

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

DA.Nos. 797/91 & 771/91

Primered this the 15th day of September 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Bawaja, Member (A)

DA.NO.771/91

1) Shri P. B. Dhavalikar  
Age 28 yrs, Occ. Service  
R/o. M-23/1870 M.H. Board,  
Yeravada, Pune - 6.

2) Shri S. M. Kumbhar  
Age 26 yrs, Occ. Service  
R/o. At & Post Uralikanchan  
Pune.

3) Shri S. B. Shevate,  
Age 26 yrs, Occ. Service,  
R/o. R.No.16/3 Yamunanagar,  
Widgi, Pune.

4) Shri R.V. Belvalkar  
Age 26 yrs, Occ. Service  
R/o. 956 Gokhale nagar,  
Pune - 16.

5) Shri G. B. Sarde,  
Age 49 yrs, Occ. Service,  
R/o. At & Post Varude  
Tal. Khed, Dist. Pune.

6) Shri J. S. Kamble  
Age 47 yrs, Occ. Service,  
R/o. At & Post Umraj,  
Tal. Karad, Dist. Satara

7) Shri P. P. Mate  
Age 28 yrs, Occ. Service,  
R/o. 77/B, Shewale Chawal,  
Hadapsar, Pune-28.

APPLICANTS

8) Shri A. B. Pillay  
Age 27 yrs, Occ. Service,  
B/o. Mendre Bldg.,  
Bangarwadi, Lonavala.

9) Shri A. A. Surve  
Age 27 yrs, Occ. Service,  
B/o. 540 Shitolenagar,  
Sangvi, Pune-27.

10) Shri S. D. Whole  
Age 26 yrs, Occ. Service,  
B/o. Gurav Pimple,  
Sangvi, Pune-27

11) Shri S. C. Kafande  
Age 26 yrs, Occ. Service,  
B/o - At & Post Dehugaon,  
Tal. Haveli, Dist. Pune.

12) Shri S. T. Bhujbal  
Age 26 yrs, Occ. Service,  
538 Shitolengar,  
Sangvi, Pune-27.

13) Shri P. S. Shingate  
Age 25 yrs, Occ. Service,  
B/o. 540 Shitolenagar,  
Sangvi, Pune - 27

14) Shri P. R. Nayal,  
Age 27 yrs, Occ. Service,  
B/o. 453, Kavadenagar,  
Sangvi, Pune - 27

APPLICANTS

22) Shri P.V. Solanki  
Age 27 yrs, Occ. Service,  
R/o. Dhoranagar,  
Sangvi, Pune 27.

23) Shri R.R. Thakure  
Age 25 yrs, Occ. Service,  
R/o. Samarth Nagar,  
Sangvi, Pune 27.

24) Shri H.S. Chavane,  
Age 22 yrs, Occ. Service,  
R/o. Pawar Chawal,  
Old Sangvi, Pune-27.

25) Shri D.P. Charthad  
Age 25 yrs, Occ. Service,  
R/o. 113, Anandnagar,  
Sangvi, Pune-27.

26) Shri R.J. Thorat,  
Age 24 yrs, Occ. Service,  
R/o. Vadgaon Naval,  
Dist. Pune.

27) Shri D.K. Thorat  
Age 25 yrs, Occ. Service,  
902, Kasba Peth,  
Kagdipura, Pune.

28) Shri S.C. Dhumal  
Age 31 yrs, Occ. Service,  
R/o. S.No.41, Nadgaonsheri,  
Pune - 411 014.

APPLICANTS

VERSUS

1) Union of India  
Represented by :-  
The Directorate Gen. of EME,  
EME, CIV-L,  
Master General of ORD. BR.  
Army Head Quarters, DHQ, PO  
NEW DELHI - 110 011

RESPONDENTS

2) The Commandant  
312, Army Base Workshop,  
Kirkee, Pune-411003

25) Shri C. P. Kadari  
Age 26 yrs, Occ. Service,  
R/o. Sangotri Area,  
Theragon, Pune.

16) Shri D. G. Shete,  
Age 25 yrs, Occ. Service,  
R/o. Govind Chawal,  
At & Post Pimpri,  
Pune - 27.

17) Shri B. N. Jagdale  
Age 26 yrs, Occ. Service,  
R/o. At & Post Daund,  
Dist. Pune.

18) Shri N. N. Mohal  
Age 26 yrs, Occ. Service,  
R/o. 120 P.No. 7,  
Jai-Bhavani Nagar,  
Pune - 29.

APPLICANTS

19) Shri R. T. Ubale  
Age 25 yrs, Occ. Service,  
R/o. Rahatani, P.O.  
P.O. Kalewadi,  
Pune 411 033.

20) Shri A. B. Koli  
Age 24 yrs, Occ. Service  
R/o. 4/7 Dolasmath Colony,  
Talegaon Dabhade,

21) Shri S. N. Bobade  
Age 30 yrs, Occ. Service,  
R/o. Shiteolenagar,  
Sangvi, Pune - 27.

DA.NO.797/91

- 1) Shri Rajkumar Babulal Kagale  
Age 27 yrs, Occ. Service,  
R/o. Samual Kunj, Chaitanya,  
Society, Pimprigaon, Pune-17.
- 2) Shri Mahadeo Ganpat Yadav  
Age 26 yrs, Occ. Service,  
R/o. Golande Chawal,  
Chinchwadgaon, Pune-33
- 3) Shri Satish Jagannath Ranjane  
Age 27 yrs, Occ. Service,  
R/o. Jorte Chawal, Room No. 72,  
Akurdi, Pune-35.
- 4) Shri Ashok Balkrishna Chaskar  
Age 27 yrs, Occ. Service,  
R/o. Kavadenagar, Sangvi,  
Pune-27.
- 5) Shri Sunil Chagan Salunkhe  
Age 27 yrs, Occ. Service,  
R/o. Hindmata Chowk, Hona Peth,  
Pune.
- 6) Shri Balu Bapu Pawar  
Age 28 yrs, Occ. Service,  
R/o. At & Post Wagholi,  
Tal. Haveli, Dist. Pune.
- 7) Shri Johnson Peter Francis  
Age 28 yrs, Occ. Service,  
R/o. Behind Kayani Bakeri,  
Sarbatwalla Chowk, Camp,  
Pune-1.

APPLICANTS

8) Shri Yeshwant Shirirang Chavhan  
Age 28 yrs, Occ. Service,  
R/o. 610/3, Sarvatra Nagar,  
Dahuroad, Pune.

9) Shri Dattatraya Bhikoba Tilekar,  
Age 26 yrs, Occ. Service,  
R/o. Hariprasad Hsg. Society,  
Vishrantwadi, Pune-15.

10) Shri Krishna Sambhaji Ovhal  
Age 27 yrs, Occ. Service,  
R/o. Tapkir Chawal,  
Bhosari, Pune-39.

11) Shri P.A. Samuel,  
Age 45 yrs, Occ. Service,  
R/o. B.No. 55/4, Bhairevnagar,  
Pune-15.

By Advocate Shri H.Y. Deo

- V/S -

1) Union of India

Represented by :-

The Directorate Gen. of EME,  
EME CIV - L,  
Master General of ORD.BR.,  
Army Head Quarters, DHQ PO  
NEW DELHI - 110 011

RESPONDENTS

2) The Commandant  
S12, Army Base Workshop  
Kirkee, Pune-411003

By Advocate Shri R.K. Shetty

ORDER

(Per: Shri D.S. Bawaja, Member (A))

These two OAs, have been heard together and are being disposed of by a common order as facts involved in these two OAs, are similar and same question of law is involved.

2. OA.NO.797/91 :- This OA, has been filed by 11 applicants who are working as Precision Grinders in the scale of pay of Rs.950-1500 under Commandant, 512, Army Base Workshop, Kirkee, Pune (Respondent No.2). The applicants states that they were registered with the Employment Exchange and received a call letter for the post of Precision Grinders with a basic pay of Rs.1200/-. All the applicants were subjected to interview and Trade Test in November, 1987 by the Respondents No. 2 and they were selected. They were appointed as Precision Grinders as per order dated 16.3.1988. The main case of the applicants is that though they received call letters for the post of Precision Grinder with the basic pay of Rs.1200/-, but the respondents have given them the appointment in the scale of Rs.950-1500. The applicants have further stated that except Applicant No. 2 & 3, others were also paid the basic pay of Rs.1200/- for the first month after appointment but the same was withdrawn subsequently. The applicants represented through their Union as per letter dated 28.9.1989 for non-grant of scale with basic pay of Rs.1200/-. This was subsequently followed by a reminder dated 5.4.1990. The Respondent No. 2 by letter dated 12.4.1990 advised to the Union that the recruitment of all the applicants had been

done as per the Recruitment Rules, 1988 and there is no need to refer the matter to higher authorities. Subsequently, on a further representation as per order dated 12.4.1990, it was again reiterated by the respondents that the applicants had been recruited in the lower grade in view of the Recruitment Rules, 1988. Being aggrieved by these orders, the present application has been filed on 13.11.1991 seeking the following reliefs :-

(a) to declare that the applicants are entitled to "Equal Pay for Equal Work" and therefore entitled for the pay at the rate of Rs.1200/- as basic instead of Rs.950/-, (b) respondents be directed to pay to the applicants the difference between the two pay scales from the respective dates of appointment with interest at the rate of 18% p.a.

3. The applicants have challenged the denial of the pay scale with basic pay of Rs.1200/- on the following grounds :- (a) The Notification of the applicants for appointment had been issued before the Recruitment Rules, 1988 came into force against the vacancies existing before December, 1987 and therefore their recruitment is to be governed by old Recruitment Rules of 1982. The applicants claim that as per the 1982 Recruitment Rules, their required recruitment was <sup>also</sup> ~~to be~~ <sup>done</sup> in the scale of Rs.1200-1800. The applicants are entitled for the scale of Rs.1200-1800 on the principle of "Equal Pay for Equal Work" as they are performing the same duties of Precision Grinder as that of Precision Grinder Grade-II who have been recruited prior to January, 1988. The applicants therefore have been subjected to hostile discrimination.

4. OA.NO.771/91 :- This application has been filed by 28 applicants who are working as Electricians (Motor Vehicle) under Respondent No.2. In this case, the applicants state that they were called for test and interview for the post of Electrician (Power) in the scale of pay with basic pay of Rs.1320/- . However, subsequently they were given the appointment of Electrician (Motor Vehicle) (Skilled) in the scale of pay of Rs.950-1500. Here also the case of the applicants is that they should have been recruited in the grade of Rs.1200-1800. Similar representations with regard to their pay scale had been made and reply had been given to them reasons as in indicating the same/ reply given in OA.NO.797/91. The grounds raised in support of their reliefs are also the same as in OA.NO.797/91.

5. The respondents have filed written statement strongly opposing both the OAs. The averments made in both the written replies are identical. The respondents have submitted that as per the recommendations of the Third Pay Commission, an Expert Classification Committee/ Implementation Committee was set up for fixing the all pay scales of the industrial employees. After careful consideration, the Committee gave its recommendations after job evaluation in the 9 pay scales depending upon the points scored by them and it was decided to compress the 9 pay scales into 5 pay scales. The instructions were issued for implementation of the recommendations of this Committee as per order dated 11.5.1983. However, on account of compression of 9 pay scales into 5 pay scales, certain anomalies arose, whereby in certain trades one

or two of the 5 pay scales became non-operative and the staff with the pay scale of Rs.210-290 were getting directly promoted to the scale of Rs.330-480 and therefore jumping the pay scale of Rs.260-400. In order to examine these anomalies, Anomalies Committee was set up by the Ministry of Defence which had been represented by the staff side also. Based on the recommendations of the Anomalies Committee, orders were issued as per letter dated 15.10.1984.

As per this letter, the total skilled staff is divided into 3 grades, <sup>i.e. skilled,</sup> ~~highly skilled~~ Grade II and Highly Skilled Grade I with percentages fixed for each category. As per these orders, both the Electrician Motor Vehicle as well as Precision Grinder belong to the common trade and therefore recruitment is to be <sup>done</sup> in the initial grade of Rs.260-400 (Rs.950-1500). In view of this, the respondents submit that the recruitment of the applicants in both the OAs. had been correctly done in the grade of Rs.950-1500. The respondents admit that recruitment from January, 1985 to 31.12.1987 in the trade of Precision Grinder, Electrician Motor Vehicle <sup>some other trades</sup> ~~and~~ were done in the grade of Rs.1200-1800 before the new recruitment rules of 1988 were put into force. However, the Audit authorities took objection for the recruitment in the scale of pay Rs.1200-1800 and directed to refix the pay of the staff recruited in the grade of Rs.1200-1800 in the scale of pay of Rs.950-1500 and recover the excess payment. However, the applicants had been recruited after January, 1988 as per the Recruitment Rules, 1988 and therefore are not entitled for the scale of pay of Rs.1200-1800.

The respondents also deny that any discrimination has been caused in the case of the applicants and the case of the applicants for "Equal Pay for Equal Work" on the plea that they are performing the same duty as that of Grade II is also not sustainable. The respondents, therefore, plead that both the applications have no merits and the same deserve to be dismissed.

6. The applicants have not filed rejoinder reply in both the OAs. However, Misc. Applications & OA.771/91 respectively No. 255/97 and 256/97 in OA.NO. 797/91 were filed ~~only~~ by the applicants seeking the details of the vacancies as existing before December, 1987 as well as making the prayer that respondents may be directed to furnish the details of the agreement arrived at with the applicants in OA.NO.432/91 ~~which was withdrawn~~ by the applicants stating that respondents have allowed the benefit of scale of pay of Rs.1200-1800. The applicants plea is that they are similarly placed to the applicants in OA.NO.432/91. The respondents have filed reply to these Misc. Applications in both the OAs. furnishing the details of the vacancies and bringing on record the recruitment rules and the action taken in respect of applicants in OA.NO.432/91.

7. We have heard Shri H.Y.Deo, learned counsel for the applicants in both the OAs, and Shri R.K.Shetty, learned counsel for the respondents. The material brought on record has also been carefully gone into.

8. The learned counsel for the applicants has cited the following judgements in support of their claim :- (a) Y.V.Rangaiah & Ors., Appellants J.Sreenivasa Rao & Ors. Respondents and State of Andhra Pradesh and Anr. Appellants v. J.Sreenivasa Rao & Ors. Respondents, 1983 LAB.I.C. 1240, (b) P. Mahendran & Ors. vs. The State of Karnataka & Ors. 1990(1) SLJ 48, (c) C.Malarkodi vs. Union of India & Ors., 1996(1) ATJ 440, (d) The Vice Chancellor, University of Allahabad & Ors. vs. Dr.Anand Prakash Mishra & Ors., 1997(2) SLJ 97.

9. From the averments by the either side, the short controversy which needs to be resolved is whether the applicants in both the OAs. are entitled for the grade of Rs.1200-1800 from the date of recruitment. The applicants have based their claim on two grounds which have been earlier detailed. The first ground is that the recruitment process in respect of applicants had started before the notification of Recruitment Rules, 1988 in January, <sup>existing December</sup> 1988 against the vacancies prior to 1987 and therefore they are to be governed by the rules existing prior to January, 1988. It is the contention of the applicants that as per the earlier Recruitment Rules, the recruitment for the post of Precision Grinder and Electrician Motor Vehicle was to be done in the grade of Rs.1200-1800 and therefore the applicants in both the OAs. are entitled to be appointed in this grade. The respondents, on the other hand, have contested this stating that applicants had been appointed after January, 1988 and therefore they will be governed by the Recruitment Rules, 1988.

10. Either party has not brought on record as to when the Notification was issued calling for the names from the Employment Exchange for recruitment. However, from the details furnished, it is noted that in respect of the applicants in OA.NO.797/91, as per Exhibit-'B', the Employment Exchange had sent call letters to the applicants in October, 1987 and thereafter, as per letter dated 2.11.1987, the applicants were called for interview and the trade test. In respect of OA.NO.771/91, it is noted that the applicants were called for trade test and interview during August, 1987. From these facts, it could be inferred that recruitment process had started much earlier than the Notification of Recruitment Rules in January, 1988. The contention of the applicants in both the OAs. that their recruitment had been done for the vacancies existing before December, 1987 is, therefore, tenable. With this position, the question that needs to be answered is whether the recruitment of the applicants is to be governed by the earlier recruitment rules. The applicants have cited several judgements in support of their contention that the recruitment rules cannot be adopted retrospectively. We have carefully gone through these judgements and noted the law laid down by the Hon'ble Supreme Court. Keeping in view what is held in these judgements, we are inclined to conclude that the recruitment of the applicants in both the OAs. was to be governed by the old rules and not by the rules which were notified in January, 1988. Keeping in view these findings, we will now find out that whether the claim for scale of Rs.1200-1800 is sustainable in terms of 1982 recruitment rules. The respondents have brought on record the recruitment rules dated 7.1.1988 as per SRO which were existing till the issue of the revised

recruitment rules in 1988. On going through these rules, we find that the recruitment for the post of Precision Grinder is indicated in the grade of Rs.260-400 which is equivalent to Rs.950-1500 as per the Fourth Pay Commission. <sup>and</sup> Similarly, for the post of Electrician Motor Vehicle, the recruitment is in the same grade Rs.260-400. When the counsel for the applicants was confronted with these provisions in 1982 rules, the learned counsel for the applicant explained that the grades of Precision Grinder as well as Electrician Motor Vehicle had been fitted as Rs.330-480 as per the order dated 11.5.1983 issued by the Ministry of Defence and brought on record by the respondents with the written statement at Exhibit-'R-1'. This explanation of the applicants does not hold good in view of the clarification furnished by the respondents in the written statement. As already brought out earlier, an Expert Classification Committee was appointed to go into the fitment of the pay scales of the Industrial employees after job evaluation. This committee recommended compression of 9 pay scales into 5 pay scales. This resulted into a number of anomalies. Some of the pay scales became non-operative for some categories which included the categories of the applicants under reference. This also resulted the promotion for some categories from the scale of Rs.210-290 directly to the scale of pay of Rs.330-480. Keeping these anomalies in view, an Anomalies Committee was set up. The recommendations of the Anomalies Committee have been notified for implementation as per order dated 15.10.1984

brought on record by the respondents at Annexure 'R-3'. On going through this letter, it is noted that in respect of the skilled grade in the common categories, the minimum grade is Rs.260-400 and the higher grades have been provided as highly skilled Grade II and Grade I on percentage basis. As per this, the recruitment is required to be made in the scale of Rs.260-400, i.e. Rs.950-1500. With the implementation of these recommendations, the grade of the Precision Grinder as well as the Electrician Motor Vehicle for recruitment purpose is the initial grade of Rs.260-400, i.e. Rs.950-1500. Therefore, as per the Recruitment Rules of 1982, the recruitment for the category of Precision Grinder and Electrician Motor Vehicle was required to be done in the grade of Rs.950-1500. Although, the respondents have taken a plea that the recruitment of the applicants in both the OAs. will be governed by the Recruitment Rules of 1988, but on examination of the issue with reference to the 1982 rules, which we have already held would be applicable to the case of the applicants, the recruitment of the applicants in the grade of Rs.950-1500 is in order. In view of this, the claim made by the applicants in both the OAs. is not sustainable.

1' The applicants have also advanced the ground that they are entitled for the scale of Rs.1200-1800 on the principle of "Equal Pay for Equal Work" as those recruited before January, 1988 in the categories under reference have been allowed the scale of Rs.1200-1800. The applicants have also brought on record the comparative duty list indicating that the work performed by them is the same as that performed by the staff of the same

categories in the scale of Rs.1200-1800. The respondents have explained and also admitted as stated earlier that the recruitment in these categories and other categories had been done in the scale of Rs.1200-1800 wrongly and the matter had been taken up by the Audit authorities who have directed to recover the excess payment from the staff concerned. Even if it is admitted that the recruitment had been done in the scale of Rs.1200-1800 in the categories under reference in isolation of the recruitment rules, it does not give a right to the applicants to claim that the same mistake be made in their case also on the plea of discrimination. The doctrine of discrimination is founded upon the existence of the enforceable right. A wrong decision by the Government does not give right to enforce the wrong action and claim parity or equality. In the present case, as brought out earlier, the recruitment of the applicants in both the OAs. in the grade of Rs.950-1500 is as per the recruitment rules prevailing at the time of recruitment. Therefore, the plea of the applicants that they are entitled for the scale of Rs.1200-1800 on the ground of "Equal Pay for Equal Work" does not hold good. The applicants have also made a statement that they are not claiming the status of Grade II but are claiming the scale of Rs.1200-1800 which has been granted to the persons working in Grade II posts. This statement of the applicants does not stand to any reason. The Grade II and Grade I scales have been provided within the cadre of skilled category of staff with a view to give promotional prospects and these grades are to be allowed on promotion based on

the seniority. Therefore, the applicants recruited in the skilled grade cannot claim the higher scale without undergoing the process of selection for promotion. In view of these observations, this ground of the applicants is not tenable.

12. In the light of the above deliberations, we are unable to find any merit in both the OAs, and the same are accordingly dismissed. No orders as to costs.

(D.S.BAWEJA)  
MEMBER (A)

(R.G.VAIDYANATHA)  
VICE CHAIRMAN

mrj.

(254)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

Review Petition No. 59/98 and 60/98 in  
Original Application No. 797/91 and 771/91

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.  
Hon'ble Shri D.S. Baweja, Member (A)

R.B. Kagale and others ... Applicants in  
OA 797/91  
RP 59/98

P.B.Dhavalikar and others. ... Applicants in  
OA 771/91  
RP 60/98

V/s.

Union of India through  
The Directorate General  
of EME  
EME CIV-L and Ors.

The Commandant  
512 Army Base Workshop  
Kirkee, Pune. ... Respondents

Tribunal's order on Review Petition by Circulation.

{ Per Shri D.S. Baweja, Member (A) }

Dated: 4/12/98

O.A. 771/91 and 797/91 were decided by a common order dated 15.9.1998. Review Petition 59/98 in O.A. 797/91 and Review Petition 60/98 in O.A. 771/91 have been filed by the applicants seeking review of the order dated 15.9.1998.

2. As held by Hon'ble Supreme Court in catena of judgements, the power of review may be exercised on the discovery of the new and important matter or evidence which after exercise of the due diligence was not within the knowledge of the persons seeking a review or could not be produced by him at the time when the order was made; it may be exercised when some mistake or error apparent on the fact of the record is found; it may also be exercised on any analogous grounds. However the power of review could not be exercised on the plea that the decision was erroneous

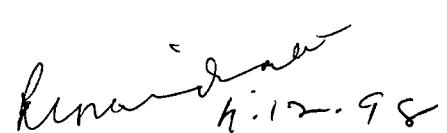


on merits.

3. Keeping in view of the above parameters, the two Review Petitions which are identical have been considered. On going through the grounds taken in the Review Petitions, it is noted that no new facts have been brought on the record and no errors apparent on the record have been pointed out. In fact the grounds advanced for seeking the review of the order are the same as advanced in the O.As. The applicants have again reiterated that their recruitment was governed by SRO 233/88 and therefore they are entitled for the scale of Rs. 1200, 1800. This aspect has already been examined in the O.As. and in fact the findings have been recorded that the case of the applicants is to be governed by SRO 233/82 and not by the subsequent modified recruitment Rule as per SRO 1/88. Only after recording these findings, the case of the applicants has been examined as to whether they were entitled for the scale of Rs. 1200,- 1800 as per SRO 233/82. But no merit was found in the claim of the applicants. Keeping this in focus, we are of the view that none of the parameters laid down for exercise of the power of review are emerging from the Review Petitions and therefore there is no merit in the Review Petitions.

4. In the result of the above, both the Review Petitions are dismissed.

  
(D.S. Bawej)  
Member (A)

  
R.G. Vaidyanatha  
Vice Chairman

NS

~~order/Judgement despatched  
to Appellant/Respondent(s)  
on 17/12/98~~

~~14/12/98~~