

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A Nos.858/93,1065/94,365/95,64/99 & 82/99
Original Application No.858/93

Dated this Thursday the 20th Day of July, 2000.

Coram : Hon'ble Shri A.V. Haridasan, Vice Chairman.
Hon'ble Shri Govindan S. Tampi, Member (A).

1. Shri Salim Ibrahim Sandilkar,
Mech (S.K.), MES No.602802
19, Latif Naik House,
313, Reay Road,
Bombay - 400 010.
2. Shri Umesh Shrikant Naik,
MES No.602641,
C/o.New Municipal Colony,
Shrikrishna Chowk,
New Mill Road,
Kurla (West),
Bombay - 400 070.
3. Shri Bimal Vishram Chauhan,
MES No.602644,
Vallabha Baug,
M.G. Road,
Ghatkopar (East),
Bombay - 400 077.
4. Shri Arif Ahmed Bakshi,
MES No.602640,
65, Akash Darshan Co.op.
Housing Society, Vakola
Village Road,
Santacruz (East),
Bombay - 400 055.

.. Applicants.

(By Advocate Shri S.P. Kulkarni).

Vs.

1. The Union of India,
through Engineer in Chief,
Army Head Quarters,
Ministry of Defence,
Government of India,
New Delhi.
2. The Commander of Works Engineer,
Ministry of Defence,
Dr.Homi Bhabha Road,
Navy Nagar, Colaba,
Bombay - 400 005.
3. The Commander of Works

Engineer (Subs), Powai,
P.O. Bhandup,
Bombay - 400 078.

4. The Garrison Engineer,
Karanja,
Post NAD Karanja,
Dist. Raigad, Pin-400704.
(By Advocate Shri Ravi Shetty for
Shri R.K. Shetty).

.. Respondents.

Original Application No.1065/94

1. Sudhir Govind Behere,
Refrigeration Mechanic,
Office of Garrison Engineer
(P) (I), R&D,
Pashan, Poona-411021.
2. Prashant Vasant Kavathekar,
Refrigeration Mechanic,
Office of Garrison Engineer
(P) (I) R&D,
Pashan, Poona-411021.
3. Rajendra V. Joshi,
Refrigeration Mechanic,
Office of Garrison Engineer
(P) (I) R&D,
Pashan, Poona-411021.

.. Applicants.

(By Advocate Shri S.P. Saxena)

Vs.

1. Union of India, through
the Secretary,
Ministry of Defence,
South Block DHQ,
Post Office, Rs
New Delhi - 110 011.
2. Chief Engineer,
Southern Command,
Pune-411001.
3. Garrison Engineer
(P) (I) R&D,
Pashan, Pune-411021.
4. Garrison Engineer(NW),
Karanja,
Dist. Raigad.

.. Respondents.

(By Advocate Shri Ravi Shetty, for
Shri R.K. Shetty).

Original Application No.365/95

1. Military Engineering Services,
Employees Union, Pune,
Through its President,
Shri D.K. Puranik,
having its office at
595, Narayanpeth,
Pune - 411030.
2. S.M. Yelwante
(MES No.159869),
Refrigeration Mechanic (Sk.),
A.G.E. (I) E/M,
Kirkee, Poona-411003.

.. Applicants.

(By Advocate Shri S.P. Saxena)

Vs.

1. Union of India,
through the Secretary,
Ministry of Defence,
DHE PO,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.
3. The Chief Engineer,
Southern Command,
Pune - 411 001.
4. Garrison Engineer,
C.M.E., Dapodi,
Pune - 411 031.
5. Garrison Engineer,
(South),
Pune - 411 001.
6. Garrison Engineer
(Central),
Kirkee,
Pune - 411 003.
7. Garrison Engineer,
Khadakwasla,
Pune - 411 023.

.. Respondents.

(By Advocate Shri Ravi Shetty for
Shri R.K. Shetty).

Original Application No.64/99

1. B.B. Sarode,
MES / 164356,
Refrigeration Mechanic,
Office of Garrison Engineer,
(South), Pune-411001.

.. Applicant.

(By Advocate Shri S.P. Saxena)

Vs.

1. The Union of India,
Through The Engineer-in-Chief,
Army Headquarters,
New Delhi - 110 011.
2. The Chief Engineer
Southern Command,
Pune - 411 001.
3. The Chief Engineer,
Pune Zone,
Pune - 411 001.
4. The Garrison Engineer
(South),
No.1, Gen.Bhagat Marg,
Pune - 411 001.

.. Respondents.

(By Advocate Shri Ravi Shetty for
Shri R.K. Shetty).

Original Application No.82/99

1. Raghavan Sugathan
Refrigeration Mechanic (Skilled),
Office of A.G.E., E/M II,
Naval Station, Karanja Post,
Uran, Raigad-400 704.

.. Applicant.

(By Advocate Shri S.P. Saxena)

Vs.

1. Union of India, through the
Secretary,
Ministry of Defence,
New Delhi-110 011.
2. The Chief Engineer,
HQ, Southern Command,
Poona - 411 001.
3. Garrison Engineer (NW),
Karanja,
Post:Naval Armament Depot,
Karanja,
Uran, Dist.Raigad-400 704.

.. Respondents.

(By Advocate Shri Ravi Shetty for
Shri R.K. Shetty).

ORDER (Oral)

[Per : Shri A.V. Haridasan, Vice Chairman]

The question of law involved in all these cases is identical and the facts are also similar in all these cases. Hence these cases are being heard and disposed of by this common order.

The facts of the individual cases are being stated shortly.

O.A.No.858/93

The applicants were after a process of selection for the post of Refrigeration Mechanic, Skilled in the scale of Rs.950-1500 were offered appointment to the posts in that grade by order dated 24.5.1988. They joined the post and ^{were}~~have~~ given increments annually. Their grievance is that by order dated 28.6.1993 (Annexure A-1) issued in respect of applicant No.1 and similar orders in respect of other applicants, their initial appointment have been down graded to the scale of Rs.800-1150 which is semi skilled without even giving them notice. The applicants, aggrieved by this impugned action have approached this Tribunal seeking to quash that order and for a direction to the respondents to continue them in the same pay scale mentioned in the offers of appointment and to restrain respondents from making any ~~recovery~~ from the pay and allowances of the applicants on the basis of impugned orders.

O.A.No.1065/94

The applicants No.1 to 3 in this case were appointed on the skilled post of Refrigeration Mechanic by order dated 3.10.1987 in the pay scale of Rs.950-1500. They were granted increments annually. The

present grievance of the applicants is that the Garrison Engineer (NW), Karanja on 19.6.1992 issued an order (Annexure A-4) amending the appointment orders of the applicants as Refrigeration Mechanics placing them lower scale of pay of Rs.800-1150 retrospectively from the dates of their appointments and stipulating that they would be placed in the scale of Rs.950-1500 after the period of probation without giving them any notice. Recovery had been made from the pay and allowances of the applicants on the basis of the impugned order. Alleging that this retrospective amendment of the appointment order to this detriment without giving them notice is unreasonable and uncalled for, ~~the~~ applicants have filed this application jointly for quashing the above orders and for a direction to the respondents to continue them in the ~~pay~~ scale of Rs.950-1500 and also not to make any recovery from their pay and allowances on the basis of the impugned orders. By an interim order of the Tribunal further recovery has been stayed.

O.A.No.365/95

The applicant No.1 is a Military Engineering Services Employees Union Pune represented by President Shri D.K. Puranik and the applicant No.2 Shri S.M. Yelwante, is a Refrigeration Mechanic (Skilled), A.G.E.(I) E/M, Kirkee, Pune. The grievance of the applicants is that the Members of the Union like second

applicnat who were recruited to the post of Refrigeration Mechanics in the skilled grade in the scale of Rs.950-1500 were granted the pay^{scale} only of Rs.800-1150 stating that they would be placed in scale of Rs.950-1500 only on completion of probation. They contended that the scale of the posts^{on which} the Members of the Union were appointed carried pay scale of Rs.950-1500 or the corresponding scales at the appropriate time, the action on the part of the respondents not to give them the scale of post to which they were recruited is highly unjustified. Though the union submitted a representation on 23.8.1994 as there was no response, the applicants have filed this application praying that it may be directed that the employees serving under the respondents as Tradesman (Skilled) in different trades are entitled for the scale of pay of Rs.950-1500 from the dates of their appointment as skilled tradesman and for a direction to the respondents to give them consequential benefits.

O.A.No.64/99

The applicant was appointed by an order dated 16.5.1985 (Annexure A-3) in the post of Refrigeration Mechanic in the pay scale of Rs.260-400. The scale has been revised to Rs.950-1500 on the implementation of the recommendations of the 4th Pay Commission, while the applicant was getting pay accordingly, on 16.12.1998, the impugned order (Annexure A-1) was

issued by the Garrison Engineer (S), purporting to amend ^{the applicant's} appointment order and providing that he would be in the semi skilled grade i.e. Rs.210-290 initially to be followed in the skilled grade pay scale i.e. Rs.260-400 only on completion of probation period of 2 years. Being aggrieved by this retrospective down grading of his appointment without any notice and apprehending that recovery would be made from his pay and allowances, the applicant has filed this application seeking that the impugned order be set aside.

O.A.No.82/99

The applicant was appointed by an order dated 12.4.1985 as Refrigeration Mechanic (Skilled) in the pay scale of Rs.260-400. The pay scale was then revised to Rs.950-1500 on the implementation of recommendations of 4th Pay Commission. He is aggrieved because without giving him any notice the impugned order dated 12.5.1998 (Annexure A-1) was passed by which an amendment is made to his appointment order providing that he would be in the semi skilled grade of Rs.210-290 for a period of 2 years and would be placed in the scale of Rs.260-400 only on the probation period of 2 years. The applicant has stated that amendment to his appointment order down-grading his post without notice and without justifiable cause is wholly unjustified. He has also stated that some recovery has

been effected on the basis of the impugned order. Hence the applicant has filed this application to set aside the impugned order, for a declaration that he is entitled to the pay scale of Rs.950-1500 and for a direction to the respondents to refund the amount already recovered on the basis of impugned order. After filing of the application the Tribunal issued an interim order of stay^{ing} further recovery from the pay and allowances of the applicant on the basis of the impugned order.

2. The respondents in all these cases have filed reply statements. They contended that the appointments of the applicants in all these cases in the skilled grade were the result of an inadvertant error^{on failure} to note the instructions contained in the Government of India, Ministry of Defence letter dated 15.10.1984 (Annexure R-1), 28.10.1985 (Annexure R-2), 11.1.1985 (Annexure R-3), 16.10.1981 (Annexure R-4) and letter dated 27.4.1983 (Annexure R-5. The corrigendum amending the appointments were made with a view to rectify this error on the basis of Army Headquarters letter dated 13.9.1988 (Exhibit R-7) in O.A.1065/94. The respondents contend that the applicants do not have any legitimate grievance calling for redressal.

3. The short question that arises for

consideration in all these cases is that whether a tradesman appointed to a post in the skilled grade carrying the pay scale of Rs.260-400 in terms of statutory recruitment rules can be placed initially in a lower grade applicable to semi skilled grade during the period of probation without making the necessary amendment to the Recruitment Rules.

4. It is an undisputed fact that ^{as per} the Recruitment Rules till it was amended in the year 1991 there was nothing in the rules which provided that those appointed to the skilled grade would be initially put in the semi skilled scales during the period of probation and would be placed in the skilled grade only after completion of the probation. It is also beyond dispute that the applicants in all these cases were offered appointments to the post of Refrigeration Mechanic which was a skilled grade with the pay scale of Rs.260-400 on the corresponding scale. The justification for placing them in the semi-^{skilled} scale grade and for making amendment to the orders of their appointments already made is sought ^{for} on the basis of a letter dated 13.9.1988 issued by the Army Headquarters which reads as follows:-

"Whilst implementing recommendations of the anomalies committee and upgrading certain Semi-Skilled categories to the Skilled grades, directions were issued by the Govt. to fill up the skilled posts by candidates possessing ITI/NCTVT/ExTrade apprentices etc. The new recruitment rules under finalisation also cater for a direct recruit to be appointed in Semi-Skilled grade during probation. The requirement contained

in Ministry's letter that initial appointment may be made in the semi-skilled grade is extendable to the category of the applicant. No discrimination has been perpetrated on the applicant, as the same procedure has been followed in carrying out appointments in similar skilled trades with identical qualifications".

It is seen from this letter that amendment to the recruitment rules to the effect ^{that} while making recruitment to the skilled grade it should be provided that those recruited would be put

in the semi skilled grade during the probation period was yet to be made. The amendment was made only in 1991. Further the letter dated 15.10.1984 seems to have been wrongly interpreted because there is no indication in that letter, that those recruited to the post in the skilled grade should be ^{initially} ~~wrongly~~ placed in semi skilled grade. That letter speaks of upgradation of semi skilled grade into skilled grade. Since the applicants in all these cases were appointed in the skilled grade, the impugned action of placing them in the semi skilled grade for two years and amending the appointment order retrospectively to the detriment is arbitrary, illegal and uncalled for. The identical issue was considered by a Division Bench of the Central Administrative Tribunal, Jabalpur Bench in M.E.S. Employees Union Jabalpur and others vs. Union of India in O.A.166/91. The Tribunal vide judgment dated

21.5.1999 to which one of us (Shri A.V. Haridasan, Vice Chairman) was a Member, after going through the entire facts and circumstances held that not giving the incumbants recruited to the post in skilled grade the scale attached to the post was illegal and unsustainable. The Tribunal directed the administration to place the applicants in the scale of Rs.950-1500 with effect from the dates of their initial appointment. We are in complete agreement with the view taken on that case. Learned Counsel of the respondents invited our attention to the decision of the Hon'ble Supreme Court in S.L.P.(Civil) Nos.17021-17022 of 1995 arising from the judgment of Bangalore Bench of the Central Administrative in O.A.No.50/92. In the case under citation the Division Bench of the Tribunal following the decision of the Full Bench of the Tribunal in G.Narayana and others vs. The Secretary, Ministry of Defence and others in O.A.111/91, granted the benefit of the pay scale to all the applicants in almost similar circumstances like in this case. The Apex Court observing that the Courts or the Tribunals normally should not try to fix the pay scales of different categories of employees only on principle of equal pay for equal work allowed the appeal and quashed the order of Tribunal directing the appellants to examine the grievances of the respondents in the light of the decision of the Supreme Court in the case of

State of Madhya Pradesh & Ors. vs. Pramod Bhartiya & Ors. reported in 1993(1) SCC 539. The Learned Counsel argued that the facts of the case before the Bangalore Bench were identical to the facts of the recent case and as the Apex Court has reversed the decision of the Tribunal granting them the relief basing on the Full Bench, ruling in S.Narayana's case, ^{The matter} having been settled, this Tribunal should follow the decision. We are unable to accept the arguments of the Learned Counsel. The Hon'ble Supreme Court in the case under citation has not held that it is permissible to place a person selected and appointed to a post in the skilled grade, in a pay scale applicable to the semi skilled grade even if there is no provision in the rules permitting such a placement. The Apex Court *only* held that the Court of Tribunal should not fix a pay scale on the principle of equal pay for equal work ^{alone} and it is for the competent authority to take a decision. In these cases we are not called upon to decide whether the applicants are entitled to a particular pay scale or not. What arises for consideration in these cases is whether an employee specifically selected and appointed to a post of skilled grade with a pay scale attached to his grade can be validly placed in a lower pay scale attached to the semi skilled grade without a provision in that regard in the Recruitment Rules. Therefore the decision relied on by the Learned Counsel of the

respondents does not apply to this case at all. It is pertinent to mention here that Shri Ravi Shetty, Learned Counsel of the respondents stated that the SLP filed against the judgment of the Full Bench of the Tribunal in Narayana's case was dismissed and that the directions in the judgment have been complied with.

5. In the conspectus of facts and circumstances, we find that the action of the respondents in placing the applicants who were specifically selected and appointed on skilled posts carrying the scale of Rs.950-1500 or its equivalent ^{in the pay} scale of Rs.800-1150 or its equivalent applicable to the semi skilled grade and / or amending their appointment order after a long lapse of time after their appointment down-grading them to the semi skilled grade of Rs.800-1150 or corresponding scale during the period of probation and placing them in the scale of Rs.950-1500 or its equivalent only ~~on~~ the expiry of the period of two years is arbitrary, irrational, unsupported by law or binding instructions and they are unsustainable. We also find that principles of natural justice have been violated by amending the appointment order to the detriment of the applicants after a lapse of time without notice. We therefore allow all these applications and direct 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 dates of their initial appointment itself. We set aside the orders by which the appointment orders of the relevant applicants were amended by the impugned orders stipulating that they would be in the semi-skilled during the period of probation and would be paid in skilled grade only on completion of probation. If any recovery has been made on the basis of impugned order, the amount should be refunded to the respective applicants. The directions shall be complied with within four months. No order as to costs.

 (GOVINDAN S. TAMPI)
MEMBER (A)

(A.V. HARIDASAN)
VICE CHAIRMAN

H.