

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 521/96 & 657/96

Date of Decision : 2nd August '01.

ARDE Employees Organisation Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

(i) To be referred to the reporter or not ? Yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(iii) Library Yes

S. L. JAIN
(S. L. JAIN)
MEMBER (J)

mr.j.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.521/96 & 657/96

Dated this the 2nd day of August 2001.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

A.R.D.E. Employees Organisation
through Shri S.E.Suratran,
Secretary and others,
Working as Tradesman 'E' in
A.R.D.E., Pashan, Pune,
C/o. Bharatiya Mazdoor Sangh,
185, Shaniwar Peth,
Pune - 411 030.

...Applicants

By Advocate Shri H.Y.Deo

V/S.

1. Union of India
through The Secretary,
Ministry of Defence,
Raksha Bhavan,
New Delhi.
2. The Director General,
Department of Defence
Research and Development
Organisation,
'B' Wing, Sena Bhavan,
New Delhi.
3. The Director,
Armament Research and
Development Establishment,
Pashan, Pune.
4. The Director,
High Energy Material
Research Laboratory,
Sutarwadi (Pashan),
Pune.

...Respondents

By Advocate Shri R.K.Shetty

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

These are the applications under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that letter No.96532/1 E/GTRE/RD-PERS 5/4692/D (R&D) dated 17.11.1993 issued by the Under Secretary of Ministry of Defence to the Director General of the D.R.D.O., restraining the benefit of higher pay scale Rs.260-400 pre-revised to only those Tradesman 'E' who are recruited/promoted prior to 15.10.1984 is arbitrary, unjust and illegal, to quash and set aside the orders contained in the letter dated 7.2.1995 (Annexure-'A-2) sent by Respondent No. 3, a consequential relief is also sought regarding the benefit of upgradation of the post of Tradesman 'E' to the post of Tradesman 'C' and the granting of higher pay scale of 260-400 to such Tradesman 'E' as contained in the letter dated 17.11.1993 (Annexure-'A-1') be extended to the applicants who are recruited/promoted as Tradesman 'E' subsequent to 15.10.1994 w.e.f. the date of their appointment as Tradesman 'E', fixation of pay accordingly from the date of their appointment as Tradesman 'E' and redesignation as Tradesman 'C'.

2. Applicant No. 1 is the registered Trade Union and majority of the employees of A.R.D.E. Pune are its members. Applicants No. 2 to 23 are working as Tradesman 'E' in the A.R.D.E. Pune from 1988 onwards. The particulars shown in Annexure-'A-3' relates to appointment of the applicants in detail.

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They were recruited as Tradesman 'E' in the pay scale of Rs.210-290 (pre-revised scale before 4th Pay Commission). The Secretary of the Ministry of Defence has issued order No.96532/1 E/GTRE/RD-PELG-9/4692/D (R&D) dated 17.11.1993 whereby all the Tradesman 'E' working in the various establishments of D.R.D.O. have been upgraded to the grade of Tradesman 'C' w.e.f. 15.10.1984 in the pay scale of Rs.260-400 (pre-revised scale before 4th Pay Commission). As the respondents have given this benefit of upgradation to all the Tradesman 'E' who were recruited upto 15.10.1984, between 16.10.1984 till 1988 there was no recruitment of Tradesman 'E' in the Establishment of D.R.D.O.. Thereafter, the respondents regularly made the recruitment in the cadre of Tradesman 'E'. Though the Tradesman 'E' recruited/promoted prior to 15.10.1984 and the Tradesman 'E' recruited/promoted subsequent to 15.10.1984 are doing the same type of work and shouldering the same responsibilities and duties, the respondents are reluctant to give this benefit of upgradation and higher pay scale to the Tradesman 'E' recruited/promoted subsequent to 15.10.1984. The respondents are required to upgrade the employees who are recruited/promoted as Tradesman 'E' after 1988 by virtue of the orders contained in the O.M. dated 17.11.1993 (Annexure-'A-1) in accordance with the terms and conditions prescribed therein for such upgradation.

3. The applicants filed the representation to the Respondent No. 3 requesting him to upgrade them as Tradesman 'C' in the higher pay scale of Rs.260-400 (pre-revised before the 4th Pay Commission) revised scale Rs.950-1500 vide Annexure-'A-4'. A

reminder dated 26.9.1994 was sent by Applicant No. 1 to the Respondent No. 3 (Annexure-'A-5'). The respondents vide letter dated 7.2.1995 denied the request of the applicants vide Annexure 'A-2'.

4. The grounds on which the relief is sought are that minimum required recruitment qualifications of all the Tradesman 'E' working within the jurisdiction of the respondents are same and though the works and duties performed by all these Tradesman 'E' are exactly same, irrespective of their date of recruitment. Thus, the applicants who were ~~subsequent~~ ^{recruited} to 15.10.1984 are unreasonably discriminated by the respondents. The discrimination is unjust and unfair which violates Article 14 of the Constitution of India. The same responsibilities are being shouldered by the applicants. Hence, these OAs. for the above said reliefs.

5. The respondents have resisted the claim of the applicants on the ground that Applicants No.9,12,14,16,17,18 & 20 are working as Tradesman 'E' (Rs.210-290 pre-revised) in the scale of pay of Rs.800-1150/- (Revised) and the Applicants at Sr.No. 2 to 8,10,11,13,15,19,21 to 23 are presently holding the appointment as Technician 'A' in the pay scale of Rs.950-1500 (Revised) after implementation of DRTC Rules,1995. The applicants being Tradesman 'E' who have been employed after 15.10.1984 and are claiming the parity with their counterparts who were employed as

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Tradesman 'E' before 15.10.1984, and whose pay scale has been upgraded to Rs.260-400/- (pre-revised) as against those of the applicants who are still in the pay scale of Rs.210-290 (Pre-revised). The benefit of upgradation was given only to those Tradesman who were in the post of Tradesman 'E' before 15.10.1984. Tradesman 'E' who joined after 15.10.1984 were promoted in accordance with the provisions of SRO 221 of 1981 (Exhibit-'R-1'). It is also submitted that the applicants demand directly being categorised as skilled workmen having completed two years of regular service in semi-skilled post after passing the prescribed trade test and NCTVT examination, one which is against the Recruitment Rules for the post of skilled level Tradesmen 'C'. Thus, the applicants are praying for amending the Recruitment Rules which is a policy matter cannot be interfered with by this Tribunal. Similar applications were filed by the counterparts of the applicants in other DRDO Labs/Estts. have already been dismissed and they are OA.NOs.1853/94 and 218/95 before the CAT, Bangalore Bench vide its order dated 28.7.1995. OA.No.886/94 and OA.NOs.984 to 991 of 1994 are also decided similarly vide order dated 21.9.1995. CAT, Hyderabad Bench also vide its order dated 12.12.1990 in Review Petition in OA.No.508/88 has also dismissed the similar relief sought for by the counterparts of the applicants (Vide Exhibit 'R-II', 'R-III' and 'R-IV'). Thus, the respondents claim that it is a covered case. The revision of scales of pay is not within the jurisdiction of this Tribunal.

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6. The Expert Classification Committee (ECC) was set up to scientifically evaluate the industrial and non-industrial jobs to classify various trades getting similar pay scale but performing not similar duties for proper fitment of IIIrd Central Pay Commission scales. The Classification of various trades was done by ECC which evaluated 1720 industrial jobs. The ECC had evaluated the job contents based on various factors for each trade and awarded point scores to each job. Those trades which had obtained point scores between 251-328 were given the grade of Rs. 260-400, the trades obtained points between 206-250 were given the Semi-skilled grade of Rs.210-290. The report submitted by the ECC was examined by the Government and orders granting 5 major categories were issued on 18.10.1981 which was superseded by Ministry of Defence letter No.F.1(2)/80/D(ECC/IC) dated 11.5.1983. On introducing the pay scales in above order, some anomalies crept in. Therefore, an Anomaly Committee was constituted by Government in 1982 which submitted its report in May, 1984. The Government accepted the recommendations of the Anomalies Committee vide Ministry of Defence letter No.3823/DS/(O&M)/Civ-I/84 dated 15.10.1984, all trades of Semi-skilled were upgraded and granted higher pay scale of Rs.260-400. After implementation of 15.10.1984 orders, some affected Tradesmen of MES approached the Apex Court stating that their trades were upgraded from 15.10.1984, though the anomaly has arisen from October 1981, on implementation of ECC recommendations to sort out for which the anomaly committee was appointed. Hence, their upgradation should have been effective

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from October, 1981. The plea was accepted by the Apex Court in the case of Bhagwan Sahai & Ors. vs. Union of India, 1989 (2) SCC 299. A five grade structure was already introduced in DRDO as per SRO 221 of August 1981. According to SRO, the trade-wise seniority was done away with and only gradewise seniority was followed. The recruitment is based on qualifying the trade(s) of the eligible tradesmen. On implementation of the orders dated 15.10.1984 issued by the Ministry of Defence, some senior Tradesmen whose trades were not upgraded approached CAT, Hyderabad in OA.NO.363/88 for upgradation of their trades on par with their juniors whose trades have been upgraded from the common seniority list. CAT Hyderabad Bench while examining the pleas of tradesmen of R&D of not recommended trades in OA.No.363/88 relied on Supreme Court judgement mentioned above though both the cases are distinguishable on facts and granted the prayer for upgradation on par with upgraded trades w.e.f. 15.10.1984. While Bhagwan Sahai case involved parity between upgraded trades upgraded on different dates, in OA.No.363/88 the applicants belonging to non-upgraded trades prayed for parity with Tradesmen of upgraded trades. The same Bench of CAT Hyderabad decided three more cases in favour of applicants and all the judgements have been implemented as the SLP filed in OA.No.363/88 was dismissed. Review Petition filed in the matter was also dismissed. In a similar case OA.NO.111/91, CAT Bangalore Bench has disagreed with CAT, Hyderabad Bench decision in OA.No.363/88 and the matter was referred to a larger Bench.

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The larger Bench of CAT vide their judgement dated 29.1.1993 in OA.No.111/91 upheld CAT Hyderabad Bench judgement dated 23.6.1989 in OA.NO.363/88. Thus, one time upgradation was accepted. This cannot be extended to any other Tradesmen 'E' joining after 15.10.1984. Further, selective upgradation of any Tradesmen 'E' can be undertaken with reference to Ministry of Defence letter dated 15.10.1984.

7. Keeping in view the pleadings of the parties, the cases of the employees who were in position on 15.10.1984 and the employees who joined the services as Tradesmen 'E' after 15.10.1984 is claimed by the respondents on different footings.

8. OA.No. 508/88 decided by CAT, Hyderabad Bench on 10.9.1990 has clearly laid down as under :-

" The order dt.15.10.1984 was meant to remove through upgradation of posts certain anomalies in various cadres who were in service on that date and the relief given to them was a one time measure in terms of memo dt.15.10.84. Nowhere it is said that the statutory recruitment rule laid down in SRO 221/81 has been amended. Hence, the applicants who joined service as Tradesment 'E' after the issue of the memo dated 15.10.1984 are to be governed only by the statutory recruitment rule and cannot get the benefit contained in the memo of 15.10.1984."

A review was filed against the said order which was rejected on 12.12.1990.

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9. In OA.No.1853/94 and 203 to 218/95 CAT, Bangalore Bench has passed the order on 28th July,1995 as under :-

" In the case of the other applicants, we are told they were not in position on 15.10.1984 and that they had not been selected and recommended for placement. If that is so, we must regret our inability to direct granting relief to the applicants other than applicant No.1. With these observations, these applications stand disposed off. Mr.Malimath says that in any view of the matter he would be grateful if the cases of the applicants are considered afresh. We however decline to make any observation on this submission and leave it to the administration to deal with it appropriately."

10. Thereafter, in OA.NO.984/94 to 991/94 and 886/94 decided by CAT, Bangalore Bench on 21.9.1995 similar view was taken which is as under :-

" There being no dispute that the applicants were not in position as Tradesman 'E' as on 15.10.1984, it follows that they cannot seek upgradation from that date. This being the only point raised herein, this application fails and is dismissed."

11. In OA.NO.561/95 decided by Principal Bench, New Delhi on 1.1.1997, the Tribunal has ordered as under :-

"This one time upgradation was in the nature of an in situ promotion of all those Tradesmen 'E' who were in position on 15.10.84 to Tradesmen 'C' and as admittedly the applicants were not in a position as Tradesmen 'E' on 15.10.84, they cannot seek upgradation from that date. We are fortified in our view by the CAT Bangalore Bench judgement dated 21.9.95 in OAs. No.886, 984-991 of 1994 T.A.Moses & Ors. vs. Union of India & Ors."

12. OA.NO.990/95 decided on 9.1.1998 by CAT, Madras bench has also taken the similar view.

A review filed against the said order was rejected on 7.4.1997.

13. In OA.Nos.320-323/96 and OA.No.144/97 CAT, Madras Bench has passed the order as under :-

"8. Admittedly, the applicants in the present OA. have joined service after the crucial date i.e. 15.10.84. Further, at the time of appointment itself they were informed about the trade as well as the grade to which they were appointed which also indicates the scale of pay. Therefore, there could be no doubt in the minds of the applicants in so far as the grade or the pay scale is concerned. It is rather surprising as to how they can claim the benefit of the order dated 15.10.1984 which squarely applies only to those who were already in service. That order of the Ministry of Defence was issued with reference to the anomalies that arose while implementing the recommendations of the III Pay Commission. Obviously all this would mean that the said order dated 15.10.1984 was in respect of those who were already in service on that date. We therefore do not find any merit in the claim of the applicants."

14. OA.NO.363/88 decided by Hyderabad Bench against which SLP was dismissed. Review against the same was also dismissed was in respect of Tradesmen 'E' who were in position on 15.10.1984. OA.NO.111/91 decided by CAT, Bangalore Bench referring the matter to the Larger Bench and the Larger Bench upheld the view of Hyderabad Bench is also in respect of the Tradesmen 'E' who were in position on 15.10.1984 clearly lays down that it is one time upgradation.

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15. Thus, the precedents as it stands since 10.9.1990 till 1998 constantly are treating the applicants who were in position on 15.10.1984 and the applicants who were recruitted after 15.10.1984 as Tradesmen 'E' on different footing. The learned counsel for the applicants is not able to place any convincing reasons to differ with the said precedent. Suffice to mention that the order dated 15.10.1984 was made only for those officials who were in position till then and thereafter new Recruitment Rules were framed by the respondents and recruitted the applicants accordingly. Thus there was a change in law by framing of Recruitment Rules. We, therefore, do not find any merit in the OAs.

16. In the result, OAs. deserve to be dismissed and are dismissed accordingly with no order as to costs.

Mr. Jain
(S.L.JAIN)

MEMBER (J)

mrj.

B.N.Bahadur
(B.N.BAHADUR) 2/8101
MEMBER (A)