

262/97
Order in O.A.
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI 400001

ORDER IN O.A.Nos. 765/97;

884/97

885/97;

886/97 AND

371/92

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, V.C.
O.A. No. 765/97 : HON'BLE MEMBER(A), SHRI N.R.KOLHATKAR.

Dated: 28-01-98.

Mrs. Sobha A.
Assistant Foreman
Armament Research and Development
Establishment,
Pashan,
Pune 411021
(By Adv. Mr. S P Saxena)

..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Defence
New Delhi 110011
2. The Director General
Research & Development
Directorate of Pers(Pers
'B' Wing, Sena Bhawan
Ministry of Defence
New Delhi 110011
3. The Director
Armament Research and
Development Establishemtn
Pashan
Pune 411021
(By Adv. Mr. R K Shetty,
Central Government Standing
Counsel)

..Respondents

O.A. No. 884/97 :

P.R. Dilpak
Technical Officer 'A'
Armament Research and Development
Establishment,
Pashan,
Pune 411021
(By Adv. Mr. S P Saxena)

..Applicant

V/s.

1. Union of India
through the Secretary

Ministry of Defence
New Delhi 110011

2. The Director General and
Scientific Advisor
Research & Development
Directorate of Pers(Pers-1)
'B' Wing, Sena Bhawan
Ministry of Defence
New Delhi 110011

3. The Director
Armament Research and
Development Establishemtn
Pashan
Pune 411021
(By Adv. Mr. R K Shetty,
Central Government Standing
Counsel)

..Respondents

O.A.No. 885/97 :

V D Dhaybar
Technical Officer 'A'
Armament Research and Development
Establishment,
Pashan,
Pune 411021
(By Adv. Mr. S P Saxena)

..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Defence
New Delhi 110011

2. The Director General and
Scientific Advisor
Research & Development
Directorate of Pers(Pers-1)
'B' Wing, Sena Bhawan
Ministry of Defence
New Delhi 110011

3. The Director
Armament Research and
Development Establishemtn
Pashan
Pune 411021
(By Adv. Mr. R K Shetty,
Central Government Standing
Counsel)

..Respondents

O.A.No. 886/97 :

K G Pillai
Technical Officer 'A'

Armament Research and Development
Establishment,
Pashan,
Pune 411021
(By Adv. Mr. S P Saxena)

..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Defence
New Delhi 110011
2. The Director General and
Scientific Advisor
Research & Development
Directorate of Pers(Pers-1)
'B' Wing, Sena Bhawan
Ministry of Defence
New Delhi 110011
3. The Director
Armament Research and
Development Establishemtn
Pashan
Pune 411021
(By Adv. Mr. R K Shetty,
Central Government Standing
Counsel)

..Respondents

O.A. No. 371/92 :

1. Lakhbir Singh
2. S S Deolalikar
3. Y R Urde
4. H G Pardeshi
5. S B Bhalerao
6. J K Bidlan
7. S B Parmar
8. K S K Nair
9. E G Darpalli
C/o..ARDE, Armament Base
Pashan, Pune 411021
- 10 Smt. Pyari N. Masih
W/o. Noor Nasih
C/o. Adv. Avinash Shivade
Advocate, Vrindavan 112A/2,
14th Lane, Prabhat Road,
Poona 411004
(By Adv. Dr. Avinash Shivade)

..Applicants in
O.A.No.371/92

V/s.

1. Union of India
through the Secretary

Ministry of Defence
South Block
New Delhi 110011

2. The Director
Armament Research and
Development Establishemtn
Pashan
Pune 411021

3. Department of Personnel
R&D Headquarters
Sana Bhavan
New Delhi 110011
(By Adv. Mr. R K Shetty,
Central Government Standing
Counsel)

(Adv. Mr. S P Saxena)

..Respondents
..for Intervenors

ORDER

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[Per: R.G.Vaidyanatha, Vice Chairman]

1. All these case are applications filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply in all these applications. Since common question arises for consideration in all these cases they are heard together and are disposed of by this common order. We have heard Shri S.P.Saxena, learned counsel for the Applicants in the first four cases and Dr. Avinash Shivade, learned counsel for the Applicant in the fifth case and Mr. R .K.Shetty, learned counsel for the Respondents in all the cases.

2. In the first four cases the pleadings are almost identical, both on behalf of the Applicants and on behalf of the Respondents. The Applicants in the first four cases had earlier challenged the order or reversion by filing O.As. in this Tribunal. The said O.As. came to

be disposed of by this Tribunal by order dated 4.3.97 under which the impugned order of reversion was quashed but the department was given opportunity to issue a show cause notice to the Applicants and then after hearing them to pass fresh orders according to law. The department issued show cause notices to all the four Applicants and then passed separate orders against the Applicants under which they came to be reverted again. The order of reversion is being challenged by all the four Applicants.

3. The Applicants case is that they had been promoted from Chargeman Grade II to Chargeman Gr.I and further they got further promotions and came to the grade of Assistant Foreman by regular promotion.

4. There was another set of employees called Precision Mechanics who were lower than Chargeman Gr.II, but however, by a decision of the Bangalore Bench of the Tribunal dated 6.4.93 in O.A.No.600/91 the Precision Mechanic were equated with Chargeman Grade II and entitled to promotion directly to Chargeman Grade I. It is alleged that the decision of the Bangalore Bench is erroneous and contrary to the rules. It is alleged that the Bangalore Bench did not take into consideration SRO 221 of 1981 where the cadre of Precision Mechanic was abolished and merged into new cadre of Tradesman. Hence it is contended that the decision of the Bangalore Bench relying on SRO 246 of 1981 without notice of SRO 221 is

per incuriam. It is therefore stated that Precision Mechanics were no longer in existence when SRO 246 was issued and hence the decision of the Bangalore Bench that Precision Mechanics are entitled to promotion directly as Chargeman Gr.I is erroneous and cannot be accepted. Now the Respondents have given promotion to the Precision Mechanics on the basis of Bangalore Bench order of this Tribunal and prepared a fresh seniority list and as a result of which the four Applicants have been reverted. It is alleged that the reversion is bad and illegal. Even otherwise it is stated that there was no necessity for reversion at all. In our view the other facts alleged in the O.As. are not necessary for our present purpose.

5. The Respondents have filed a reply asserting that all the four applications are not maintainable in law in view of the decision of Bangalore Bench in O.A.No.600/91. It is stated that the Applicants remedy is for a review application before the Bangalore Bench or to challenge that judgment by filing an appeal before the Supreme Court. Then it is stated that in view of the decision given by the Bangalore Bench the seniority list was prepared afresh and then Precision Mechanics were promoted directly to chargeman Gr.I and they were also given higher promotions. The four Applicants are far below in the seniority list and as a result they had to be reverted in order to accommodate the promoted Precision Mechanics in view of the judgment of the

Bangalore Bench of CAT. Hence it is stated that the order of reversion is perfectly justified and valid and is done in compliance with the decision of the Bangalore Bench of the Tribunal.

6. In the last case viz., O.A.No. 371/92 some of the earstwhile Precision Mechanics who were promoted on the basis of the Bangalore Bench judgement have filed this O.A. stating that they are entitled to promotion retrospectively from 1.3.1977 and entitled to all the consequential benefits. It is filed by nine earstwhile Precision Mechanics and one widow of an earstwhile Precision Mechanic.

7. In the reply filed by the Department the stand taken is that the Applicants in this case are not entitled to promotion from 1977 but are entitled to promotion only from 1991 when SRO 246 was issued which enabled the Precision Mechanics to get promotion directly to Chargeman Gr.I which has been recognised and applied by the Bangalore Bench of the Tribunal in O.A.No. 600/91.

8. In this application some seven persons have filed Miscellaneous Petition no. 801/96 as intervenors with the request that they should be permitted to come as intervenors and should be heard in the matter. The application for intervention has been allowed. Though these intervenors have not filed any reply, their learned counsel Mr. S P Saxena, adopted the case of the

Applicants in the first four cases as Defence to the present application.

9. Mr. Saxena, learned counsel for the Applicants in the first four cases and who is also the learned counsel for the intervenors in the fifth case contended that the judgement of Bangalore Bench is erroneous and per incuriam. He contended that the Precision Mechanics were below grade of Chargeman Gr.II and hence they cannot be promoted directly to Chargeman Gr.I. Then it was further submitted that the SRO 246 cannot be enforced since the Precision Mechanics were no longer in existence when that SRO was issued. Alternatively it was submitted that there was no necessity to revert the Applicants even if Precision Mechanics had to be promoted as per the order of the Bangalore Bench.

10. The learned counsel for the Respondents in all the cases, Mr. R K Shetty, contended that the applications are not maintainable in this Tribunal and that the order passed by the department is perfectly justified, legal and valid.

11. In the last case Dr. Shivade appearing for the Applicants contended that Applicants are at least entitled to promotion and consequential benefits from 1981. In this case Mr. Shetty, learned counsel for the Respondents submitted that the department has no objection to give seniority and promotion from 1981 to

the nine Applicants and the widow of the tenth Applicant in this O.A. But Mr. Saxena who appeared for the intervenors in this case contended that the Applicants being Precision Mechanics are not entitled to promotion on the basis of SRO 246 and hence their application is liable to be dismissed in the light of the arguments addressed before us.

12. The points that fall for consideration are:

- (1) Whether the first four applications are not maintainable as alleged ?
- (2) Whether the decision of the Bangalore Bench of the Tribunal is per incuriam or otherwise erroneous and requires reconsideration? And if so whether the matter should be referred to a Larger Bench ?
- (3) Whether the Precision Mechanics are entitled to be promoted to Chargeman Gr.I directly as held by the Bangalore Bench of the Tribunal in O.A.No. 600/91 ?
- (4) Whether the reversion of the Applicants in these four cases is illegal and liable to be quashed ?

(5) Whether the Applicants in the last case (O.A. No. 371/92) are entitled to promotion and consequential benefits at least from 1981 ?

(6) What order ?

POINT No.(1):

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13. The learned counsel for the Respondents Mr. Shetty contended that rightly or wrongly the Bangalore Bench has taken one view. The correctness of the same cannot be canvassed before another coordinate bench and the remedy of the Applicant is either to file Review therein or to file an appeal in the Supreme Court. The argument is no doubt attractive. In fact some of the earlier decisions of the Tribunal are to the effect that in such cases fresh OAs should not be filed and the party aggrieved by a judgment of a Bench of any Tribunal, though he is not a party, may move the Tribunal with a Review Petition. But, as of to-day, the question is no longer res-integra and is covered by a direct authority of the Apex Court in AIR 1997 SC 3277 [K. AJIT BABU & ORS. Vs. UNION OF INDIA & ORS] where an identical question arose before the Supreme Court. It is pointed out by the Apex Court that in service matters it is quite possible that the judgment of a Tribunal may affect many officers who will not be parties before the Tribunal. Strictly speaking, observed

the Supreme Court, such judgments are not in personam but they should be judgments in rem. Then the Supreme Court observed that in such cases fresh applications should be filed under section 19 of the A.T. Act. If it is found that the question involved is considered by an earlier decision of the Tribunal, then the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree or dissent from it. If the Tribunal in the fresh case disagrees with the view taken by another Tribunal in a similar matter, then the Tribunal will have to refer the question to a Larger Bench/Full Bench to decide the matter.

14. In view of this ruling of the Supreme Court we hold that the present applications filed by the Applicants challenging the correctness of the decision of the Bangalore Bench in O.A.No.600/91 are perfectly maintainable. If we agree with the decision of the Bangalore Bench then the applications will have to be dismissed. However, if we disagree with the view taken by the Bangalore Bench, then we will refer the disputed question to the Full Bench or Larger Bench to be constituted by the Hon. Chairman as provided in the A.T.Act. Point No. (1) is answered accordingly.

POINT Nos. (2) and (3):

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15. The Bangalore Bench has based its decision entirely on SRO 246 to come to the conclusion that Precision Mechanics are equal to Chargeman Gr.II and therefore they are entitled be promoted directly to Chargeman Gr.I. Prior to this SRO, Precision Mechanics were not on par with the Chargeman Gr.II and they had to be promoted first to the Chargeman Gr.II and then later to Chargeman Gr.II.

16. The only argument urged by Mr. Saxena is that the decision of the Bangalore Bench is per incuriam as the Bangalore Bench had not considered SRO 221 and therefore ignoring or not noticing a statutory provision amounts to the decision being per incuriam. It was also argued that the Respondents in that case did not bring to the notice of the Tribunal the implications of SRO 221. In our view this argument has no merit. We find that the Bangalore Bench was made aware of SRO 221.

17. It may be noticed that there was some dispute about the salary of Precision Mechanics. The matter was agitated before a Bench of this Tribunal at Hyderabad. The Hyderabad Bench in O.A.No.156/86 [P.S. PRASAD & ORS. Vs. UNION OF INDIA & ORS.] by order dated 10.11.1986 held that all Precision Mechanics are entitled to revised scale of Rs.380-560. It is interesting to notice that

this pay scale which was given to the Precision Mechanics by the Hyderabad Bench is the same pay scale given to Chargeman Gr.II. Of course the Hyderabad Bench was not dealing with the question of promotion or equation of Precision Mechanic with Chargeman Gr.II, but the Hyderabad Bench has decided that Precision Mechanics are to get the said scale of pay which incidentally is identical with the pay scale of Chargeman Gr.II.

18. There cannot be any dispute that the Government can always amend or modify the rules of recruitment, promotion etc.

19. In the judgment of the Bangalore Bench in OA 600/91, which is referred to extensively by counsel for either side, we find that in para 4 there is a clear reference to SRO 221 dated 22.8.1981. In fact the Respondents viz., the Government in that case have clearly pleaded that the Precision Mechanics get merged with Tradesman Gr.A in view of SRO 221 and hence the Precision Mechanic cannot claim right of promotion directly to Chargeman Gr.I. This point has also been considered by the said Bench in para 7 where they have held that SRO 221 cannot in any way affect SRO 246 issued by the Government.

20. Therefore, we find that the Respondents have pleaded SRO 221 as a bar to the promotion of Precision Mechanics directly to the grade of Chargeman Gr.I and this argument has been considered and rejected by the Bench in view of

subsequent SRO 246. Therefore the argument that SRO 221 was never brought to the notice of Bangalore Bench and the decision was given ignoring or not noticing the statutory provision has no merit and is liable to be rejected. In the case before the Bangalore Bench both SRO 221 and 246 were considered and SRO 246 under which Precision Mechanics with three years service were entitled to be promoted directly to Chargeman Gr.I. Therefore, the argument by the Applicant's counsel that the Bangalore Bench decision is per incuriam being contrary to the statutory rules has no merit.

21. We may also notice that some of the officials who are not parties to this O.A.No.600/91 filed a Review Petition before the Bangalore Bench taking identical contention which is now pressed by the Applicants in this case. Copy of the order in Review petition is placed on record. In the review application No.36/94 in O.A.No.600/91 (ASHOK Vs. SECRETARY, UNION OF INDIA) an identical question was argued basing on SRO 221. The Review Petition came to be dismissed by order dated 4.1.96. Even in this Review Application there is reference to SRO 221 of 1981. Then they have considered subsequent SRO 246/81. Then on the basis of SRO 246/81 the Review Bench also agreed with the decision given by the earlier Bench in O.A.600/91. Reference to SRO 221/81 in this Review Petition is at many places in the order. Therefore, it is not a case of a judgment being given ignoring or nor noticing statutory provision.

22. The argument that the post of Precision Mechanic did not exist after SRO 221/81 was issued has no merit. What SRO 221 says is that certain categories of Industrial posts are brought under common name Tradesman Gr.A. It nowhere says that all the posts grouped under Tradesman Gr.A are abolished or they are merged in one cadre. For the purpose of recruitment the number of industrial posts were grouped under one heading "Tradesman Gr.A". The argument that the post of Precision Mechanic was abolished and did not exist after the issue of SRO 221 has no merit.

23. Then a week later SRO 246/81 was issued in which it is provided that Precision Mechanics are entitled for promotion to Chargeman Gr.I if they have put in three years of service. The argument that SRO 246 does not supersede SRO 221 is also an argument which does not merit acceptance. Precision Mechanics and a number of other Industrial posts were grouped under Tradesman Gr.A under SRO 221. But in SRO 246 Precision Mechanics are given right of promotion directly to Chargeman Gr.I if they have put in three years of service. There is no conflict at all between SRO 221 and 246. Both of them operate in different fields. Even agreeing for a moment that there was some inconsistency between the two orders then later order should prevail. If the Government has issued SRO 246 with a definite purpose of giving promotion opportunities only to the Precision Mechanics, then to that extent impliedly it supersedes SRO 221. In

our view however, this is not a case of SRO 246 superseding SRO 221. The purpose of SRO 221, is to create certain industrial posts including Precision Mechanics under one category of Tradesman Gr.A for the purpose of recruitment. But the purpose of SRO 246 is a different one giving promotional opportunity to Precision Mechanic with three years service directly to the post of Chargeman Gr.I. The Bangalore Bench has considered SRO 246 which rightly states that Precision Mechanics with three years service are entitled to be promoted directly to the post of Chargeman Gr.I.

24. We, therefore, find no illegality or infirmity in the reasoning or finding of the Bangalore Bench. We fully agree with the view expressed by the Bangalore Bench in O.A.No.600/91 and hold that all Precision Mechanics who had put in three years of service when SRO 246 came into existence are entitled to promotion to the post of Chargeman Gr.I. We do not find any reason to take a different view from that of Bangalore Bench and to refer the matter to a Larger Bench.

25. For the above reasons our finding to POINT No.2 is in the negative and finding on POINT No.3 is in the affirmative.

POINT No.4 :

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26. It is true that the Bangalore Bench never stated that officers already promoted should be reverted. But the Bangalore Bench gave a direction to prepare a seniority list on the basis of this judgment and then give promotion to the Precision Mechanics as per SRO 246. It is true that in one of the letters the department has stated that the question of reversion may not arise and adjustment would be made. But after the seniority list was prepared it was found that the Applicants came as low as one hundred and more in the seniority list. For instance Mrs. Sobha, Applicant in O.A.No. 765/97 is at serial No.113 as per the revised seniority list. If Precision Mechanics are to be given promotion as per SRO 246 and as held by the Bangalore Bench, with which we are in respectful agreement, then persons who are already promoted have to be reverted. If by chance we take pity and allow the four Applicants to continue in the promoted post then all persons above them will have to be immediately promoted because when a junior is promoted then the seniors will have to be automatically promoted. There are a number of persons in the seniority list above the present Applicants and some others below who are already promoted. All those persons who are above the Applicants will have to be automatically given promotion if the Applicants are not to be disturbed from the reversion. In our view that cannot be done. The only

thing the Applicants would be entitled to is to get the protection of pay till they get next promotion. In fact, that has been considered by the department and in the order of reversion it is stated that the Applicants will continue to draw the salary which they are drawing till they get the promotion again. The Respondents have also not directed the Applicants to refund any amounts which they have drawn in the promoted post. Therefore, in our view the reversion of the Applicants is unavoidable having regard to SRO 246 and the judgment of the Bangalore Bench with which we fully agree. POINT No.4 is answered accordingly.

27. We had reserved the case after hearing arguments and had practically completed dictation of the judgment. At this stage we find that the learned counsel for the Applicant has given a bunch of papers consisting of some letters, some SROs and some judgments. In our view the letters and SROs have no bearing since we have already considered the relevant SROs which are necessary for the disposal of these cases. Since some copies of the judgments are produced we would like to refer to them briefly.

(i) Copy of order dated 7.2.92 of a Division Bench of this Tribunal in O.A.No.324/88 [S.PHILIP & ORS Vs. UNION OF INDIA & ORS]. That was a case where some reversion was done on the basis of a letter of the Government and it was pointed out to the Tribunal that on the basis of

the letter of the Government the promotional avenues could not be changed and the earlier promotees could not be reverted. In our view this observation has no application to the facts of the present case since in the present case seniority list is prepared on the basis of judgment of Bangalore Bench of the Tribunal. The department was bound to comply with the judgment of the Tribunal and on that basis prepare a seniority list which unfortunately resulted in reverting some of the promotees who were far far below in the seniority list.

(ii) Order dated 14.2.91 in O.A.No.217/87 of Jabalpur Bench of the Tribunal in the case of SHISHIR KUMAR CHATTOPADHYAY & 5 ORS Vs. UNION OF INDIA & 99 ORS. That was a case where the question was about giving effect to the judgment of the High Court regarding fixation of notional seniority. It is, therefore, observed for purpose of giving notional seniority the other persons who rank above in the seniority list should not be disturbed. This decision also has no application to the facts of the present case.

(iii) O.A. No. 1712/95 & connected cases - S M NAIDU Vs. UNION OF INDIA & ORS. In that case the only question was about giving effect to the guidelines in the Government letter dated 11.4.94 which was issued by the Government of India in pursuance of the judgment of Full Bench. In the present case there is no controversy at all about the guidelines contained in circular dated 11.4.94.

(iv) Decision of the Supreme Court in Civil Appeal No.2925/81 dated 30.9.86 in the case of K.R. MUDGAL & ORS. Vs. R.P. SINGH & ORS. (THE CITATION IS NOT LEGIBLE). The only relevant point in that judgment is that the court should not give relief to a party if there are latches and delays on his part. We do not know how this judgment would be helpful to the Applicants at all. In our view the question of delays or latches does not arise so far as the Respondents are concerned. It is Applicants who have come to the court and they are producing an authority on a question of latches and delay.

(v) Decision of the Supreme Court reported in J.T. 1995(5) SC 543 in the case of UNION OF INDIA & ORS. Vs. SHRI DEBASHIS KAR & ORS. In our view this decision is on the question of giving higher scale of pay to Draughtsman in the Ordnance Factories like the Draughtsman of C.P.W.D. and this decision has no application to the facts of the present case.

28. As already stated some of the papers filed along with the bunch of papers are not relevant and further copies are not given to the opposite side and no arguments were addressed with reference to those papers. Hence we cannot consider these papers which are filed after the case was reserved for judgment. Even otherwise we find that most of the documents are highly irrelevant for the purpose of the present case.

POINT No.5 :

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29. In view of the findings given by us on points 1 to 4 the promotion of the Applicants in O.A.No.371/92 as Precision Mechanics has to be upheld. Argument of the intervenors that these Applicants are not entitled to promotion has to be rejected for the reasons mentioned above.

30. The original prayer in this O.A. was for promotion to the post of Chargeman Gr.I. But it was brought to our notice that all the Applicants have been promoted as Chargeman Gr.I during the pendency of this O.A. and the only point of dispute is about granting retrospective promotion from 1981 or not.

31. Now the only question in this O.A. is from what date the Applicants are entitled to get promotional benefits. The Applicants wanted promotion right from 1977, but the stand of the Government is that the Applicants being Precision Mechanics got the right of promotion only from 1981 when SRO 246/81 came into existence.

32. At the time of arguments the learned counsel for the Applicants Dr. Shivade submitted that the Applicants would be satisfied if they get the benefit of promotion from the date of SRO 246/81. It is conceded by the

learned counsel for the Respondents at the time of arguments and also admitted in the reply wherein it is stated that the Precision Mechanics are entitled for proforma promotion from the date of issue of SRO 246/81. Hence we hold that the Applicants 1 to 10 are entitled to consequential benefits from 1.9.1981. Point 5 is answered accordingly.

ORDER

33. In the result it is ordered as follows:

- (1) O.A.Nos. 765/97; 884/97; 885/97 AND 886/97 are hereby dismissed.
- (2) The Applicants 1 to 9 in O.A. No. 371/92 and the husband of the Applicant No.10 are entitled to proforma promotion from 1.9.1981 and fixation of pay in the promotional post as on 1.9.1981 and entitled to arrears of pay and allowances in the promotional post from 1.9.1981.
- (3) They are also entitled to all consequential benefits taking their seniority in the first promotional post from 1.9.1981.
- (4) Official Respondents are granted six months time from to day to pay the arrears of pay and allowances to the Applicants in O.A.No. 371/92.

(5) In the circumstances of the case there would be no order as to costs.

(M.R.KoJhatkar)

Member(A)

(R G Vaidyanatha)

Vice Chairman

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