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Between:

R.A.No. 75 /96 (S.R.No.2493/96 in O.A.1530/95).

1. Union of India represented by its Secretary,
Ministry of Defence, Sena Bhavan, New Delhi.
2. The Commandant HQ 1 EME Centre, Secunderabad. Applicants/Respondents.

A n d

1. J.S.Surjuse.
2. Mohd. Aktar Hussain.
3. M.Devakar. Respondents/Applicants.

R.A.No. 76 /96 (S.R.No.2495/96 in O.A.52/96)

1. Union of India represented by its Secretary,
Ministry of Defence, Sena Bhavan, New Delhi.
2. The Commanding Officer, Station Workshop EME,
Secunderabad. Applicants/Respondents.

And

R.Babu. R.A.No. 77 /96 (S.R.No.2485/96 in O.A.1267/95.) Respondent/Applicant.

1. The Union of India represented by the Secretary,
Ministry of Defence, Sena Bhavan, New Delhi.
2. The Commanding Officer, EME Depot Battalion,
Secunderabad. Applicants/ Respondents.

And

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|-----------------|----------------|-------------------------|
| 1. G.Pitchaiah. | 2. Ram Asre. | 3. Maria Bhogal |
| 4. P.Subramani. | 5. V.Gevardha. | 6. Smt. G.Sayamma. |
| 7. R.Krishna. | | Respondents/Applicants. |

R.A.No. 78 /96 S.R.No.2489/96 in O.A.1264/95)

1. Union of India represented by its Secretary,
Ministry of Defence, Sena Bhavan, New Delhi.
2. The Commandant, MCEME, Trimulgherry Lal Bazar,
Secunderabad. Applicants/Respondents.

A n d

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|-----------------|----------------|-------------------------|
| 1. M. Yadagiri. | 2. Murugeshan. | 3. Jaihindu Rao |
| 4. C.Narayana. | | Respondents/Applicants. |

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD

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R.A.No. 72 /96 (S.R.No. 2212/96 in O.A.1524/95)
R.A.No. 73 /96 (S.R.No.2258/96 in O.A.1525/95)
R.A.No. 74 /96 (S.R.No.2262/96 in O.A.No.1150/95)
R.A.No. 75 /96 (S.R.No.2493/96 in O.A.No.1530/95)
R.A.No. 76 /96 (S.R.No.2495/96 in O.A.No.52/96)
R.A.No. 77 /96 (S.R.No.2485/96 in O.A.No.1267/95)
R.A.No. 78 /96 (S.R.No. 2489/96 in O.A.No.1264/95)
R.A.No. 79 /96 (S.R.No. 2492/96 in O.A.No.1263/95)
R.A.No. 80 /96 (S.R.No. 2487/96 in O.A.No.161/95)

DATE OF DECISION: 18-9-1996.

BETWEEN:

R.A.No. 72 /96 (S.R.2212/96 in O.A.1524/95)

1. The Union of India represented by the Secretary,
Ministry of Defence Sena Bhavan, New Delhi.
2. The Commandant, Military Hospital, Golconda, Hyderabad. Applicants/Respondents

And

K.Satyanarayana. Respondent/Applicant.

R.A.No. 73 /96 (S.R.No.2258/96 in O.A.1525//95)

1. The Union of India represented by the Secretary,
Ministry of Defence Sena Bhavan, New Delhi.
2. The Commandant Military Hospital, Golconda, Hyderabad. Applicants/Respondents.

And

Smt. Lalithabai. Respondent/Applicant.

R.A.No. 74 /96 (S.R.No.2262/96 in O.A.1150/95)

1. The Union of India represented by the Secretary,
Ministry of Defence, Sena Bhavan, New Delhi.
2. The Commandant HQ. Artillery Centre,
Golconda, Hyderabad. Applicants/Respondents.

And

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|----------------|--------------------|-------------------------|
| 1. Munnuswamy. | 2. Kanniah. | 3. Govindswamy. |
| 4. L.Chander. | 5. Tulasiram. | 6. Laxmamma. |
| 7. Shyamlal | 8. R.Balaram | 9. G.V.Jagadish Rao. |
| 10.M.A.Khadar. | 11. Balaram Gakwad | 12.Laxminarayana. |
| 13.C.B.Mankar. | 14. G.Pentaiah | 15.Syed Ali Ahmed. |
| 16.Kantha Rao. | 17. P.Shankar. | RESPONDENTS/APPLICANTS. |

Between:

R.A.No. 79 /96 (S.R.No.2492/96 in O.A.No.1263/95)

1. Union of India represented by its Secretary, Ministry of Defence, Sena Bhavan, New Delhi.
2. The Commandant, HQ1, EME Centre, Bolaram, Secunderabad ... Applicants/Respondents.

And

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|-----------------|----------------------|
| 1. C.Dhanpal. | 7. V.Kothandapani. |
| 2. M.Rangaiah. | 8. A.C.Krishna. |
| 3. M.Syamalal. | 9. M.Gopi. |
| 4. Thakur Dass. | 10. M.Kumar |
| 5. Narayan. | 11. Puranchand |
| 6. K.Babu. | 12. P.K.Dilli Babu. |
| 13.S.G.Kamble | 14. Chandulal Mohan. |

Respondents/Applicants.

R.A.No. 80 (S.R.No.2487/96 in O.A.161/95.

1. Union of India represented by its Secretary, Ministry of Defence, New Delhi.
2. The Commandant, AOC Centre, Secunderabad ... Applicants/Respondents.

And

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| 1. B.Ramdas. | 2. Mohan Lal. | 3. G.Joneswar Rao. |
| 4. M.Ramchander. | 5. Mohd. Uncer. | Respondents/Applicants. |

Counsel for Applicants in all the Review Applications.

Sri N.R.Devraj, Senior Standing Counsel for the Applicants/ (Respondents in O.As.,)

Counsel for the Respondents in all the Review Applications:

Sri K.Sudhakar Reddy for the Respondents (Applicants in O.As.,)

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD.

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REVIEW APPLICATION NO. 72 /96

(S.R.No. 2212 of 1996 in O.A.No. 1524 of 1995.)

DATE: 18 SEPTEMBER - 1996

Between:

1. The Union of India represented by
the Secretary, Ministry of Defence,
Sena Bhavan, New Delhi.

2. The Commandant Military Hospital
Golconda, Hyderabad.

APPLICANTS/RESPONDENTS

A N D

K. Satyanarayana.

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RESPONDENT/Applicant.

COUNSEL FOR THE APPLICANTS: Sri N.R.Devraj, Senior Standing
Counsel for Central Government.

COUNSEL FOR THE RESPONDENTS: Sri S.Sudhakar Reddy.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN. *full*

HON'BLE SHRI R.RANGARAJAN, MEMBER (A)

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3. The Respondent herein is working as Tailor under the control of the Commandant, Military Hospital Golconda, Hyderabad (Review Petitioner No.2) which is a Defence Establishment. He was in the pay scale of Rs.210-290. Relying upon the decision of the Supreme Court in the case of PRABHU LAL AND ANOTHER Vs. UNION OF INDIA in W.P.(C)No.492 of 1991 dated 3-10-1991 he claimed the benefit of upgradation to the Skilled Grade of Rs.260-400 with effect from 16-10-1981 together with arrears of pay from that date. The O.A. was disposed of at admission stage and the respondents had not filed any counter. The Senior Standing Counsel for the Central Government Shri Devraj however appeared when the Order was passed. The Division Bench for the reasons stated in the Order and following the earlier decision of this Bench in O.A.No.100/92 dated 15.9.95 allowed the O.A., granting relief to the present respondent in terms set out above.

4. The grounds for review as stated in the review petition and urged before us by Mr. Devraj, the learned Senior Standing counsel for Central Government appearing for the petitioner may be,

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REVIEW APPLICATION NO. /96
(S.R.NO. 2212 /96 in O.A.No. 1524 /95.

DATE: 18th SEPTEMBER, 1996

J U D G M E N T.

(PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN)

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The original respondents in the O.A., viz., Union of India (Ministry of Defence) seek review of the Order dated 11-12-1995 passed in the O.A., whereby relief was granted to the present respondent (original applicant) as follows:

- (i) Pay of the applicant be notionally fixed in the pay scale of Rs.260-400 as on 15-11-1984 and the monetary benefit be given with effect from 9-2-1988 (and even earlier if such decision was taken by the Ministry)
- (ii) Respondent No.1 (Review petitioner) to take a decision by 1-3-1996 as to whether the benefit as per Memo No.17(5)/89-D(Civ.1) dated 19-3-1993 be extended even to the trades other than the five trades identified by the Expert Committee and the 11 trades identified by the Anomalies Committee.

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- v) The decision of the Supreme Court in PRABHULAL'S case did not cover the category of the Respondent and was inapplicable but has been wrongly applied
- vi) Thus there is an error apparent on the face of the record for which the Order requires to be reviewed.

4. In order to appreciate the above points in a correct perspective it is necessary to mention as an incidental fact that similar orders passed by the Tribunal in respect of unskilled workers in different trades under different defence establishments are subject matter of review petitions which we have heard with the instant petition and the facts relating to them are relevant to be taken into account for effectual determination of the points raised as noted above which also have been raised in those petitions and the conclusions herein will also govern those petitions. Moreover the counsel for both the sides have adopted the same arguments in all these matters. The details are as follows:

1. O.A.No.1525/95 was filed by a Boot Maker working in Artillery Centre, Hyderabad.

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summarised as follows:

- i) The claim in the O.A., was barred by res judicata in view of earlier decisions of the Tribunal on the same points.
- ii) The facts and circumstances relating to the applicant were different from those relating to DRDO and therefore the reliance placed on the letter issued in the DRDO side, to give the monetary benefit from 9-2-1988 to the Respondent is wrong.
- iii) There did not arise any occasion to take a decision by the Ministry whether the benefit of their letter dated 19-3-1993 could be extended inasmuch as the Supreme Court had upheld the fitment of pay scales as per the ECC recommendations and the recommendations of the Anomalies Committee.
- iv) An opportunity should have been given to the Government to defend the case and the decision should have been rendered on merits after hearing them.

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They were working in different Trades namely, Tailors, Boot Makers and Equipment repairers. All the applicants in these 9 O.As., numbering 52 have been granted the same relief of fixation of pay scale (skilled grade) Rs.260-400 notionally from 15.11.1984 and monetary benefit from 9-2-1988. In two cases decision in O.A.1042/93 has been followed, in one case decisions in O.A.958/94 and 1159/95 have been followed and in other cases decision in O.A.100/92 has been followed. We shall refer to those decisions in due course.

6. In order to deal with the points raised by Mr. Devraj it is necessary to note the Scheme as regards upgradation of unskilled staff to skilled grade in different trades in different units.

Historical background of rationalisation
and fitment of pay Scales.

7. The Third Central Pay Commission after examining the scales of various categories of Workers in the Defence Establishments had recommended the setting up of an Expert Classification Committee (ECC) for studying and evaluating the job contents of all industrial jobs and

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2. O.A.No.1150/95 was filed by 17 applicants who consisted of Boot Makers, Tailors and Equipment repairers working in Artillery Centre, Hyderabad.
3. O.A.No.1530/95 was filed by three applicants described as Boot Makers, Tailor, Equipment Repairer working in IEME Centre, Secunderabad.
4. O.A.52/96: Applicant was working as Boot Maker, EME Station Workshop, Secunderabad.
5. O.A.1267/95: The seven applicants were working as Boot Makers in EME Depot Battallion.
6. O.A.1264/95: The 4 applicants were described as Boot Makers, Tailors, Equipment repairers in MCEME.
7. O.A.1263/95: The 14 applicants worked as Boot Makers at EME HQ'I Centre, Bolaram, Secunderabad
8. O.A.161/95: The 5 applicants were working as Tailors at AOC Centre, Secunderabad.

5. It will thus be noticed that the applicants concerned in these O.As., were working at different establishments namely, Military Hospital Golconda Artillery Centre Hyderabad, IEME Centre Secunderabad, EME Station Workshop and EME Depot Battallion, MCEME.

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tradesmen in DRDO who were left out made representations complaining that there was no justification to pick and choose only 11 trades denying the same benefit to those in some trades who were similarly situate. With a view to look into this problem a Committee called "VENKATESAN COMMITTEE" was set up by the DRDO. That Committee made a recommendation to the effect that all the tradesmen in the grade of Rs.210--290 as on 15-10-1984 should have the benefit of ungradation to the scale of Rs.260-400 as a one time measure. Consistently it was also recommended that on retirement or promotion of the beneficiaries of upgradation, the posts occupied by them in the scale of Rs.260-400 should revert back to the scale of Rs.210-290 and filled up in accordance with the rules. These recommendations, however, were not accepted by the Government.

8. In DRDO which has several laboratories and establishments promotions to the relevant categories is governed by the same set of statutory rules and for the purpose of according promotion from the lower to the higher category common seniority lists are prepared and maintained in respect of all the trades though for the purpose of effecting promotions each establishment is treated as separate unit.

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prescribe suitable pay scales within the framework of the recommendations of the Pay Commission which reduced the existing 19 scales to 5 scales varying from unskilled to highly skilled Grade I categories. The ECC was accordingly set up in October, 1974. The Committee submitted its report in 1979 and recommended 9 scales. The Government however took a decision in October, 1981 that there should be only 5 scales of industrial workers instead of 9. The fitment of 9 pay scales into 5 pay scales had to be done on the basis of mid-point-rating of the points allotted by the ECC for each category as the result of job evaluation. The implementation of these recommendations having given rise to certain anomalies a Committee called ^{-waram} "VENKATESAN ANOMALIES COMMITTEE" was constituted which classified 11 categories as skilled categories for according the pay scale of Rs.260-400. These 11 categories however did not include Tailors, Boot Makers and Equipment repairers and some other categories of semi-skilled tradesmen. These recommendations were implemented in different units of defence establishments. One of them was Defence Research and Development Organisation (DRDO for short). DRDO had had different wings such as DRD Laboratory and Gas Turbine Research Establishment (GTRE). However common rules governed recruitment to the posts and services in the DRDO. The semi-skilled



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12. The mid-point rating method therefore could result in a trade in an establishment not being equated with a trade with same nomenclature under another establishment. Thus the points scored by Tailors of AOC as per job evaluation were 228 resulting in their being fitted in the scale of Rs.210-290. In this connection it has to be noted that at the Floor level upto point 205 the wage scale fixed was Rs.106 to Rs.205 between 206 and 250 points it was fixed at Rs.210-290, for the points scored between Rs.251 to Rs.328 the wage fixed was Rs.260-400, for the points scored between 329 and 388 it was fixed at Rs.330--480 and for those above 388 the scale was Rs.380--560. Accordingly Tailors in AOC got the scale of Rs.210--290.

13. The fixation was to be made in respect of Employees who belonged to semi-skilled category and were in position on 16th October, 1981.

14. As far as DRDO is concerned, common seniority lists are prepared and maintained in respect of all trades for promotion from the lower to the higher category but for the purpose of effecting promotion, each establishment is treated as separate unit. A complex method therefore is being adopted. Thus firstly unit-wise position of seniority is taken into account. That is next carried to common seniority lists of all the wings of DRDO and eventually the employees are accordingly

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9. The above details are gathered from the following decisions.

1. Supreme Court - Civil Appeal Nos. 3999 - 4023 of 1988. S.THIRUVALLUVAN & OTHERS Vs. UNION OF INDIA & OTHERS with DEFENCE EMPLOYEES UNION & OTHERS vs. UNION OF INDIA AND OTHERS (decided on 13-7-1993).
2. O.A.No.2090/1990 Principal Bench, Central Administrative Tribunal SRI DULICHAND & ORS., Vs. UNION OF INDIA decided on 17-10-1994 (copies of above decisions are annexed to the reply) and
3. G. NARAYAN & OTHERS vs. UNION OF INDIA AND OTHERS (C.A.T. Bangalore Bench O.A.111/91) decided by Full Bench (CAT) on 10-6-1993 and reported at Full Bench Judgments(CAT) Vol. III P.216 decided on 18-6-1993.

Position emerging from the above material.

10. The Expert Classification Committee had reduced the 19 scales in the defence establishments to 9. That was the primary classification. The Committee had studied more than 1700 industrial jobs in various defence establishments. However, the Government decided to compress the proposed 9 scales into 5 pay scales. The classification was based on the technique of job evaluation following the point on rating basis.

11. The 11 categories specified by the Anomalies Committee were eventually to be fitted in the 5 scales of pay which the Government had approved and which were based on job evaluation following the mid-point rating method

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benefit of upgradation. Thus it was the policy decision taken by the Government of India that those categories were not, in view of the job evaluation made, to be conferred with that benefit though there may have been similarities of their trades with trades of those who were classified to get that benefit. As held by the Supreme Court in STATE OF UTTAR PRADESH Vs. J.P. CHAURASIA reported in A.I.R. 1988 S.C. 19 the evaluation of duties and responsibilities of various posts should be left to the expert bodies and the Court should normally accept the recommendations. As seen above the upgradation Scheme has been based on recommendations of Expert Bodies and the Tribunal cannot easily disregard the same.

17. Few more factual details will make the position further clear. As seen earlier Tailors trade in AOC has been awarded 228 points. This was referred to Anomalies Committee but it did not find any anomaly in fixing the pay scales of Tailors of AOC Centre on point rating that had been adopted. However, the Tailors in EME have been fitted in the pay scale of Rs. 260-400 vide Government letter dated 11-5-1993. It is, therefore, manifest that Tailors in all the defence establishments cannot be said to be entitled to upgradation uniformly. The differentiation is based on rational basis of job evaluation and rating given by Expert Bodies.

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fitted in the basic 5 pay scales consistently with the 11 categories specified by the Anomalies Committee.

15. It would not therefore be right to proceed on the basis that all unskilled workers from all trades who were positioned in the scale of Rs.210-290 were to be uniformly upgraded to the scale of Rs.260-400 whether in position on 16-10-1981 or at a later point of time. Such an approach would result in ignoring the job evaluation done and recommendations made by expert bodies and the policy decisions taken by the Government in respect of all Defence Establishments.

16. The VENKATESAN COMMITTEE had dealt with the semi-skilled tradesmen in DRDO only and not belonging to other defence establishments. The Committee merely had suggested upgradation of all tradesmen from scale of Rs.210--290 to Rs.260-400 uniformly as one time measure only and had not departed from the recommendations of anomalies Committee and the ECC. The Government however did not accept this suggestion. Consequently the classification into 11 categories made by the Anomalies Committee eventually relatable to the primary classification indicated by the ECC in five categories prescribed and the unskilled workers who were outside the 5 categories irrespective to whatever trade they belonged and were in whatever establishment did not become entitled to get the

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19. In the above decision the decision in O.A.363/88 was referred to and followed. The decision in O.A.363/88 was considered by the Full Bench of the Central Administrative Tribunal in the case of G.NARAYANA AND OTHERS (Supra). That was also a case relating to Employees working in DRDL and GTRE under DRDO. The Full Bench held that the view taken by this Bench was right and called for no reconsideration. The Full Bench held that the picking and choosing of only 11 trades from the common category of trades who are all in the same feeder category for promotion to Group 'C' would per se result in discrimination against the excluded categories and would be violative of Articles 14 and 16 of the Constitution.

20. It may be mentioned that SDP filed against the decision in O.A.363/88 was dismissed in limine by the Supreme Court on 15-11-1989 as noted in the Full Bench decision.

21. Three of the O.As., from which review petitions have arisen, namely O.A.Nos., 1525/95, 1150/95 and 1530/95 were disposed of at admission stage following the previous decision in O.A.No.110/92 which in turn had followed the decision in O.A.363/88 which was approved by the Full Bench and SLP against which had been dismissed by the Supreme Court. There should therefore be no scope to interfere in review. However,

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The previous decisions of this Bench and other
Case law discussed.

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18. As mentioned earlier the decisions of this Bench relied upon in this batch of cases were rendered in:

O.A.No.100/92.
O.A.No.958/94.
O.A.No.1159/95 and
O.A.No.1042/95.

O.A.100/92 (decided by Division Bench on 15.9.1995).

The application was filed by 24 employees who were working as Tradesmen "B" in different jobs in the DRDL (a wing of DRDO). They sought extension of the benefit of upgradation to the scale of Rs.260-400. The claim was contested by the respondents (the main respondents being DRDL and DRDO) on the ground that the trades of the said applicants were not recommended higher pay scale either by the ECC or the Anomalies Committee. The application was allowed on the assumption that in pursuance of the direction given to Government to take a decision in regard to industrial workers in the organisation who did not come within the five trades specified by the ECC and 11 trades referred to by the Anomalies Committee a decision will be taken to extend them the benefit of upgradation. Thus the relief granted was based on a prospective decision anticipated from Government to concede the demand which however was not taken by the Government. The relief granted therefore has become illusory.

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23. The above view also finds support from the decision of the Principal Bench of the Central Administrative Tribunal in O.A.2090/90 decided on 17-10-1994 (that is earlier to the decision in O.A.100/92). That case was filed by Tailors working in Ordnance Department who were not given the up-gradation. The contention of the Respondents was that the difference in pay scales between Tailors of AOC and Tailors of other Units as well as those belonging to other trades had arisen mainly because of the varying job content. The Division Bench (consisting of the Hon'ble Chairman Mr. S.C.Mathur and Mr. P. Thiruvengadam, Member(A)) negatived the contention of the applicants that they were discriminated. It was also held that the main ground urged by the applicants that they should be placed in a scale higher than tailor (mates) cannot be sustained. The observations of the Supreme Court in CHAURASIA'S CASE and the circumstance that those applicants had submitted a Memorandum to the Fifth Pay Commission were noted and it was held:

"We also note that the main issue regarding pay scale for the tailors has been gone into by the ECC as well as by Anomaly Committee. In the circumstances, we do not consider it proper to give a direction to the respondents for rationalising the pay scale of the tailors at this stage."

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the impact of the later decision of the Supreme Court in the cases of S. THIRUVALLUVAN AND DEFENCE EMPLOYEES UNION (Supra) is necessary to be noted. It has been held by Their Lordships while dismissing the appeals thus:

"The Tribunal has, therefore, rightly come to the conclusion that the pay scale allotted to each category of employees on the basis of points given by the ECC as a result of job evaluation cannot be termed as arbitrary."

22. The decision was rendered on 13-7-1993, that is after the Full Bench decision of the Tribunal in O.A.111/91 (supra) which was decided earlier on 18-6-1993 and therefore it would prevail over the Full Bench decision and could be followed in O.A.100/92 which decided much later on 15-9-1995. Moreover the Full Bench decision related to staff working under DRDO whereas the Supreme Court decision would cover all the defence establishments. With the decision of the Supreme Court the vice of arbitrariness which could lead to discrimination would not arise in adopting the main 5 categories identified for upgradation including the 11 trades identified by the Anomalies Committee which had to be fitted within the main 5 classifications.

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27. It is true that the Full Bench (CAT) had adopted the date 15-10-1984 in respect of applicants concerned in that case. That was based on recommendation of Venkatesam Committee for one time measure. That again appears to be in conflict with the decision of the Supreme Court in ASSOCIATION OF EXAMINERS MURADNAGAR ORDINANCE FACTORY vs. UNION OF INDIA & OTHERS (Writ Petition No.40 of 1991 d/31.7.1991).

It was observed therein:

"It is, therefore, obvious that those employees who belong to the semi-skilled category and were in position on 16th October, 1981 in the grade of Rs.210--290 were to be upgraded to the semi-skilled category carrying a scale of Rs.260--440 commensurate with the points score given by the Committee...."

Their Lordships have referred to the decision in BHAGWAN SAHAI Vs. UNION OF INDIA (A.I.R.1989 S.C.1215) which was relied in the decision in O.A.363/88 of this Bench and the Full Bench decision (C.A.T.). The Supreme Court decision however related to the entitlement of those who were in position on 16-10-1981 and not with reference to subsequent dates. The decision of the Supreme Court in the ASSOCIATION OF EXAMINERS case was not noticed in the Full Bench decision nor in the orders under review. However, in the decision under review (O.A.1524/95

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This decision was rendered after the Full Bench decision as well as the decision of the Supreme Court mentioned above. Since this decision takes the view consistently with the decision of the Supreme Court it ought to be followed.

✓ 24. Unfortunately none of these decisions have been noted either in the decision in O.A.100/92 or in the decision presently under review. In all the three O.As., under review Tailors were applicants (with Boot-makers and equipment repairers in two cases).

25. We are therefore inclined to take the view that O.A.100/92 had not been correctly decided and consequently the three O.As., under review which were decided following the decision in O.A.100/92 have also not been correctly decided.

26. Another feature relating to the three decisions under review is the relief granted notionally from 15-10-1984 and monetary benefit from 9-2-1988. It has already been seen that the upgradation was available to those who were in position on 16-10-1981. The recommendation of VENKATESAM COMMITTEE to give the benefit to all Tradesmen as one time measure had not been accepted by the Government. The Government did not take a decision to grant that benefit by reference to any date after 16-10-1981 (which would include the dates 15-10-1984 and 9.2.1988).

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29. PRABHULAL'S case related to a claim made by Bootmakers based on letter of Government d/15-10-1984. It was observed that the distinction (sought to be made on the basis of notification Nos. SRO 1/88 and SRO 130/89) between non-industrial and industrial workmen belonging to the same trade was not shown to have existed earlier when the benefit was granted to certain employees. Hence the Government was directed to grant the scale of Rs.260-400 to those who were in service with effect from 16-10-1981. The question involved therefore was relating to distinction made within the trade between industrial and non-industrial categories of Bootmakers and it was left to the Government to take a decision to grant the benefit uniformly to all those trades which were to be upgraded after the Deputy Secretary's letter d/16-10-1984 and they not being driven to Court to receive the benefit of which they were entitled as per the interpretation of the Court in BHAGWAN SAHAI'S CASE.

30. The Government contend in this behalf in the review petition as follows:

"The direction of the Supreme Court (in PRABHULAL'S CASE) was that the Department should grant the benefit uniformly to all those trades which are to be upgraded after the Government letter dated 15th October, 1984. This we have done by issue of

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another decision of the Supreme Court in W.P.No.492/91

(SHRI PRABHULAL & ANOTHER Vs. UNION OF INDIA AND OTHERS)

dated 3-10-1991 has been referred. Their Lordships observed in that decision that "the Department should grant the benefit uniformly to all those trades which were to be upgraded after the Deputy Secretary's letter of October 15, 1984...." On the assumption that the said judgment might have been placed before the Ministry who had necessarily to take a decision in regard to the industrial workers in the defence organisation who do not come within the five trades referred to by the Anomalies Committee as to whether the benefit of upgradation with effect from 16-10-1981 has to be extended to them or not the relief in the O.A., was granted. Even so there is no elucidation as to on what basis the benefit is directed to be given from 15-10-1984.

28. As stated earlier since the Government had yet to take a decision as hoped by the Supreme Court the orders under review had directed the Government to take a decision whether the benefit as per the Memo No.17(5)/89-D(Civ.1) dated 19-3-1993 be extended to the trades other than the fixed trades identified by the Expert Committee and the 11 trades identified by the Anomalies Committee. Thus the relief of upgradation granted was subjected to such decision being taken here as said earlier it became illusory.

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32. Decisions under review:

33. O.A.52/96 decided on 16-1-1996) was filed by a Bootmaker of EME Station Workshop. The decision follows earlier decision in O.A.1159/95. The decision in O.A.958/94 decided on 10-8-1994 was based on decision in O.A.443/88 which had been decided by a single Member on 29-9-1989. That case related to a Bootmaker who was denied the benefit of upgradation on the ground that he was in non-industrial category which was not identified as entitled to get that benefit. It was held that no difference was permissible between industrial and non-industrial bootmakers as that resulted in discrimination. Relief was therefore granted. Similar view was taken in O.A.521/93 in respect of 5 Boot Makers of MCEME.

34. The basic question however remains as to whether employees in excluded categories can be granted the benefit of upgradation on the ground of discrimination. This aspect has already been discussed. The position in law had become clear after the Supreme Court decision in I.THIRUVALLUVAN'S case in 1993 although the view was taken in O.A.443/88 decided on 29-8-1989 as mentioned above, with respect, the same could not be followed straightaway in the order under review which was decided on 16-1-1996.

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Government letter dated 19th March, 1993. Thus the Supreme Court already having upheld the up-gradation of certain trades from semi-skilled to skilled on the basis of the Anomalies Committee's recommendations and MOD having issued Govt. letter dated 15-10-1984 from 16th October, 1984, there is no scope for extending the benefit to skilled grade to other trades than what was given by the Anomalies Committee's recommendations. In view of the matter the benefit of MOD letter dated 19-3-1993 cannot be extended to the trades other than those identified by the Anomalies Committee"

It is further contended that the Tribunal could not issue the direction on the basis of the direction given by the Supreme Court in PRABHULAL'S CASE in regard to the employees whose trades are not covered by the MOD letter dated 15-10-1984 issued by the Deputy Secretary(O & M).

31. A situation therefore arises where the direction given by the Tribunal is based on a decision to be taken by the Government which the Government says it cannot take. The submissions made by the Government as above undoubtedly have force in them.

32. Whether for the aforesaid discussion the review should be allowed or not is a vexed question which we shall answer later after noticing other decisions.

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dismissed by the Supreme Court and thus there is no scope to re-open the issues.

38. There is force in the submissions urged by Mr. Sudhakar Reddy. Although we might condone the delay in the presentation of the review petition yet the fact remains that the decision under review being based on earlier decisions merely setting it aside would achieve no purpose and would indeed result in inconsistency of decisions of the Tribunal and give rise to judicial discrimination between those who got the benefit under earlier orders and those concerned in the present O.A., and in O.As., in companion Review applications. It is pertinent to note that the earlier decision in O.A.363/88 was rendered on 23-6-1989 followed by the decision in O.A.443/88 decided on 29.9.1989. These have been the forerunners of subsequent decisions one following the earlier. The decision in O.A.363/88 was approved by the Full Bench of the Central Administrative Tribunal and SLP filed against it was dismissed by the Supreme Court.

39. It is also seen that against some of the decisions in subsequent cases, SLPs., were dismissed by the Supreme Court. Some of these were O.A.Nos., 56/95 and 57/95 (SLPs 25353 and 25354 of 1995) and O.A.Nos., 521/93 and 522/93. The view taken in the earlier decisions was primarily based on the decisions of the Supreme Court in BHAGAWAN SAHARI'S CASE and in PRABHULAL'S case.

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35. O.A.Nos., 1263/95 and 1264/94 were decided on 20-10-1995 following the decision in O.As., 521/93 and 1042/93. The four applicants were Bootmakers in MCEME. Similar view as above was taken in these cases.

RELIEF:

36. The question now arises as to whether the review application can be allowed and Original Order be set aside. Mr. Devraj submitted that the directions given by the Tribunal in this and in other cases has created several difficulties in the way of the Government in implementing the policy of upgradation of different trades in different scales in different establishments all over the country involving a very large number of employees. The question of heavy additional financial burden also arises. Therefore he submits that the review be allowed and the legal position may be clarified.

37. Mr. S. Sudhakar Reddy for the Respondent submits on the other hand that the review application is liable to be rejected for variety of reasons. Firstly, there is no satisfactory explanation of delay and it is time barred; secondly, the decision in the O.A., follows earlier decisions which have achieved finality and therefore it cannot be held that there is any error manifest on the face of the record so as to interfere with it. The learned counsel also says that SLPs., filed against some of the earlier decisions had been

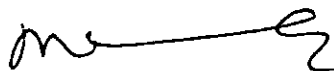
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by the Review Petitioners, we are not inclined to allow the same. The instant review petition is (and the companion 8 review petitions are) therefore liable to be dismissed.

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ORDER

42. In the result the Review Petition S.R.No.2212 of 1966 in O.A.No.1524 of 1995 is hereby dismissed. No order as to costs.



R. RANGARAJAN,
MEMBER (A)



M.G. CHAUDHARI, J
VICE-CHAIRMAN

Date: 18.9.96

Pronounced in open Court.

* P.S. : At the request of Mr. N.R. Devaraj, time to implement the original judgement is extended by three months from the date of receipt of this order.
sss.



HRRN
M(A)



HMGCJ 18.9.96
VC

NOTE:

Copy of the Order in R.A.No.72/96 (S.R.No.2212/96) in O.A.No.1524/95 shall be kept separately in each of the R.As., and each shall be treated as disposed of separately by an Order.



HRRN
M(A)



HMGCJ, J
V.C.