

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 182 of 1995.

Dated this _____ the 2nd day of June 2000.

G. P. Naik & 22 Others, _____ Applicants.

Shri U. M. Joshi, _____ Advocate for the
applicant.

VERSUS

Union of India & 2 Others, _____ Respondents.

Shri R. K. Shetty, _____ Advocate for
the respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches no.
of the Tribunal ?
- (iii) Library. yes

S. L. JAIN
(S. L. JAIN)
MEMBER (J).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 182 of 1995.

Dated this 1st day the 2nd day of June 2000.

CORAM : Hon'ble Shri B.N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

1. G. P. Naik,
T.No. 3297,
M.E. Turner (SK).
2. P. G. Ingale,
T.No. 2414,
M.E. Turner.
3. A. P. Birhade,
T.No. 3296,
M.E. Fitter.
4. P. V. Balapurkar,
T. No. 3295,
M. E. Fitter.
5. R. D. Birari,
T. No. 3236,
M.E. Fitter.
6. T. G. Pillai,
T. No. 3298,
M.E. Fitter.
7. R. D. Suryawanshi,
T. No. 2551,
M.E. Mechanist.
8. R. L. Jadhav,
T. No. 2393,
LA-Mechanist.
9. S. S. Chaudhari,
T.No. 2371/LA
L.A. Mechanist.
10. R. K. Malik,
T.No. 3224,
M.E. Millwright.
11. P. Haridas,
T. No. 3239,
ME-Millwright.
12. Q. K. Sheikh,
T. No. 3318,
LA Turner.

13. B. N. Patil,
T. No. 2415,
M.E. Turner.
14. S. M. Patil,
T. No. 2458,
M.E. Turner.
15. S. S. Sonawane,
T. No. 3258,
M. E. Turner.
16. S. G. Waykole,
T. No. 2459,
M. E. Turner.
17. A. A. Tayade,
T. No. 3234,
M. E. Grinder.
18. S. N. Dhokane,
T. No. 3233,
M. E. Grinder.
19. R. D. Borse,
T. No. 6310,
Grinder.
20. B. D. Thakur,
T. No. 6311,
Grinder.
21. V. Ramachandran,
T. No. 6319,
Grinder.
22. P. P. Mankodiya,
T. No. 6359,
Machinist.
23. V. J. Nagore,
T. No. 6363,
Machinist.

... Applicants.

(All the above applicants are working in
Ordnance Factory, Varangaon, Dist. Jalgaon).

(By Advocate Shri V. M. Joshi).

VERSUS

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

P.L. Joshi -

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3. The General Manager,
Ordnance Factory,
Varangaon, Dist. Jalgaon.

... Respondents.

(By Advocate Shri R. K. Shetty).

O R D E R

PER : Shri S. L. Jain, Member (J).

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for setting aside and quashing the order dated 05.10.1994 with a declaration that order dated 15.10.1984 is illegal. It is further sought that the applicants should be treated as Skilled Labourers from the very date of their appointment in the Labour 'B' Grade, be paid pay scale of skilled grade Rs. 260-400 effective from the very date of their appointment in Labour 'B' Grade alongwith arrears till the date of their upgradation to the skilled cadre.

2. At the commencement of the hearing, the Learned Counsel for the applicants stated that the relief prayed for that the declaration that applicants should be treated as Skilled Labourers from the date of their appointment in Labour 'B' Grade' be moulded as after two years of their appointment in the semi-skilled grade and the rest of the reliefs which are consequential to the said relief be moulded accordingly.

3. The applicants were appointed as Apprentices in the Ordnance Factory's Management as trainees under the Scheme of NCTVT from the date shown in column no. 4 of the Annexure A-2. They have completed the training on the date as mentioned in column no. 6 of the Annexure A-2. They have obtained the

J. Jain' ... 4

respective trade mentioned in column no. 5 of Annexure A-2. After completion of the training and passing the examination of National Council of Training in Vocational Trades, they were appointed as Labour 'B' as unskilled labours. Thereafter applicant no. 1 to 9 were appointed as Lapper 'B' under the pay scale of Rs. 210-290. After that all the applicants were appointed as semi-skilled worker on the date as mentioned in column no. 9 of Annexure A-2. They were upgraded from semi-skilled to skilled grade from the date mentioned in column no. 10 of Annexure A-2.

4. The applicants' case in brief is that they were appointed initially for training under the Ordnance Factory's Management as Trainee under the scheme of NCTVT. They underwent training for a period of two to three years according to the requirements of the trades. They completed the training between the period from 06.04.1984 to 25.07.1985 as mentioned in column no. 6 of Annexure A-2 in respect of each individual. They claim that after completion of their training they were entitled to the status of skilled labourers, as they had attained the qualification of fully skilled labours. However, they were appointed by the respondents as Labour 'B', which is nothing but the grade of unskilled labours. They should have been appointed in a skilled grade of Rs. 260-400. The applicants had to accept the said grade though they had done the job of skilled worker. Some of the applicants were appointed as Lapper-B in the grade of Rs 210-290, which is a semi-skilled labour grade. Later on, remaining applicants were also appointed in the semi-skilled grade in the said pay scale. The said act of the respondents is contrary to the policy of the Government as well as waste of

A. L. Singh

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public money on such training schemes which are mainly responsible in providing skilled workers. The said act of the respondents is violative of public policy mentioned in part IV of the Constitution of India, as it is exploitation of a weak person from mighty power.

5. As per recommendations of the Third Pay Commission, an Expert Classification Committee went into the question of fixation of semi-skilled trade. The semi-skilled trade was held to be entitled to skilled trade and the pay scales, as submitted by the said Committee in their partial report in 1981 and final report in 1983. The Government has issued a letter dated 15.10.1984 (Annexure A-4) requiring that every individual must put in two years in order to enable him to get skilled post. The said view is also taken by the Apex Court of the Land in Bhagwan Sahai, Carpenter & Others V/s. Union of India reported in 1989 (10) ATC 70 in connection with upgradation of some trades with skilled grade effective from 16.10.1981. Hence, the letter dated 15.10.1984 has become redundant in view of the judgement of the Apex Court referred above and the post of semi-skilled grade does not survive. Thus, the respondents have made discrimination between the workers who got benefits under the report of anomaly committee effective from 16.10.1981 and the applicants who are eligible to get the same benefit from the very date of their appointment under the Labour category-B. The applicants have made representation to the respondents for upgradation from the date of their appointment in Labour-B grade which is replied by the respondents vide order dated 5.10.1994 stating the reasons that the promotions cannot be ante-dated. The said order is void and invalid which is the subject matter of the case.

P.L. Sharma -

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6. The respondents have resisted the claim of the applicants on the ground that it is barred by limitation. The Millwright, Grinder and Lapper were not upgraded from semi-skilled to skilled grade vide letter dated 15.10.1984. The respondents allege that the question of promoting persons in a grade in the absence of vacancies does not arise. The applicants cannot claim to be promoted in the grade of skilled labour just because they have acquired the required qualification. Hence the respondents pray for the dismissal of the O.A. alongwith costs.

7. The applicants filed a rejoinder affidavit denying the allegations levelled against him. They also filed a copy of order dated 05.09.1985 by which nine applicants were designated as Machinist/Fitter/Turner from the grade of Lapper D, copy of the order dated 08.06.1989 by which the applicants are placed in Skilled grade in the scale of Rs. 260-400 w.e.f. 01.06.1989, copy of representations dated 05.08.1987 and 30.11.1993.

8. On perusal of Annexure A-2 it is noticed that Applicant No.1, 2, 12, 13 to 16 have obtained the trade named "Turner". Applicant Nos. 3 to 6 have obtained the trade named "Fitter". Applicant Nos. 7 to 9, 22 and 23 have obtained the trade named "Machinist". Applicant Nos. 10 have obtained the trade named "Millwright" and Applicant Nos. 17 to 21 have obtained the trade named "Grinder". On perusal of Annexure A-4 letter dated 15.10.1984 we are of the considered opinion that "Millwright" and "Grinder" trades are not covered by the said letter. Thus Applicant Nos. 10, 11, 17 to 21 who have not obtained the trade specified in the said letter, are not entitled to any upgradation in view of the said letter. The Learned Counsel for the applicants have relied on an order passed in O.A. No. 111/91 by the Bangalore Bench. Vide order dated 18.02.1993 the Division

J.L. Dhillon

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Bench of Bangalore Bench, Central Administrative Tribunal had directed the Registrar to place the papers before the Hon'ble Chairman for his orders regarding constitution of a Larger Bench. A larger Bench was constituted and the matter was decided on 18.06.1993 which is reported in 1994-96 A.T. Full Bench Judgements page 9 (G. Narayana & Others V/s. Union of India & Others). The opinion expressed is as under :

"For the reasons stated above, this application is allowed and is disposed of with the following directions :

(a) The respondents are directed to extend to the applicants the benefit of upgradation and according to higher scale of pay of Rs. 260-400 with effect from 15.10.1984.

(b) The applicants shall be entitled to seniority and fixation of emoluments on the basis of their upgradation as aforesaid with effect from 15.10.1984.

(c) The financial benefits flowing from the aforesaid direction shall however, be limited to a period not exceeding three years before the filing of the present application.

(d) These directions shall be implemented within a period of four months from the date of receipt of a copy of this order.

(e) Parties shall bear their own costs."

In view of the above said pronouncement, every trade has been upgraded. Hence, though the case of applicant Nos. 10, 11, 17 to 21 is not covered by letter dated 15.10.1984 but in view of pronouncement by Full Bench in case of G. Narayana & Others V/s. Union of India & Others, their case is covered. Thus, the case of the applicants for upgradation of posts apparently stands covered.

J.L. Gani -

9. Applicant Nos. 1 to 9 were appointed in semi-skilled grade on 17.08.1985, Applicant Nos. 10 to 21 were appointed in semi-skilled grade on 04.09.1985 and Applicant Nos. 22 and 23 were appointed in semi-skilled grade on 10.02.1986.

10. Annexure A-4 which gives upgradation of persons in semi-skilled grade also makes a provision for fresh induction to the trades listed in (i). The provision is as under :

"a) Semi-skilled categories to be identified by you or feeder categories in the pay scale of Rs. 210-290 already existing under the present recruitment rules, subject to the workers having rendered minimum of three years service in the grade and after passing the prescribed trade test;

and

b) direct recruits with III Certificate / Ex-Trade Apprentices/ NCTVGT etc. inducted in the semi-skilled grade, who have rendered two years service in that grade."

On perusal of the above provision (b), which is relied on by the applicant's counsel, we are of the considered opinion that the feeder cadre for skilled grade alongwith eligible qualification is mentioned. The contention of the Learned Counsel for the applicants is that the persons who are direct recruits with NCTVT inducted in the semi-skilled grade who have rendered two years service in that grade shall be entitled to the skilled grade. In our considered view, this position cannot be accepted as it is only an eligibility but posting to skilled grade depends upon the availability of vacancies. The Learned Counsel for the respondents relied on an order passed by the Central Administrative Tribunal, Madras Bench, in case of R. Jaisingh & others V/s. Union Of India & Others decided alongwith other cases

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on 13.04.1999 which lays down the proposition that order dated 15.10.1984 applies to persons already in service on the said date. Similar view has been taken by the Principal Bench in O.A. No. 561 of 1990 decided on 01.01.1997. A review against the same was filed No. 41/97 which was also dismissed on 07.04.1997.


11. The Learned Counsel for the respondents relied on an order passed in O.A. No. 442/97 by Central Administrative Tribunal, Hyderabad Bench on 20.12.1997. On perusal of the said order we are of the considered view that the said order is not at all relevant to the present case, as all the applicants in the said order were appointed after 15.10.1984 and the rules regarding the said recruitment were modified.

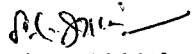
12. The Learned Counsel for the respondents relied on the decision of the Apex Court in Civil Application No. 11486 and 11487/90 (Union of India & Others V/s. S. Yoganand & Others) which lays down the proposition that Courts and Tribunals normally should not try to fix the pay scale of different categories of employees only on principle of equal pay for equal work. In the said appeal the matter in question was for a direction to the Respondents that the same scale of pay be given to the Petitioners by the Respondents, which was being paid to Skilled grade employees. In the present case, the applicants' relief is not to the same effect, though originally the prayer was the same. But at the commencement of the hearing, they have moulded the prayer and restricted their relief only to the extent that after completion of two years training they are entitled to the grade of skilled labourers.

Dr. B. M. /

13. As stated above, the post of skilled labourers are sanctioned one and the said grade can be allotted to the applicants only when there exists vacancies. Further, in view of discussion as stated above, order dated 15.10.1984 applies to persons already in service on the said date as Semi-Skilled labour, while the applicants were appointed later on in the said grade.

14. In the result, we do not find any merit in the O.A. The O.A. deserves to be dismissed and is dismissed accordingly with no order as to costs.


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


(S. L. JAIN)
MEMBER (J).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.45/2000 in OA.No.182/95

Dated this the 31st day of May 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

G.P.Naik & Ors.

...Applicants

By Advocate Shri S.P.Saxena

vs.

Union of India & Ors.

...Respondents

By Advocate Shri R.K.Shetty

Tribunal's Order

{Per : Shri S.L.Jain, Member (J)}

Applicant No.11 in OA.NO.182/95 has filed this Review Petition in respect of an order passed by this Bench in OA.NO. 182/95 decided on 2.6.2000.

2. The applicant claims that copy of the order was received on or about 25.6.2000. The Review Petition is filed on 25.8.2000. Along with Review Petition, application for condonation of delay was not filed but it was filed on 17.4.2001.

S.L.J.

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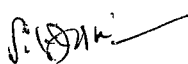
3. The grounds stated in the application are that the applicant had sought legal opinion about the possibility of filing a Review Petition or a Writ Petition in High Court and as the applicants are employed at a very remote place Varangaon and their Advocate was at Poona, the applicants had to consult the Advocate at Poona, which took some time. On being advised to file a Review Petition before Tribunal, the Review Petition was drafted and settled and filed in the Tribunal on 25.8.2000.

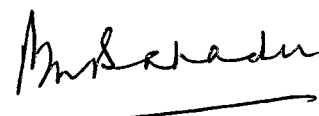
4. On consideration of the grounds for delay condonation in filing the Review Petition, we are of the considered opinion that the facts mentioned by the applicant are such in nature which every litigant has to come across the same. None of the facts are such which can be said to be the circumstance by which it can be said that the applicant was prevented by sufficient cause for filing the Review Application in time. It is well known fact that at every place the Benches of the Tribunal are not sitting, litigants residing in villages and towns while the Tribunals are available at Capital places, and Advocates are not available where the litigants do reside. The facts being so, we do not find that the applicant is able to make out any sufficient cause for condoning the delay in filing the Review Petition.

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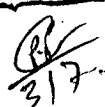
5. The Review Petition filed by the applicant is delayed by one month. The Review Petition is barred by time as applicant fails to establish sufficient cause for delay condonation. In view of the fact that delay condonation application deserves to be dismissed and is dismissed accordingly, it is not necessary to record any opinion on the Review Petition.

6. In the result, Review Petition deserves to be dismissed and is dismissed accordingly as barred by time. No order as to costs.


(S.L.JAIN)
MEMBER (J)


(B.N.BAHADUR)
MEMBER (A)

mrj.

dt: 31.5.2002
order/Judgment despatched
to Applicant/Respondent (s)
on 1.7.2002.

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