

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1264/93

Date of Decision:

8/6/99

Ordnance Factory Kamgar Union & Ors.
Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(D.S.BAWEJA)

MEMBER (A)

(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.1264/93

Tuesday

Dated this the 8th day of June, 1999

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

1. Ordnance Factory Kamgar Union
through Shri Sapadu Narayan Sonovane
Joint Secretary, Varangaon Estate,
Varangaon.
2. Vikas Sitaram Dandekar,
2544/ME, Ordnance Factory,
Varangaon.
3. Padmakar Narayan Phalke,
5557/TR, Ordnance Factory,
Varangaon.
4. Pradip Pandit Kolhe,
5579/TR, Ordnance Factory,
Varangaon.
5. Subhash Motiram Patil,
5545/TR, Ordnance Factory,
Varangaon.

By Advocate Shri D.V.Gangal

... Applicants

V/S.

1. Union of India
through Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Chairman,
Ordnance Factory Board,
10A, Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory,
Varangaon.

By Advocate Shri R.K.Shetty

... Respondents



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O R D E R

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

This application has been filed jointly by Ordnance Factory Kamgar Union, Varangaon along with four other applicants who are members of the Union.

2. The Union represents the case of 35 employees of Ordnance Factory, Varangaon as per details furnished at Annexure.'A-9' of the OA, which includes the four applicants who have joined along with the Ordnance Factory Kamgar Union. The applicants were working in Semi-Skilled trade in the grade of Rs.210-290 during the period from 16.10.1981 to 15.10.1984. The semi-skilled grade posts were upgraded to skilled grade posts of Rs.260-400 effective from 16.10.1981 as per order dated 19.3.1993 issued by the Ministry of Defence, Government of India. The applicants along with other employees were allowed the grade of Rs.260-400 and fixation of pay accordingly as per order dated 30.8.1993. However, subsequently as per letter dated 8.11.1993 a show cause notice was issued to the applicants indicating that the benefit of upgradation to skilled grade ^{as} ~~allowed~~ is proposed to be withdrawn in view of the letter dated 23.9.1993 of Ordnance Factory Board. The applicants replied to the show cause notice as per letter dated 22.11.1993. As per order dated 2.12.1993, the benefit allowed to the applicants of higher scale has been withdrawn. Feeling aggrieved by the same, the present OA. has been filed on 8.12.1993 seeking the relief of

quashing the order dated 2.12.1993, show cause notice dated 8.11.1993 and order dated 23.9.1993 with a prayer that the applicants are entitled for the benefits of the skilled grade in terms of the order dated 19.3.1993.

3. The main contention of the applicants is that they have been discriminated stating that similarly situated semi-skilled ~~in~~ other trades like Mill Write, Grinders, etc. have been granted the benefit of upgradation though they were appointed and promoted between 16.10.1981 to 15.10.1984. The applicants also plead that they are similarly situated as ^{the} petitioners in the case of Shri Bhagawan Sahai & Ors. vs. Union of India & Anr., 1989(2) SLJ 100.

4. The respondents have opposed the application through the written statement. The respondents submit that based on the recommendations of the 3rd Pay Commission, an Expert Classification Committee was appointed in 1974 to look into the matter regarding fitment of Industrial workers in the pay scales after applying the technique of job evaluation. This Committee recommended five pay scales for the industrial workers based on the point rating scores. The recommendations were accepted by the Government of India and implemented w.e.f. 16.10.1981. However, certain anomalies in assignment of pay scales were brought to the notice of the Government. The Government of India appointed Anomalies Committee to look into this issue. The Anomalies Committee recommended upgradation of pay scales of 23 semi-skilled grades to skilled grades. These recommendations were



accepted by the Government of India and order to this effect was issued as per letter dated 15.10.1984 and the recommendations were made effective from the date of issue of the letter, i.e. 15.10.1984. The date of implementation of the recommendations was, however, challenged in the Writ Petition No. 12259-66 of 1984, Shri Bhagawan Sahai & Ors. vs. Union of India. The Hon'ble Supreme Court held that implementation of the upgradation ~~for~~ ^{when} some of the categories from 15.10.1984 is discriminatory ~~for~~ ^{when} for similar other categories, the implementation has been done from 16.10.1981. The Hon'ble Supreme Court directed that categories covered by the order dated 15.10.1984 are entitled for the skilled grade from 16.10.1981. In pursuance of the judgement of the Hon'ble Supreme Court, the Ministry of Defence as per order dated 19.3.1993 decided that all the trades which have been granted skilled grade w.e.f. 15.10.1984 will be given the benefit of pay scale from 16.10.1981. The respondents have further submitted that as per the recommendations of the Anomalies Committee, the fresh induction to the trades which have been ~~upgraded~~ ^{grade} to skilled ~~grade~~ ^{is} is to be done from semi-skilled categories promoted from unskilled grade or by induction from the market. In respect of semi-skilled categories, ~~it is laid down that they~~ ^{that they} have to have a minimum 3 years of service in the semi-skilled grade before being eligible for grant of skilled grade. The respondents contend that all the applicants have been appointed in semi-skilled grade after 16.10.1981 and therefore they can be considered for grant of skilled grade only after completion of minimum service of 3 years as laid down as per the recruitment rules. The respondents based on these submissions plead that the applicants are

not entitled for the grant of skilled grade from 16.10.1981 as claimed and no discrimination has been caused to them since they are not entitled for the benefit as per the extant rules. The applicants were allowed the benefit of skilled grade from 16.10.1981 inadvertently and the same has been withdrawn subsequently after giving show cause notice to the applicants and considering the **representation** made by them for the show cause notice.

5. The applicants have not filed any rejoinder reply to the written statement.

6. Heard the arguments of Shri D.V.Gangal, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents.

7. From the averments made by the either side, it is admitted fact that the applicants were granted the benefit of skilled grade from 16.10.1981 as per order dated 30.8.1993. However, this benefit was subsequently withdrawn as per order dated 2.12.1993 after giving show cause notice in view of the order dated 23.9.1993 of Ministry of Defence, Govt. of India. From the details of the employees **furnished** by the Union at Annexure.'A-9' which includes the 4 applicants in the present OA., it is noted that all the 36 employees had been promoted or appointed to the ^{semi-}skilled grade after 16.10.1981 but before 15.10.1984. The applicants claim is that they are entitled for the benefit of grant of skilled grade from 16.10.1981 while the respondents have contested the same stating that they are not entitled for the same and the benefit was initially given to them inadvertently. Keeping the


rival contentions in focus, the short question which requires to be answered is whether in terms of various orders of the Government of India, Ministry of Defence the applicants are entitled for the benefit of ^{grant of} skilled grade from 16.10.1981.

8. As indicated above, the applicants had been given the benefit of upgradation to skilled grade from 16.10.1981 in terms of the provisions in order dated 19.3.1993 (A-2). On going through this letter, it is noted that the date of implementation of upgradation of 23 semi-skilled trades into skilled trades earlier made effective from 15.10.1984 as per letter dated 15.10.1984 is to be given effect from 16.10.1981 keeping in view what is held by the Hon'ble Supreme Court in the judgement of Shri Bhagawan Sahai & Ors. ^{also} vs. Union of India (supra). It is provided in this letter in Para 3 that all the conditions mentioned in the order dated 15.10.1984 remain unchanged. On perusal of the order dated 15.10.1984, it is noted that the fresh induction to the upgraded trades after the cut-off date of 15.10.1984 is to be done as per the conditions laid down in (a) and (b) of Para (1). Condition (a) applies to the case of the applicants and as per this, the semi-skilled categories are entitled to be promoted to the skilled grade only after rendering a minimum of 3 years of service and after passing the prescribed trade test. In view of this, the provisions in the order dated 19.3.1993 are to be read along with the stipulations made in the order dated 15.10.1984. The applicants were allowed the benefit of upgradation of skilled grade initially by the respondents

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but the same has been withdrawn subsequently after issue of show cause notice. The respondents have contended that the benefit was allowed inadvertently and as per the various orders issued by the Ministry of Defence the applicants are not entitled to upgradation to skilled grade from 16.10.1981. The respondents have referred to the order dated 23.9.1993 which has been issued as a clarification to the earlier orders dated 19.3.1993 and 15.10.1984. On perusal of this order, it is noted that the upgradation to skilled grade is ^{only} ^{holding} to be allowed ~~to~~ those who were ~~were~~ ^{holding} semi-skilled grade in respect of 23 trades as on 16.10.1981. Keeping in view the contents of the Government orders relied upon by the respondents, we find that withdrawal of the benefit which was allowed to the applicants initially is justified as the applicants are not entitled as per these orders. The applicants, however, have pleaded that they have been discriminated as in respect of some other categories where the benefits of upgradation was allowed from 16.10.1981, no stipulation was laid down for minimum years of service for upgradation. The ^{has} learned counsel for the applicants ^{has} placed strong reliance on the judgement of the Hon'ble Supreme Court in the case of Shri Bhagawan Sahai and others submitting that the applicants are similarly situated and therefore entitled for the same benefit. We have carefully gone through the judgement of the Hon'ble Supreme Court in the case of Shri Bhagawan Sahai & Ors. and find that what is held in this judgement does not support the case of the applicants. In this judgement,

the issue raised by the petitioners was with regard to discrimination as some categories had been allowed the benefit from 16.10.1981 while the categories covered as per the order dated 15.10.1984 had been allowed the same benefit from a later date. After considering the facts and circumstances of the case, the Hon'ble Supreme Court has held that the action of the Government in allowing later date for entitlement of skilled grade in respect of some categories as per order dated 15.10.1984 is discriminatory and therefore violative of Articles 14 and 16 of the Constitution of India as well as Fundamental Rights of "Equal Pay for Equal Work". The Hon'ble Supreme Court has given a direction that the petitioners who were covered by the order dated 15.10.1984 are entitled for the skilled grade from 16.10.1981. In this judgement, therefore while considering the provisions of the order dated 15.10.1984, the Hon'ble Supreme Court has not gone into the issue concerning the conditions laid down for ^{grant of} skilled grade in respect of those employees who come to the semi-skilled grade after the cut-off date of 15.10.1981. Therefore the contention of the applicants that they are similarly situated as the petitioners in Bhagawan Sahai's case is not tenable as indicated earlier, none of the applicants and other employees to whom the Union represents as per the details at Annexure, 'A-9' had been in semi-skilled grade the on/crucial date of 16.10.1981. The conditions laid down in the order dated 15.10.1984 ^{thus} stand even after the order has been struck down by the Hon'ble Supreme



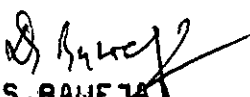
Court in the case of Shri Bhagawan Sahai with regard to the date of its effect. The case of the applicants is therefore to be governed by the various Government orders issued and referred to earlier with regard to upgradation of the semi-skilled trades to skilled grade.


9. The respondents have also cited the judgement dated 31.7.1991 of the Hon'ble Supreme Court in the Writ Petition No. 40 of 1991 in the case of Association of Examiners, Ahmednagar Ordnance Factory vs. Union of India & Ors. in support of their contention that the applicants are entitled for skilled grade only after they meet with the conditions laid down in the order dated 15.10.1984. On going through this judgement, we note that the issue raised in the present OA, has already been gone into by the Hon'ble Supreme Court in this judgement and has come to the conclusion. The Hon'ble Supreme Court has held in this judgement that the benefit of upgradation of semi-skilled to skilled grade is applicable to those of the employees who were in position on 16.10.1981 keeping in view the ratio of decision in Bhagawan Sahai's case. Such of the employees who were not in position on 16.10.1981 in the semi-skilled grades are entitled for upgradation to the skilled grade if they satisfy the requirements of clauses (a), (b), (c) in Class-IV in Chapter X of Anomalies Committee's Report. The case of the applicants is squarely similar to the case of the petitioners in this judgement as discussed earlier above because all the applicants in the OA, and the others included in

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A-9 were not in position on 16.10.1981. Therefore they are not entitled for the benefit of upgradation from 16.10.1981 since the entitlement to skilled grade is subject to the conditions laid down in the order dated 15.10.1984. On going through the extracts from the Expert Anomalies Committee Report, it is noted that the conditions laid down in order dated 15.10.1984 are the same as quoted by the Hon'ble Supreme Court from Chapter X of the Anomalies Committee's Report. Thus, keeping in view the contents of the various orders issued by the Government of India, Ministry of Defence and what is held by the Hon'ble Supreme Court in the case of Association of Examiners vs. Union of India, the claim of the applicants for grant of skilled grade from 16.10.1981 does not sustain.

10. In the light of the above deliberations, we hold that the OA. is devoid of merit and the same is dismissed accordingly. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA) 8.6.99
VICE CHAIRMAN

mrj.