

O.A. NO. 740 of 1999.

1. Hendre Chandrakant Namdeo.
2. Mashale Shankar Daulat.
3. Tamhane Bharat Kashinath.
4. Obbna Hanumatta.
5. Hole Raju Ramachandra.
6. Sadare Kishor Anantrao.
7. Errna Ramappa Bhandari.
8. Shelar Surykant Krishanaj.
9. Masadge Vasant Narayan.
10. Salunke Gokul Ram.
- 10.A. Mulavi Bashir Gulamali.
11. Vanarse Haridas Dnyashwar.
12. Lokhandi Premdas Tulshiram.
13. Tahamane Gangaram Sopanrao.
14. Khopkar Vilas Shankar.
15. Phand Rohidas Shakaram.
16. Sawant Suresh Sawalaram.
17. Hendre Vinyak Muralidhar.
18. Alhat Bhagwan Shrirang.
19. Dawakhar Sopan Sakharam.
20. Smt. Shaikh Meera Mustak.
21. Smt. Jagadambha Devi.
22. Abdul Rehman Shaikh.

- 22.A. Vikram Vetal Bansode.
23. Falle Raghunath Balbhim.
24. Adsul Arun Ganpat.
25. Gaikwad Raju B.

... Applicants.

All the applicants are working as Tailors in the Ordnance Depot, Talegaon, Dabhade, Pune.

(By Advocate Shri K. R. Yelwe)

VERSUS

1. Union of India through the Secretary to the Govt. Of India, Ministry of Defence, Ordinance Branch, New Delhi.
2. The Director General of Ordnance (Service OS-BC) Master General of Ordnance Branch, Army Headquarters, New Delhi.
3. Major General A.O.C. South Command, Pune - 411 001.
4. The Commandant, Ordnance Depot, Talegaon, Dabhad - 410 506.
5. C.D.A. Southern Command, Pune - 411 001.

... Respondents.

(By Advocate Shri R. K. Shetty)

O.A. NO. 891 of 1999.

1. S. R. Bansode.
2. S. K. Pawar.
3. Manoharlal Vishal Singh.

4. Syed Akbar Mahmood Miyan.
5. Gyaneshwar More.
6. T. M. Solay.
7. L.S. Gahile.
8. Ramdas.

... Applicants.

All the applicants are presently working as Tailor at Armoured Corps Centre & School, Ahmednagar - 414 002.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. The Commandant,
Armoured Corps Centre & School,
Ahmednagar - 411 402.
3. Controller of Defence Account
(Pay/2/1 Sec.),
Southern Command,
Pune - 411 001.

... Respondents.

(By Advocate Shri R. K. Shetty).

O.A. NO. 971 of 1999.

1. Mohd. Minhajuddin.
Armoured Tailor Corps Centre
& School, Ahmednagar 414 002.
2. N. K. Kutty.
Tailor, Artillary Centre,
Nasik Road Camp, Nasik.

... Applicants.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
D.H.Q. P.O.,
New Delhi.
2. The Commandant,
Armoured Corps Centre & School,
Ahmednagar.
3. The Commandent,
Artillary Centre,
Nasik Road Camp, Nasik. ... Respondents.

(By Advocate Shri R. K. Shetty).

O.A. NO. 122 of 2000.

1. Rajendra H. Lakhwan.
2. Mohammad T. Shaikh.
3. Krishnan Kutty.
4. Appa M. Jagtap.
5. Murlidhar B. Modhave.
6. Ramesh M. Shitre.
7. Deelip C. Nagpure.
8. Atmaram V. Khandve. ... Applicants.

All the applicants are presently
working as Tailors at Bit Battalion,
M.I.R.C. at Ahmednagar.

(By Advocate Shri S.P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
D.H.Q. P.O.,
New Delhi - 110 011.

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2. The Director General of Mech.
Forces (Pers.),
General Staff Branch,
Army H.Q., DHQ P.O.,
New Delhi - 110 011.

3. The Officer-In-Charge,
Pay/II Section,
C.D.A. Southern Command,
Pune - 411 001.

4. The Commandant,
M.I.R.C., Ahmednagar 414 110.

... Respondents.

(By Advocate Shri R. K. Shetty)

O.A. NO. 252 of 2000

1. R. Vasudev.
2. Atmaram K. Kamble.
3. Rajendra S. Bagade.
4. Gulab K. Kodre.
5. S. D. Bahule.
6. Fakir M. Shaikh.
7. Parmeshwar R. Kamble.

... Applicants.

All Applicants are working as Tailor
at Bombay Engineer Group & Centre,
Kirkee, Pune - 411 003.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
DHQ, P.O., New Delhi 110 001.
2. The Commandant,
HQs Bombay Engineer Group
& Centre, Kirkee,
Pune 411 003.

... Respondents.

(By Advocate Shri R. K. Shetty)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

We are considering, together, a batch of six O.As. (as indicated above) since the issues involved in them are similar and are disposing of the O.As. through this common order. For the sake of convenience, we are taking up the facts in O.A. 735/99 i.e. the application of Shri P.B. Mogli. The Applicant comes up to the Tribunal seeking the relief, in substance, that it be held and declared that the Applicant is correctly placed in the scale of Rs. 3050-4590/- and that the impugned orders dated 18.12.1998 and 23.04.1999 (Annexure A-1 and A-11) are illegal and should be quashed.

2. The case made out by the Applicant is that he is a skilled, non-industrial worker, working as Tailor, with Respondents' organisation, in Pune. He had been placed in the grade of Rs. 210-290/- on his appointment in 1983. This pay scale was upgraded, as per Government orders dated 27.01.1996. with effect from 15.10.1984 and the scale provided after such upgradation was Rs. 260-400/-. (It must straightaway be mentioned, for better appreciation, that the equivalence of the scales after 3rd and 4th Central Pay Commission is as follows :
Rs. 210-290/- was converted to Rs. 800-1100/- and later to Rs. 2650-4000/-.

Similarly, the pay scale of Rs. 260-400 was converted to Rs. 950-1500 and thereafter to Rs. 3050-4590/-.

Arrears were also paid to the Applicant on this basis.

3. The grievance of the Applicant comes with the Respondents making the impugned order dated 18.12.1998 stating that Tailors should not have been fixed in the upgraded (higher) scale, and should be fixed in the lower scale, again. This has entailed ordering of recovery of amounts paid also.

4. The Respondents have filed a Written Statement, where it is explained that the Applicant's pay scale had been erroneously upgraded with effect from 01.01.1986, on account of wrong interpretation of the O.M. of Ministry of Defence dated 15.10.1984, and that the Applicant was wrongly placed in the higher scale and that too, retrospectively. The Respondents aver that they later came to realize that the post of Tailor, under the Adjutant General's Branch, had never been upgraded, and hence the upgradation provided to the Applicant, and similar persons, was a mistake, and the same mistake has now sought to be undone through the impugned order/s.

5. The Respondents give details in regard to the case in the further part of the long Written Statement filed, explaining

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their stand, and the reactions to the grounds taken by the Applicants. Respondents state that as per C.P.R.O. 81/93, the Tailor category had been categorised as semi-skilled, and it is the deliberate decision of the Government that these workers will carry industrial pay scales, as well as benefit of non-industrial service. The Ministry of Defence vide their letter dated 15.10.1984 has sanctioned upgradation from the semi-skilled grade (from Rs. 210-290/-) to the skilled grade (Rs. 260 - 400/-) only in respect of four categories viz. (a) Boot Maker, (b) Carpenter, (c) Painter/Painter-III and (d) Painter (I.R.C.). The Respondents contend that due to some wrong clarifications issued in the middle, as discussed in para 2 of the written statement, the wrong fixations were granted.

6. We have seen the papers in the case and have heard the Learned Counsel on both sides and have also carefully seen the case law cited. The Learned Counsel for the Applicant, Shri D.V. Gangal, took us through the facts of the case, in detail, and strenuously made the point that the higher pay scale/s were consciously given in terms of the orders which are appended in the O.A. He made the point that the controversy, in fact, hinges round the issue whether the Applicant^s was skilled workers or semi-skilled workers^s. The clarification made in the letter at Annexure A-3 dated 27.01.1996 at para 4 (b) was sufficient to help the cause of the Applicants. He also referred to the

communication sent from the Bangalore office to Southern Command, Pune (P.R.O. Unit) on 28.06.1996 (Annexure A-4) to contend that the pay scale of this Tailor category had been revised from the grade of Rs. 210-290/- to the higher grade of Rs. 260-400/-. Similarly, support was drawn from the communication of Army Headquarters dated 31.08.1992 (Annexure A-8) where the position was confirmed to the Ahmednagar Regimental Centre. In fact, it was contended that, whereas the persons posted in Ahmednagar were still on the higher grade, those in Pune, are now sought to be downgraded.

7. Shri S. P. Saxena argued the case for the Applicants in O.A. 122/2000, and in O.As. bearing No. 252/2000, O.A. No. 891/99 and 970/99. Shri Saxena, apart from adopting the arguments already made, drew our attention to some of the case law which he has cited in his behalf, copies of which are available at pages 14 onwards in the case of Shri Mohd. Minhajuddin and Another (O.A. 971/99) and in other Paper Books. The judgements of the Guwahati High Court and Chandigarh High Court were also cited by the Learned Counsel. Shri Saxena concluded his arguments by stating that the cases of the Applicants are clearly covered by the various judgements of the different Benches cited. Learned Counsel also made the point

that S.L.P./s are filed in respect of these judgements and also upheld the judgements, which worked in favour of the Applicants in these O.As. He also raised the point of discrimination, having been made. Shri K.R. Yelwe, Learned Counsel for Applicant in O.A. No. 740/99 adopted the arguments of the two other Counsel.

8. Arguing the case on behalf of the Respondents, the Learned Counsel, Shri Shetty, drew the attention of the Tribunal to the circular of 15.10.1984 filed by them as Annexure R-2 in the O.A. 735/99. It was his contention that, in the upgradation order made in respect of four jobs from semi-skilled grade to skilled grade, there was no sanction for upgradation of the post of Tailor. A confusion has arisen only because of the letter dated 27.01.1996 (Annexure A-3) where the category of Tailor also got added. This continued through subsequent communications annexed at A-4, A-5, etc. by the Applicant. It was the contention of Shri Shetty that the circular at Annexure A-3 cannot supercede the circular of 15.10.1984 (Exhibit R-2). Shri Shetty further continued his argument to make the point that the Anomalies Committee had not agreed to what is now being claimed by the Applicants. He drew attention to page 72 of the Paper Book in O.A. No. 891, which is a copy of a note in Respondents'

file which contains internal noting to the effect that the judgement of the Hyderabad Bench needed to be examined by Government.

9. Shri Shetty then referred to the various judgements of the different Benches cited in the O.As. to make the point that all Tailors were not alike. Even in different Regiments, different qualifications may be prescribed, and duties may be different. He referred to certain observations in these judgements to stress this point. For example, in the Guwahati Bench judgement, he stated, it had been observed that the Written Statement was weak. Shri Shetty ended his argument with a plea that the matter may be referred to a Larger Bench of the Tribunal.

10. We have carefully considered the various orders that have been issued in this case, as filed on behalf of either side, and also the judgements of different Benches of this Tribunal which are indeed in favour of similarly placed Applicants. We have carefully considered the arguments made by different Learned Counsel on both sides.

11. The first point that strikes us is that the basic communication, which is clearly important, is the one at Annexure R-2, dated 15.10.1984, addressed to the Chief of Army Staff by

the Government of India (the Ministry of Defence). This announces the decision of the Government statedly based on the Anomalies Committee's Report to upgrade four categories of job, as mentioned earlier. It is clear that the Tailor's category is not included in this decision. The Bangalore office of the core of Military Police Record, however, issues a communication with reference to Army Headquarters letter dated 18.09.1986. This talks of revision of pay scales of Tailor and then states how certain clarifications had been sought from the Ministry of Defence. Para 4 and 5 of this communication are reproduced :

"4. From the correspondence received from various units it was observed that some of the employees were still carrying the old scales. Ministry of Defence was therefore requested to clarify the following points :-

- (a) Whether employees carrying old scale of Rs. 210-250, Rs. 196-232 and Rs. 210-270 can be authorised the revised scale of Rs. 210-290 under the provisions of CPRO, 81/83.
- (b) Employees carrying the pay scale of Rs. 210-290 have been sanctioned the revised scale of Rs. 260-400 vide Ministry of Defence letter dated 15 Oct. '84, mentioned in para 3 above, confirm that the revised pay scale of Rs. 260-400 can be further given to employees referred to in para 4 (a) above w.e.f. 15 Oct. '84.
- (c) Confirm that the employees who were carrying the old pay scale of Rs. 225-300 can be authorised the pay scale of Rs. 260-400 under the provisions of Ministry of Defence letter dated 15 Oct. '84 *ibid.*

5. Ministry of Defence have now clarified the points mentioned in para 4(a) to (c) above as indicated below :

- (a) Yes.
- (b) Yes wef 15 Oct. 84.
- (c) Yes wef 15 Oct. 84 even if they had opted for old scales."

Various letters annexed at A-4, etc. which formed the basis of the arguments of different applicants, then continue to place the Tailor category also in the higher grade of pay. The subsequent actions in upgrading pay, making payment of arrears, etc. then follows, as has been already recorded.

12. The point that appeals to us, as taken on behalf of the Respondents, is that the basic decision made vide communication dated 15.10.1984 clearly does not include the category of Tailor for upgradation. Now whether this was wrong or right, is not a matter that we would like to judicially determine. Being a policy decision, taken by competent authority, i.e. Government of India - and that too after considering expert advise of the Anomalies Committee. It is in this context that the argument of the Respondents that the entire thing was a mistake holds some strength in our view, and mistakes can be corrected, as per settled law. Will it be fair to authorise continuance of a benefit granted by mistake. Not recovering amounts paid to applicants could of course be justifiable, again, as per settled law.

13. On the other hand, we have clear decisions made by different Benches of this Tribunal and indeed, this have been the mainstay of the case of the Applicant as argued before us. These judgements have been filed in different copies of the O.As. before us and have been mentioned above. The judgements of the Hyderabad Bench in two different O.As. (161/95 and 56/95) have been seen. Similarly, the judgement of the Bangalore Bench dated 31.01.1997 in a batch of O.As. has also held that non-grant of the higher pay scale to the Applicants in those O.A. was discriminatory.

14. For the reasons discussed earlier in this order, we are not persuaded to follow the judgements made by some of the other Benches of the Tribunal in the cases referred to. Apart from the reasons discussed in brief by us, we also entertain a doubt as to whether the Tribunal can undertake the function of going into a policy decision made by the Government and judicially determining that the application of the higher scale was discriminatory in nature. We are, therefore, of the view that the case deserves to be referred to a Larger Bench so that the issue can be considered in totality and a decision reached. We are, advisedly, not going into the matter in further detail, since this could be done by the Larger Bench.

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15. In view of the above discussions, we hereby refer this matter to the Chairman of the Tribunal with a request to constitute a Larger Bench, as deemed fit, to decide the issue/s in all the six O.As. The terms of reference of the Larger Bench shall be as below :

Whether the impugned order merely corrects a mistake made and is, therefore, valid or whether a decision on the lines taken by different Benches of this Tribunal in the above mentioned O.As. would be justified.

Also, what should be the exact relief made available.

16. As already ordered, the interim relief shall continue to operate till these O.As. are finally disposed of.

(B. N. BAHADUR)
MEMBER (A).

(ASHOK C. AGARWAL)
CHAIRMAN.

OS*

df 19/12/2001
order/Judgment despatched
to Applicant/Respondent (s)
on 16/12/2001
Ocin OA 735/99

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