

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 115/96,752/97,239/98 & 18/2001.

Date of Decision : 11th April 2002

M.K.Solaman & Ors. Applicant

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty Advocate for the
Respondents

CORAM :

The Hon'ble Shri Gopal Singh, 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 ? No
- (iii) Library yes

Page 2 -
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA.NOs.115/96, 752/97, 239/98 & 18/2001

the 11th day of April 2002

CORAM: Hon'ble Shri Gopal Singh, Member (A)

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

1. M.K. Solaman
2. Suresh Poonoor
3. V.Thilak
4. G.S. Sunil Kumar
5. Bharat N. Yadav
6. Ramchandran Nair
7. K.V. Ramankutty
8. D.N. Kumthekar
9. P.S. Daniel
10. Peter Francis
11. Benjamin F. Thomas
12. Anil Kumar G.Nair
13. Arvind F.Sama
14. V.S. Dalvi
15. Sanjay Menkudale
16. M.E. Sontakke
17. Vinod Shankar Pawar
18. Lallappa Mala
19. Purshottam Kumar
20. Manipurbha N. Namboodri
21. S.N. Ghorpade
22. A.S. Jagtap
23. Jacob Varghese
24. S.M. Solanki
25. Kishorkumar Tambe
26. R.M.Tapkir
27. D.B. Deshmukh
28. Vikram Talwar
29. S.R. Parab
30. Shaikh Mushtaque
31. D.R. Adagale
32. M.D. Nesamani
33. S.S. Pansare
34. R.D. Dhandar
35. P.U. Haridas
36. G.V. Nanajkar
37. J.K. Bhagat
38. V.B. Rokade
39. R.V.Rasankar
40. P.G. Mulay
41. K.C. Pardesi
42. Boggavarapu Bapanaich
43. K. Rangaswamy
44. M.R. Angir.

...Applicants

All are working as Turner Skilled,
Fitter HS-II, Miller Skilled,
Grinder Skilled.

By Advocate Shri S.P. Saxena.

...2...

delu -

1. The Secretary
Ministry of Defence
DHQ PO, New Delhi.
2. The Chairman
Ordnance Factory Board
10-A, Auckland Road,
Calcutta.
3. The General Manager
Ammunition Factory
Kirkee, Pune.
4. The General Manager
High Explosives Factory
Kirkee, Pune.

...Respondents

By Advocate Shri R.K.Shetty.

OA.NO.752/97

1. Shrirang Harihar Pandit
2. Haridasan Padmanabhan Nair
3. Amol Narayan Dutta
4. Rajendra Dhondu Punyarthi
5. Hari Krishnan
6. Parsuram Laxman Mali
7. Jayanandan Anandan Thekke Thayyil
8. Sreekumar S.K.Sadasivan Pillai
9. Mohammed Ekabal Mohommed Salim Ansari
10. Vilas Motiram Aware
11. Abu Rafat Abu Sadd Usmani
12. Satish Kumar Gulab Chand Gupta
13. Anil Anand Norde
14. R.Arumugam S.Benugopal Mudaliar
15. Pradyut Upendra Roy
16. Balakrishna Kadam
17. Jairam Mahadu Nikam
18. Ravindra Pundlik Wani
19. Anandprakash Jagdishnarain Tiwari
20. Ashok Kundalik Thorat

...Applicants

Working as Machinist, Grinder, Turner,
Fitter (Skilled).

OA.NO.239/98

1. Balkrishna K. Bansode
2. Pradeep P.Mohile
3. Govind J.Sonawane
4. Chandrakant L.Gaikwad

...Applicants

Working as Examiners

..3/-

Plm - -

OA.NO.18/2001

1. R.K.Singh
2. L.I.Khemani
3. R.C.Mourya
4. S.S.Pawar
5. V.M.Likhite
6. Y.C.Ghosalkar
7. S.S.Kadam
8. N.K.Kamble
9. Y.A.Marke
10. J.D.Shinde
11. D.T.Wadkar
12. V.S.Surte
13. K.A.Angamuthu
14. Y.C.Oommen
15. A.H.Buva
16. M.A.Siddique
17. B.L.Karbari
18. R.D.Belapurkar
19. M.P.Jagtap
20. S.R.Maniwede
21. S.X.Joseph
22. G.P.Rao
23. N.B.Patil
24. R.V.Bhoir
25. M.H.Puranik
26. P.B.Dhonde
27. R.D.Badle
28. K.S.Gaikar
29. S.A.Tare
30. K.B.Andade
31. R.M.Bamodkar
32. Y.M.Singe
33. Ramprasad Motilal
34. Ganesh M.Shetye
35. Sanjay R.Malwadkar
36. D.P.Choudhary
37. S.S.Deshpande
38. P.S.Jadhav
39. J.D.Khamkar
40. A.R.Patil
41. D.G.Surve
42. P.M.Brahmakhatrri
43. O.S.Sharma
44. Ramchandra Bandu
45. P.C.Mane
46. S.V.Patil
47. L.A.Rao
48. A.K.Khedekar
49. D.R.Narkhede
50. N.S.Todankar
51. A.A.Deokar
52. P.S.Kulkarni
53. M.G.Tupe
54. H.J.Butere
55. R.K.Hushe

P. Jm 2/-

..4/-

56. Gaffar Khan
57. A.K.Sharma
58. C.K.Kadav
59. M.K.Suku
60. N.S.Kshirsagar
61. S.Sarkar
62. T.V.Mathew
63. K.B.Hire
64. R.B.Jaiswar
65. Jairam Pillai
66. C.G.Mhaskar
67. U.G.Goud
68. N.V.Patil
69. M.J.Pisekar
70. Y.D.Gupta
71. S.B.Sharma
72. K.K.Sakharkar
73. S.P.Nair
74. T.S.Kazi
75. A.K.Roy
76. K.D.Aslekar
77. R.R.Pillai
78. N.Narsappa
79. N.S.Pawar
80. M.I.Shaikh

...Applicants

Working as Turner, Fitter, Machinist,
Examiner, Grinder, Miller, etc.

By Advocate Shri S.P.Saxena

V/S.

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Director General of Ordnance
Factories, Auckland Road,
Calcutta.
3. The General Manager,
Machine Tool Prototype Factory,
P.O.Ambernath Ordnance Factory,
Ambernath.
4. The Director General Quality
Assurance, Directorate of
Quality Assurance, DHQ P.O.
New Delhi.

..5/-

See -

5. The Senior Quality Assurance
Officer, Quality Assurance
Establishment (W),
Ambernath Ordnance Factory,
Ambernath.

6. The General Manager,
Machine Tool Prototype
Factory, Ambarnath.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

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

In accordance with the recommendation of III Pay Commission, which was accepted by the Government, an Expert Classification Committee was set up in 1974 by a Resolution of the Government of India, Ministry of Defence dated 3.10.1974, to study and evaluate the job contents of all Industrial and a few Non-Industrial jobs in Defence establishments and to correlate the evaluation to suitable pay scales within the frame work of recommendations of III Pay Commission. This Committee was advisory in nature. The Committee submitted its recommendations to the Government of India in 1979. It recommended seprate pay scales for Industrial Workers, After applying the technique of jobs evaluation following the point rating method, on the basis of points scores, fitment of defence workers in revised scales was done, made effective and implemented with effect from 16.10.1981. It had recommended upgradation only of some trades out of various trades, in the skilled grade of Rs. 260 - 400.

Sign

..6/-

2. Thereafter Anomalies Committee was appointed. The Committee submitted its report which was accepted by the Government. The Respondent No.1, vide its letter dated 15.10.1989 (Exhibit A-4), addressed to the Respondent No.2, had conveyed the sanction of the President to upgrade 23 semi skilled trades in the scale of Rs. 210 - 290 to be upgraded to skilled grade with scale of pay Rs. 260 - 400, in various Ordnance Factories under the Respondent No.2 and the upgradation was made effective from 15.10.1984, in pursuance of the recommendation of Anomalies Committee.

3. This was challenged by Petitioners from M.E.S. in Bhagwan Sahai V/s Union of India (AIR 1989 SC 1215) on the grounds that the fixation of higher scales of pay of only some of trades in the skilled grade, ignoring other trades is arbitrary, discriminatory and in contravention of Fundamental Rights enshrined in Article 14 and 16 as well as in Article 39(d) of the Constitution of India in as much as it purports to violate the rights of equal pay for equal work.

4. The upgradation in the scale of pay had been made on the basis of report of Expert Committee appointed in 1981, which gave scores points to various trades and on its basis, recommended higher scale of pay only for some trades in the skilled grade i.e. Rs.260 - 400, whereas, some other trades of the said grade were termed as semi - skilled, and the scale of pay was recommended as Rs. 210 - 290 for these trades.

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5. Based on the judgement of the Supreme Court in the case of Bhagwan Sahai V/s Union of India (AIR 1989 SC 1215) delivered on 15.3.1989, the respondent No.1 issued a letter No. 17(5)/89-D(Civ.I) dated 19.3.1993 (Exhibit A-3), conveying the sanction of the President of India, that all the trades, which had been granted the skilled grade from semi skilled grade with effect from 15.10.1984, will now be given the benefits of the pay scale of skilled grade (Rs. 260 - 400) with effect from 16.10.1981.

6. The applicants submitted that by various orders and directions given by the Supreme Court in identical Writ Petitions it was directed by the Supreme Court in Writ Petition No. 915/1991, 855/1991, 521/1992, 649/1992 and 644/1992 (R.S. Gill and others V/s Union of India) decided on 14.10.1992, that the respondents to verify the service records of the employees and grant them the benefits from 16.10.1981, if they were in position on that date, or from the date subsequent thereto, if they have entered later, by upgrading them from the grade of Rs. 210 290 to Rs. 260 -400. Thus by above observations of the Supreme Court, the Applicants, became entitled for same benefit of scale of pay of Rs. 260 - 400 from the date they were placed in the skilled grades. The respondents did not give the benefit to the applicants till today.

Per :-

..8/-

7. By letter dated 15.4.1993 (Exhibit A-2), the respondent No.2, had unilaterally and arbitrarily directed the respondent No.3 and 4, that while implementing the orders, it should be ensured that the individuals, who were in occupation of the semi - skilled grade of the grades involved, as on 16.10.1981 are only given these benefits, which means that employees of skilled trades, like the applicants, who are appointed / promoted to semi - skilled trades after 16.10.1981 should not be given the said scale of Rs. 260- 400.

8. The applicants therefore submitted that some of the stipulations contained in letter dated 15.4.1993 restricts the benefit of the judgement of the Supreme Court to employees who hold the NCTVT / ITI certificates and have rendered two years of service in semi - skilled category as on 15.10.1984. This condition is laid down for no justified reason and the same is neither in accordance with the recommendations of Expert Classification / Anomalies Committee recommendation, nor it is in accordance with any directions of the Supreme Court in above referred Writ Petitions and hence the same needs to be quashed and set aside.

9. The applicants submitted that the respondent No.2, has issued another letter dated 1.11.1993, addressed to the respondent No.3 and 4 alongwith others, wherein in para 3, it is again stated that " individuals, who have come to occupy their posts from a date later than 16.10.1981 and upgraded from

Page 2

..9/-

15.10.1984, the condition mentioned in paragraph 1(i) (a) and (b) of the letter dated 15.10.1984 will apply ipso facto". In other words, if any individual in possession of NCTVT Certificate and appointed to semi - skilled grade of affected trades on a date after 16.10.1981 but prior to 15.10.1984, will be eligible for upgradation after completion of two years of service. Obviously, the two years of service is to be completed prior to 15.10.1984 for becoming eligible to receive arrears of payment".

10. The applicants have based their claim challenging the action of the respondents in not extending the benefit of the judgement in the case of :-

(i) Bhagwan Sahai and others V/s Union of India and others (Civil Writ Petition No. 12259-66 of 1984) delivered on 15.3.1989 (AIR 1989 Supreme Court 1215).

(ii) Federation of Employees of AFK Factory V/s Union of India (Writ Petition Nos 79/1993, 5/1993) before Supreme Court.

(iii) Association of Examiners, Ordnance Factory, Muradnagar V/s Union of India (Writ Petition No. 40 of 1991) before Supreme Court.

(iv) Shri Prabhu Lal and another V/s Union of India (Writ Petition No. 492 of 1991) before Supreme Court.

(v) Shri R.S. Gill and others V/s. Union of India and others (Writ Petition Nos. 915/1991, 855/1991, 521/1992, 649/1992 and 644/1992) before the Supreme Court in respect of upgrading the applicants from their scale of Rs./ 210 - 290 (Pre-reserved), to the scale of pay of Rs. 260 - 400 (Pre-revised) from the date the applicants have entered in the service.

(b). Letter dated 1.11.1993 issued by the respondent No.2 Exhibit A - 1).

c). Letter dated 15.4.1993 issued by the respondent No.2 Exhibit A -2).

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d). Letter dated 19.3.1993 issued by the respondent No.1 Exhibit A - 3).

e). Letter dated 15.10.1984 issued by the respondent No.1 Exhibit A - 4).

The above referred judgements are as claimed by the applicants, judgement in rem and hence the respondents ought to have placed the applicants in the scale of Rs. 260 - 400, instead of arbitrarily giving them the lower pay scale of Rs. 210 - 290, while other persons similarly situated have been given the pay scale of Rs. 260 - 400. The Anomalies Committee set up by the Government of India, Ministry of Defence, had recommended the pay scale of Rs. 260 - 400, and the Supreme Court had directed to place the Petitioners in above mentioned Writ Petitions in the said scale of pay of Rs. 260 - 400.

11. The claim of the applicants is resisted. The respondents submitted that the Hon'ble Supreme Court of India in an identical case of Writ Petition No.40 of 1991 filed by the Association of Examiners, Ordnance Factory, Muradnagar have already decided that those employees who were in the Semi - Skilled grade as on 16.10.1981 in the pay scale of Rs. 210 - 290 were to be upgraded to Skilled category carrying pay scale of Rs. 260 - 400 with effect from 16.10.1981, provided they satisfied the requirements of Clause 'a', 'b' and 'c' of Clause (IV) in Chapter X of the Anomalies Committee's report which inter alia provide that the employees shall have to put in minimum 2/3 years of service in Semi-skilled grade before being eligible for promotion to Skilled grade.

Don't

12. The Anomalies Committee recommended for upgradation of 23 trades to Skilled Grade w.e.f. 15.10.1984. On the recommendation of anomalies committee, Ministry of Defence letter dated 15.10.1984 was issued. On the basis of Supreme Court judgment in SLP No.12259-66/1984 filed by Shri Bhagwan Sahai & others, Ministry of Defence vide letter No.17(5)/89-D(Civ-I) dated 19.3.1993 have issued orders regarding upgradation of these trades w.e.f. 16.10.1981 instead of 15.10.1984 (Exhibit R-4). It was clearly stated in Ministry of Defence letter dated 19.3.1993 that the conditions laid down in Ministry of Defence letter dated 15.10.1984 will remain unchanged. Hence under these orders those employees who were in occupation of posts in the Semi Skilled Grade in the pay scale of Rs.210-290 as on 16.10.1981 were entitled to upgradation of pay scale w.e.f. 16.10.1981. Those who were in occupation of posts in the Semi-Skilled grade in the pay scale of Rs.210-290 subsequent to 16.10.1981 but before 15.10.1984 were, however, subjected to conditions laid down in Paras 1 (i) (a) and (b) of the Ministry of Defence letter dated 15.10.1984. In other words, an individual in possession of NCTVT Certificate and appointed to Semi-Skilled grade of affected trades on a date after 16.10.1981, but prior to 15.10.1984 will be eligible for upgradation after completion of 2 years service. In this connection, copies of OFB's letter No.01/A/ECC, dated 01.11.1993 and 15.4.1993 are also annexed for reference and markes as Exhibit R-5 and R-6 respectively.

Done

..12/-

13. The representations of the applicants in OA.No.115/96 were rejected by GM/AFK on 10.9.1993, the application has been filed on 04.10.1996 after more than one year, as such the application is barred by limitation.

14. The respondents submit that the applicants were recruited/promoted to the Trade of Turner 'C', Fitter 'C', Miller 'C', Machinist 'C' and Grinder 'C' from dates subsequent to 16.10.1981 but prior to 15.10.1984. Though these trades existed in various other departments such as M.E.S., DGQA etc. the nature of duties involved varies from one department to another. The applicants in this OA were not in the Semi Skilled Grade of the trades, which were upgraded by Government orders dated 15.10.1984, on 16.10.1981. Hence, they are not entitled for Skilled Grade from the date of appointment/promotion to the Semi-Skilled Grade. They are entitled to upgradation after 2/3 years in accordance with Ministry of Defence letter dated 15.10.1984.

15. The Hon'ble Supreme Court of India in Writ Petition (s) No.915/91, 855/91, 531/92, 649/92 and 644/92 (Shri R.S.Gill and others Vs. Union of India & others) had directed to verify the service records of the employees and grant them the benefits from 16.10.1981 if they were in position on that date or from a date

Regd-2

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subsequent thereto if they have entertained later by upgrading them from the grade of Rs.210-290 to Rs.260-400 on the basis of the ratio of the judgment of Supreme Court in Bhagwan Sahai Carpenter and others Vs. Union of India & others.

16. The Office of the Director General of Quality Assurance, New Delhi - 110 001 had initially given the benefits of upgradation to all their employees who were in occupation of Semi-Skilled grade on 16.10.1981 and thereafter. However, Ministry of Defence had subsequently intimated that DGQA have cancelled their orders and directed their units to strictly follow government orders on the subject. Copies of DGQA New Delhi letter No.A/94486/Fitment/DGQA/ADM-7A, dated 12.8.1994 and 10.8.1993 are enclosed for reference and marked as Exhibit R-9 and R-10 respectively. As such, the contention of the applicants that the employees of DGOF Organisation have been given differential treatment than the employees of DGQA Organisation is not correct. No.94486/Fitment/DGQA (ADM-7A), dated 13.4.1994.

Done

..14/-

17. In A.I.R. 1989 S.C. 1215 - Bhagwan Sahai Carpenter & Ors. vs. Union of India & Anr. decided on 15.3.1989 which is relied on by the learned counsel for the applicant, paras 8,9,10 and 11 are as under :-

"8. From the aforesaid letters, it is clear that the Respondent No.1 has extended the benefit of scale of pay fixed for skilled grade to the petitioners trades by upgrading their semi-skilled grade to skilled grade with effect from October 15,1984. The petitioners are, therefore, getting equal pay being in the skilled grade as other members of the skilled grade. The petitioners, however, are praying that the benefit of the higher scale of pay in the skilled grade should be extended them from October 16,1981 instead of October 15, 1984 as has been given to the members of other trades of the skilled grade upgraded earlier on the basis of the Report of Anomalies Committee. The relevant excerpt of the Report is quoted below :-

"All the jobs studied by the Anomalies Committee, which are present in semi-skilled grade of Rs. 210-290, may be upgraded to the skilled grade on Rs.260-400. This may be given effect from October 16,1981."

9. Mr.Garg, learned counsel appearing on behalf of the petitioners has submitted that in view of the recommendations of the Anomalies Committee, the petitioners should be given the benefit of the scale of pay of the skilled grade, i.e. Rs.260-400 with effect from October 16, 1981 and not from October 15,1984. He further submitted that the scale of pay has been fixed on consideration of the job evaluation in as much as the previous job evaluation by the Expert Committee led to serious grievances between the employees of the different trades in the skilled grade.

10. Mr.Mahajan, learned counsel appearing on behalf of the Union of India has submitted that though the Anomalies Committee has recommended that the benefit of the skilled grade may be given effect from October 16,1981 yet it has got no binding force on the Government. It is for the Government to decide from which date the Government will apply the said skilled grade to the petitioners even though the Government has accepted the recommendations of the Anomalies Committee.

..15/-

P. Garg

11. Considering all the facts and circumstances of the case, we are unable to accept the contentions advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled grade cannot be treated differently, i.e. by allowing higher scale of pay to employees of some of the trades from an earlier date and giving the same benefit to members of other trades in the skilled grade from a later date. This will per se be discriminatory and it will be contrary to the equity clause envisaged in Articles 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work. The petitioners are entitled to get the benefit of the skilled grade of Rs.260-400 from October 16, 1981 instead of October 15, 1984 as has been given to the employees of other trades in the skilled grade.

18. On perusal of the same, we are of the considered opinion that the question involved before the Apex Court was that the trades which have been subsequently declared as skilled grade trades by an Anomalies Committee, the persons occupying the said position, whether they are entitled to a grade of Rs.210-290 or Rs.260-400 w.e.f. 16.10.1981, the Apex Court has held that the said persons are entitled to a grade of Rs.260-400 w.e.f. 16.10.1981.

19. Asso.of Examiners, Muradnagar, Ordnance Factory vs. Union of India & Ors. decided by the Apex Court 31.7.1991, relevant portion of para 1 & 2 are as under :-

"We find from Chapter VIII of the Anomalies Committee's Report that the Committee decided that "the existing incumbents in the semi-skilled category, who were in position as on 16th October, 1981 in the grade of Rs.210-290, may be upgraded to the skilled category Rs.260-400, commensurate with the point-score given by the Committee."

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"Those who were not in position as on 16th October, 1981 in the semi-skilled grade of Rs. 210-290 will be entitled to placement in the skilled category of Rs. 260-400 if they satisfy the requirements of Clauses 'a', 'b' and 'c' of Clause (IV) in Chapter X of the Anomalies Committee's report to the extent of its acceptance, with or without modifications, by the Government of India. This should be finalised not later than October 31, 1991."

(Emphasis supplied by us)

20. Shri Prabhu Lal & Anr. vs. Union of India & Ors. - Writ Petition (C) No. 492/91 decided by the Apex Court on 3.10.1991 - the petition filed by Boot-Makers who were semi-skilled and by Anomalies Committee report entitled to be skilled grade. The Apex Court has held as under :-

"Counsel for the respondents, however, invited our attention to the notifications Nos. SRO 1 of 1988 and SRO 130 of 1989 produced as Annexures 'A' & 'B' to the counter affidavit and submitted that boot-makers belong to two categories and since the petitioners herein belong to non-industrial category, they are not entitled to the benefit sought by them. On a plain reading of these notifications, we do not think that they have any retrospective operation. This distinction between non-industrial and industrial workmen belonging to the same trade is not shown to have existed earlier when the benefit was granted to certain employees, including the petitioners of the aforesaid two earlier cases. We, therefore, do not see any merit in this contention. We, therefore, direct a mandamus to issue to the Union of India to grant to the petitioners the benefit of the skilled grade of Rs. 260-400 w.e.f. October 16, 1981 to those who were in service then. Arrears of salary, etc., will also be granted on that basis within three months. The rule is made absolute accordingly with no order as to costs.

(Emphasis supplied by us)

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21. R.S.Gill & Ors. vs. Union of India & Ors. decided along with other writ petitions on 14.10.1992 lays down the proposition as under :-

"We, therefore, direct the respondents to verify the services records of the employees and grant them the benefit from 16th October, 1981 if they were in position on that date or from the date subsequent thereto if they have entered later by upgrading them from the grade of Rs.210-290 to Rs.260-400 on the basis of the ratio of this court in Bhagwan Sahai Carpenter & Ors. vs. Union of India & Anr. (AIR 1989 SC 1215) vide paragraph 11 of the judgement."

22. Thus, the consistent view of the Apex Court is that if the person or persons were in position on 16.10.1981 in the Grade of Rs.210-290, the trade being upgraded by Anomalies Committee Report are entitled to Rs.260-400 on the basis of ratio in Bhagwan Sahai Carpenter & Ors. vs. Union of India & Anr.

23. Chapter VIII of Anomalies Committee Report para 8.1. is as under :-

"After a great deal of deliberations, the Committee decided that the existing incumbents in the semi-skilled category, who were in position as on 16th October, 1981 in the grade of Rs.210-290 may be upgraded to the skilled category (Rs.260-400), commensurate with the point-score given by the Committee."

The fresh induction into the skilled category would be from -

..18/-

Page 2

(a) semi-skilled categories, promoted from the un-skilled grade, and who have rendered a minimum of three years' service in the semi-skilled grade and after passing the prescribed trade test;

(b) the feeder categories in the scale of Rs.210-290 wherever they exist, such as Filer Viceman, Hammerman, etc.,

(c) direct recruits with ITI certificate/diploma/ex-trade apprentice/National Certificate of Technical Vocational Training conducted by Ministry of Labour inducted in the semi-skilled grade job training for a period of two years."

24. Recommendations of the Anomalies Committee contained in Chapter X, para 10 regarding fresh induction is as under :-

"10. The recommendations made by the Anomalies Committee in their report are summerised below :-

(i) The skill required in the repair/overhaul workshops is generally of same order as that obtaining in reduction shops. Therefore, there should be no difference in the pay of workers doing similar jobs involving similar skills and experience. (Paragraphs 6.6 and 7.2 refer).

(ii) Examiners should at least be placed the same pay scales as that of the skilled tradesmen whose work they inspect. (Paragraph 6.9 2 refers).

(iii) All the jobs (studied by the Anomalies Committee, which are at present in semi-skilled grade of Rs.210-290, be upgraded to the skilled grade of Rs.260-400. This may be given effect from 16th October, 1981.

The semi-skilled jobs (Rs.210-290 in other Defence Establishments whose nomenclature is the same and job content and skill requirements are comparable with the jobs already studied should also be elevated to skilled category (Rs.260-400) without any further study. (Paragraph 2.6 refers).

(iv) Fresh induction to the trades which have been evaluated as skilled should be as follows:-

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P. J. M.

(a) semi-skilled categories, promoted from the un-skilled grade, and who have rendered a minimum of three years' service in the semi-skilled grade and after passing the prescribed trade test;

(b) the feeder categories in the scale of Rs.210-290 wherever they exist, such as Filer, Viceman, Hammerman, etc.

(c) direct recruits with ITI certificate/diploma/ex-trade apprentice National Certificate of Technical Vocational Training conducted Ministry of Labour inducted in the semi-skilled grade and allowing them adequate time for on-the-job training for a period of two years.

(v) After a trade has been classified as skilled, the higher grade(s) for that trade may be created depending on the requirement of higher skill in that trade and also on the basis of functional requirement of the Defence Establishments subject to the minimum of bench mark percentages of 15:20:65 among Highly Skilled I, Highly Skilled II and Skilled. (Paras 9.2 and 9.4.1 refer)

(vi) Wherever only skilled grade (Rs.260-400), as in EME, is operated, the bench mark percentages may be provided in Highly Skilled Grade I/Grade II with simultaneous abolition of Selection grades, as a one time measure."

25. The learned counsel for the respondents relied on an order passed by this Bench in OA.NO.764/93 which was an OA. filed by Grinders, the question involved was - whether the Grinders are entitled to higher pay scales in terms of the judgement of the Calcutta Bench of the Tribunal in TA.No.1248/86 and 1361/86, the Tribunal relying on earlier judgement in OA.No.555/90 and 52/93 held that the Tribunal has no jurisdiction to go into it as it involves a policy decision and when the Expert Body has taken a view it is not within the jurisdiction of the Tribunal to go into it.

Done

26. Similar was the view taken by this Tribunal in OA.NO.88/95 and the issue involved in the said order is contained in para 3 of the said order.

27. The learned counsel for the respondents relied on 1993 II L.L.J. 539 - Indian Railway Service of Mechanical Engineers Assn. & Ors. and Indian railway Traffic Services Assn. & Anr. with Union of India and Indian Railway Traffic Services Assn., which lays down the proposition that :-

" The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their Constitutional or statutory powers."

It has been further held that :-

"The Tribunal has erred in interfering with the scheme. It has transgressed its limits while questioning the correctness of a policy."

28. The learned counsel for the respondents relied on 1993 (23) ATC 657 - State of Madhya Pradesh & Anr. vs. Pramod Bhartiya & Ors., and argued that to establish right to equal pay for equal work is the bounded duty of the applicants. Para 13 and para 1 of the order is as under :-

" 13. Since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the original petitioners (respondents) have

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30. The learned counsel for the respondents further relied on 1999 SCC (L&S) 138, Sadhan Chandra Dey & Ors. vs. Union of India & Ors., which lays down the proposition that "Extension of relief by the administration to other similarly situated employees - The Administration held on facts, not obliged to extend the relief to others if it was wrongly granted by court."

31. The learned counsel for the respondents relied on an order passed by this Bench in OA.NO.525/98 decided on 9.10.2000 in which case of Lift Operators of MES who were claiming parity with Lift Operators of the CPWD was referred to JCM.

32. The learned counsel for the applicant relied on the above referred decisions and argued that the Expert Committee, the Anomalies Committee has examined the Trades and has given the Point rating and the Tribunal is not competent to fix the pay scale of the Trades which is beyond the jurisdiction of the Tribunal. We agree with the said proposition. In the present case, we are not fixing the pay scale for a particular trade but the Expert Committee and Anomalies Committee which has categorised the Trade as skilled trade, fixed the Grade of the said trade, the applicants are appointed in the said skilled trade for which there is no dispute, whether the applicants are entitled to the said scale or not, is a question to be decided in this case. As such, we are very clear in our mind that we are not deciding whether a particular trade is semi-skilled trade or a skilled trade but we are deciding the trade which is admittedly

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a skilled trade whether the applicants are entitled to a grade fixed by the expert Committee, Anomalies Committee for the skilled trade. As such the said decisions have no bearing in the present case.

33. The learned counsel for the respondents relied on an order passed in OA.No.743/99 in case of G.Vikraman Nair vs. Union of India & Ors. decided by CAT, Ernakulam Bench on 9.8.2001 and argued that principle of 'Equal Pay for Equal Work' cannot be decided by the Tribunal. We agree with the said submission of the learned counsel for the respondents but as stated above, we are not deciding that whether the applicants could perform a particular job and the others who perform the same job are entitled to the same scale or not. As such, the said authority has no relevance.

34. The learned counsel for the respondents relied on 2001 (5) SCC 519 - Somaiya Organics (India) Ltd. & Anr. vs. State of U.P. & Anr. and argued that any pronouncement is to be considered as under :-

" As far as India is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows the Supreme Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, Supreme Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice". Given this constitutional discretion, it was perhaps unnecessary to resort to any principle of prospective overruling. Ultimately, it is a question of this Court's discretion and is, for this reason, relatable directly to the words of the Court granting the relief."

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35. The learned counsel for the applicants relied on a decision of this Bench in OA.NO.858/93 - B.B.Sarode vs. Union of India & Ors. along with other OAs. decided on 20.7.2000 with a direction to the respondents to grant the applicants the pay of the skilled grade i.e. Rs.260-400 or its equivalent as the case may be to those applicants who have not been given the scales with effect from the date of their initial appointment itself. The applicants in the said case were appointed on 16.5.1985 after 16.10.1981. The respondents moved the Hon'ble High Court of Bombay by Writ Petition No. 1279/01 which was also dismissed on 9.4.2001. As such the decision of the said case do not assist the applicants for the reason that their appointment is on 16.5.1985.

36. The learned counsel for the respondents also relied on 2000 SCC (L&S) 845 - State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr. with State of Bihar & Ors. vs. Brij Bihari Prasad Singh with Indra Nand Mishra & Ors. vs. State of Bihar & Ors., on para 30 of the said judgement which is as under :-

" The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgement passed in favour of one individual does not entitle others to claim similar benefits."

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37. The learned counsel for the applicant relied on para 1 & 2 of an order passed by Govt. of India, Ministry of Defence, New Delhi No.17-5/89-D-Civ.i, dated 19.3.1993 and argued that the President has accorded sanction of Skilled Grade of Rs.260-400 w.e.f. 16.10.1981 to all the Trades which had been granted the skilled grade from semi-skilled grade in terms of Government of India's letter dated 15.10.1984, which is as under :-

"1. i am directed to refer to para 1-i of Govt. letters of 15.10.1984, quoted in the margin on the above subject, wherein sanction of president was conveyed, inter-alia, for upgradation of certain trades in semi-skilled grade s.210-290 pre-revised w.e.f. 15.10.1984 in pursuance of recommendations made by the Anomalies Committee.

2. The issue of ante-dating of the pay scale of the skilled grade of industrial workers from 15.10.1984 to 16.10.1981 in respect of the categories mentioned in para 1-i of the Govt. letters of 15.10.1984 under reference was engaging the attention of Govt. for some time past in the wake of Supreme Court judgement in W 12259-66/1984 filed by Shri Bhagwan Sahai rs. of MES. President is now pleased to decide that all the trades which has been granted the 'Skilled' grade from semi skilled grade w.e.f. 15.10.1984 in terms of Govt. letter of 15.10.1984 will now be given the benefit of the pay scale of the skilled grade Rs.260-400 w.e.f. 16.10.1981."

38. The learned counsel for the respondents relied on the order passed by the Govt. of india, Ministry of Defence No.3808/DS- o-M/Civ.i/84, dated 15.10.1984 and argued that the said order is passed based on the decision taken by the Govt. of india on the unanimous recommendation of the Anomaly Committee

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and the Anomaly Committee vide their report in Chapter VIII and X have stated that fresh induction to the trade shall be (a) from semi-skilled to be identified after a period of 3 years service in the grade and after passing a prescribed trade test. (b) Direct recruits with certificate/Trade Apprentices NCTVT who rendered 2 years' service. He argued that keeping in view the said recommendations, respondents have provided the grade, Skilled Grade Scale Rs.260-400 to the applicants after a period of 2 years or 3 years as the case may be, as it was not the recommendations of Anomaly Committee to provide the Skilled Grade of Rs.260-400 immediately after promotion or appointment in the semi-skilled grade after 15.10.1981 to 16.10.1984. Hence, the respondents have not committed any error in not providing the skilled grade of Rs.260-400 immediately after appointment/promotion of the applicants.

39. Order No.3808 DS/O&M/CIV-I/84 dated 15.10.1984 issued by Govt. of India, Ministry of Defence specifically mentions for period of 3 years and 2 years regarding fresh induction. The order was issued on 15.10.1984. The order can have only prospective effect untill and unless a retrospective operation is provided for in the said order. On perusal of the said order, we do not find that any retrospective operation was provided for operation of the said order.

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40. Further, Order No.17 (5)/89-D (Civ.I) 19.3.1993 referred above which has a prospective sanction does not provide any such condition. The anomalies committee's opinion was regarding fresh induction, i.e. induction after 15.10.1984. Assuming it, without admitting that the Anomalies Committee's opinion was otherwise after the Order No.17 (5)/89-D (Civ I) dated 19.3.1993, it loses every importance, as the Government did not accept the same. The another reason being Shri Bhagwan Sahai filed a Writ petition which was decided by the Apex Court and keeping in view the said judgement, the presidential order was passed. As such, the argument of the learned counsel for the respondents fails to the counter.

41. The learned counsel for the applicants relied on an order passed by Govt. of India, Ministry of Defence, Department of Defence production and Supply, General Quality Assurance, DHQ, New Delhi dated 12.4.1994 {OA.No.239/98 page 40} which clearly lays down that by Anomaly Committee the Trades which have been granted the skilled grade shall be entitled to a Grade of Rs.260-400 w.e.f. 16.10.1981. He further relied on para 2 of an order passed by Govt. of India, Ministry of Defence letter No.94486/Fitment/DGQA(ADM)-7A dated 13.4.1994, which is as under:

" 2. in connection with the implementation of the Govt. orders on Fitment of Industrial Workers [Skilled Grade] wef.16.10.1981, further instructions of clarificatory nature have been issued vide this HQ letter No.A/94486/DGQA/Adm-7B dated 30 Nov/03 Dec 93. With the issue of these clarificatory instructions, the position in regard to those personnel who become eligible for placement in the skilled grade on or after 16 ct

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81 have been clearly stated. The benefit of Fitment in such cases will be afforded if the conditions stipulated in this regard are fully met as stated in this HQ letter No.A/94486/DGQA/Adm-7B dated 30 Nov/03 Dec 93."

Perusal of the same makes it clear that effect is to be given from 16.10.1981.

42. The respondents have framed the Recruitment Rules about 4 to 5 years after 1984. The said Recruitment Rules cannot be put in operation w.e.f. 16.10.1981.

43. The learned counsel for the respondents relied on the operative part of the order passed in Writ Petition No.40/81 Association of Examiners, Muradnagar Ordnance factory vs. Union of India decided on 31.7.2001 which has been incorporated in para 2 by Govt. of India, Ministry of Defence, Dept. of Defence Production and Supplies, Dept. of General Quality Assurance, dated 30.11.1993, which is as under :-

" We would, therefore, direct the respondents to verify the service records of these employees and grant the benefit to those who were in position on 16.10.1981 in the grade of Rs.210-280 by upgrading them to the skilled category of Rs.260-400 w.e.f. that date on the ratio of this Court's decision in Bhagawan Sahai vs. The union of india [Air 1980 SC 1215] vide aragraph 11 of the judgement. Theose who were not in position as on 16.10.81 in the semi-skilled grade of Rs.210-280 will be entitled to placement in the skilled category of Rs.260-400 if they satisfy the requirements of Clauses 'a','b' and 'c' of Clause [iv] in Chapter X of the Anomalies Committee's report to the extent of its acceptance, with or without modifications by the Govt. of India." (Emphasis supplied by us).

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44. The learned counsel for the respondents argued that the said order of the Hon'ble Apex Court qualifies Clause IV Chapter X, of the Anomalies Committee for its application. On a careful reading of it, it is to the extent of its acceptance with or without acceptance by the Govt. of India. As stated above, the President while issuing the Order No.17-5/89 D (Civ I) dated 19.3.1993 has not qualified for appointment or for promotion after 16.10.1981 to 15.10.1984 with the said condition of 2/3 years are to be observed for the trades which has been classified as Skilled Trades by Anomalies Committee. It only states 'fresh induction' which means after 15.10.84 and not earlier to it.

45. In OA.NO.115/96 all the applicants were appointed/promoted to 'C' grade equivalent to semi-skilled grade after 16.10.1981, given the semi-skilled grade of Rs.210-290 (Revised Rs.950-1200 w.e.f. 1.1.1986) and not been given the skilled scale of pay of Rs.260-400.

46. In OA.NO.18/2001 the grievance of the applicants is that the respondents are re-fixing the pay of the applicants, which was fixed in the year 1982-83 and want to recover the alleged excess payment for the period from 1982 to 2000. The applicants were appointed in semi-skilled grade of Rs.210-290 which was subsequently upgraded to Skilled-Grade, in the pay scale of Rs.260-400 by the Anomalies Committee. The applicants were therefore placed in the pay scale of Rs.260-400 with effect from their dates of appointments/promotions, i.e. from 1982-83. The

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respondents have now passed the impugned orders (i) Order No.5527/ECC/LB dated 30.11.2000 and (ii) Order No.2835 to 2860 TD dated 23.12.2000 stating that the placement of the applicants in the pay scale of Rs.260-400 from the date of their appointment/promotion was wrong and that the pay of the applicants will be re-fixed and recovery of excess payment made.

47. Applicants No.1,12,15,18,32,38,42,52,58,59 and 69 are promoted/appointed in the Trade of Fitter, Applicants No.2,7,11, 16,25,45,56,57,65 and 68 are promoted/appointed in the Trade of Machinist, Applicants No. 3 to 6, 8 to 10, 13,14,17, 19 to 22, 24,26,28,35,36,43,47,55,60,61 to 63,71 to 79 are appointed/promoted as Turner, Applicants No.23,37,40,41,48,51, 64,70,80 are appointed/promoted in the Trade of Examiner, Applicants No.27,31,33,44,46,49,50,53,54,66,67 are promoted/appointed in the Trade of Miller, Applicant No.34 is appointed in the Trade of Grinder after 16.10.1981 but before 15.10.1984.

48. OA.NO.239/98 : All the applicants were promoted in the Trade of Examiner as enumerated in para 4.1 which is extracted below :-

<u>Name</u>	<u>Date of Promotion</u>
1. B.K.Bansode	26.4.1982
2. Pradeep Mohile	15.7.1982
3. Govind Sonavane	26.4.1982
4. Chandrakant Gaikwad	18.6.1982

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49. OA.NO.752/97 : Applicants No.7,8,12,17 were appointed/ appointed/promoted in the Trade of Turner, Applicants No.9 to 11, 13 and 15 were appointed/promoted in the Trade of Fitter, Applicants No.1 to 6,16,18 to 20 were appointed/promoted to the Trade of Machinist after 16.10.1981 but before 15.10.1984.

50. The learned counsel for the respondents relied on an order passed by CAT, Calcutta Bench in case of Shiba Basu Roy & Ors. vs. Union of India & Ors. in OA.NO.1380/93 decided on 13.12.1993. On perusal of the said order, we are of the considered opinion, as mentioned in para 4 of the said order, that the applicants in the said OA. were promoted vide order dated 28.7.1989. We have to bear in mind that cases pertaining to appointment or promotion before 15.10.1984 are to be treated on different footing with cases for appointment or promotion thereafter in view of Circular dated 19.3.1993 No.17-5/89-D-Civ-i issued by the Ministry of Defence referred above. As such, the said order does not assist the respondents.

51. The learned counsel for the respondents further relied on an order passed in OA.No.735/99 along with other OAs. by this Bench on a reference on 20.6.2001 - Prakash Gundappa M. vs. Union of India & Ors. On a careful perusal of the said order, we find that the Tailors who were not recommended to be skilled grade even in view of Anomalies Committee were provided the benefit of the grade of Rs.260-400, while in the present case,

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the applicants' trade has been recommended as a skilled trade by the Anomalies Committee which has been accepted by the Government and order referred above No.17-5/89-D-Civ-i dated 19.3.1993 has been issued by the Ministry of Defence.

52. The applicants in OA.NO.115/96 have claimed the declaration that they are entitled for the benefit of upgradation of a scale of Rs.260-400 of skilled grade from the date they are holding the post of semi-skilled Tradesmen during the period from 16.10.1981 to 15.10.1984, entitled for the fitment of pay in the said scale with a direction to the respondents to place the applicants in the said scale of pay from the date they are holding the semi-skilled grade, to quash and set aside the Factory Order No.220/IE dated 27.7.1993 so far it concerns the applicants, with a direction to the respondents to pay the difference of arrears of pay and allowances on applicants being placed in the scale of Rs.260-400 and a further declaration that the conditions/stipulations contained in para 1 (i) (a) and (b) of letter dated 15.10.1984 and para 3 of letter dated 1.11.1993 are not applicable to the applicants along with consequential benefits.

53. In OA.No.752/97 the applicants have sought the declaration that the act of refitting applicants in the scale of Rs.260-400 by omitting period of 2 years from the date of initial appointment is illegal and arbitrary being inconsistent with conditions of appointment and Recruitment Rules, quash and set

aside the date (set by omitting period of 2 years) in the order dated 15.2.1984. direction to the respondents to carry out fitment of the applicants in the pay scale of Rs.260-400 from the date of their initial appointment with consequential benefits, i.e. arrears, seniority in the grade.

54. In OA.No.239/88 the applicants have claimed direction to the respondents to grant the benefit of pay scale of Rs.260-400 to the applicants from their respective dates of promotion as per order dated 19.3.1993 with a declaration that non-grant of benefit of upgradation to the applicants from the respective dates of promotion is illegal and void, to quash the same, further direction to pay all the arrears in terms of order dated 19.3.1993.

55. In OA.No.16/2001 the applicants have sought the relief to quash and set aside the impugned orders dated 30.11.2000, 23.12.2000, 21.5.2001 and 31.5.2001 with the declaration that the conditions stipulated in the order dated 15.10.1984 are illegal and void not applicable to the applicants, restrain the respondents from re-fixing the pay of the applicants and making any recoveries from their pay.

56. In the result, all the OAs. are allowed as below :-

The applicants in all the above referred OAs., i.e. OA.No.115/95, 152/97, 239/98 & 18/2001 are entitled for the benefit of upgradation of the scale of Rs.260-400 of skilled

aside the date (set by omitting period of 2 years) in the order dated 15.2.1984, direction to the respondents to carry out fitment of the applicants in the pay scale of Rs.260-400 from the date of their initial appointment with consequential benefits, i.e. arrears, seniority in the grade.

54. In OA.NO.239/98 the applicants have claimed direction to the respondents to grant the benefit of pay scale of Rs.260-400 to the applicants from their respective dates of promotion as per order dated 19.3.1993 with a declaration that non-grant of benefit of upgradation to the applicants from the respective dates of promotion is illegal and void, to quash the same, further direction to pay all the arrears in terms of order dated 19.3.1993.

55. In OA.NO.18/2001 the applicants have sought the relief to quash and set aside the impugned orders dated 30.11.2000, 23.12.2000, 21.5.2001 and 31.5.2001 with the declaration that the conditions stipulated in the order dated 15.10.1984 are illegal and void not applicable to the applicants, restrain the respondents from re-fixing the pay of the applicants and making any recoveries from their pay.

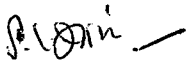
56. In the result, all the OAs. are allowed as below :-

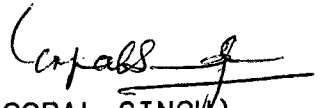
The applicants in all the above referred OAs., i.e. OA.No.115/96, 752/97, 239/98 & 18/2001 are entitled for the benefit of upgradation of the scale of Rs.260-400 of skilled

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grade from the date they are holding the post of semi-skilled tradesmen and the post is upgraded, they are promoted/appointed on the said post, entitled for the fitment in the said scale. Regarding the arrears, it is mentioned that the applicants are entitled to notional fixation of their pay with effect from the date of promotion/appointment and monetary benefits for the period prior to one year before filing of the OA. OA.NO.115/96, 752/97 and 239/98 i.e. 31.10.1996, 27.8.1997 and 5.3.1998 respectively are allowed. In respect of OA.No.18/2001 the order dated 30.11.2000, 23.12.2000, 21.5.2001 and 31.5.2001 are quashed and set aside. The applicants in the said OA.No. 18/2001 who have been granted the said scale of skilled grade shall continue to draw the said scale as per extant rules. The applicants in each OA. are entitled to cost amounting to Rs.1000/- which shall be paid by the respondents to Applicant No.1 for and on behalf of all the applicants within three months from the date of receipt of the copy of the order.


(S.L.JAIN)
MEMBER (J)


(GOPAL SINGH)
MEMBER (A)

mrj.