application was filed he was working as Foreman in the Ordnance Factory at Dehu Road. In 1964-65 some Chargemen II

who were junior to the applicant were promoted as Asstt. Foremen. His representation against his supercession was rejected. In 1978, S.P.Saxena and 15 others had filed Special Civil Application No.1791/78 in the High Court of Judicature at Bombay challenging the seniority lists of Chargeman II (Chemist) and all Assistant Foreman (Chemist) dated 31.10.1977 and 30.3.1978, respectively. The High Court by its judgment dated 1.12.1981 held that the rules which were framed in 1961 were not applicable to the petitioners before them and hence the seniority list was struck down by the High Court with a direction that fresh seniority list be drawn of the said two categories by giving the seniority on the basis of their continuous officiation in their respective posts. Consequent benefits were also given to them. Respondents' SLP was dismissed by the Supreme Court on 3.2.1984. Thereafter the seniority list was amended in 1986. After the decision of the High Court, Shri S.A.B.Patil submitted a representation on 26.4.1982 and even thereafter he continued to make representations. However, as no relief was granted, he filed O.A. 152/87 in this Tribunal praying for the same reliefs which were granted by the High Court in Special Civil Application No.1791/78, that is preparing fresh seniority lists in different grades of Chargeman I (Mechanical, Assistant Foreman (Mechanical) and Foreman (Mechanical), based on the rules framed in 1956 by ignoring the rules framed in 1961 which were held inapplicable by the High Court. There were some other prayers also. After referring to some judgments, including the judgment of the Madras Bench of the Tribunal in D.Thilagan's case delivered on 30.3.1987, we dismissed O.A. 152/87. SLP filed by the applicant was dismissed by the Supreme Court on 4.5.1989. In this case also the cause of action has arisen between 1962 and 1966. Hence we are of the view that this Tribunal will have no jurisdiction to grant reliefs as the applications are barred by limitation.

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47. However, we find that a different view is taken by the Jabalpur Bench of the Tribunal in R.J.Sundar Raman's case. By a common judgement the Bench has disposed of eight original applications filed in 1987 under Section 19 of the Administrative Tribunals Act. In para 6 the Bench has considered the question of delay and laches which was raised by the respondents and rejected it.

48. Similarly by the common judgement in B.H.Ananthamurthy's case Jabalpur Bench has disposed of one T.A.No.322/1986 filed by B.H.Ananthamurthy & Others and one O.A.104/86 filed by Ravindra Nath Gupta and Others. In para 5, the Bench has dealt with the question of delay and laches which was raised by the respondents and answered it negatively. We are of the opinion that the question of delay and laches arises in writ petitions filed in the High Court and transferred to the Tribunal. However, that question will not arise in Original Applications filed in the Tribunal, under Section 19 of the Administrative Tribunals Act. So far as applications under Section 19 are concerned, what has to be considered is question of limitation. For these reasons we respectfully disagree with the view taken by the Jabalpur Bench on this point. We,therefore, propose to refer the fifth point also to a larger Bench.

49. Lastly we may refer to one point which we have not dealt so far. It was pointed out on behalf of the applicants that against the judgement of the Jabalpur Bench in B.H.Ananthamurthy's case, an SLP was preferred under Article 136 in the Supreme Court, but it was dismissed on 18.1.1989. Hence it was urged that we should follow the same view taken by the Jabalpur Bench. But Article 136 does not give a right to a party to appeal to the Supreme Court. As held by the Supreme Court in a number of cases, the Supreme Court does not grant SLP

(43)

unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Hence whenever an SLP against a judgement is rejected it will not be proper to hold that the Supreme Court accepts or affirms the view taken in the judgement. The judgement appealed against may be incorrect in law but if it does not cause substantial and grave injustice, the Supreme Court may not allow the SLP.

50. Apart from this, the Supreme Court in Paluru Ramkrishnaiah's case rejected the reliefs to the fresh petitioners in that case, which were granted by it to the petitioners in Virendra Kumar's case. We are bound by the judgement of Supreme Court in Paluru Ramkrishnaiah's case. The fact that it had granted relief to the petitioner in Virendra Kumar's case or the fact that it has rejected the SLP filed by the respondents in B.H.Ananthamurthy's case did not come in the way of the Supreme Court in dismissing the fresh petitions filed in 1983. That is why we are referring the points to a larger Bench for decision because the decision is likely to affect innumerable persons recruited in the Ordnance Factories during 1962 to 1966.

51. In result we direct that all the cases be referred to the Chairman of the Central Administrative Tribunal for appropriate action under Section 5(4)(d) of the Administrative Tribunals Act,1985 for the five points framed in para 34 and the cases being decided by a Bench comprising of more than two Members. The papers of the cases should be sent to the Chairman along with a copy of this order.