

Ans

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 549/93, 525/94 & 854/94.

Dated this Monday the 27th day of March, 2000.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A)

O. A. NO.: 549/93.

1. S. P. Dubal.
2. M. M. Gokule.
3. C. D. Chandhere.
4. D. S. Bakare.
5. R. K. George.
6. D. B. Nighojkar.
7. D. H. Thorawade.
8. B. K. Naidu.
9. G. B. Asservadan.
10. R. S. Sopal.
11. S. N. Nikam.
12. P. K. Namdas.
13. S. R. Choudhary.
14. P. M. Jayakumar.
15. L. R. Nazare.
16. N. P. Waghmare.
17. A. N. Harihar.
18. K. B. Rakshe.
19. C. S. Ghawate.
20. V. S. Kolhatkar.
21. A. L. Jadhav.
22. P. G. Joshi.
23. P. S. Nampurkar.
24. A. I. Shaikh.
25. S. S. Wagh.
26. S. S. Kedari.
27. Sandeep Gosh.
28. K. D. Naraunekar.
29. C. G. Nilange.
30. S. S. Nikalge.
31. R. R. Dhati.
32. H. A. Rajathnam.
33. Philip Mathew.
34. V. Raut.
35. A. D. Marne.
36. R. M. Gujar.
37. P. P. Boharapi.
38. V. G. Pawar.
39. J. J. Divekar.
40. Y. H. Maniyar.
41. S. N. Ghawate.
42. S. V. Shettiwar.
43. P. S. Gaikwad.
44. R. S. Jana.
45. K. P. Zatke.
46. D. B. Deshmukh.
47. V. D. Dharmadhikari.

48. R. K. Khan.
49. G. P. Sharma.
50. P. D. Naik.
51. D. B. Kshirasagar.
52. V. N. Sasane.
53. S. A. Medhekar.
54. Y. Y. Gaikwad.
55. P. D. Bhoir.
56. K. R. Padale.
57. D.A.H. Khan.
58. P. R. Kamble.
59. George Varghese.
60. Pangarkar
61. Uplap K. V.
62. Paralikar S. C.
63. S. K. Joseph.
64. W. S. Bhalerao.
65. V. G. Potdar.
66. V. B. Bagal.
67. S. J. Gagrai.

... Applicants

All the applicants are working as Supervisor (Tech.) in the Ammunition Factory, Kirkee, Pune - 3.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Department of Defence Production,
Ministry of Defence, D.H.Q., P.O.,
New Delhi - 110 001.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Ammunition Factory,
Kirkee, Poona - 411 003.

... Respondents.

(By Advocate Shri R. K. Shetty
alongwith Shri R. R. Shetty).

O.A. NO.: 525/94.

1. J. V. Chaudahari.
2. S. C. Baviskar.
3. S. M. Sonavane.
4. V. N. Sharma.
5. V. R. Deshmukh.
6. R. S. Dhake.
7. S. S. Patil.
8. S. G. Thorat.

...3

9. M. K. Chopade.
10. S. D. Khachne.
11. V. K. Kapse.
12. A. R. Washikar.
14. M. R. Patil.
15. Shaikh Kutubuddin.
16. S. B. Chauhan.
17. S. D. Kudle.
18. S. B. Gadekar.
19. P. P. Hirve.
20. L. B. Sarulkar.
21. J. S. Chaudhari.
22. N. R. Pujari.
23. B. V. Dange.
24. J. S. Kosekar.
25. P. S. Ahuja.
26. Keshv Mistry.
27. T. N. Virappa.
28. S. J. Surwade.
29. Y. P. Otari.
30. D. K. Mhaske.
31. K. V. Thomas.
32. A. L. Patil.
33. M. D. Shinde.
34. T. P. Zope.
35. L. B. Gurav.
36. K. T. Oommen.
37. K. M. Patil.
38. B. R. Sapkal.
39. M. B. Bhangale.
40. P. L. Narkhede.
41. S. S. Mhaskar.
42. V. K. Thakur.
43. Valson K.
44. V. R. Vhole.
45. N. T. Kulkarni.
46. S. D. Chaudhari.
47. M. D. Patil.
48. R. W. Mahajan.
49. M. G. Chaudhari.
50. M. L. Bhole.
51. P. S. Chaudhari.
52. D. F. Mistry.
53. N. G. Chaudhari.
54. B. D. Patil.
55. S. T. Patil.
56. G. Z. Zope.
57. V. P. Kapur.
58. S. C. Garhwal.
59. M. D. Sonar.
60. R. D. Potdar.
61. V. K. Bhatia.
62. Vaijnath.
63. S. B. Chopde.
64. B. K. Dutta.
65. C. V. Mahajan.
66. V. P. Pardeshi.
67. A. S. Zope.
68. B. R. Chaudhari.
69. T. P. Kirange.
70. P. L. Patil.
71. K. V. Mahajan.

72. T. J. Mali.
73. P. C. Chaudhari.
74. R. N. Dhere.
75. J. L. Yadav.
76. R. E. Patil.
77. S. V. Bhandari.
78. Y. B. Mate.
79. D. C. Bhangale.
80. R. N. Patil.
81. S. V. Hartalkar.
82. R. K. Mishra.
83. M. D. Patil.
84. Tulsidas Dutta.
85. A. K. Acharya.
86. S. K. Das.
87. D. G. Uke.
88. B. L. Shrivastava.
89. R. P. Narkhede.
90. A. B. Rudre.
91. D. T. Chirmade.
92. A. D. Patil.
93. M. S. Tavade.
94. P. V. Patil.
95. R. A. Sonawane.
96. N. B. Niley.

... Applicants.

Note : Applicants from Sl. No. 1 to 83
are working as Chargeman Grade-II (Tech.)
at Ordnance Factory, Varangaon,
Dist. Jalgaon.

Applicants from Sl. No. 84 to 96 are
working as Chargeman Grade-II (Tech.) at
Ordnance Factory, Bhusawal, Dist. Jalgaon.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Deptt. of Defence Production,
Ministry of Defence, DHQ P.O.,
New Delhi - 110 011.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Ordnance Factory,
Varangaon, Dist. Jalgaon,
Pin - 425 303.
4. The General Manager,
Ordnance Factory,
Bhusawal, Dist. Jalgaon.

... Respondents.

(By Advocate Shri R. K. Shetty
alongwith Shri R. R. Shetty).

O.A. NO. 854 of 1994.

1. Manohar Sugnomal Lilaramani.
2. Suresh R. Bhangale.
3. Manohar V. Petkar.
4. Somnath R. Bhamre.
5. Ashok R. Gawade.
6. Vasantray L. Kathwadia.
7. Anil Sadashiv Gawade.
8. D. Hundrajmal Harisinghani.
9. Parekkat Venugopalan.
10. Surendra B. Kulkarni.
11. Prafulla Prabhakar Shastri.
12. Peringhat Jayachandran.
13. Rajsekhar Gandage.
14. Anand Ramachandra Raichur.
15. Hiren Roy.
16. Mohammad Salim Qureshi.
17. Kodavalath Unnikrishnan.
18. V. P. Unnikrishnan.
19. Anil Vasant Deshpande.
20. Arun Shantaram Tamhane.
21. Rampath Kashinath Yadav.
22. P. I. Abraham.
23. Gopinath P. K.
24. Nathu Ramu Patil.
25. Laxman Sitaram Patil.
26. K.V. Varghese.
27. Sudhir Anant Deshpande.
28. Charudatta G. Mhapankar.
29. Anwar Ali S. K.
30. K. E. Joseph.
31. Narendra Vishram Patil.
32. R. R. Menon.
33. Dilip P. Choudhary.
34. Raghavan Unnikrishnan.
35. Purakkavil Haridasan.
36. Jayaprakash Choudhary.
37. Namdeo D. Patil.
38. Sukhen Kumar Roy.

... Applicants.

Note : All applicants are working as
Chargeman Grade-II in the O/o. the
General Manager, Ordnance Factory,
Ambernath.

(By Advocate Shri S. S. Karkera)

VERSUS

1. Union of India through
the Secretary,
Ministry of Defence,
New Delhi.
2. The Secretary,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory,
Ambernath - 421 502..
4. Shri M. R. Nair.
5. S. S. Shukla,
6. Haridas Malakar.
7. D. K. Das.
8. S. V. Sharma.
9. S. M. Dutta.
10. S. K. Bose.
11. B. Dasgupta.
12. Chandrakan Panchal.
13. K. G. Hariharan.
14. Rohidas B. Kharat.
15. D. Y. Raghavelu.
16. V. P. Pushpagandhan.
17. G. Ramdular.
18. B. V. More.
19. Ashok D. Jadhav.
20. U. N. Thakur.
21. Late Nakalayya Ramayya.
Ex-Chargeman Gr.II (Metallurgy).
22. Madhukar Pardhe.
C.M. Grade-II(Metallurgy).
23. S. D. Pandit,-
Chargeman Gr.II (Metallurgy) ... Respondents.

Note : Private Respondent Nos. 4 to 6 are working as Chargeman Grade-II (Elect.)

Private Respondent Nos. 7 to 20 are working as Chargeman Gr.II (Mech.)

(By Advocate Shri P. M. Pradhan for official respondent nos. 1 to 3).

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

These are three applications filed by the various applicants claiming certain reliefs. Respondents have filed reply opposing all the three applications. Since the points involved are identical in all these three cases, we are disposing of these O.As. by a common order. We have heard Mr. S.P. Saxena

on behalf of applicants in the first two cases and Mr. S.S. Karkera on behalf of the applicants in the third case. Mr. R. K. Shetty and Mr. R. R. Shetty addressed arguments on behalf of respondents.

2. O.A. No. 549/93 is filed by 67 applicants who were Chargeman Grade-II (for short referred to as C.M. Grade-II in the judgement) in the Ammunition Factory at Kirkee, Pune. Their case in brief is that all of them were working as Supervisor (Technical) and now appointed or promoted as Chargeman Grade-II. The applicants were initially appointed as Supervisor - 'B' Grade (Technical). As per the 1956 Rules, Supervisor 'B' could be promoted as Supervisor 'A' and then as C.M. Grade-II and then C.M. Grade-I, etc. It appears, in 1980 the post of Supervisor Grade 'A' was merged with C.M. Grade-II. Therefore, after 1990 there was only one class of Supervisors, namely - Supervisor 'B', which came to be known as Supervisor (Technical). It is also stated that after the acceptance of the Fourth Pay Commission Report w.e.f. 01.0.1986, the pay scales of the applicants who were formerly known as Supervisor 'B' and later known as Supervisor (T) was revised to Rs. 1400-2300 and the pay scale of the promotional post of Chargeman Grade-II (T) was also revised to the same pay scale of Rs. 1400-2300. In view of this identity of pay scale, the Ministry of Defence redesignated the existing Supervisor (T) as Chargeman Grade-II (T) w.e.f. 01.01.1986. This decision of the Ministry of Defence has been applied in the Organisation under the Ministry of Defence known as Directorate General of Quality Assurance (D.G.Q.A.). Necessary notification has been issued by the D.G.Q.A.

redesignating all Supervisors as Chargeman Grade-II w.e.f. 01.01.1986. But the Ordnance Factory Board has not implemented that decision in respect of all Ordnance Factories inspite of representations by many of the officials.

Then it is pleaded that in 1989 new statutory rules were issued under Article 309 of the Constitution by superseding the earlier rule of 1956 S.R.O. 13-A dated 04.05.1989 has superseded the earlier S.R.O. 4 of 1956. In this new S.R.O. of 1989, there is no post of Supervisor or Supervisor 'B' (T) and therefore, it must be deemed that all existing Supervisors have been redesignated as Chargeman Grade-II (T). The applicants are non-industrial workers. But in Ordnance Factory, there is another wing which contains industrial employees in Class-IV or Group 'D', consisting of unskilled and skilled workers. Under the 1956 Rules, these Group 'D' workers can be promoted to the post of Supervisor 'B', then to Supervisor 'A' and then to C.M. Grade-II. But under the 1989 Rules, industrial workers are given an avenue of promotion directly to the post of Chargeman Grade-II. That means, highly skilled Grade-II workers are entitled to be promoted to the post of C.M. Grade-II directly. Under the 1989 Rules, Supervisors are to be appointed by transfer as C.M. Grade-II whereas H.S.G. Grade-I officials can be promoted to Chargeman Grade-II. Accordingly, appointment orders are issued to the applicants and some of the promotees, and all of them are given common seniority w.e.f. 10.05.1993. The very appointment of the applicants on transfer as Chargeman Grade-II is illegal, since they cannot be freshly appointed at this stage

when they are already working in the same department for number of years and that too, to a post having the same pay scale as C.M. Grade-II. Even otherwise, the seniority of the applicants in the grade should be on the basis of continuous officiation, which was provided under the 1956 Rules. The applicants were senior to many of the officials in H.S.G. Grade-I and are now brought on par and some of them are shown junior to officials promoted to Chargeman Grade-II from H.S.G. Grade-I. The new seniority list is prescribed on the basis of rota-quota between Supervisors who are appointed as Chargeman Grade-II and H.S.G. Grade-I officials who are promoted to Chargeman Grade-II. The seniority list is illegal and contrary to rules. Since the applicants were having the same scale of pay even prior to induction as C.M. Grade-II, they must be held to be senior to promotees from H.S.G. Grade-I, since the pay scale of H.S.G. Grade-I is less than the pay scale of Supervisors. On the basis of higher pay scale in the feeder cadre, the applicants should be held or deemed to be senior to officials in H.S.G. Grade-I. The respondents appear to have acted on Administrative Instructions dated 19.04.1993 for preparing the seniority list on the basis of rota-quota. It is alleged that it is a fit case for re-designation of applications as C.M. Grade-II w.e.f. 01.01.1986 in view of the pay scales for both the posts being identical w.e.f. 01.01.1986. Though the word used is that applicants are appointed to the post of Chargeman Grade-II, it must be a case of redesignation of applicants as C.M. Grade-II. Giving direct promotion from H.S.G. Grade-I to the post of Chargeman Grade-II has jeopardised the applicants' future prospects and it is in violation of statutory rules. When

the applicants were in a higher pay scale than the H.S.G. Grade-I officials, on promotion as C.M. Grade-II, H.S.G. Grade-I officials cannot march over the applicants. The action of the respondents in not redesignating the applicants as Chargeman Grade-II is arbitrary and is in violation of Articles 14 and 16 of the Constitution of India. The action of the administration in holding D.P.C. and clearing applicants for appointment by transfer to C.M. Grade-II is bad in law. Seniority cannot be worked out on the basis of Government letter dated 19.04.1993. The applicants who were appointed as Chargeman Grade-II w.e.f. 10.05.1993 should be kept enblock senior to officials promoted as C.M. Grade-II from H.S.G. Grade-I. On these allegations, the applicants have approached this Tribunal for a declaration that their appointment as Chargeman Grade-II w.e.f. 10.05.1993 is illegal but on the other hand, they should be redesignated as Chargeman Grade-II w.e.f. 01.01.1986, that the method of assigning seniority in the Government letter dated 19.04.1993 is arbitrary and illegal, for quashing the seniority list dated 10.07.1997 and to quash all the promotions effected on the basis of impugned seniority list dated 10.07.1996 and for a direction to the respondents to prepare a fresh seniority list by placing the applicants enblock senior over the promotees from H.S.G. Grade-I and for other consequential reliefs.

It may be mentioned here that the Original Application has been amended and these are allegations made in the amended O.A.

3. The defence of the respondents in this case is that the O.A. is not maintainable. The applicants' allegations that they should be redesignated as C.M. Grade-II is not sustainable in view of the S.R.O. 1989. The question of redesignation of a particular post is purely a policy matter which the Government has to decide on the basis of a policy decision. The service conditions are now controlled by S.R.O. 1989 and not S.R.O. of 1956, which has been superseded by the 1989 Rules. It is denied that the Ministry of Defence has taken a policy decision to redesignate all the existing Supervisor as Chargeman Grade-II w.e.f. 01.01.1986. The decision taken by the D.G.Q.A. cannot be applied to Ordnance Factories. Under the 1989 Rules, there are two modes of filling the post of C.M. Grade-II. One is by transfer of Supervisors and other is by promotion of H.S.G. Grade-I. Therefore, from 1989, there are two feeder cadres for the post of C.M. Grade-II. Similar issue has been raised before the Madras Bench of this Tribunal by certain Supervisors and the O.A. has been dismissed by order dated 27.06.1991. Even though the pay scales of Supervisors and C.M. Grade-II are identical w.e.f. 01.01.1986, it does not mean that Supervisor should be redesignated as Chargeman Grade-II. The seniority between the Chargemen who were appointed by transfer and Chargemen who were promoted from H.S.G. Grade-I has been prepared on the basis of rota-quota as per the Government Instructions in the letter dated 19.04.1993. It is, therefore, stated that applicants are not entitled to any of the reliefs prayed for.

4. O.A. No. 525/94 is filed by 96 applicants who were also Chargeman Grade-II, of whom 83 persons are working in the Ordnance Factory, Varangaon and the remaining 13 persons are working in Ordnance Factory at Bhusawal.

The applicants in this case are also aggrieved by the action of the administration in appointing them by transfer as Chargeman Grade-II instead of redesignating them as Chargeman Grade-II. They are also aggrieved by the seniority given to promotees from H.S. Grade-I to the post of C.M. Grade-II on the basis of rota-quota as per Government's letter dated 19.04.1993.

All the allegations made in the O.A. are identical to the allegations made in O.A. No. 549/93. Hence, it is not necessary to repeat the same. Even the prayers in the O.A. are identical to the prayers in O.A. No. 549/93.

5. Similarly, the defence of the respondents is also identical to the defence taken by them in O.A. No. 549/93. Hence, it is not necessary to repeat the same.

6. Then we come to O.A. No. 854/94 which is filed by 38 applicants, who are working as Chargeman Grade-II in the Ordnance Factory at Ambernath.

The case of the applicants in this O.A. is almost identical as the case of the applicants in the above two O.As. Here, some private respondents are made parties, who are

respondent nos. 4 to 23 and who are promoted to C.M. Grade-II from H.S. Grade-I. They are kept above the applicants in the seniority list. The applicants who were originally Supervisors (Technical) have been brought to the cadre of C.M. Grade-II by appointment by transfer. The main grievance of the applicants in this case is, that instead of appointing them as Chargeman Grade-II by transfer, they should have been automatically designated as Chargeman Grade-II w.e.f. 01.01.1986 when their pay scales became on par with the pay scales of C.M. Grade-II w.e.f. 01.01.1986 after the acceptance of the Fourth Pay Commission Report. The applicants are also aggrieved by the Government letter dated 19.04.1993 which provides certain provisions for fixing seniority between the applicants on one hand and promotees from H.S. Grade-I on the other. The seniority list has been prepared on the basis of rota-quota principles of 3:2 between the applicants and promotees from H.S. Grade-I. If the applicants had been redesignated as C.M. Grade-II, they would become enblock senior to the promotees who come from H.S. Grade-I. The action of the official respondents has affected further promotional chances of the applicants to the post of Chargeman Grade-I and above. Keeping private respondent nos. 4 to 23 above the applicants is illegal. Therefore, the applicants have filed this O.A. for quashing the seniority list Annexure A-1, A-2 and A-3; for a direction to the respondents to redesignate the applicants as C.M. Grade-II with effect from 01.01.1986, for preparation of a fresh seniority list on that basis and not to give further promotion to Respondent Nos. 4 to 23 to the post of Chargeman Grade-I, etc.

7. The reply of the official respondents in this case is almost identical to the reply filed in the other two O.As. Hence, we need not repeat the same.

8. In the light of the pleadings and arguments addressed at the bar, the points that fall for determination in these cases are :

- (i) Whether the applicants are entitled to be redesignated as Chargeman Grade-II w.e.f. 01.01.1986 and consequentially to get seniority over promotee Chargeman Grade-II.
- (ii) Whether the applicants are entitled to seniority over the promotee Chargeman Grade-II on the basis of their respective dates of joining the feeder cadre and according to their scale of pay in their feeder cadre ?
- (iii) Whether the post of Chargeman Grade-II as on 01.01.1986 should be filled up as per S.R.O. 1956 and not as per S.R.O. 1989 ?
- (iv) What order ?

9. POINT NO.(i) :

Before we consider this point, let us notice the hierarchy of services from Supervisor to Chargeman Grade-II. For the moment we are not concerned above Chargeman Grade-I and higher posts.

According to 1956 Rules, the hierarchy is as follows :

Supervisor 'B'
|
Supervisor 'A'
|
Chargeman Grade - II

It is common ground that Supervisor 'A' came to be abolished and merged with Chargeman Grade-II w.e.f. 01.01.1980. Therefore, after 01.01.1980 Supervisor 'B' was entitled to be promoted as Chargeman Grade-II. Prior to 01.01.1986 the pay scale of Supervisor 'B' (T) was Rs. 380-560 and that of Chargeman Grade-II (T) was Rs. 425-700. From 01.01.1986 number of intermediary scales got merged and the total number of pay scales got reduced and as a result, after 01.01.1986 both Supervisor 'B'(T) and C.M. Grade-II were kept in the revised pay scale of Rs. 1400-2300.

The argument is, when the pay scale of Supervisor Grade 'B' is identical to Chargeman Grade-II, from 01.01.1986 Supervisor 'B' cannot be in the feeder cadre for promotion to C.M. Grade-II and therefore, it is a case of both - post being identical with same pay scale and therefore must be held to have been merged together. Since Supervisor Grade 'A' has already been abolished, we can refer to Supervisor 'B' (T) as

Supervisor (T) after 01.01.1980. There is no question of there being Supervisor 'A' and Supervisor 'B' after 01.01.1986.

The argument is no doubt attractive but cannot be accepted for two reasons. One is, there are number of judgements of different Benches of this Tribunal where consistent view is taken that the theory ^{of} for merger cannot be accepted. There is no bar for providing promotion from one post to another post even though their pay scales are identical. Even F.R. 22 mentions about promotion from one lower post to higher post though both of them are in the same scale of pay but still provides for increments to be given at the time of fixing pay of the promoted official. Then another thing to be noticed is, irrespective of the pay scales, promotions are governed by the recruitment rules. If the recruitment rules provide for promotion, then the posts have to be filled by promotion only and the theory of merger cannot be accepted unless the recruitment rules are amended to merge Supervisor with the post of Chargeman Grade-II.

10. Before noticing the decisions bearing on the point, we will refer to the documents on which the applicants place reliance.

In O.A. No. 549/93 exhibit A3 at page 13 shows appointment of some of the applicants from Supervisor (T) to Chargeman Grade-II (T) by way of 'appointment by transfer'. This is because the 1989 rules provide filling up of Chargeman Grade-II by two modes - 80% by appointment by transfer from the

cadre of Supervisor and 20% by way of promotion from Highly Skilled Grade-I.

. Applicants have placed strong reliance on exhibit A-7 at page 43 of the said paper book. Here nodoubt, Technical Supervisors are redesignated as Chargeman Grade-II. In our view, this document will not help the case of the applicants since it is a notification issued by a different organisation, namely - Quality Assurance Establishment, Kirkee. It is not an order issued by the Ordnance Factory. Merely because D.G.Q.A. Organisation has redesignated Supervisor as Chargeman Grade-II, it does not automatically follow that the same should be done in the Ordnance Factory. We do not know as to how many posts of Supervisor and Chargeman Grade-II are in the D.G.Q.A. Organisation and how many such posts are in the Ordnance Factory. It is a policy decision which has to be taken by the Government. It may be that the Government has decided that in D.G.Q.A. such redesignation should be done. There is no plea about service conditions and other requirements of Supervisor (T) in Ordnance Factory viz-a-viz Supervisor in D.G.Q.A. Another thing to be noticed is, that this order is issued on 25.11.1987 but we are concerned with the interpretation of 1989 Rules under which the applicants have been appointed from Supervisor to Chargeman Grade-II by appointment by transfer, as provided in the rules.

In this paper book, S.R.O.13-(E) dated 4.05.1989 is found at page 50 of the Paper Book. The S.R.O. does not make such a provision for redesignation of Supervisor as Chargeman Grade-II.

If we grant the reliefs prayed for by the applicants, then our order will be running counter to the Recruitment Rules of 1989. The applicants are not challenging the legality or validity of the 1989 Recruitment Rules. Even the 1956 Rules did not provide for such redesignation or merger of Supervisor with Chargeman Grade-II. When the Recruitment Rules of 1989 specifically provides for appointing Supervisors by transfer as Chargeman Grade-II to the extent of 80% and then 20% by promotion by H.S. Grade-I, we cannot give any direction contrary to the Recruitment Rules.

11. Then reliance is placed on exhibit A-10 dated 31.08.1990 which is at page 58 of the paper book (O.A. No. 549/93) where it speaks about redesignation of Supervisor Grade 'A' (non-technical) as Chargeman Grade-II. For one thing, the applicants are technical Supervisors but the said order refers to non-technical Supervisors. For another, it is in respect of Supervisor Grade 'A' but we are concerned with Supervisor Grade 'B', who is now known as Supervisor.

Similarly, some other orders are passed regarding non-technical Supervisor 'A', which cannot be applied to Supervisor 'B' (T) with whom we are concerned.

Exhibit A-12 at page 65 is again about the organisation, D.G.Q.A. but we are concerned with Ordnance Factory and, therefore, the said order of the Government dated 27.10.1987 has no relevance.

12. In O.A. No. 525/95, there is an order dated 10.05.1993 at page 27 where officials like applicants, namely - Supervisors (T) are appointed by transfer as Chargeman Grade-II.

This appointment is in conformity with the Recruitment Rules, 1989.

Then we have exhibit A-4 at page 30 dated 05.05.1993. Here certain officials who were Supervisors (T) were again appointed as Chargeman Grade-II by transfer. However, in the body of the order it is mentioned as "redesignation", which means, Supervisor 'B' redesignated as Chargeman Grade-II. But the order also says that it is a "transfer by appointment" of Supervisor as Chargeman Grade-II. Similarly, in addition to using the words 'appointment by transfer', the word 'redesignation' is used in bracket in some other orders also, which are exhibit A-5, A-6 and A-7.

Appointment by transfer fits in with Recruitment Rules, 1989. But using the word "redesignation" in bracket makes no sense since it is not in conformity with the Recruitment Rules. The Recruitment Rules of 1989 nowhere mentions the word 'redesignation'. There is no order in the name of the President of India about redesignating Supervisor (T) as Chargeman Grade-II in the Ordnance Factory till today. Merely because the word 'redesignation' is wrongly used in some of the appointment orders, it cannot give any right to the applicant to contend that their post is merged with Chargeman Grade-II and it is only a

case of redesignation and not a case of appointment by transfer. When the Recruitment Rules is very definite and clear that Supervisor is appointed as Chargeman Grade-II by appointment by transfer, mere use of the word 'redesignation' will not make any difference. Even if such an instruction is given by the Head of the Department to redesignate Supervisor as Chargeman Grade-II in Ordnance Factory, it has no legal effect, since it is contrary to the Recruitment Rules. The Supreme Court has observed in many cases that administrative instructions or executive orders can be used to supplement or fill up the gaps in the Recruitment Rules in cases where there is no specific provision in the Recruitment Rules. It is well settled that any administrative or executive instruction contrary to the Recruitment Rules has no legal validity. The Supreme Court has pointed out in C. C. Padmanabhan & Others V/s. The Director of Public Instructions & Others reported in 1980 (2) SLR 599 that mere Government instructions which are contrary to Recruitment Rules do not amount to amendment of Recruitment Rules. That was a case where Assistant Education Officer was higher than a High School Assistant. According to the rules, High School Assistant can be appointed to the post of Head Master of a High School but there is no provision for appointing Assistant Education Officer as a Head Master. The Supreme Court noticed that the Government was in the practice of appointing Assistant Education Officers as Head Masters of High School, which means, they were equating Assistant Education Officers with High School Assistants. The Supreme Court observed that if the rules do not permit Assistant

Education Officers to become Head Masters of High School, then merely because the Government has been posting them as such in contravention of the rules, it would not follow that the Rules automatically stand amended in conformity with the contravention.

Similarly, the 1989 Rules does not speak about redesignation of Supervisor as Chargeman Grade-II. On the other hand, the rule is very clear that Supervisors in the feeder cadre are to be appointed by transfer to the post of Chargeman Grade-II. Merely because in some of the orders the word 'redesignation' is wrongly used, it does not make Supervisors and Chargeman Grade-II identical in all respects. In view of the law declared by the Apex Court, we are constrained to observe that not withstanding using the word redesignation wrongly in some of the orders, it will not amount to amendment of 1989 Rules and, therefore, Supervisor cannot be treated as identical with Chargeman Grade-II in all respects.

Similarly, in Palaru Ramkrishnaiah & Others V/s. Union of India & Another reported in AIR 1990 SC 166, it is pointed out by the Apex Court that though the Government can give executive instructions, if there is a conflict between such instructions and the statutory rules made under Article 309, then the Statutory rules prevail and the executive instructions contrary to rules would have no application. It is further pointed out

that executive instructions can make provisions only with regard to matter which is not covered by the rules and an executive instruction cannot over-ride any provision of the rule. The same view is taken by the Apex Court in the case of K.K. M. Nair & Others V/s. Union of India & Others reported in AIR 1994 SC 244.

In view of this position of law, even if there is a letter by the Government suggesting redesignation or the word 'redesignation' is used in the appointment orders, it will have no effect unless the Recruitment Rules are amended. We have already seen that 1989 Rules do not make any provision for such redesignation or merging of Supervisor with Chargeman Grade-II.

Again at page 61 of this Paper Book, there is an order dated 03.09.1990 about redesignation of non-technical supervisors as Chargeman Grade-II, but as already stated, it cannot apply to technical Supervisors with whom we are concerned. Again, the order at page 65 dated 14.11.1987 pertains to D.G.Q.A. organisation and it cannot apply to Ordnance Factory.

13. In O.A. No. 854/94, the applicants rely on some documents which pertain to D.G.Q.A. Organisation, which have no bearing since we are concerned with Supervisor and Chargeman Grade-II in Ordnance Factory.

14. Another contention urged on behalf of the applicants is, that how can the applicants be appointed on transfer to another

post. This is provided in the 1989 Recruitment Rules. "Appointment by transfer" is one of the method of recruitment which we have seen in some of the Recruitment Rules. It is not an unknown principle in service jurisprudence.

We may mention here that we have come across some Recruitment Rules where one of the modes of recruitment is shown as 'appointment by transfer'. In this connection, we may refer to a case reported in 1996 (2) SLR 5 (SC) (Union of India V/s. S. D. Gupta) where for the post of Extra Assistant Directors in the Central Water Commission, there were two modes of filling up that post. One was by promotion and other was "by appointment by transfer". We have only pointed out this to show that this "appointment by transfer" is well known method of recruitment.

Then we may refer to our Central Administrative Tribunal's Recruitment Rules. We find that for many posts in our Tribunal, the method of recruitment is by promotion, transfer, transfer on deputation and also direct recruitment. In the Central Administrative Tribunal, Recruitment Rules, 1988 for the post of Deputy Registrar, the mode of recruitment is 50% by promotion and 50% by "transfer"/transfer on deputation. Therefore, simple transfer apart from transfer on deputation is also a mode of recruitment. In the Central Administrative Tribunal (Group 'B' and 'C' Posts) Recruitment Rules, 1989, we find for the post of Court Officer/Section Officer, the mode of recruitment is 50% by direct recruitment, failing which by "transfer"/transfer on deputation and remaining 50% by promotion.

For Hindi Translator, the mode of recruitment could be either on transfer or transfer on deputation, failing which by direct recruitment. Similarly, for the post of Assistants, it is by promotion, failing which by transfer/transfer on deputation. Similarly, for some other posts also, appointment by transfer is shown as one of the modes of recruitment.

In the 1989 Rules for the post of Chargeman Grade-II, there are two modes of recruitment. One is 80% by appointment or by transfer from Supervisors and 20% by promotion from H.S.G.-I.

15. From the above discussion we find that the theory of redesignation or the theory of Supervisor should be treated as having merged with Chargeman Grade-II or clubbed with Chargeman Grade-II has no force.

Now we will notice direct decisions bearing on the point.

The first decision which is brought to our notice is by the Madras Bench of the Tribunal in O.A. No. 107/90 dated 27.06.1991. It is an unreported judgement, a copy of which is placed on record at page No. 255 of O.A. No. 525/94. That was a case filed by C. K. Subramaniam and 159 Others against the Ordnance Factory Board. The only contention in that case was that the Supervisor (T) should be treated as merged with Chargeman Grade-II and hence should be redesignated as such w.e.f. 01.01.1986. The Division Bench went into the question and held that it is not a case of merger of Supervisor with Chargeman

Grade-II, though the pay scales may be identical. The one and only prayer in that case was that Supervisor should be redesignated as Chargeman Grade-II w.e.f. 01.01.1986. Then a review petition was filed before the Tribunal, which came to be rejected.

Then there is one more order of the Madras Bench of the Tribunal dated 01.12.1995 in another unreported judgement in O.A. No. 313/93, a copy of which is at page 271 of the paper book in O.A. No. 525/94. That was filed by Mr. V.Raveendran & 288 Others against the Ordnance Factory. There also the applicants were Supervisor (T). There also the applicants wanted the relief of redesignation of Supervisor as Chargeman Grade-II. The Tribunal again noticed that similar prayers had been asked by others before the earlier Bench in O.A. No. 107/90 and the O.A. came to be dismissed, which order we have already referred to above. The Tribunal also rejected the contention of the applicants that Supervisor (T) should be treated as equivalent to Chargeman Grade-II, since the 1989 rules clearly provide that Supervisor to be appointed by transfer as Chargeman Grade-II. That O.A. also came to be dismissed.

Then there is one more unreported judgement of Hyderabad Bench of the Tribunal in O.A. No. 453/96 dated 07.04.1999. That was an application filed by U. Chandra Shekhar & Others V/s. Union of India & Others against the Ordnance Factory Board. Those applicants were also Supervisors in the Ordnance Factory Board. The applicants in that case challenged the vires of 1989

S.R.O. which provided appointment by transfer of Supervisors who had put in three years service as Chargeman Grade-II. It was contended that the said rule is in violation of Articles 14 and 16 of the Constitution of India. There is also a prayer to redesignate the Supervisors as Chargeman Grade-II w.e.f. 01.01.1986. The Tribunal did not grant any relief and dismissed the application.

Therefore, we have three judgements of three Division Benches of this Tribunal taking the view that Supervisors cannot claim parity with Chargeman Grade-II and cannot claim redesignation as Chargeman Grade-II.

Therefore, we find that both on precedent, and also on facts, the applicants are not entitled to claim for being redesignated as Chargeman Grade-II w.e.f. 01.01.1986. If once it is so held then the question of applicants claiming seniority over promotees will not arise. How the seniority is to be determined between the direct recruits and promotees will be decided while discussing point no. (ii). Though the applicants are brought to the cadre of Chargeman Grade-II by appointment by transfer, it is like filling the post by direct recruitment. For the above reasons, Point No. (i) is answered in the negative.

16. POINT NO. (ii) :

The Learned Counsel for the applicants contended that seniority in between applicants and promotees should be decided on the basis of their entry into service in the feeder cadre. It

was argued that the Supervisors had entered into service long prior to many of the promotees from the industrial cadre. It was further argued that the Supervisors were in a higher pay scale than the feeder cadre of promotees and therefore, the erstwhile Supervisors must be held to be senior to the erstwhile H.S. Grade-I officials when they entered into the common cadre of Chargeman Grade-II. It was also commented as to how can there be a feeder cadre of one higher grade and another lower grade in filling up the post of Chargeman Grade-II. In other words, the argument is that the feeder cadre must be of ^{LOWER} equal grade for promotion to any higher post. The argument is no doubt attractive but cannot be accepted if we go by the recruitment rules.

The Recruitment Rules provide that C.M. Grade-II shall be filled up by 80% by appointment by transfer of Supervisors and 20% by promotion from H.S. Grade-I. It is also an admitted fact that Supervisors were in the higher scale of pay than officials of H.S. Grade-I. Therefore, we can proceed with the assumption that feeder cadre of H.S. Grade-I was in a lower scale or lower grade than feeder cadre of Supervisors.

In our view, there is no legal bar to have different feeder cadres of different grades for promotion or appointment to a higher grade. We have already referred to C. C. Padmanabhan's case reported in 1980 (2) SLR 599 on a different point. That decision is also having an important bearing on the point under consideration. Similar arguments were addressed before the

Supreme Court in that case that there cannot be two feeder cadres, one lower and another higher, for promotion to a still higher post. But the Supreme Court rejected such an argument by its observations in para 9 of the reported judgement at page 605, which reads as follows :

"In any case, there is no incongruity in two categories of posts one higher and the other lower, furnishing two sources of recruitment to another higher post; and it would not necessarily follow from such a practice that the two sources must be regarded as equivalent to each other for all purposes."

In this connection, we may also refer to a decision of the Apex Court in Bhey Ram Sharma & Others V/s. The Haryana State Electricity Board & Others reported in 1993 (5) SLR SC 282. An identical question arose for consideration in that case. That was also a case where there was dispute regarding seniority in the promotional post when there were two feeder cadres which were not equivalent cadres but one in a higher grade and other in a lower grade. The observations of the Supreme Court which are relevant for our present purpose are found in para 5, which is as follows :

"This Court has examined the question of fixation of seniority inter se between officers appointed from different sources i.e. by promotion, and by process of direct recruitment. It is almost settled that while determining the inter se seniority amongst officers recruited from different sources or between officers appointed by the same process at different times, the date of entering in the service is relevant."

Therefore, when there are different sources for promotion or appointment to fill up a particular cadre, it is the date of entry in that particular cadre which is relevant for determining the seniority.

Then we come to an identical case of promotion to a particular grade from two different feeder cadres which are not equivalent but one is higher and the other is lower, which is reported in 1987 (4) SLR SC 561 (Yashbir Singh & Others V/s. Union of India & Others). That was a case where the question was about seniority in grade 'D' for the purpose of next promotion to Grade 'C'. For recruitment to Grade 'D' of Train Examiners, there were two sources, one by promotion of Skilled Artisans working in the lower grade and another by direct recruitment of apprentice having completed four years training. The ratio was 1:1. The dispute was, whether the seniority of the officials in Grade 'D' should be determined on the basis of erstwhile seniority in the feeder cadre or it should be decided on the basis of entry into Grade 'D'. The Supreme Court held that when post is filled from two sources, then seniority will count from the date of entry into Grade 'D' and it does not depend upon the seniority in the feeder cadre. Therefore, the Supreme Court rejected the contention that the seniority in a particular grade should be decided on the basis of seniority in the feeder cadre. On the other hand, the Supreme Court ruled that once a particular grade is filled up by two sources, then there cannot be any discrimination of seniority in that particular grade with reference to their seniority in the feeder cadre.

Therefore, the arguments by the Learned Counsel for the applicants that as per the seniority in the feeder cadre on the basis of pay scale, the Supervisors should be treated as seniors to promotees from H.S. Grade-I cannot be accepted. When both,

Supervisors and Promotees from H.S. Grade-I are brought into Chargeman Grade-II, then there cannot be any discrimination between them on the basis of their erstwhile seniority. They will get their seniority from the date they entered the grade of Chargeman Grade-II. Further, in this case, the appointment by transfer may be treated as a direct recruitment and the other mode is by promotion. Whether we call it as direct recruitment or appointment by transfer, it makes little difference. When there are two sources of recruitment, the question is as to how the seniority should be ^{decided!} ~~decision~~? No doubt, entry to the grade is a relevant factor but it is quite possible ^{as} in this case that sometimes, both the promotees and direct recruits are persons appointed by transfer or brought into the cadre on the same day. The Recruitment Rules of 1989 is silent on the question of seniority. In fact, many recruitment rules do not provide for seniority rules. We have to go by the general rules of Central Government to decide the question of seniority in a matter like this.

17. In this case, the Government has issued circular dated 19.04.1993 which is produced at page 25 of the first O.A., namely - 549/93. It is a general circular issued by the Ordnance Factory Board. It says that the seniority between the promotees and direct recruits shall be decided on the rota-~~8~~ota principle, on the basis of which the appointments/promotions are made. That means, in the ratio of 80:20, which will be in the ratio of 4:1. In the present case, the seniority list has been prepared on this principle, i.e. 4:1 between the direct recruits and promotees.

The Learned Counsel for the applicant contended that this 1993 circular cannot be the legal basis for determining the seniority between the Supervisors and the promotees. There is no merit in the submission. When the recruitment rules are silent on a particular question, then administrative instructions or executive instructions can fill up the gaps. We have already referred to K.K.M. Nair's case reported in AIR 1994 SC 244 and Palaru Ramkrishnaiah's case reported in AIR 1990 SC 166 where the Supreme Court has held that executive instructions can cover the area not covered by rules. The same principle is again reiterated by the Apex Court in S. D. Gupta's case reported in 1996 (2) SLR SC 5 which also we have already referred to on another point. In this particular case, the dispute was again about seniority in a particular cadre which had two sources of recruitment. The Supreme Court has held that the executive instructions prescribing seniority on the basis of rota-~~ota~~ rule is perfectly valid, since statutory rules are silent regarding seniority on rota-~~ota~~ basis. They have upheld the administrative instructions as valid and it would supplement the Recruitment Rules which are silent regarding principle of seniority. It may be inter se seniority among direct recruits or inter se seniority among promotees ~~which~~ will have to be decided on the basis of their erstwhile seniority in their respective feeder cadre. In other words, a person who is junior in the Supervisor Cadre cannot become senior to his erstwhile senior supervisor in Chageman Grade-II, unless ofcourse, a senior has been superseded being unfit for promotion. Anyhow, in this case, there is no inter se dispute among Supervisors or inter se dispute among promotees. But the dispute is, whether Supervisors who come to

the cadre of Chargeman Grade-II should get enblock seniority over promotees, who come from H.S. Grade-I. The 1993 instructions are very clear that in such a case the principle of rota-~~ota~~ should be applied. Even without this 1993 circular, we can fall back on the general principles laid down by the Government of India which also speaks about rota-~~ota~~ principle whenever there are two modes of recruitment like direct recruits and promotees for a particular post. We may refer to Official Memorandum dated 03.07.1986 which is at page 426 of Swamy's Complete Manual on Establishment and Administration (1994 Edition) and in particular, para 2.4.1. which says that the relative seniority of direct recruits and promotees shall be determined according to their rotation of vacancies between direct recruits and promotees, which shall be based on the quota of vacancies reserved for direct recruitments and promotions respectively in the recruitment rules. Therefore, this is a policy decision of the Central Government that whenever a cadre is filled by direct recruits and promotees, the seniority shall be on the basis of rota-~~ota~~ principles. This is again reiterated in 1993 circular for a particular post of C.M. Grade-II. One is a general rule and the other is a special rule for a particular post. In either way, rota-~~ota~~ principle is the recognized principle by the Government of India.

The Learned Counsel for the applicant invited our attention to a general circular dated 07.05.1997 of the Government of India which was produced at the time of arguments. This circular says that on the basis of Fourth Pay Commission certain different pay scales have been merged into one pay scale.

In view of the merger of pay scales or bunching of pay scales, the pay scale for the feeder post and the next promotional post become one and the same. It is, therefore, suggested in the circular that Army Headquarters is requested by the Ordnance Factory Board that in such cases the two posts should be treated to have been merged and the recruitment rules be amended accordingly.

In our view, no reliefs can be given to the applicants on the basis of this circular for more than one reason. The first and important reason is, that this is only in the form of a suggestion to the Army Headquarters for amendment of the recruitment rules. Admittedly and undisputedly, the recruitment rules are not ^{amended} amendment and, therefore, any executive instructions contrary to recruitment rules has no legal force and we have already referred to some decisions of the Supreme Court in our early part of the judgement. The other reason is, that even if this decision is accepted, it is only prospective in nature. The original letter is dated 06.12.1996 which is copied in the circular dated 07.05.1997. If on the basis of the circular, relief should be given, then it is prospective. Therefore, on the basis of this 1996 or 1997 circular, we cannot decide the fate of applicants and promotees as on 01.01.1986 or as on the date of filing this O.As. in 1993 or 1994. Normally, any policy decision or any amendment of rule is prospective in nature, unless there is a specific rule about retrospective application of the policy decision or a rule. Therefore, in our view, the decision or the principle brought out in 1997 circular will have only prospective application and it cannot apply to a

case like this, where we are considering the rights of parties on 01.01.1986 or as in the year 1989 or when the new Recruitment Rules came into force or when the O.As. were filed in 1993 or 1994.

On the other hand, the Learned Counsel for the applicants placed before us another recent circular dated 15.02.2000 issued by the Ordnance Factory Board stating that the question of erstwhile Supervisors and Promotee Chargeman Grade-II have been settled and attained finality and it cannot be re-opened now.

18. The Learned Counsel for the applicant_s has referred to some authorities and in our view, none of the authorities have any bearing on the point under consideration.

Some of the cases relied on pertained to interpretation of the relevant recruitment rules, which cannot be applied to the cases before us, since we have to interpret the 1989 Recruitment Rules, which are not *peri materia* with many of the recruitment rules referred to in the judgements.

For example, in M. Ramachandran's case reported in JT 1999 (7) SC 271, the Supreme Court was concerned with interpreting Rule 5 of Central Administrative Tribunal Recruitment Rules, 1989. Those rules are not identical with 1989 Rules of Ordnance Factory Board with which we are concerned.

Reliance was placed on Nirmal Kumar Choudhary's case reported in 1988 (6) ATC 881 where it is held that length of service in a cadre is a determining factor for seniority in the

absence of rules. There is no dispute about this proposition of law at all. We have already held that date of entry into the Grade of Chargeman Grade-II is the date to be reckoned for the purpose of seniority. But since two or more persons from different feeder cadre have entered the cadre on the same date, we have to apply to rota-~~to~~ principle, which we have already explained.

In the case of V.P. Shrivastava & Others reported in 1996 AIR SCW 946 the Supreme Court held that though promotees entered the grade earlier than the direct recruits, they cannot get seniority, since their promotion was adhoc and not according to rules. In our view, this decision has no application to the facts of the case, since there is no allegation, much less proof, that the promotion of the promotees was adhoc and it was contrary to rules. It is nobody's case. Again the decision relied on reported in 1996 II CLR 942 (Hari Om Verma V/s. State of Punjab & Others) is based on the particular Rule 3 of Subordinate Service Rules of Punjab Government, which has no bearing on the 1989 Rules of Central Government, with which we are now concerned.

Similarly, in the decision relied on reported in 1998 AIR SCW 400 (Anand Chandra Dash V/s. State of Orissa & Others) the question was about seniority of a particular individual who was transferred against his will, etc. It has no bearing on the point under consideration. Similarly, the decision reported in 2000 (1) SCC 644 (Sub-Inspector Rooplal & Another V/s. Lt. Governor through Chief Secretary, Delhi & Others) is also a case dependent

on ~~g~~ peculiar facts of the case and on the basis of a particular Government circular.

After going through the facts and circumstances of the case and the law bearing on the point, we have no hesitation to hold that the seniority between the officials who come to Chargeman Grade-II by way of appointment by transfer and officials who come to that cadre by promotion from H.S. Grade-I should be decided on the basis of rota-~~ota~~ principle, as mentioned in the 1993 circular of the Government of India. The applicants cannot get any seniority on the basis of their erstwhile pay scale or erstwhile date of entry in the feeder cadre of Supervisor.

Point No. (ii) answered accordingly.

19. POINT NO. (iii)

The Learned Counsel for the applicant contended that the recruitment rules as on the date of vacancy should be applied. He further argued that there were many vacancies of Chargeman Grade-II prior to 01.01.1986 and even after 01.01.1986 till the date of new recruitment rules, namely - 04.05.1989. He, therefore, argued that all the vacancies of C.M. Grade-II, both prior to 01.01.1986 and after 01.01.1986 upto 03.05.1989 should be filled by the old Recruitment Rules of 1956, namely - S.R.O. 4 of 1956 and not on the basis of SRO 13-E dated 04.05.1989. He relied on some decisions of the Apex Court in support of his contention that the law prevailing on the date of vacancy should

be followed. There is no dispute about the proposition of law as such and it is covered by some decision of the Apex Court. But the point now urged is a mixed question of law and facts. We have to go into the question as to how many vacancies were in 1986, 1985, 1984, 1987, 1988, etc. There is no pleading\$ to this effect in all the three O.As. No such relief is asked in the O.As. for a direction to respondents to fill up the post_s on the basis of year-wise vacancies under S.R.O. 1956 till 03.05.1989. How could we give a blanket direction on the basis of oral submission made at the bar on the day of argument before us on 01.03.2000. The first O.A. was filed in 1993 and two other O.As. were filed in 1994. As already stated, there is neither pleading nor prayer to this effect in all the three O.As. But argument is pressed into service on 01.03.2000 when the matter was heard. For one thing, we cannot grant relief on the basis of oral submission made at the bar in the absence of particular pleadings and particular prayers in the O.As. For another, the plea now raised is a mixed question of law and facts and cannot be allowed to be raised at the time of arguments without basis in the pleadings. The official respondents had no opportunity to meet this ^{para} of the case. Further, if the prayer is taken as an oral prayer made at the time of argument on 01.03.2000, then the prayer is highly belated, suffers from delay and laches and limitation. Even if such a plea had been raised in the O.As. filed in ¹⁹⁹³ 1983, we could not have given the relief of retrospective filling up of posts in 1986, 1985, 1984, 1983, etc. But now the prayer is pressed in the year 2000 and the applicant's want the clock to be set back by 18 to 20 years.

Hundreds and thousands of employees are going to be affected if we issue such a direction. All promotions made from 1980 and onwards till today, namely - for the last twenty years, will have to be reopened and some of them might have got further promotions and they have to be reverted and applicants will have to be given one or two promotions more. We will be unsettling the settled things over the last two decades and that too, on a mere oral submission at the time of argument. We may also notice that hundreds and thousands of officials have already been promoted as Chargeman Grade-II and even higher posts, who are likely to be affected by any such direction, who are not before us.

For the above reasons, we reject the belated oral prayer made at the time of arguments before us.

20. Even otherwise, we find that in the peculiar facts and circumstances of the case, this prayer of the applicants, though belated, cannot be accepted.

The Learned Counsel for the applicants may be right in his submission on the basis of judgement of the Supreme Court in Y. V. Rangaiah's case reported in 1983 SCC (L&S) 382 that posts have to be filled up on the basis of Recruitment Rules prevailing on the date of vacancy. In this case, no doubt it is held that vacancy should be filled up on the basis of recruitment rules on the date of vacancy and not on the basis of amended rules. Then, the Learned Counsel for the applicant himself has relied on another subsequent judgement of the Supreme Court in the case of P. Ganeshwar Rao & Others V/s. State of Andhra Pradesh & Others reported in 1989 SCC (L&S) 123. Here also one of the mode of

appointment was by transfer, which we have discussed while discussing Point No. (i). The Supreme Court has noticed that a rule can be amended retrospectively. Then while considering the relevant recruitment rules, and in particular, while referring to the words "vacancies arising", the Supreme Court held that it applies to future vacancies. Therefore, the Supreme Court held the recruitment rules as prospective in nature and it applies to vacancies "arising" after the recruitment rules and hence, cannot apply to earlier vacancies and following Y. V. Rangaiah's case, it was observed that the earlier vacancies should be filled up by the previous recruitment rules.

21. In the present case, we find that the S.R.O. of 1989 is not prospective in nature but it purports to apply to all the existing vacancies and not only to future vacancies. In O.A. No. 549.93 a copy of S.R.O. 13-E dated 04.05.1989 is at page 50 of the Paper Book. It reads as follows :

"S.R.O. 13-(E) - In exercise of the powers conferred by the proviso of 309 of the Constitution, and in supersession of the Indian Ordnance Factories (Recruitment and Conditions of Service of Class-III Personnel) Rules, 1956 notified as SRO 4 of 4-1-1956 as amended from time to time, except as respect things done or omitted to be done before such supersession, the President, hereby makes the following Rules, regulating the method of recruitment to the posts belonging to the Supervisory and Non-Gazetted cadre covering supervisors to Foreman in Ordnance and Ordnance Equipment Factories and other offices and establishments under the Ordnance Factories Organisation."

From the reading of the above para we find that S.R.O. 4 of 1956 has been superseded, except as respect things done

before supersession of SRO-4 of 1956. That means, whatever act that has been done under the 1956 SRO is saved. This gives a clear indication that 1989 Rules will apply to all the existing vacancies except things which have been done or recruitment or promotions done under the 1956 Rules. It may be a case where a notification for recruitment is issued or interview has been held or examinations to be held under the 1956 Rules. But if no such thing is done under the 1956 Rules, then all the existing vacancies as on 04.05.1989 will have to be filled up as per the new S.R.O. of 1989. That is why, in one of the judgements of the Supreme Court referred to above, the Supreme Court noticed the using of words "vacancies arising" and then interpreted that the rule applies to "arising" vacancies, which means, future vacancies from the date of rule. But here, the old rule is superseded, except things which are done under the old rule, which means, some action are taken under the old rule, like calling for application, holding interview, etc. Then those things are saved. Therefore, in the facts and circumstances of the case, we could conclude that the rules under the 1989 circular applies to all existing vacancies. Therefore, the argument about applying 1956 rule for filling up vacancies has no merit. We have given only brief reasons, since our main reasoning is that applicants cannot be permitted to raise a mixed question of law and facts at the time of arguments without pleadings and without prayer and without giving an opportunity to the respondents to plead on this point.

For the above reasons, Point No. (iii) is answered in the

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22. In the result, all the three Original Applications are dismissed but without costs.

MEMBER (A).

VICE-CHAIRMAN.

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