

FORM NO . 21.

(Sec. Rule 114.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD.

O.A / ~~114~~ 580/96 199

.. N. Dharmasish & S. S. S. Applicant(s).

Versus

The Secretary, M.O. Deum, N. Delhi 6 S. S. Respondent(s).

INDEX SHEET

Serial No.	Description of documents and dates.	Pages.
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Docket orders.

Interim Orders

Orders in M.A(S)

Reply State, emt.

Rejoinder

ORDERS IN (Final orders)

15-9-98.

14-5-96.

17-7-96.

5-8-98.

7-1-99.

1 to 4

64 & 65

25 to 27

28 to 47

48 to 63.

66 to 77

Certified that the file is Completed
in all respects.

Signature of dealing Head.

(in Record Section)

Signature of S.O.

OA 580/96

Date

Office Note

Orders

1-9-98

At the request of counsel
for the applicant, list it on
11-9-98. No further adjourn-
ment will be given.

R
HBS SP
M(S)

[Signature]
HARN
M(A)

11-9-98

List it on 14-9-98
for judgement.

R
HBS SP
M(S)

[Signature]
HARN
M(A)

15/9/98

List it on 22-9-98 for
judgement above admissions.
If no ^{proof} ~~reply~~ in regard to the
applicant having called for
trade test in 1986 & 1987 is
produced on that day, the
case will be decided as if
the applicants have not called
for trade test in 1986 &
1987.

R
HBS SP
M(S)

[Signature]
HARN
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

O.A.NO. 580 of 1996

N. Dharmiah & 588 Applicant (S)

V E R S U S

The Secretary, Ministry of Defence,

New Delhi & 688 Respondent (S)

Date

office Note

Orders

14.5.1996 (vacation)

M.A.NO.381/96 in OASR No.1595/96 and
OASR

MINUTES

Leave granted. Application is disposed of. Office to register the O.A. subject to removal of other objections if any. In view of the pendency of the companion OASR No.1593/96, this OA is admitted. Issue notice to the respondents. Four weeks for written statement. OA to be listed for further proceeding along with OASR No.1593/96.

Operation of the impugned order dated 28.4.1994 which was continued by the order dated 28.3.1996 in M.A.NO.466/94 is hereby extended to operate during the pendency of the instant O.A.

8/5/96
HMRP
M(A)

HMGC.j
VC

Admet Notice
28/5/96

2

4

OA 580/96

DATE

Office Note

ORDER

7/12/98

from
page

to be given in regard to the
payment of Rs. 250/- to each of
the applicant 1 & 2 as ordered
in the docket order dt. 22.9.98.

R
HBSOP
M(J)

HRRM
M(A)

14/12/98.

list this OA for Judgement
above admission on 15-12-98.

R
HBSOP
M(J)

HRRM
M(B)

15/12/98.

Heard Mr. G. V. Subba R
the applicant and Mr. V. Bhim
for the respondents.

This OA is similar to O.A.
578/96 which is reserved to
Both the OAs will be disposed
by a common order.

R
HBSOP
M(J)

HRRM
M(B)

O.A. 580/96.

DATE

Office Note

O R D E R

22-09-98.

Heard Mr. G.V. Subba Rao, learned counsel for the applicant and Mr. V. Bhimanna, learned counsel for the respondents.

2. The order dated 15-09-98 is not complied with at all. The learned counsel for the respondents produced some material which cannot be treated as evidence to prove their case. It is worth throwing out even without any hesitation. It looks that the respondents are trying to mis-lead the Court by providing evidence which cannot be considered as evidence at all. The learned counsel for the respondents submit that he will produce necessary documents. When the respondents were instructed to produce necessary documents on 15-09-98 itself it is not understood why the respondents request some more time. In our opinion, the reason is to delay the issue of the judgment for reasons known to them. Hence, the OA is to be posted for judgment on 23-11-98 when necessary documents for proving the case of the respondents will be produced.

3. List it on 23-11-98.

HBSJP
M(J)

HRRN
M(A)

list it for orders on

7. 12. 98.

R
HBSJP
M(J)

L
HRRN
M(A)

*Mr. G.V. Subba Rao, for the applicant.
Mr. V. Bhimanna, for the respondent.*

*list it for judgment above admission
on 14/12/98. By that date Confirmation*

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD.

ORIGINAL APPLICATION 580 of 1996.

Shri M. Dharmachand and Applicant (S)
5 others.
V E R S U S

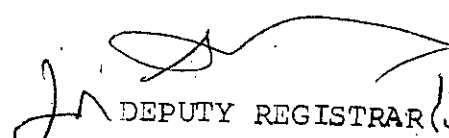
Secy, P/O Defence,
New Delhi 46 others Respondent (S)

The application has been submitted to the Tribunal by
Shri GV Subbarao Advocate/~~party-in~~

~~under~~ under section 19 of the Administrative Tribunal Act,
1985 and the same has been scrutinised with reference to the
points mentioned in the check list in the light of the provi-
sions in the Administrative Tribunal (procedure) Rule 1987.

The application is in order and may be listed for
admission on 14/5/96


SCRUTINY OFFICER
13/5/96


DEPUTY REGISTRAR (JUDL)
10/5

Section Officer.

10. Has the impugned orders Original/duly attested legible copy been filed ?

Yes

11. Have legible copies of the annexures duly attested been filed ?

Yes

12. Has the Index of documents been filed and pagination done properly ?

Yes

13. Has the applicant exhausted all available remedies ?

Yes

14. Has the declaration as required by item No.7 of Form I been made.

Yes

15. Have required number of envelopes (file size) bearing full address of the respondents been filed ?

Yes

16. (a) Whether the relief sought for, arise out of single cause of action ?

Yes

(b) Whether any interim relief is prayed for ?

Yes

17. In case an MA for condonation of delay is filed, is it supported by an affidavit of the applicant ?

Yes

18. Whether this case can be heard by Single Bench ?

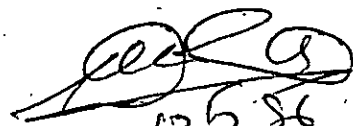
No

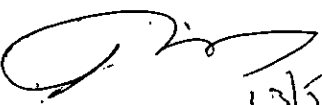
19. Any other point ?

Yes

20. Result of the scrutiny with initial of the scrutiny clerk ?

File


13/5/86
Scrutiny Asst.


13/5/86
Section Officer.

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

Dairy No. 1595

Report on the Scrutiny of Application

Presented by SKR Date of presentation 13/5/96
Applicant (S) N. Dharmadas & Sons
Respondent (S) Secy, Defence, Delhi
Nature of grievance Modifying the date of promotion
No. of applicants 6 No. of Respondents 7

CLASSIFICATION

Subject Modifying the date of promotion (No) Department Defence (No)

1. Is the application in the proper form ?
(Three complete sets in paper books form
in two compilations) 8

2. Whether name, description and addresses
of all the parties been furnished in the
cause title ? 8

3. (a) Has the application been duly signed
and verified ? 8

(b) Have the copies been duly signed? 8

(c) Have sufficient number of copies of
the application been filed ? 8

4. Whether all the necessary parties are
impleaded. 8

5. Whether English translation of documents
in a language other than English or Hindi
been filed ? —

6. Is the application on in time ? (See
Section 21) 8

7. Has the Vakalatnama / Memo of Appear-
ance / authorisation been filed ? 8

8. Is the application maintainable ? (u/s 2,
14, 18, or U.R. 8 etc) 8

9. Is the application accompanied IPO/DD,
for Rs. 50/- ? 8

607

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

I N D E X - S H E E T

O.A.NO. 580 1996

CAUSE TITLE N. Dharmachari & S. S.

V E R S U S

The Secretary, Ministry of Defence,
New Delhi & G.S.

Sl.No.	Description of documents	Page NO.
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2.	Material papers	15 to 20
3.	Vakalat	1
4.	Objection sheet	—
5.	Spare copies	7
6.	Covers	7

7. Reply statement filed by Mr.
V. Bhimanna on 17/7/66.

8. Retainer filed by M. G. V. Subbar
on 8/8/66.

checked
2

Modifying the date of Promotion
Reg! - To direct the Respondents to treat the applicants
as having been promoted w.e.f. 15.10.85 to the
Grade of H.S.I. against restructured vacancies
as the promotions were ordered dispensing
with trade test as a one time measure.
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD
OA No. 580 of 1996

Bench

Between:

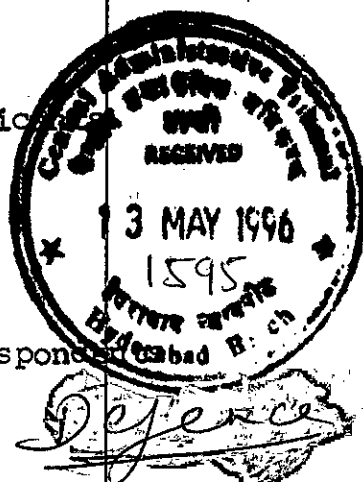
N.Dharmaiah and 3 others.

...Applicants

A N D

The Secretary, Ministry of Defence,
New Delhi and 6 others.

...Respondents



CHRONOLOGY OF EVENTS

1. The applicants are presently working as Senior Refrigeration Mechanics AC HS-I in Navy at Vasakhapatnam.
2. Consequent on restructuring the posts, they were promoted to the grade of HS-I w.e.f. 15.10.85 and they were also paid arrears.
3. Subsequently, the respondents came forward with a plea that they were given HS Grade.I w.e.f. 24.9.88 as per the modified proceedings and proposed recovery of the arrears already paid.
4. Against this order, the applicants filed OA No.1024/90 in this Hon'ble Tribunal and this Hon'ble Tribunal directed the respondents to permit the applicants to peruse the records and make representations against the orders.
5. The applicants were given opportunity to peruse the records and they made representation to the authorities against the order of recovery.
6. Without considering the actual facts, the respondents again reiterated their earlier stand by issuing the impugned order dated 28.4.94 without application of mind.
7. The applicants filed MA No.466/94 against the proposed recovery and this Hon'ble Tribunal stayed the operation of the order dt. 28.4.94.
8. The MA was finally disposed of on 28.3.96 with liberty given to the applicants to file a fresh OA and to apply for similar orders in this OA.

Persuant to the said instructions, the applicants have filed this OA praying for quashing of the orders dated 28.4.94. a separate OA is filed as per direction of the Hon'ble Tribunal on 9.5.96 in OASR No.1593/96.

Hyderabad
Dated: 12.5.96

[Signature]
COUNSEL FOR THE APPLICANTS

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA No. 580 of 1996

Between:

Nelapati Dharmaiah and
5 others.

...Applicants

A N D

The Secretary,
Ministry of Defence,
New Delhi and 6 others.

...Respondents

I N D E X

<u>Sl. No.</u>	<u>Date</u>	<u>Particulars</u>	<u>Ann.No.</u>	<u>Page No.</u>
1.	12.5.96	Original Application		1 - 14
2.	28.4.94	Impugned order No. 11500/ 133/86/EILC.	I	15
3.	2.4.94	Representation of the applicants	II	16-17
4.	28.3.96	Order dated 28.3.96 of this Hon'ble Tribunal in MA 466/94 in OA 1024/90.	III	18-20

11 S. S. Srinivasulu
COUNSEL FOR THE APPLICANTS

FOR USE OF THE REGISTRY

DATE OF FILING:

REGISTRATION No:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA No. 580 of 1996

Between:

1. Nelapati Dharmaiah,
S/o late Shri Venkanna,
Senior Refrigeration Mechanic,
HS-I, aged about 55 years,
Naval Depot & Base,
Visakhapatnam.
2. B. Umamaheswara Rao,
S/o Ramanaiah,
aged about 38 years,
Senior Refrigeration Mechanic,
HS-I, Naval Depot &
Base, Visakhapatnam.
3. B. Prabhakara Rao,
S/o late Shri Appala Rao,
aged about 38 years,
Senior Refrigeration Mechanic,
HS-I, Naval Depot &
Base, Visakhapatnam.
4. M. Siva Prasad,
S/o Shri Late Simhachalam,
aged about 38 years,
Senior Refrigeration Mechanic,
HS-I, Naval Depot &
Base, Visakhapatnam.
5. P. Ravindran,
S/o late P. Parameswari Menon,
aged about 49 years,
Senior Refrigeration Mechanic,
HS-I, Naval Depot &
Base, Visakhapatnam.
6. M. Narsinga Rao,
S/o Shri M. Adinarayana Murthy,
aged about 45 years,
Senior Refrigeration Mechanic,
HS-I, Naval Depot &
Base, Visakhapatnam.

... Applicants

A N D

1. The Secretary,
Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
New Delhi.
3. The Chief Engineer, MES
Southern Command,
Pune.

4. The Chief Engineer,
Dry Dock & Vizag Zone,
Visakhapatnam.
 5. The Commander Works Engineer,
Station Road,
Visakhapatnam.
 6. The Garrison Engineer,
Naval Depot,
Visakhapatnam.
 7. The Garrison Engineer,
Naval Base,
Visakhapatnam.
- ...Respondents

**APPLICATION FILED UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNALS ACT, 1985**

I. PARTICULARS OF THE APPLICANTS:

The particulars of the applicants are mentioned
in the above cause title.

The address of the applicants for the purpose of
service of notices etc is that of their counsel M/s G.V.
Subba Rao & N.Ethirajulu, Advocates, H.No.1-1-230/33,
Chikkadapally, Hyderabad.

II. PARTICULARS OF THE RESPONDENTS:

The particulars of the respondents are as mentioned
in the above cause title.

III. ORDERS AGAINST WHICH THE OA IS MADE:

Chief Engineer, Navy, Visakhapatnam letter No.11500/
133/86/EILC dated 28.4.94, containing the proceedings dated
30.1.1990 of the Commander Works Engineer (fifth respondent)
modifying the promotion date.

IV. JURISDICTION:

The applicants declare that the subject matter of
the OA is well within the jurisdiction of this Hon'ble
Tribunal under section 14 (1) (a) of the Central Adminis-
trative Tribunals Act, 1985, as they are all employed as
HS-Grade-I Senior Mechanics in the Navy, at Visakhapatnam.

V. LIMITATION:

The applicants further declare that the OA is well within the limitation as required under Section 21 (1) (a) of the Central Administrative Tribunals Act, 1985, in as much as this Hon'ble Tribunal disposed off the ^{OA} 466/94 in OA 1024/90 on 28.3.96 by a common order, with a direction to file a fresh OA, within four weeks from the date of the order. This Hon'ble Tribunal directed the applicants to file a separate OA in respect of all the applicants in OA no. 1024/90 by its order dt. 9.5.96 in OA sr.No. 1595/96.

VI. FACTS OF THE CASE:

A) The applicants humbly submit that they are employed as Senior Mechanic Refrigeration A/c in HS Grade I, Under the control of the Garrison Engineer, Naval Depot and Naval Base at Visakhapatnam in the Grade of Rs. 1320-2040. They filed OA No. 1022/90 and 1024/90 in this Hon'ble Tribunal challenging the proposed recovery and re-fixation of their pay in the Grade of ~~HS~~ ^{HS} I A/c Mechanic. This Hon'ble Tribunal by a common judgement disposed off the above OAs with a direction to the respondents within three months from the date of receipt of this order R4 in OA 1020/90 has to pass final order about the date from which the applicants have to be given promotion to the category of HS Grade-I, after determining as to when the vacancies in the said category had arisen. For determination of the same R4 has to give

notice to the applicants and has to allow them to look into their relevant records, which has bearing in determination of the said vacancies. Pending the final order to be passed by the R-4, the recovery as per the impugned orders dated 30.1.1990 is stayed till then the applicants have the salary from January, 1994 till the final order is going to be passed by the R-4, even the applicants in OA No. 1024/90 have to be paid salary from January, 1994 in accordance with the pay fixed as per the impugned proceedings dated 30.1.1990. If ultimately, the applicants succeed, they have to be paid as per the pay fixed as per the proceedings dated 24.9.1988 for the period for which they were paid at a lesser rate within three months from the date of order of R-4. Of course, if the order of R-4 is going to be adverse to the applicants herein, the recovery for the relevant period can be made and then the applicants are free to move this Hon'ble Tribunal by way of MA for challenging the same. If R-4 is not going to pass any final order within three months from the date of receipt of this order, the applicants herein are free to move this Hon'ble Tribunal by of MA for necessary instructions.

(B) Pursuant to the said directions, the fourth respondent i.e., the Commander-works-Engineer directed the applicants to look into the relevant records. As per the direction of the fourth respondent, the applicants perused the records that were made available and made a representation to the Chief Engineer on 2.4.1994. In the said representation, it was stated that the total strength as authorised as on date 15.10.1984 is shown as 119. The total vacancies authorised as per the Ministry of Defence order are as follows:

Skilled	-	77
HSK-II	-	24
HSK-I	-	17
Unfilled	-	01
		<u>119</u>

According to the records produced that there was no change in the total strength and also no promotion have been taken place.

And also the applicants allowed to see the record regarding the promotions taken place in the other than our category in which it is observed that no action till date initiated for the recovery of the revision of their pay as done on 30.1.1990 in our case even though they passed the trade test on 1988 only.

And also we were allowed to see the letter No. 15033/HS-I/122/EIND dated 24th October, 1988 by which it is observed that in the case of other categories some type of revision is not done and no action has been taken to do so, and when enquired the office shown the such record, it was informed that we are not concerned to know about.

(C) Without taking into consideration the representation made by us, the fifth respondent vide his letter No. 15055/CAT/1022 & 1024/142 dated 15.3.1994 again issued notices to us stating that the promotion from HS Grade II to HS Grade I from 15.10.1985 ordered as per the proceedings dated 24.9.1988 by the Chief Works Engineer, Visakhapatnam has been modified by the proceedings dated 30.1.1990 "Your promotion from HS Grade II to HS Grade I from 15.10.1985 ordered as per the proceedings

dated 24.9.1988 by the Chief Works Engineer, Visakhapatnam has been modified by the proceedings dated 30.1.1990 giving promotion to HS Grade.I with effect from 24.9.1988, the date on which you passed the trade test, as you were not qualified/appeared for trade test during 1985/86 for the post of HS Grade.I. Since your promotion to HS Grade.I was effected only from 24.9.1988, you are entitled for pay for HS Grade.I only from 24.9.1988 and accordingly your pay has been revised and the payment already made prior to 24.9.1988 in the post of HS Grade.I is to be recovered.

(D) It is further submitted that this letter is nothing but a reiteration of the earlier stand taken by the respondents without applying their mind to the various points that have been discussed by this Hon'ble Tribunal in its order dated 27.12.1993.

(E) It has been rightly observed by this Hon'ble Tribunal in para No.6 of the judgement that the benefit of the Ministry of Defence letter has to be given from that date. As these applicants were in service in the category of Refrigeration Mechanics, Skilled Grade.III for more than 3 years, they were given promotion to HS Grade.II with effect from 15.10.1984.

(F) In this connection, it is pertinent to point out that as on the date of notification of the upgradation of skilled category, the strength of the skilled category staff was 119 as per the particulars furnished in para supra. In terms of the upgradation the skilled category posts have to be distributed in the ratio of 15:20:65 percentage. The lowest category is that of the skilled grade and the rest of the posts are to be filled into

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HS Grade II and HS Grade-I at 20:15 percentage respectively. Applying the said principle of distribution of posts, the skilled category was distributed as under:

Skilled	-	77
HSK Gr.II	-	24
HSK Gr.I	-	17
Unfilled	-	01
Total		<u>119</u>

(G) From the above facts, it is evident that as result of restructuring the existing skilled category staff were automatically distributed as per the ratio. There is no change in the nature of work performed by them except that the seniors were given the higher grades, as they were ratting in the lower grade for a long time without any avenue or promotion.

(H) The contention of the respondents that there were no vacancies as on 15.10.1985 is incorrect and deliberate misrepresentation. The applicants were given the benefit of HS Grade-II initially with effect from 15.10.1984 and they were also paid the arrears for the period from 15.10.1984. The respondents have admitted that they were non-functional posts and they were given arrears with retrospective effect. As a matter of fact the applicants ought to have been straight away given HS Grade-I in terms of Ministry's notification but applying the rules regarding

::8::

r lation for promotions to HS Grade-I to one year the respondents have correctly fixed them in HS Grade-I with effect from 15.10.1985. The question of constituting a DPC at a later date does not arise in view of the fact that against the 15% upgraded posts, the applicants were fitted in with effect from 15.10.1985 and they were also paid the arrears with retrospective effect in terms of the Defence Ministry's notification. As on 15.10.84 in the HS Grade-I, it does not mean that there were no vacancies as that particular point of time. The only thing that they did was to first to implement the percentage in HS Grade-II leaving the post in HS Grade-I vacant. This is not filled. On 15.10.85 these posts were filled by promoting the applicants alongwith the others to the upgraded posts. If there were no vacancies, there was no need to promote the applicants to HS Grade-I with retrospective effect i.e., 15.10.1985. In this connection, the letter No. 90270/89/EIC, dated 4.7.1985 from Army Head Quarters. Engineer-In-Chief Branch, Delhi addressed to the Chief Engineer of the Southern Command clearly indicates that the fitment of the industrial works of MES in the pay scales recommended by the III Pay Commission, recommendations of the anomalies committee regarding fitment of common category skilled jobs are to be provided with Highly Skilled Grade. II and Highly skilled grade-II and the applicants fall under General Category and they are to be fitted against the 15% upgraded posts.

(I) In para No. 22 under the heading selection grades it is clearly stated consequent on introduction of HS Grade.I and HS Grade.II to common category jobs, the selection grade for the skilled grade, if provided will stand a substantially abolished as a one time measure.

(J) It is respectfully submitted that prior to the upgradation of the skilled category posts, there were no posts available in the HS Grade.II and HS Grade.I. Even, if the category, where such grades existed in the upgradation percentage has to be implemented in such manner that the percentage cadre strength of the category does not exceed the prescribed percentage of the upgradation. In the case of Refrigeration Mechanics, the upgradation was implemented with effect from 15.10.1984 and 15.10.1985 for HS Grade.II and HS Grade.I categories.

(K) In terms of the instructions contained in para No. 23, even if the procedures of selection to the higher grades was in existence either by a way of trade test or DPC, that procedure has been abolished as a one time measure. Hence, the question of constituting a DPC for promotion to HS Grade.I does not arise and there is nothing on records to show that DPC was constituted is that DPC was formed from 1985 to 1987. If a DPC was constituted in 1988, it was contrary to the executive instructions contained in Army Headquarters letter dated 4.7.1985. The Constitution of the DPC is without jurisdiction and the proceedings are vitiated in law. When the upgraded posts were filled in HS Grade.I with retrospective effect from 15.10.1985 there is no sanctity in constituting the so called DPC to fill up the vacancies in 1988, when as a matter of

:: 10 ::

fact, there were no vacancies at that particular point of time. This was done with a malafide intention to deprive the applicants of their right to promotion with effect from 15.10.1985.

(L) It is further submitted that the whole anomaly arose as a result of the misrepresentation of the instructions by the Chief Engineer, Pune, who has not properly understood the instructions contained in the Ministry's letter dated 15.10.1984 addressed to the Chief of Army Staff, New Delhi, wherein it is clearly stated that the orders will take effect from the dates of issue and the expenditure involved to be debited to the respective head of establishments.

(M) It is further respectfully submitted that the respondents have fixed the applicants' pay in grade.II on 15.10.1984 and also in grade.I on 15.10.1985 as per the instructions of the Engineer-in-Chief, Delhi. They should have fixed the applicants in Grade.I on 15.10.1984 itself, as was done in the case of Refrigeration Mechanics working at Delhi under CE, WES/AC, Delhi dated 8.1.90. Instead of fixing the pay of the applicants in HS Grade.I with effect from 15.10.1984, the respondents are trying to misrepresent the circular dated 4.7.1985 and have given a wrong impression as if the vacancies did not exist as on 15.10.1985 and the fixation of pay is wrong etc and are trying to recover irregularly alleging excess payment.

(N) It is pertinent to point out in this connection that carpenters and masons were given HS Grade.I and they were not subjected to trade test and no recovery has been ordered in their cases. For instance Mason, MES No.146613 D.Butchi Babu, MES 124094 N.Sadhu Rao, MES No.146630 K.Pardesi and Carpenter MES No.1830847

R.D.Sharma, MES No.146734 M.Simhachalam and MES No.209192 Ch.Suryanarayana are some of the cases, wherein they were retrospectively promoted and given arrears.

(O) In the orders promoting the applicants to HS Grade.I, there is no whisper much less any indication that the applicants will be subjected to a trade test or DPC. This letter also does not mention anything to the effect that the applicants have been promoted on adhoc/officiating basis and as such it should be deemed that they were promoted substantitvely to HS Grade.I with effect from 15.10.1985. The proposed reduction in pay and recovery of arrears clearly attracts the provisions of articles 311 (2), 14 and 16 of the Constitution of India.

(P) The constitution of the DPC in 1988 and subjecting the applicants to trade test is illegal and malafide having no sanction of law, in view of the instructions contained in provision of Engineer-in-Chief letter dated 4.7.1985.

(Q) The respondents contention that the applicants did not appear for the trade test said to have been conducted earlier is entirely false and baseless. They have to produce the records pertaining to the proposed trade test to justify the false averments that a trade test was conducted earlier in which the applicants did not appear.

(R) From the above facts, it is evident that the applicants were correctly fitted in HS Grade.I with effect from 15.10.1985 and paid the arrears as per the instructions contained in the Ministry of Defence letter. ~~Now~~ The respondents' letter dated 28.4.1994 proposing to modify the dates of promotion 24.9.1988

and to recover the over payment is illegal and arbitrary and violative of articles 311 (2), 14 and 16 of the Constitution of India.

(S) It is submitted that on receipt of the said letter the applicants filed MA No. 466/94 against the orders of the respondents in this Hon'ble Tribunal and this Hon'ble Tribunal stayed the operation of the respondents letter dated 28.4.1994.

(T) This Hon'ble Tribunal by its order dated 28.3.96 disposed of the MA with a direction to file a fresh OA as the MA is not maintainable. In accordance with the direction given by this Hon'ble Tribunal, the present OA is filed against the order of the respondents dated 28.4.1994.

VII. RELIEFS SOUGHT:

In view of the facts mentioned in para VI of the OA, the applicants pray that this Hon'ble Tribunal may be pleased to direct the respondents to produce the records pertaining to the restructuring of the grades of Highly Skilled AC Mechanics of HS-I, II and III and quash the letter dated 29.4.1994 issued by the Chief Engineer, Navy, Visakhapatnam under his letter No. 11500/133/86/EILC by read with the proceedings dated 30.1.1990 of the Commander Works Engineer, Visakhapatnam (fifth respondent) by declaring it as arbitrary, illegal and unconstitutional, violative of articles 311 (2), 14 and 16 of the Constitution of India by directing the respondents to treat the

applicants as having been promoted with effect from 15.10.1985 to the grade of HS-I against restructured vacancies as the promotions were ordered dispensing with trade test as a one time measure consequent on the cadre restructured and direct the respondents not to reduce their pay and recover the arrears of their pay as per rules.

VIII. INTERIM RELIEF PRAYED FOR:

Pending disposal of the OA, the applicants humbly pray that this Hon'ble Tribunal may be pleased to suspend the operation of the order of the Chief Engineer, Navy, Visakhapatnam No.11500/133/86/EILC dated 28.4.1994 as others irreparable damage would be caused to the applicants in that they recover the arrears of pay stated to have been paid from an earlier date instead of from 24.9.1988 and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

IX. REMEDIES EXHAUSTED: The applicants declare that they have availed all the remedies available to them under the service rules in as much as their representation dated 2.4.94 has not been disposed of.

X. MATTERS NOT PENDING WITH ANY OTHER COURT ETC: The applicants further declare that the subject matter of the OA is not pending with any other Court of law, authority or Bench of this Hon'ble Tribunal.

XI. PARTICULARS OF THE POSTAL ORDER: Indian Postal Order No. ⁷⁻³⁰⁻⁷⁷²⁷⁶⁸ ~~7-30-772769~~ dated 27/2/96 for Rs. 50/- drawn in favour of the Registrar, CAI, Hyderabad is enclosed. ⁵⁰⁻⁵⁷⁹⁶⁹⁰ ~~50-579690~~ ¹³⁻⁸⁻⁸⁶ ~~13-8-86~~ ^{Self} ~~Self~~

XII. DETAILS OF INDEX: An index containing the details of documents to be relied upon is enclosed.

XIII. LIST OF ENCLOSURES:

1. Vakalat.
2. IPO No. *as per Para XII* dated _____ for Rs. 50/
drawn in favour of the Registrar, CAT, Hyderabad.
3. An index containing the particulars of the documents to be relied upon.

VERIFICATION

We,

1. N.Dharmaiah, S/o late Shri Venkanna, aged about 55 years,
2. B.Umamaheswara Rao, S/o Ramanaiah, aged about 38 years,
3. B.Prabhakara Rao, S/o late Shri Appala Rao, aged about 38 years,
4. M.Sivaprasad, S/o Shri Late Simhachalam, aged about 38 years,
5. P.Ravindran, S/o late P.Parameswari Menon, aged about 49 years,
6. M.Narsinga Rao, S/o Shri M.Adinarayana Murthy, aged about 45 years,

working as Senior Refrigeration Mechanics AC HS-I,

Naval Depot and Naval Base, Visakhapatnam, having temporarily come down to Hyderabad do hereby solemnly and sincerely affirm and verify that the contents of paras I to XIII are true and correct to the best of our knowledge and belief and that we have not suppressed any material facts of the case.

Hence, verified on this the 12th day of May, 1996
at Hyderabad.

1. *[Signature]*
 2. *[Signature]*
 3. *[Signature]*
 4. *[Signature]*
 5. *[Signature]*
 6. *[Signature]*
- APPLICANTS

To
The Registrar,
CAT, Hyderabad.

[Signature]
counsel for the Applicant

Telephone: 558354

Chief Engineer (Navy)
Station Road
Waltair R^o & PO
Visakhapatnam

28.4.94

11500/133/86/EILC

1. Shri Dharmalal Nelapati, Sr. Mech Refg & AC HS.I, GE(ND)
2. Shri B. Umamaheswara Rao, -do-
3. Shri B. Prabhakara Rao, -do-
4. Shri M. Siva Prasad, -do-
5. Shri P. Ravindran, -do-
6. Shri M. Narasinga Rao, -do-
7. Shri K. Nooka Raju, -do-
8. Shri S. Lakshmana Rao, -do-

OA No. 1022/90 FILED BY K. NOOKA RAJU & OTHERS AND
OA NO. 1024/90 FILED BY DHARMAIAH NELAPATI AND
OTHERS

1. Reference Hon'ble CAT Bench Hyderabad Judgement pronounced on 27 Dec 93 on the above OAs.

2. Your promotion from HS Gde II to HS Gde. I from 15 Oct 85 ordered as per the proceedings dated 24 Sep 88 by CWE, Visakhapatnam has been modified by the proceedings dated 30. Jan 90 giving promotion to HS Gde I w.e.f., 24 Sep 88, the date on which you passed Trade Test, as you were not qualified nor appeared for TT during 1985/86 for the post of HS Gde. I. Since your promotion to HS Gde I was effected only from 24 Sep 88, you are entitled for pay for HS Gde. I only from 24 Sep 88 and accordingly your pay has to be revised and the payment already made prior to 24 Sep 88 in the post of HS Gde. I will be recovered.

3. Please acknowledge receipt.

Sd/-
(A. VASUDAVA RAO)
Chief Engineer (Navy)

Copy to:

1. CESC, Pune,
2. E-in-C, New Delhi
3. CWE, Visakhapatnam
4. GE (NB) (V) I further to Cwe, Visakhapatnam lr.
5. GE (NB) (V) I No. 15033/CAT/1022 & 1024/90/152/
EINB dated 18 Mar 94 for taking
necessary action.

///TRUE COPY///

11 S. Thiruganba

c) According to the records produced that there was no change in total strength and also no promotion have been taken place.

d) And also the applicants allowed to see the records regarding the promotions taken place in the other than our category in which it is observed that no action till date initiated for the recovery or the revision of their pay as done on 30.1.90 in our case even though they passed the trade test on 1988 only.

e) And also we were allowed to see the letter No. 15033/HS-I/122/EMD dt. 24.10.88 by which it is observed that in the cases of other categories some type of revision is not done and no action has been taken to do so, and when enquired the officials have shown the record, it was informed that we not concerned to know about.

6. In addition to all the above, the applicants when enquired regarding upgradation no response has been offered they are only insisting regarding the trade test and fixation of pay and no other information, they prepared to supply.

In view of the facts submitted above and as per the records allowed me to look into it, I submit that the point of vacancies has been cleared to me and agreed by the office concerned that 17 vacancies will be arised due to determination of upgradation, and the office concerned has also failed to show the record, as if trade test is required to be conducted and after attaining the eligibility only, they should be given promotion.

Therefore, I submit that our point is clearly established that we are in the zone of upgradation and depriving our right is illegal and accordingly we submit to your honour please.

Thanking you.

Yours faithfully,

Sd/-

(All the applicants)

//////TRUE COPY//////

Dated: 2.4.94

From

Nelapati Dharmaiah
and others (Applicants)

To

The Chief Engineer (Navy),
Station Road,
Visakhapatnam.

(Through proper channel)

Respected Sir,

NOTICE FOR VERIFICATION OF RECORDS AS PER
JUDGEMENT OF OA NO. 1024/90-REGARDING

1. Please refer to Judgement Order of OA 1024/90 filed by me.

2. You are the respondent no.4 in the OA and you are ordered by the Hon'ble Tribunal to give a notice to the applicants of the OA and to offer the relevant records nominated by the judgement within 3 months of the date of judgement.

3. Eventhough you are the specific respondent no.4 the Commanding Works Engineer, i.e., the Respondent No.5 in our OA 1024/90 has now come up with a notice to me vide 15033/CAT/1022&1024/EINB dated 15.3.94 and shown the records regarding trade test and the date from which they intended to effect promotion.

4. Whereas, in accordance with the judgement order of OA, you are liable to produce the following records for verification of the application:

a) You have to pass final order about the date from which the applicants have to be given promotion on to the category of HSK-Gr.I after determining as to when the vacancies in the said category had arisen.

b) Para 7 of the judgement says that the applicants has to be allowed to look into their relevant records which has a bearing in determination of the said vacancies.

5. During the course of personal hearing on 29.3.94, the applicants allowed to see the following records:

a) Total strength as authorised as on dated 15.10.84 is shown as 119.

b) Total vacancies authorised as per M of D order are as follows:

Skilled	-	77
HSK-II	-	24
HSK-I	-	17
Unfilled	-	01
		<u>119</u>

...2...

U. S. Srinivasulu

O R D E R

Heard Sri G.V. Subba Rao, for the applicants and Mr. V. Rajeswara-Rao, for the respondents.

2. After going through the original order in the OA and the final order passed by the respondents on 29.4.94 as per the directions given in the OA, we are of the opinion that the correctness of that final order can be challenged only by a substantive proceeding in the shape of original application and that can not be done by means of a miscellaneous application. Hence MA is misconceived.

3. Learned counsel for the applicants prays that the MA was filed under a misconception and therefore the applicants may be given liberty to file a regular original application to challenge the order dated 29.4.94. We are inclined to grant that liberty. Hence the following order :

The applicants are given liberty to file a separate original application challenging the order dated 29.4.94 passed by the 4th respondents provided such an OA is filed within a period of four weeks from today. On such OA being filed within the stipulated time, the date of filing of the MA dated 19.7.94 will be taken as date of filing of the OA for the purpose of counting limitation. The MA is accordingly disposed of.

The interim order passed in the MA on 27.7.94 suspending the operation of order dated 29.4.94 is continued for a period of four weeks from today with

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

MA.466/94 in OA.1024/90

Dt. March 28, 96

Between:

1. Dharmaiah Nelapati
2. B.Umamaheswara Rao
3. B.Prabhakara Rao
4. M.Sivaprasad
5. P.Ravindran
6. M.Narasinga Rao

...Applicants

A N D

1. The Secretary,
Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
New Delhi.
3. The Chief Engineer,
Southern Command,
Pune.
4. The Chief Engineer,
Dry Dock & Vizag Zone,
Visakhapatnam.
5. The Commander Works Engineer,
Station Road,
Visakhapatnam.
6. The Garrison Engineer,
Naval Depot,
Visakhapatnam.
7. The Garrison Engineer,
Naval Base,
Visakhapatnam.

...Respondents

COUNSEL FOR THE PETITIONERS : G.V.SUBBA RAO, ADVOCATE

COUNSEL FOR THE RESPONDENTS : N.V.RAMANA, ADDE. CGSC

CORAM

HON.MR.JUSTICE M.G.CHAUDHARI: VICE CHAIRMAN

HON.MR. R.RANGARAJAN: MEMBER (ADMN)

....2..

[Handwritten signature]

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liberty to the applicants to apply for similar order in the OA which will be filed.

4. Copies to be supplied immediately.

1/c
H. S. Ewing
Counsel for the Appellee

25

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 580/96 &
M.A.381/96

Date of Order: 14-5-96.

Between:

1. Nelapati Dharmaiah.
2. B.Umamaheswara Rao.
3. B.Prabhakara Rao.
4. M.Siva Prasad.
5. P.Ravindran.
6. M.Narsinga Rao.

.. Applicants.

and

1. The Secretary, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Headquarters, New Delhi.
3. The Chief Engineer, MES Southern Command, Pune.
4. The Chief Engineer, Dry Dock and Vizag Zone, Visakhapatnam.
5. The Commander Works Engineer, Station Road, Visakhapatnam.
6. The Garrison Engineer, Naval Depot, Visakhapatnam.
7. The Garrison Engineer, Naval Base, Visakhapatnam.

.. Respondents.

For the Applicants: Mr. G.V.Subba Rao, Advocate.

For the Respondents: Mr.V.Bhimanna, Addl.CGSC.

CORAM:

THE HON'BLE MR.M.G.CHAUDHARI : VICE-CHAIRMAN

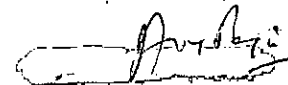
THE HON'BLE MR.H.RAJENDRA PRASAD : MEMBER(ADMIN)

The Tribunal made the following Order:-

Leave granted. Application is disposed of.

In view of the pendency of the companion OASR No.1593/96, this OA is admitted. Issue notice to the respondents. Four weeks for written statement. OA to be listed for further proceeding along with OASR No.1593/96.

Operation of the impugned order dt.28-4-94 which was continued by the order dt.28-3-1996 in MA No.466/94 is hereby extended to operate during the pendency of the instant O.A.


Deputy Registrar(J)CC

-2-

To

1. The Secretary, Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief, Army Headquarters,
New Delhi.
3. The Chief Engineer, MES Southern Command,
Pune.
4. The Chief Engineer, Dry Dock and Vizag Zone,
Visakhapatnam.
5. The Commander Works Engineer,
Station Road, Visakhapatnam.
6. The Garrison Engineer, Naval Depot,
Visakhapatnam.
7. The Garrison Engineer,
Naval Base, Visakhapatnam.
8. One copy to Mr.G.V.Subha Rao, Advocate CAT.Hyd.
9. One copy to Mr.V.Bhimanna, Addl.CGSC.CAT.Hyd.
10. One spare copy.

pvm.

I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

Dated: 14-5-1996

ORDER/JUDGMENT

M.A/R.A/G.A No. 381/96 in A 580/96

O.A.No.

580/96

T.A.No.

(w.p.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

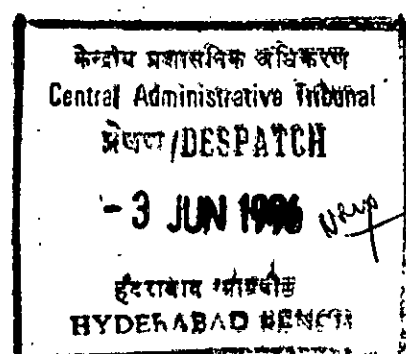
Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

pvm



28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

CA No. 580 OF 1996

BETWEEN :

1. Neelapathi Dharmaiah
2. B Umamaheswara Rao
3. B Prabhakara Rao
4. M Siva Prasad
5. P Ravindran
6. M Narsinga Rao - Applicants

AND

1. The Secretary
Min of Defence
New Delhi
2. The E-in-C's Br.,
AHQ, New Delhi
3. CE SC Pune
4. CE (Navy) Visakhapatnam
5. CWE Visakhapatnam
6. GE (ND) Visakhapatnam
7. GE (NB) Visakhapatnam - Respondents

REPLY STATEMENT FILED ON BEHALF
OF THE RESPONDENTS

I Thotam Raghunathachary Krishnan, S/o Shri TA Raghunatha Chary, aged about 50 years working as Superintending Engineer do hereby state as follows :-

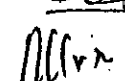
1. I am working in the office of 5th Respondent and dealing with the subject matter of the case and as such I am well acquainted with the facts of the case. I am filing this reply on behalf of the respondents as I am authorised to do so. The material averments in the CA are denied some those that are specifically admitted hereunder.

Attestor

Contd...2/-

Deponent


SBSO
Commander Works Engineers


(T. R. KRISHNAN)
SE
Commander Works Engineer

2. The applicants have filed this OA based on the judgements dt 28 Mar '96 by the Hon'ble CAT Hyderabad in MA 466/94 in OA 1024/90 and MA 584/94 in OA 1022/90. The judgement has given liberty to the applicants to file a separate original application challenging the order dated 29 Apr '94, passed by CE (Navy) Visakhapatnam provided such an OA is filed within the period of four weeks from the date of judgement ie., 28 Mar 96 and the MA was accordingly disposed off. It is submitted this OA is nothing but the replica of the Miscellaneous Application No.466/94 OA No. 1022/90 & MA No.584/94 in OA No.1024/90 filed by the applicants mentioned in the preceeding para. The present OA is filed by the applicants mentioned in MA 466/94 in OA 1024/90, whereas the two applicants who filed MA 584/94 in OA 1022/90 were given to have separately as per the orders of Hon'ble CAT Hyderabad dated 09 May 96. The applicants have not brought any valid points to substantiate their demands.

3. The applicants are presently working as Senior Mechanic Ref HS Gde I in the department in the pay scale of Rs.1320-2040. They filed OA No.1022/90 and 1024/90 in the Hon'ble Tribunal challenging the proposed recovery and refixation of their pay due to revision of date of promotion to HS Gde I wef 24 Sep 88 instead of 15 Oct '85. The Hon'ble Tribunal disposed off the above OA, by common judgement with the direction to the department to pass final order. Pending the final order to be passed by the R-4, the recovery as per the impugned order dt 30 Jan 90 was stayed. The R-4 has accordingly issued speaking order vide CE (Navy)(V) No.11500/133/86/E1LC dt 28 Apr '94 (Annexure R-I) to the applicants stating that the payment already made prior to 24 Sep 88, the actual date on which the applicants were promoted, will be recovered. The applicants were also allowed to go through the relevant documents in the office of CWE Visakhapatnam in accordance with

Attester

Deponent

AVS Ray
SBSO
Commander Works Engineers

(T. R. KRISHNAN)
SE
Commander Works Engineers

Contd....3/-

:: 03 ::

the directions given by the Hon'ble Tribunal and the same has been confirmed by the applicants in OA.

4. In reply to para IV (B) of OA, it is submitted that the details given by the applicants are the figures of authorised strength for the financial year and not the vacancies as mentioned. It is confirmed that vacancies were available as on 15 Oct '84 due to implementation of three grade structure, but, the existing Ch Mechanic Ref were to be considered first to fill up the vacancies of HS Gde I. However, the criteria for promotion to HS Gde I was to qualify in Trade Test before being considered for promotion.

5. Consequent on introduction of three grade structure in certain industrial categories vide G of I, M of D No. 3810/DS(O&M)(Civ-I)184 of 15 Oct '84, the posts were classified as Highly Skilled Gde I, Highly skilled Gde II and Skilled Gde with the bench mark percentage of 15%, 20% and 65%, respectively and as per the guidelines issued by E-in-C's branch vide letter No.90270/891/TGS/EIC(III) of 06 Jun 86 (Annexure - R2), the promotion to highly skilled Gde I can be made if the workers satisfy the prescribed criteria in the Recruitment Rules for Sr Mech & Ref Mech HS I. In accordance, ^{to} para 2 (b)(11) the workers shall be promoted to Highly skilled Gde I after passing prescribed Trade Test by giving relaxation of experience to one year. The respondents have issued a circular/letter proposing to conduct Trade Test to all trades including the trades of HS I vide letter No.133201/TT/Pol/E1B(S) of 23 Apr '86 (Annexure R-3) Names of applicants who had given their willingness for TT were processed to higher authorities vide No.11001/339/E1 NB of 12 Jun 86 (Annexure R-4). Therefore, it may be seen that the applicants were given chance to appear for the Trade Test

Attestation

Deponent

(AVS Ram)
SBSO

Commander Works Engineers

Contd....

(T. R. KRISHNAN)
SE

:: 04 ::


in 1986-87. In this connection CE SC Pune letter No. 133401/5/12/E1B(S) of 13/17 Jul '90 (Annexure R-5) also is relevant. But, the applicants did not appear for the trade test conducted in the year 1986-87, eventhough, they were given the opportunity to appear for the trade test. The applicants appeared for the TT in the year 1988 only. And after passing the TT in the year 1988, they had become eligible for the promotion with effect from 24 Sep 1988 only.

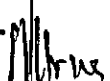
6. Eventhough the applicants were given chance to appear for the trade test, they voluntarily chose not to appear for the trade test eventhough opportunities were extended by the respondents and as such they have no right to seek promotion with retrospective effect ie wef 15 Oct '85. The workers in the other trades similar to the applicants who availed the opportunities, got the benefit of promotion wef 15 Oct '85. As such, the applicants can not compare with the workers of other trades who have passed the trade test prior to the passing of the trade test by the applicants. The applicants are mixing up the issues with other trades by suppressing the fact that the applicants did not appear for the trade test conducted during 1986-87. In view of these circumstances, CE SC Pune issued a letter No.133401/5/C2/E1B(S) of 23 Dec 1989 (Annexure R-6) stating that since the applicants passed the TT only in the year 1988 and they have not availed the 2 opportunities given for passing for TT earlier to 1988 ie., in Jan 86 and a supplementary test in Apr '87, they are eligible to be promoted from the date they passed the TT ie 24 Sep '88. The applicant's contention to consider them for promotion to HS Gde I without passing TT as there were vacancies is not logical as the basic requirement is of passing for TT for promotion to HS Gde I.

Attestor

Deponent

Contd....5/-


SBS
Commander Works Engineers


(T. R. KRISHNAN)
S E
Commander Works Engineers

:: 05 ::

7. It is also submitted that the department has clarified the position in response to their representation on a number of occasions, and the applicants bring irrelevant points to confuse the issue, thereby, trying to get an un-authorised benefit, which is not desirable in the interest of state.

8. It is not clear as to which para 22 is being referred to in para (I) of the OA. However, it is presumed that the applicants are quoting the paras of E-in-C's Br No.90870/89/EIC of 04 Jul 85 (Annexure R-2). The correct para regarding selection grade posts is 2 and not 22 as mentioned in OA. It is not clear as to what the applicants intend to bring into light from a non relevant para regarding abolition of selection grade posts consequent on introduction of HS Gde I, Gde II to common category jobs. It is evident that the applicants are having malafide intention of bringing the irrelevant points before the Hon'ble Tribunal, to confuse the issue as there is no selection grade post in the grade of Ref Mech in the department.

9. It is true that there were no posts available in the HS Gde II and Gde I in the department, before the implementation of three grade structure in the category of Ref Mechanics. But in the case of Ref Mechanic, which was a skilled grade, the post of charge mechanic Refrigeration which was equivalent to HS Gde I was available even before the introduction of three grade structure. As such, it will be seen that the reference made by the applicants is irrelevant and with malafide intention.

10. Again para 23, which was wrongly quoted by the applicants, it is submitted that the promotion to HS Gde II and Gde I is regulated in accordance with the provision of Annexure 'A' to

G of I, M of D No.1(1)/8/D(ECC)IC/Vol-III of 08 Apr 86 and

Dependent

(T. R. KRISHNAN) *convd*...6/-
S F

Attest

(AVS B)

SBSO
Commander Works Engineers

a copy of which is produced as Annexure R-8. As per item II A (b) Annexure 'A' in any unit in which recruitment rules were not in existence as on 15 Oct '84, workers shall be considered for promotion to HS Gde I after the passing of Trade Test or after clearance by a DPC as may be prescribed. As on 15 Oct '84, Recruitment Rules were not in existence in MES for Ref Mech HS I. As such, passing of TT or clearance by a DPC was an essential condition applicable to the applicants for their promotion to HS Gde I. Further, the contention of the applicants that they ought to have been straightaway given HS Gde I promotion with effect 15 Oct '85 without passing Trade Test is also incorrect as no Govt orders are existing in support of their contention. The letter No.90270/89/E1C of 04.7.85 from AHQ, E-in-C's Br., New Delhi quoted by the applicants also does not have any bearing on their contention for straight away promotion to HS Gde I without passing the requisite Trade Test. It is clear that the applicants have been mentioning the irrelevant orders which have no bearing to the subject and it only helps them in misguiding the Hon'ble Tribunal. Since the conducting DPC for promotion to HS Gde I is mandatory as per the instructions of the higher authorities, the claim of the applicants for dispensing with DPC is nothing but to mislead the Hon'ble Tribunal for getting an unauthorised and illegal benefit and therefore cannot be accepted in the interest of Govt. There were no instructions for abolition of DPC as a one time measure as per para 22 of E-in-C's Br., letter as pointed out by the applicants. In fact, it clearly stipulates that the promotion to the tradesmen will be carried out by CWE through a DPC.

11. It may be seen from the above facts that the applicants were correctly fitted in HS Gde I with effect from

Attestor
AVS R
SBSO
Commander Works Engineers

Deponent

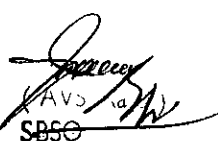
(T. R. KRISHNAN)
S E

.....7/-

24 Sep 1988, the date on which they were qualified and eligible for promotion and as such they are entitled for pay and allowances of HS Gde I wef 24 Sep 1988 only. E-in-C's Branch New Delhi and CE SC Pune have concurred this action as intimated by CE SC Pune vide letter No. 133401/5/C 2/E1B(I) of 23 Oct 89 (Annexure R - 6). The over-payment made to the applicants as HS Gde I from 15 Oct 85 to 23 Sep 88 is due for recovery and cannot be waived on any account. It is also submitted that after taking into consideration of judgement of Hon'ble CAT Hyderabad on OA No.1022 & 1024 of 1994, pronounced on 27 Dec '93 and relevant Govt orders for effecting promotion to HS Gde I, Respondent No.4 has issued final order vide his letter No.11500/133/86/E1 LC dated 29 Apr '94, informing the applicants that the promotion from Highly Skilled Gde II to Highly Skilled Gde I from 15 Oct '85 ordered as per the proceedings dated 24 Sep '88 by CWE (V) has been modified to 24 Sep '88, the date on which they qualified the Trade Test. Since the promotion was affected from 24 Sep '88, the applicants are entitled for pay of Highly Skilled Gde I only from 24 Sep '88 and as such pay of the applicants has to be revised and the payment already made prior to 24 Sep '88 in the post of Highly Skilled Gde I needs recovery.

12. The individuals contention of with-holding or waiving the recoveries may not be acceptable even as a special case as it leads to unintended benefit to the

Attestation


SBSO

Commander Works Engineers

Contd....08/-

Deponent



(T. R. KRISHNAN)
S E

Commander Works Engineers

applicants in a broader way, and as such it is prayed that the OA is liable for rejection.

13. In view of the above submissions, there are no merits in the OA and the Hon'ble Tribunal may be pleased to dismiss the same with further orders as may be considered necessary in the circumstances of the case.

DEPONENT

Alhane
(T. R. KRISHNAN)

S E

Commander Works Engineers

Sworn and signed on this 04th day
of July 1996 at Visakhapatnam
before me.

[Signature]
ATTESTOR

S E

Commander Works Engineers

9

36

ANNEXURE R-I

Telephone: 558354

Chief Engineer (Navy)
Station Road
Waltair RS & PO
Visakhapatnam

11500/133/ 06 /ELLC

28 Apr 94

1. Shri Dharmalan Nelapati, SR.Mech Refg & AC HS I, GE(ND)
2. Shri B Umamaheswara Rao -do- GE(ND)
3. Shri B Prabhakara Rao -do- GE(ND)
4. Shri M Siva Prasad -do- GE(ND)
5. Shri P Ravindran -do- GE(ND)
6. Shri M Narasinga Rao -do- GE(ND)
7. Shri K Nooka Raju -do- GE(ND)
8. Shri S. Lakshmana Rao -do- GE(ND)

OA No. 1022/90 FILED BY K NOOKA RAJU & OTHERS AND
OA NO. 124/90 FILED BY DHARAMALAN NELAPATHI AND
OTHERS.

1. Reference Hon'ble CAT Bench Hyderabad Judgement pronounced on 27 Dec 93 on the above OAs.

2. Your promotion from HS Gde II to HS Gde I from 15 Oct 85 ordered as per the proceedings dated 24 Sep 88 by CWE Visakhapatnam has been modified by the proceedings dated 30 Jan 90 giving promotion to HS Gde I wef 24 Sep 88, the date on which you passed Trade Test, as you were not qualified/appeared for IT during 1985/86 for the post of HS Gde I. Since your promotion to HS Gde I was effected only from 24 Sep 88, you are entitled for pay for HS Gde I only from 24 Sep 88 and accordingly your pay has to be revised and the payment already made prior to 24 Sep 88 in the post of HS Gde I will be recovered. / nor

3. Please acknowledge receipt.

Copy to:-

(A. VASUDEVA RAO)
Chief Engineer (Navy)

1. CESC, Pune
2. E-in-C, New Delhi
3. CWE, Visakhapatnam
4. GE (NB) (V)
5. GE (NB) (V)

Further to CWE Visakhapatnam letter No. 15033/CAT/D22 & 1024/90/152/EINB dated 18 Mar 94 for taking necessary action.

RECEIPT

Receipt of your letter No. 11500/133/85/ELLC dated 27 Apr 94 is hereby acknowledged.

Dated: Apr 94

Signature of individual

TC
Mammanna

(b) Promotion of Highly Skilled Grade II to Highly Skilled Grade I

There are 2 procedures laid down for promotion to Highly Skilled Grade-I :-

- (i) Firstly, for the categories for which Recruitment Rules already exist such as Charge Mech/Charge Elect/Charge Mech (Ref). The workers are eligible for promotion to Highly Skilled Grade I wef 15 Oct 84 provided the workers satisfy the prescribed criteria in Recruitment Rules and vacancies exist. However, if existing strength of Charge Mech, Charge Elect and Charge Mech (Ref) is 15% or more, no promotion can be made in HS Grade I of these categories.
- (ii) Secondly, categories for which Recruitment Rules were not in existence on 15 Oct 84 such as Carpenter Highly Skilled Grade I, Mason (HS I) and Painter/Polisher/Sign Writer HS I etc. Workers shall be promoted after passing the prescribed trade test. However, experience criteria has been relaxed to one year as one time relaxation. Thus promotion to HS I in these categories will be effective from 15 Oct 85.

3. The above instructions are being issued for initial implementation of Three Grade Structure for common categories jobs on the basis of one time relaxation accorded by the Ministry of Defence under their letter dated 08 Apr 86. Subsequent filling up of the posts in HS II and HS I will be filled upto the extent of Bench Mark percentage of 65:20:15 on fulfilling all the conditions such as passing of prescribed trade test and requisite number of years service in the grade as laid down in Ministry of Defence letter No.1(2)/89/D/ECC/10/Vol-III(PC) dated 19 Apr 85.

Please complete the task of implementation of Three Grade Structure for which detailed Administrative Instructions have been issued vide our letter No.90270/89/EIC dated 04 Jul 85 and submit completion report by 20 Jun 86 so that achievement of MSS units in this regard are reported to higher authorities including JCM, Army HQ Council the forum in which the subject has been raised unabatedly a number of times.

4. Please acknowledge receipt.

Sd/-x x x x x
(RP BANA)
SE
SO T Engrs(Pers)
for E-in-C

TC

Adman

COPY

Copy of E-in-C's Branch letter No. 90270/89/TGS/EIC(III) dated 08 Apr 86 addressed to all commands and others.

ATTNMENT OF INDUSTRIAL WORKERS IN PAY SCALES RECOMMENDED BY THIRD PAY COMMISSION

1. Further to our letter No. 90270/89/EIC dated Apr 86 under which a copy of Govt of India, Ministry of Defence letter No. 1(1)/89/D(ECC/10) Vol. III dated 08 Apr 1986 was sent with instruction to place the eligible skilled grade personnel in the Highly Skilled Grade II pay scale (Rs 330-400) on the basis of seniority.

2. Keeping in view the requirements contained in para 3 of Min. letter dated 08 Apr 86 and para 2 (A) (B) of the Annexure 'A' the following guide lines are issued for strict compliance.

(a) Promotion from skilled grade to Highly Skilled Grade II

Recruitment Rules for promotion to Highly Skilled Grade II posts have not yet been finalised. The promotion of workers as a one time relaxation shall be made as follows :-

- (i) 20% of the vacancies, as on 15 Oct 84 shall be filled merely on the basis of seniority without obligation to qualify in the trade test. This is only a one-time relaxation for initial implementation of three grade structure and shall not be the basis of similar promotion in future. The promoties will be eligible for the benefit wef 15 Oct 84.
- (ii) All workers in the eligible skilled grade who have retired from 15 Oct 84 and till 30 Apr 86 will invariably be promoted Highly Skilled Grade II wef 15 Oct 84. In case such retirees/number more than 20% stipulated for Highly Skilled Grade II, the ceiling to the extent may be exceeded during this initial promotion.
- (iii) Further, the Govt have allowed operation of 15% posts at Highly Skilled Grade II level in addition to 20% as above in posts where Highly Skilled Grade I does not presently exist. In this connection reference is invited to instructions contained in our letter 90270/89/EIC dated 07 Jan 86. Though this promotion will be effective from 15 Oct 84 but with two restrictions. Firstly, the promotion will be subject to passing of prescribed trade test in 2 opportunities by 30 Jun 86. CE Commands will ensure that standing trade testing boards are convened so that workers get two chances for appearing in trade test by 30 Jun 86. Secondly, quota of 15% is subject to deduction of 20% quota for Highly Skilled Grade II has exceeded due to retired, being more than 20% and also after deduction of existing holding of Charge Mechanic, Charge Electrician and Charge Mech (Ref).

Contd....2/-

// COPY //

Reference : 65701/313

OP IMMEDIATE

Dakshin Kaman Mukhyalaya
Engineer Shakh
Headquarters Southern Command
Engineers Branch
Pune - 411 001

10001/1/TT/ROL/EIB(S)

23 Apr 86

Chief Engineers

Bombay Zone, BOMBAY
Cochin Zone, COCHIN
DD & V Zone, VISAKHAPATNAM
Jaipur Zone, JAIPUR
Madras Zone, MADRAS
Pune Zone, PUNE
D & C C/o CME PUNE

CE (P) Fy MADRAS
CE (P) Fy SECUNDERABAD
CE (P) R&D SECUNDERABAD
CE (P) Port Blair
CE (P) Skylark BOMBAY
STE SC Pune
Commandant, CME Pune
OC ESD Dehu Road

MENT OF INDUSTRIAL PERSONNEL : PAY SCALES RECOMMENDED BY
THIRD PAY COMMISSION : RECOMMENDATIONS OF ANOMALIES COMMITTEE

1. Refer to this HQ letter No.133201/1/TT85/HS-II/EIB(S) dated 11 Mar 86 and letter No.133201/1/EIB(S) dated 12 Apr 86.
2. The trade test of Highly Skilled Gde II has been dispensed with as one time relaxation by the Govt. In view of this, trade test of Highly Skilled Gde II scheduled to be held during Apr/May 86 will not be held now. The DPC may please be conducted and 20% vacancies in Skilled Grade be upgraded to Highly Skilled Gde II and be filled strictly on seniority basis without trade test. The promotion of these grades will be with retrospective effect i.e. 15 Oct 84. Completion report on this may please be submitted to this HQ by 15 May 86.
3. Consequent on the above 15% Highly Skilled Gde I vacancies are to be filled up after holding Trade Test for Highly Skilled Gde I posts. The Govt have accorded relaxation of filling up Highly Skilled Gde I post on completion of 1 year service as Highly Skilled Gde II, which means the persons placed in Highly Skilled Gde II as per para 2 above will be completing one year service by 15 Oct 85. It is, therefore, requested that the names of eligible candidates in Highly Skilled Gde II may please be forwarded to this HQ by 25 May 86 for conducting trade test for Highly Skilled Gde I. Vacancies as per 15% quota in the Highly Skilled Gde I may also be intimated alongwith break down details of SC/ST.

Sd/- x x x x x
(MK Paul)
Brig
Addl CE
for Chief Engineer

Copy to :-

All Zone

Internal

1. (Records)

2. (D-EC)

3. Section

4. (EIB(S))

// COPY //

TC
Mammanna

12
// COPY //

Telephone : 654992

Commander Works Engineers
Station Road, Waltair RS
Visakhapatnam - 530 004

11001/ 389 /EINB

12 Jun 86

Chief Engineer
Dry Dock and Visakhapatnam Zone
9 IESD Area
Visakhapatnam - 530 008

FITMENT OF INDUSTRIAL PERSONNEL : PAY SCALES
RECOMMENDED BY THIRD PAY COMMISSION : RECOMM-
ENDATIONS OF ANOMALIES COMMITTEE

1. Reference CE SC Pune letter No.133201/TT/POL/EIB(S) dated 23/26 Apr 86, your letter No.11500/14/170/EINB dated 12 May 86 and this Office No.11001/374/EINB dated 22 May 86.

2. The nominal roll of eligible Highly Skilled Gde II for trade test of Highly Skilled Gde Is in respect of this Area is submitted herewith in triplicate for further necessary action.

3. As regarding Charge Elect Highly Skilled Gde I, our area is authorised 8 Nos as per bench mark percentage and holding 9 Nos. In view of the above even though 11 eligible Elect Highly Skilled Gde IIs (SC-2 + General-9) for appearing trade test for Charge Elect Highly Skilled Gde I are available with this area, their names have not been included in this report.

Sd/-x x x x x
(M Prabhakaran)
AO II
for Commander Works Eng

Encls : As above
(27 Sheets)

Appx 'A' - 3 Sheets
Appx 'B' - 24 Sheets.
27 Sheets.

// COPY //

TC
C. Prabhakaran

Area: CWB Visakhapatnam

Category: *Ref Mach*
~~Generalist~~ *Ref Mach* ~~Highly Skilled~~ *Ref Mach* (Contd)

2

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13	147097 B. Prabhakara Rao, Ref Mach RS Gde II	15 Oct 84	GS (RD) Vizag	Neither
14	147017 M. Appa Rao, Ref Mach RS Gde II	15 Oct 84	GE (RD) Vizag	Neither
15	147128 S. Sathya Babu, Ref Mach RS Gde II	15 Oct 84	GE (RD) Vizag	Neither
16	147260 M. Siva Prasad, Ref Mach RS Gde II	15 Oct 84	GE (RD) Vizag	Neither
17	147239 G. Ravi Kumar, Ref Mach RS Gde II	15 Oct 84	GE (RD) Vizag	Neither
18	361505 Ravindran, Ref Mach RS Gde II	15 Oct 84	GE (RD) Vizag	Neither

Attested

For the purpose of the recruitment of candidates for the post of...

Category: ...

Sl. No.	Existing as on 15.10.84	No. of candidates to be taken	No. of candidates available for PET	ESS No. Name and designation	Date of Appt in the present category	Formation where serving	Remarks
1	2	3	4	5	6	7	8
1	SC -06 ST -03 General -12	21	18	1 146025 J. Hanakara Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	SC
				2 147077 S. Lakshman Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	SC
	SC -03 ST -01 General -22-12			3 147129 B. Kamalakara Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	SC
				4 142815 Neelapathi Dharmalaiah, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	SC
				5 145780 M. Siva Prasad, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				6 146933 B. Satyanarayana, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				7 145884 K. Meeka Raju, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				8 146055 N. Krishna Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				9 147333 B. Dhanabeswara Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				10 147333 K.V. Ramana Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				11 147085 M. Satyanarayana, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither
				12 147077 N. Krishna Rao, Ref. Mech. ES Gde II	15 Oct 84	GE (ND) Vizag	Neither

Eligibility

SC -01
ST -11
General -03
09

Net vacancy

SC -02
ST -01
General -04
07

13

40

Tele : 665781/402

Registered
Lakshin Kaman Mukhyalaya
Engineer Shakh
Headquarters Southern Command
Engineers Branch
Pune - 411 001

No 133+01/5/CZ/EAB (S)

13/17 Jul 90

Engineer-in-Chief's Branch/EIC(2)
Army Headquarters
DHQ PO, New Delhi - 110 011

PROMOTION FROM REFG/MECH HS GDE II TO
REFG/Mech HS GDE I 1.95 (ND) VIZAG

1. In accordance with instructions contained in your HQ letter No 90270/89/EIC(2) dated 06 Jun 86, one time concession was allowed for promotion of 20% tradesmen to HS Gde II on seniority basis without passing the requisite trade test and 15% of the tradesmen were allowed to be promoted to HS I post on passing the trade test without completing minimum period of 3 Years service as HS Gde II. This relaxation was, however, intended to benefit tradesmen who were not promoted despite vacancies being available because of proposed changes in MES industrial establishment and delay in receipt of instructions.
2. CWE Vizag had conducted trade test for promotion to Refg/Mech (HS I) during Apr 88 and also convened DPC to promote the eligible candidates during Sep-Oct 88. They have granted service seniority to the affected individuals in HS I posts wef 15 Oct 85 stating that they have conducted Refg/Mech (HS I) trade test for the first time and the retrospective seniority was given to qualified industrial personnel as per Govt of India letter No 1(1)/80/D(ECC-IC) Vol - III dated 03 Apr 86. However, on examination it was found that Refg/Mech (HS I) trade test was conducted by this office wef 03 to 05 Aug 86 but none of the individual from CWE Vizag area have appeared therein. This tantamounts to that none of the candidates were willing to appear for the trade test then.
3. Keeping in view of clarification contained in your HQ letter ibid and letter No. 90270/89/IGS/SC/EIC(3) dt 04 Sep 89 and even number dated 13 Jan 90, CE DD & Vizag Zone has been directed to implement the promotion of eligible candidates wef the date of DPC and not from 15 Oct 85.
4. It is requested that the correctness of decision given by this office as stated at Para 3 above may please be confirmed. In this connection a Statement of Case received from CE DD & Visakhapatnam Zone is enclosed for perusal.

S/- x x x x x x
(G N Ispotedar)
AO I (Para)
for Chief Engineer

Copy to :-

CE DD & Vizag Zone
Visakhapatnam - 8

- for info wrt your letter No. 11500/Fit/IT/929/EINB dated 18 Jun 90. Please forward a copy of this HQ Sig. No 07625 dated 30 Jan 87 referred in the Statement of Case. The authorisation of industrial personnel reflected in Paras 2 and 3 is not convincing. Please elucidate.

A copy of CE SO Pune letter No.133401/5/CZ/EIB(S) dated 23 Dec 89.

1. Reference your letter No.11500/Fit/TT/844/EINB. dated 29 Nov 89.
2. It is seen from the details furnished in your above quoted letter that Trade Tests for Ch/Mech(Refg) were held in Jan 86 and a supplementary test in Aug 86. And no candidates appeared, for Trade Test in Apr 1987 cannot be given retrospective effect seniority from 15 Oct 85 on the grounds that vacancies were existed then.
3. You are, therefore, advised to give the effect of promotions from the date of DPC of HS-I and not from the retrospective date from 15 Oct 85. Please confirm action taken above by 10 Jan 90.

Sd/- x x x x x
(GN Dasguptadar)
AO I (Pers)
for Chief Engineer

// COPY //

9C

Signature

Provision/Introduction of Highly Skilled Grade II for Common Category Jobs

5. The common category posts proposed for introduction of Highly Skilled Grade II (S.330-480) and designation of posts in the HS Gde II are as under :-

- | | |
|---------------------|-------------------------------------|
| a) Blacksmith | b) Electrician |
| b) Carpenter | d) Fitter (Auto) |
| c) Fitter Auto Elec | f) Fitter Gen Mech |
| d) Fitter Pipe | h) Fitter Refrigeration / Refg Mech |
| e) Lineman | k) Mason |
| f) Moulder | m) Pattern Maker |
| g) Painter/Polisher | o) Turner |
| h) Welder | |

6. Blacksmith - 20 % of the existing authorised strength in a CWE Area to be sanctioned HS Gde II (S.330-480). The posts will be re-designated Black Smith (SK) and Black Smith (HS Gde II).

7. Electrician and Lineman - The existing authorised strength of Electrician and Lineman in a CWE Area will be added together for introducing Highly Skilled Gde II. 20 % of these posts in a CWE Area to be sanctioned HS Gde II (S.330-480). The post will be re-designated Electrician HS-II.

8. Carpenter and Pattern Maker - The existing authorised strength of Carpenter/Cabinet Maker/Pattern Maker in a CWE Area will be added together for introducing Highly Skilled Gde II. 20 % of these posts to be sanctioned HS Gde II (S.330-480). The post will be re-designated as Carpenter (SK) and Carpenter (HS II).

9. Fitter and Fitter Pipe - The existing posts of Pipe Fitter, Plumber and Fitter (Who were promoted from Pipe Fitter/Plumber) will be added together for the purpose of introducing three grade structure. 20 % of these posts in a CWE Area to be sanctioned HS II (S.330-480). These posts will be re-designated as Fitter Pipe (SK) and Fitter Pipe (HS-II).

10. Fitter Auto/Fitter Auto Elect/Fitter I/C Engine - 20 % of the existing posts of Vehicle Mech, Veh Electrician and Fitter Engine/ Bench will be added together to be sanctioned HS Gde II (S.330-480). The posts to be designated Vehicle Mech (HS-II).

11. Fitter Refrigeration/Refrigeration Mech - 20 % of the existing authorised strength to be upgraded to HS II Gde (S.330-480). The existing posts will be re-designated Refrigerator Mech (SK) and Refrigerator Mech (HS-II).

contd... 3/-

Annexure 10

Army Headquarters
Engineer-in-Chief's Branch
Kashmir House
Dir PO New Delhi - 110 011

04 Jul 85

90370/89/513

Chief Engineer
SC Pune
EC Clacutta
WC Chandimandir
CC Lucknow
MC G/o 55 420

Comdt CHS Pune
BEG Borekee
BEG Mirasee
MBG Bangalore

FIXTURE OF INDUSTRIAL WORKERS OF MS IN THE
SCHEDULES RECOMMENDED BY THE CHS PAY COMMISSION
RECOMMENDATIONS OF THE ANOMALIES COMMISSION

Reference Ministry of Defence letter No 3310/25(140)/Civ-1/84
at 15 Oct 84 and further to our letter No 90270/89/513 dt 29 Oct 84

2. Common Cat Skilled jobs to be provided Highly Skilled
Gde II (rs.330-480) and Highly skilled Gde I (rs.380-560) depending
on the functional requirement in the following manner as a bench-
mark percentage :-

(a) Highly Skilled Gde I (rs.380-560)	- 15 %
(b) Highly Skilled Gde II (rs.330-480)	- 20 %
(c) Skilled Gde (rs.260-400)	- 65 %

3. The trades shall be grouped together
statement placed at Appendix 'A'. The total number of posts sanctioned
in the Skilled grade as per prescribed no. of posts sanctioned in the
The Nos of posts sanctioned in MS-I and MS-II grade shall be
deducted from the Nos to be held in the Skilled grade.
Calculation number of posts of Highly Skilled Gde II and Highly
skilled Gde I

4. In calculating the number of posts in Highly skilled Gde I
and Highly skilled Gde I as per bench-mark percentage fixed for
the purpose, fraction of 0.5 and above may be ignored. An exam
showing the method of working out the number of posts depending
on the total strength in a group is indicated at Appendix 'A'
to this letter.

/ treated as one and fraction of 0.5 may be

conti...2/-

- 1 -

22. Attention of Chief Engineers is hereby drawn to Rule 43 of Financial Regulations Part I according to which excess appointment in a lower rank/grade may be made against a vacancy left unfilled in a higher rank/grade. For each vacancy in a higher rank /grade only/extra appointment in a lower rank/grade is admissible.

Selection Grade

23. Consequent on introduction of Highly Skilled Gde I and Gde II to Common Category jobs, the selection grade for the Skilled Grade, if provided, will stand simultaneously abolished as a one time measure.

sd/-xxxxxxx

(AS Sharma)

Bd 18

DDG Engrs (Pers)
For Engineer-in-Chief.

Te

Mamun

12. Mason - 20% of the existing authorised strength to be upgraded to HS-II Gde (S.350-480). The existing posts will be redesignated as Mason (SK) and Mason (HS-II).
13. Moulder - 20% of the existing authorised strength to be upgraded to HS-II Gde (S.350-480). The existing posts will be redesignated as Moulder (SK) and Moulder (HS-II).
14. Painter/Polisher/Sign Writer - 20% of the existing authorised strength to be upgraded to HS-II Gde (S.350-480). The existing posts to be designated painter (SK) and painter (HS-II).
15. Turner - 20% of the existing authorised strength to be upgraded to HS-II Gde (S.350-480). The existing posts to be designated painter (SK) and painter (HS-II).
16. Welder - 20% of existing authorised strength to be upgraded to HS-II Gde (S.350-480). The existing posts to be designated Turner (SK) and Turner HS II.
17. General - The post of Ch Mesh, Ch Mesh and Ch Mesh (S.380-560) as per existing recruitment pattern is found more than 15% of the existing authorised strength. However in case the existing sanctioned posts are found less than 15%, the same will be made upto 15%.
18. Carpenter HS-I - The feeder category post will be from HS-II Gde (S.350-480). 15% of the existing authorised strength of Carpenter/Cabinet Maker and Pattern Maker in a CWS area to be sanctioned HS Gde I. The post to be designated Carpenter (HS-I).
19. Mason (HS-I) - 15% of the existing authorised strength to be sanctioned HS-I Gde and post will be designated as Painter HS-I.
20. Painter/Polisher/Sign Writer - The Nos of posts of Painter/Polisher/Sign Writer in the Skilled Grade in a CWS area will be added together and 15% of the existing authorised strength to be sanctioned HS-I Gde and post will be designated as Painter HS-I.
21. Introduction of Highly Skilled Gde II to Skilled tradesmen and highly skilled Gde I to Highly Skilled tradesmen will be carried out by GWS through a 500. A number of queries have been raised by different establishments on certain points relating to the implementation of Government orders at 15 Oct 84. The Ministry of Defence OM No.1(2)/80(D/300/10) Vol-III(PC) at 19 Apr 85 clarifying some of the points is reproduced as Annexure - I to this letter.

contd... 4/-

HH

This issues with the concurrence of Ministry of Defence (Finance), vide U.O. No 394/Dir (Implementation)-86 dated 9th Apr.

Yours faithfully,

Sd/- x x x x x

(H.L. AHUJA)

DEPUTY SECRETARY TO THE GOVT OF INDIA

Copy to :

GDDA, New Delhi - 2 copies
DDDS, New Delhi - 2 copies
DDADS, Calcutta/Pune/Merrut/Dehra Dun/Patna-2 copies each.

CDA Eastern Command, Calcutta
" Central Command, Merrut
" Western Command, Chandigarh - 2 copies
" Southern Command, Pune (one signed in ink)
" Northern Command, Jammu
CDA Bangalore
CDA Gauthati

Director (Implementation)

DGOF, 6 Esplanade East, Calcutta

DOP, E-in-C's Branch

DOP R&D Hqrs

DTD & P (Air)

Director, Ministry of Defence, Army HQ

Director RVC, Army HQ

DST, Army HQ

CGAFMS New Delhi

AG's Branch/Ag (Org, 4)

OS, NCC New Delhi

SHQ/DCP

Air HQ/DPA

FOs-OS-20 Army HQ

DEME, Army HQ

Director (Adm) DGI, New Delhi

Copy also to :-

JS(OF) JS(S) JS(P&I) Dir (R&D)

DS (Air) DS, Navy) DS (AG) DS(W) (DS(G)

DS(P) DS(Q) DS(S)

They are requested to monitor the implementation of the letter in terms of para 3 of this letter.

Sd/- x x x x

(H.L. AHUJA)

Deputy Secretary to the Govt of India.

TC

Amman

18
45
/COPY/

No. 1(1)/80/D(ECC/IC/Vol. III)
Government of India
Ministry of Defence
New Delhi, the 5th Apr 86

To
The Chief of the Army Staff
New Delhi
The Chief of the Naval Staff
New Delhi
The Chief of the Air Staff
New Delhi

Subject: Fitment of industrial workers in pay scales recommended by the Third Pay Commission.

Sir,

I am directed to say that in this Ministry's letter Nos. 3808/3823/DS(O&M)/Civ-I)84 dated the 15th October, 1984 it was, inter alia, clarified that Highly Skilled Grade II and Highly Skilled Grade I scales should be introduced in common category job skilled jobs, listed in Annexure I of these letters, with benchmark percentages as laid down therein. It was clarified vide OM No. 1(2)80/D/ECC/IC Vol. III(PC), dated 19th Apr 1985 that pending the framing of the formal Recruitment Rules, promotions to Highly Skilled Grade II and Grade I would be subject to passing of trade tests and experience as specified therein.

2. The matter has been reconsidered in consultation with Indian National Defence Workers Federation and All India Defence Employees Federation and an agreed approach arrived at, as in Annexure A to this letter. Accordingly, promotions to Highly Skilled Grade II/Grade I shall be regulated in accordance with the provisions of Annexure A. Promotions already made but which are not in consonance with Annexure A, shall be regulated in terms of the provisions in Annexure A and excess/unauthorised payments in respect of such promotions shall be regulated in accordance with the normal rules. It should be noted that the one-time relaxation prescribed in Annexure A is applicable only to workers in the common category job enumerated in Annexure I to this Ministry's letter Nos. 3808-3823/DS(O&M) Civ-I)84, dated the 15th October, 1984 and is not to be treated as precedent in other cases.

3. I am also to request that necessary administrative instructions should be issued, as required under paragraph IIA(b) of Annexure A, by the stipulated date and copies of the same sent to the Ministry. I am further to request quarterly implementation report in respect of this letter may please be sent to the administrative sections concerned in the Ministry. The first report indicating the positions as on 30th June, 1985 should reach by the 5th July 1986

/that

Contd...P 2/-.....

PC

Wm name

ANNEXURE TO MINISTRY OF DEFENCE LETTER NO 1(1)80/D(ECC/IC/VOL III)
 8th Apr 1986

19
 ANNEXURE I

INTRODUCTION OF THREE GRADE STRUCTURE IN
 23 COMMON CATEGORY JOBS WHICH HAVE BEEN
 ALLOWED BENCH MARK PERCENTAGES IN HIGHLY
 SKILLED GRADE II AND HIGHLY SKILLED GRADE I

I. Units under DGOF/DGI

(a) In any unit in which Ministry of Defence (Department of Defence Production) letter No 1(32)/82/D(Inspection), the dated 11.4.1985 has been even partially implemented, the benefits of letter dated 11.4.85 shall be allowed to all eligible functionaries covered under Ministry of Defence letter Nos 3808-3823/DS(O&M)/Civ. I/84 dated 15.10.84. Implementation shall mean the issue of an order by the Head of the Unit concerned notifying the name of the worker who have been promoted to Highly Skilled Grade I or Highly Skilled Grade II. To elucidate if such implementation has taken place in respect of even one worker in given unit all the remaining eligible workers in that unit shall be similarly benefited viz, promoted from skilled to Highly Skilled Grade II and from Highly Skilled Grade II to Highly Skilled Grade I, as the case may be in terms of the Ministry of Defence letters of 15.10.84 referred, to above, and arrears paid accordingly.

(b) In a unit in which Ministry of Defence (Department of Defence Production) letter of 11.4.85 referred to above has not been implemented as defined in (a), and not even a single worker has been promoted by the unit's management to Highly Skilled Grade I or Highly Skilled Grade II under the relaxation stipulated in the Ministry of Defence (Department of Defence Production) letter dated 11.4.85, no worker will be given the benefit of Ministry of Defence letter No 1(1)80/D(ECC/IC/VOL III) dated 11.4.85. All the workers in such units shall be covered as under para II below.

I. All Units under DGOF/DGI as in I(b) and above and all other units under the Ministry of Defence

In so far as workers in the units under DGI/DGOF of the category as in I (b) above and in all other units under the Ministry of Defence are concerned, their cases

.....2/-

FC

Channan

In the CAT, Hyd

CA No. 580 of 96



Reply statement filed on
behalf of the Respondents

Desai

Guler

9/7/96

Accepted
13/7/96

filed by

V. Bhimanna

Addl. CG Sec

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

~~O.A. No. 578 of 1996~~
and

Between O.A.No. 580 of 1996

Nelapati Dharmaiah
and seven others

... APPLICANTS

and

Secretary, Ministry of Defence,
Government of India, New Delhi
and six others

... RESPONDENTS

R E J O I N D E R

I, Nelapati Dharmaiah, son of late Sri N.Venkanna, aged 49 years, working as Senior Mechanic, REFG, and AC HS Grade I under the control of the Garrison Engineer, Naval Depot, Visakhapatnam do hereby solemnly affirm and state on oath as under.

1. I am the applicant in O.A. No. 580/96 and I am well acquainted with the facts of the case. I am filing this rejoinder on behalf of the other applicants having been duly authorised therefor.

2. This Hon'ble Tribunal by a common order dated 27-12-93 in O.As No. 1024/90 and 1022/90 disposed of the O.As with a direction to the respondents to pass final orders about the date from which the applicants have to be given promotion to the category of HS Grade I after determining as when the vacancies in the said category arisen and liberty was given to the applicant to move this Hon'ble Tribunal by way of M.A. for challenging the same. Aggrieved by the final order of the respondents which is nothing but a reiteration of their earlier orders, the applicants herein as well the applicants in O.A.No. 1022/90 filed M.As

Conted...2.

in this Hon'ble Tribunal and the MAs were disposed of with a direction to file O.As. Pursuant to the said directions of this Hon'ble Tribunal, O.AsNo. 578/96 and 580/96 were filed and this Hon'ble Tribunal stayed the operation of the impugned orders in both the O.As. As the subject matter of both the O.As is the same the rejoinder presently filed by the applicants in O.A.No. 580/96 may please be adopted in the O.A.No. 578/96. ~~The~~

3. The Hon'ble Central Administrative Tribunal of the Calcutta Bench delivered a judgement in the case of Refrigeration Mechanics of the Port Blair establishment vide their judgement No. 9/A&N of 1989 dated 8-9-89 sitting at Port Blair. The facts of the case are identical to that of the facts in the present O.As filed in this Hon'ble Tribunal. The applicant while working as HS.III Mechanics in the Electrical Trade, as a result of the recommendations of III pay Commission, Government of India Ministry of Defence issued instructions to the Chief Engineer, of our Department to implement the recommendations of the III Pay Commission wherein it was decided that the Skilled category staff should be distributed according to the following percentages.

- a) Highly Skilled Grade.I (Rs. 380/560 - 15%
- b) Highly skilled Grade II(Rs. 330-480 - 20%
- c) Skilled Grade - 65%

4. In accordance with the said recommendations, the applicants herein were promoted to the Grade of HS.II in scale Rs. 330-480 with effect from 15-10-1984 against the existing vacancies and also paid arrears from the same date i.e. 15-10-1984 in the month of June, 1986. Subsequently in the vacancies of HS .I Grade they were promoted

Contd...3.

as per the recommendations of III Pay Commission. w.e.f
15.10.85 vide CWE letter dated 24.10.88

5. There are two procedures laid down for promotion to Highly Skilled Grade I.

1) Firstly for the categories for which recruitment Rules already exist such as charge^Mech/Charge Elect/Charge Mech(Ref). The workers are eligible for promotion to Highly Skilled Grade I w.e.f 15 Oct 84 provided the workers satisfy the prescribed criteria in Recruitment Rules and vacancies exist. However, if existing strength of charge^Mech-Charge Elect. and Charge Mech(Ref) is 15% or more, no promotion can be made in HS Grade I of these categories.

ii) Secondly, categories for which Recruitment Rules were not in existing on 15 Oct 84 such as Carpenter Highly Skilled Grade I, Mason (HS.I) and Painter/ Polisher/Sign Writer HS I etc., Workers shall be promoted after passing the prescribed trade test. However, experience criteria has been relaxed to one year as one time relaxation. Thus promotion to HS I in these categories will be effective from 15 Oct 85.

6: We are eligible for the next promotion to the post of Highly Skilled Grade I on completing service in the Highly Skilled Grade for one year. Accordingly we were promoted to the Highly Skilled Grade I from 15-10-1985 .

7. As per the instructions issued by the Ministry of Defence, the trade test for promotion to Highly Skilled Grade I was required to be held within a year when such promotion was due to a person. It is submitted that the Trade Test was held for the first time in May 1988. On account of the delay in conducting a trade test we cannot be denied the benefit of our ~~latitude~~ legitimate promotion w.e.f. 15-10-1985 .

Contd..4.

8. In para No. 4 of the counter, it is confirmed that vacancies were available as on 15-10-1984 due to implementation of the three grades. The particulars furnished in the O.A are the distribution of posts consequent on the upgradation announced as a result of the III Pay Commission Recommendations, these are the posts which are given according to the percentage assigned to each category.

9. The respondents have enclosed as Annexure R-IV to the counter dated 12-6-1986 wherein it is stated that " our area is authorised 8 Numbers as per Bench Mark percentage and holding 8 numbers. In view of the above eventhough 11 eligible Elect Highly Skilled Grade II (SC-2 + General 9) for appearing trade test for charge Elect Highly Skilled Grade I are available with this area their names have not been included in this report. An enclosure has been furnished to the said letter in which the names of the applicants are furnished.

10. The respondents have not furnished the records for our perusal pertaining to the so called trade test said to have been held in 1986 when we did not appear. It is a fact that no trade test was conducted as could be seen from the letter dated 13-7-90 i.e. Annexure-V , wherein in para No. 2 it is stated that the CWE, Vizag had conducted trade test for promotion to Refg/Mech HS I during April 1988 and also convened D.P.C. to promote the eligible candidates during September/October, 1988. It is also stated in the letter that ~~am~~ " however, on examination it was found that Refg/ Mech HS I trade test was conducted by this Office with effect from 3 to 5 Aug. 86, but none of the individuals from CWE Vizag area have appeared therein. This letter is not supported by any evidence to show that trade test was conducted in 1986 when in the very first sentence it is mentioned that

Conted....5.

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a trade test was conducted in April 1988 and a DPC was convened in September/October, 1988. The respondents are put to strict proof to substantiate the averment ^{made} ~~made~~ that the applicant, even though were asked to appear for the trade test did not appear. This is a vague statement which is not corroborated by production of the call letter issued to all the applicants to appear for the trade test, stated to have been conducted in 1986 and that the applicants were notified individually or collectively to appear for the trade test which said to have been conducted.

11. It is submitted that the respondents in the affidavit filed before the Hon'ble Calcutta Bench stated that " the applicants could not be considered for promotion before their passing in the trade test or after clearance by the DPC. The programme of the trade test was issued by the competent authority on 8-3-88 for conducting the same from 21-4-88 to 25-4-88. Accordingly the trade test was conducted and the applicants having passed the same were promoted to such posts with effect from 29-11-1988. It is the case of the respondents that the applicants claim that their promotion should have been given effect from 15-11-85 is wholly unfounded.

In this case the point to be decided is whether the applicants who were promoted to highly Skilled Grade I w.e.f. 29-11-1988 should get such promotion with retrospective effect from 15-10-1985 in view of the circular issued by the Ministry of Defence on 3-4-1986. Admittedly, these two applicants were promoted to Highly Skilled Grade II with effect from 15-10-1984. It is their representation that in view of the circular issued by the Ministry of Defence their promotions to Highly Skilled Grade I should have been given effect to from 15-10-85. In their reply the respondents have stated that their such promotions were given effect from 29-11-1988 strictly in accordance with the aforesaid circular.

Contd....6.

12. The respondents in their counter have stated that we appeared for the trade test in the ^{year} 1988 only and they had become eligible for promotion from 24-9-1988 only.

13. There are no recruitment rules in existence on 15-10-1984. Our case should be governed by para (b) of the rules issued by the Ministry of Defence stated above. Under the clause (b) we are entitled to be considered for promotion after passing the trade test ~~or~~ after clearance by the DPC. The respondents have stated that the trade test was conducted in April 1988 and we were qualified in the trade test and also in the DPC w.e.f. 24-9-1988. It is established that no administrative instructions prescribing criteria to be followed for promotion from Highly Skilled Grade II to Grade I were issued by the administration pending finalisation of the Recruitment Rules. We were given promotion in 1985 by relaxing experience criteria to one year as one time relaxation. The promotion to HS I was effect from 15-10-1985 and the respondents cannot take the plea that the monetary benefit will be given only from 24-9-1988. It has been held by the Hon'ble Tribunal of Calcutta Bench sitting in Port Blair that " it is mentioned in the said circular that so far as the experience criteria is concerned , it shall be relaxed from normal 2/3 year to one year as a special one time concession. It is not known to us as to why that special one time concession to one year was not given to the applicants. The applicants having ~~was~~ worked from 15-10-84 ~~for~~ were entitled to be considered for promotion to Highly Skilled Grade I on and from 15-10-1985 on the expiry of period of one year. It is not disputed that after October, 1985 no trade test could be arranged by the respondents before April, 1988. For such administrative lapse on the part of the respondents , the applicants i.e. the workers should not suffer. In any event when the applicants come out

Contd....7.

- 7 -

successful in that trade test, though arranged at a late stage it does not stand to reason as to why their promotion was not given effect from 15-10-85 giving them as a special one time concession by relaxing the experience criteria to one year".

14. The counter filed by the respondents Superintendent Engineer is full of contradictions and the main issue regarding fixation of pay of the applicants w.e.f. 15-10-1985 in the Grade of HS I issued by the Commender Works Engineer, has not been mentioned, in his letter dated 24-10-1988. In that letter ~~ix~~ it is clearly stated that the applicants are selected and upgraded/promoted from Highly Skilled Grade II to Highly Skilled Grade I in the scale of Rs. 1320-2040. It clearly indicates that they were promoted against the restructured vacancies. It is not denied by the respondents that as a result of the grade restructuring the posts were determined according to the percentages of 65, 20 and 15 in the HS III, HS. II and H.S. I grades. The applicants were promoted to HS Grade II w.e.f. 15-10-84 and within one year as per the rules they were also promoted to HS Grade I according to Rules after completion of one year in the HS II Grade. Though it has been mentioned that recruitment rules were to be issued, no recruitment rules were issued as well as Departmental instructions on the matter.

15. It is stated by the respondents that a trade test was conducted in January, 1986 and ~~ix~~ a Supplementary test in April, 1987. The Commender Works Engineer vide his letter dated 12-6-86 annexure R-1, enclosed a statement in which the names of the applicants were furnished who are eligible for promotion to HS I grade. It is not understood how it is averred in the counter that a trade test for promotion to HS I conducted in January 1986 when the very instructions

Conted...8.

regarding fitment of Industrial Workers were issued by the the Government of India on 8-4-86. The averment that a trade test was conducted in January 1986 for the applicant when the HS Grade posts were not determined is absurd and far from truth.

16. The Chief Engineer, Pune vide his letter dated 13-7-90 addressed to the Engineer in Chief, Delhi stated in the 2nd para that CWE, Vizag had conducted trade test for promotion to REFG. Mechanics HS I during April 1988 and also convened DPC to promote the eligible candidates during September/October 1988, for the first time. It is evident that the CWE conducted the trade test for the first time in 1988 and as such the averments made in the counter that the trade test was conducted in 1986 and 1987 are materially false in as much as no proof is produced regarding the conduct of such trade test and notifying the applicant regarding the proposed trade test the date and the place of trade test. In these circumstances without notification the question of the applicants expressing their unwillingness in writing does not arise. The respondents except stating in a casual manner have not produced any documentary evidence to that effect. They put to strict proof regarding these averments.

17. Further it has to be pointed out that the Chief Engineer in his letter has stated " However, on examination it was found that Refg Mechanic (HS.I) trade test was conducted by this office with effect from 03 to 05 August, 1986 but none of the individuals from the CWE, Vizag have appeared therein. This tantamounts^{to} that ~~that~~ none of the candidates were willing to appear for the trade test then". The Chief Engineer stated that a trade test was conducted in August, 3 to 5 , 1986, at Pune. The applicants are employed at Vizag and unless ~~xx~~ and until there is a communication to the CWE, Vizag to relieve the applicants to attend the trade test at Pune, they cannot

Contd...9.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT HYDERABAD

O.A.No. 578 of 1996
and

O.A.No. 580 of 1996

Between

Nelapati Dharmaiah and
seven others Applicants

and

Secretary, Ministry of
Defence, Government of
India, New Delhi and
six others : Respondents

REJOINDER

Filed by:

Sri G.V.Subba Rao,
Advocate,
H.No. 4-8-230/33,
Chikkadapalli,
Hyderabad-500020


Counsel for Applicants.

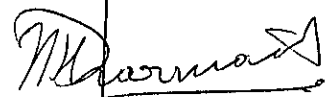
attend the trade test. The Chief Engineer without taking into consideration this aspect, viz that there was a positive communication from his side to the CWE, Visakhapatnam to relieve the applicants and direct them to appear for the trade test, he cannot presume that the applicants were not willing to attend the trade test. This may probably be due to the misrepresentation made by the CWE to the Chief Engineer at Pune, he might have made this observation without verifying the facts of the case. This is intended to cover up the lapses of the administration that a balled statement is made that a trade test was conducted and the applicants did not attend, without concrete evidence.

18. ... It is apperant that the trade test was conducted only in 1988 as admitted by the respondents in Port Blair's case. It was observed that the applicants therein cannot be denied to the benefit from 15-10-85. The applicants were rightly given the benefit of HS grade I w.e.f. 15-10-1985 and the respondents are estopped from taking the stand that the applicants did not attend the trade test earlier which is not established and in a material false statement. The Port Blair judgement was implemented and the applicants therein have been given the benefits from 15-10-85 and the administration is not justified in denying the benefit from 15-10-85 on unjustified and flimsy grounds.

It is therefore prayed that the O.A. may be allowed with costs as prayed for.

Solemnly affirmed
and signed before me
on this the 19th day of
July, 1998 at Hyderabad.


Advocate, Hyderabad.


DEPONENT.

Seri	IES No, Name and No. 1. Designation	Upgraded/ Promoted to	Posted From To	Effective Date
------	--	--------------------------	-------------------	-------------------

Carpenter HS Gdo-I

- | | | | | |
|----|--|-----------------------|-----------------|----------------|
| 1. | 185047 Shri
RD Sharma,
Carpenter HS Gdo-II | Carpenter
HS Gdo-I | GE(NB)
Vizag | Situ 15 Oct 85 |
| 2. | 146731 Shri
M Simhachalam(SC),
Carpenter HS Gdo-II | -do- | GE(NB)
Vizag | Situ 15 Oct 85 |
| 3. | 209192 Shri
Ch Suryanarayana,
Carpenter HS Gdo-II | -do- | GE(NB)
Vizag | Situ 15 Oct 85 |

3. Before fixing pay in the higher grade, Highly Skilled Gdo I, please ensure that :-

- (a) the individual is not involved in any disciplinary case/ court of inquiry etc,
- (b) the individual is not superseding any of his seniors &
- (c) none of the eligible SC/ST candidates are omitted.

b. Lakshmana Rao
(K Lakshmana Rao)
SE
Commander Works Engineers

Copy to :-

- 1. CE DD & VZ, Visakhapatnam-8 - for information.
- 2. UA GE(NB) Visakhapatnam-5.
- 3. UA GE(NB) Visakhapatnam-7.
- 4. UA GE(NB) Visakhapatnam-6.

DK/-

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Railway Station Road
Visakhapatnam - 530 001

15032/HS-I/✓/EINB

24 Oct 85

GE(Naval Base) Visakhapatnam-5
GE(Naval Depot) Visakhapatnam-7
GE(E/M) Visakhapatnam-4

UPGRADATION/PROMOTION TO HIGHLY SKILLED GRADE I CATEGORIES

1. Reference Govt of India, Ministry of Defence, New Delhi letter No 1(1)/90/L(EOC/IC) Vol.III dated 08 Apr 86 received vide CE 80 Pune letter No 132501/29-A/EIB(S) dated 08 May 86.
2. The following candidates are selected and upgraded/promoted scale 5115 to 5221 to Highly Skilled Grade I in the pay 500-EB-15-560). They will be posted to the formations as shown against each :-

Sl. No.	MS No, Name and Formation	Upgraded/ Promoted to	Posted From To	Effective Date
<u>Senior Mech Refg and A/C HS Gde - I</u>				
1.	140938 Shri M Narasinga Rao, Ref Mech HS Gde-II	Senior Mech Refg & A/C HS Gde-I	GE(NB) Vizag	Situ 15 Oct 85
2.	140931 Shri K Hoke Raju, Ref Mech HS Gde-II	-do-	GE(NB) Vizag	Situ 15 Oct 85
3.	147093 Shri B Venkateswara Rao, Ref Mech HS Gde-II	-do-	-do-	15 Oct 85
4.	147077 Shri S Lakshmana Rao(SC), Ref Mech HS Gde-II	-do-	-do-	15 Oct 85
5.	147095 Shri B Prabhakara Rao, Ref Mech HS Gde-II	-do-	-do-	15 Oct 85
6.	147200 Shri M Siva Prasad, Ref Mech HS Gde-II	-do-	-do-	15 Oct 85
7.	361555 Shri P Ravindran, Ref Mech HS Gde-II	-do-	GE(NB) Vizag	Situ 15 Oct 85
8.	142816 Shri Shariyah Neelapathi(SC), Ref Mech HS Gde-II	-do-	GE(E/M) Vizag	GE(NB) 15 Oct 85 Vizag

DE/-

Contd...2/-

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH
AT PORT BLAIR

O. A. No. 9/ A & N of 1989

Present : Hon'ble Mr. A.P. Bhattacharya, Judicial Member
Hon'ble Mr. R. Balasubramanian, Administrative Member

B. HARISH CHANDER & ANR

VS

UNION OF INDIA & ORS

For the applicants : Mr. V.K. Gupta, counsel

For the respondents: Mr. C.R. Bag, Addl. Standing Counsel

Heard on : 6.9.1989 : Judgement on : 8.9.1989

JUDGEMENTA.P. Bhattacharya, J.M. :

This application under section 19 of the Administrative Tribunal Act, 1985, has been filed by Shri B. Harish Chander and Shri P.K. Dasgupta, against the Union of India, represented by the Secretary, Ministry of Defence, New Delhi, and two others.

2. The applicants at the relevant time were holding the posts of Mechanic-Refrigeration and Air Conditioning-High Skilled, Gr. II under the Garrison Engineer (Electrical/Mechanical), Port Blair. On 8.4.86, Govt. of India, Ministry of Finance, issued a circular laying down the policy for according promotions to the industrial workers. By an order issued by respondent No. 2, applicant No. 2 was promoted to the post of High Skilled Grade-II with effect from 15.10.84. Applicant No. 1 was promoted to the post of Mechanic Skilled Grade II with effect from 15.10.84 by an order issued on 12.11.86. The applicants state that their next promotion to the posts of High Skilled Grade I was due with effect from 15.10.85 on completing their services in High Skilled Grade II for one year. By an order passed by respondent No. 2 on 19.12.88 the applicants

were promoted to High Skilled Grade I with effect from 29.11.88. The applicants challenge that order as illegal. It is their case that the delay caused to their promotion to High Skilled Grade I was attributable to the respondents as they could not arrange for their trade test in time. As per the circular issued by the Ministry of Defence the trade test for promotion to High Skilled Grade I was required to be held within a year from when such promotion was due to a person. As the trade test was held for the first time in May 1988 there was delay in giving their promotion. The applicants contend that by such lapse on the part of the respondents they cannot be deprived of their legitimate claim of promotion with effect from 15.10.85. In their application the applicants have mentioned the cases of some Carpenters who were trade tested in April 1987, but their promotions were given effect to from 15.10.85. In filing the application they have prayed for issuing direction upon the respondents so that their promotions be given retrospective effect from 15.10.85 with all consequential benefits arising out of it.

3. The application has been contested by the respondents. It is the case of the respondents that applicant No. 2 was promoted to the post of Refrigerator Mechanic- High Skilled Grade II against 20% vacancies as he had fulfilled the conditions of promotion to such post. The other applicant was promoted as Refrigerator Mechanic against 15% vacancies and for getting that he had to pass a trade test. According to the respondents, the promotion to higher post from the post of High Skilled Grade II depends on the availability of vacancy. Both the applicants were promoted to High Skilled Grade I by the approval of the Departmental Promotion Committee. In the Ministry of Defence letter dated 8.4.86 in any unit in which recruitment rules were not in existence on 15.10.84 workers shall be

considered for promotion after the trade test or after clearance by a D.P.C. as may be prescribed. Workers qualified in the trade test shall be promoted to High Skilled Grade I with effect from 15.10.85. In a subsequent letter issued on 6.6.86 it was provided that there would be two procedures for promotion to High Skilled Grade I. First for the categories for which recruitment rules already existed the workers would be eligible for promotion to Highly Skilled Grade I with effect from 15.10.85 provided the workers satisfied the prescribed criterion for recruitment rules and vacancies existed, ^{and} Secondly, categories for which recruitment rules were not in existence on 15.10.84 workers would be promoted after passing the prescribed trade test and such promotion would be effective from 15.10.85. So, according to the respondents, the applicants could not be considered for promotion before their passing in the trade test or after clearance by the D.P.C. The programme of trade test was issued by the competent authority on 8.3.88 for conducting the same from 21.4.88 to 25.4.88. Accordingly trade test was conducted and the applicants having passed the same were promoted to such post with effect from 29.11.88. It is the case of the respondents that the applicants' claim ^{that} for their promotion should have been given effect ^{to} from 15.10.85 is wholly unfounded.

4. In this case the point to be decided is whether the applicants, who were promoted to High Skilled Grade I with effect from 29.11.88, should get such promotions with retrospective effect from 15.10.85 in view of the circular issued by the Ministry of Defence on 8.4.86. Admittedly these two applicants were promoted to High Skilled Grade II with effect from 15.10.84. It is the contention that in view of the circular issued by the Ministry of Defence their promotions to High Skilled Grade I should have been given effect to from 15.10.85. In their reply the respondents have stated that their such promotions were given effect ^{to} from 29.11.88 strictly in accordance with the aforesaid circular.

Let us examine the contentions of either side.

5. In the circular issued by the Ministry of Defence which is made Annexure-A to the application it is mentioned at para A :

Promotion to Highly Skilled Grade I

- (a) In any unit in which Recruitment Rules are in existence the workers satisfying the prescribed criteria shall be eligible for promotion to Highly Skilled Grade I with effect from 15.10.84.
- (b) In any unit in which Recruitment Rules were not in existence on 15.10.84, workers shall be considered for promotion after passing the trade test or after clearance by D.P.C., as may be prescribed. However, in so far as the experience criteria is concerned, it shall be relaxed from the normal 2/3 years to one year, as a special one time concession. Workers qualifying the trade test shall be promoted to Highly Skilled Grade I with effect from 15.10.85. Pending finalisation of Recruitment Rules, administrative instructions prescribing the criteria to be followed in effecting promotions from Highly Skilled Grade II to Highly Skilled Grade I, will be issued by 31st May 1986.

Undisputedly, no recruitment rules were in existence on 15.10.84. So, the case of the applicants would be governed by clause (b) as above. Now under that clause these applicants were entitled to be considered for promotion after passing the trade test or after clearance by D.P.C. It is the respondents' version that the trade test was arranged in April 1988 and the applicants having qualified in the said trade test after their selection by the Board were given promotion to High Skilled Grade I with effect from 29.11.88. We are unable to sustain this action of the respondents. We have already found that no recruitment rules were in existence on 15.10.84. It is established that no administrative instructions prescribing criteria to be followed in effecting promotions from High Skilled Grade II to High Skilled Grade I were issued by the administration pending finalisation of the recruitment rules. It is true that respondent authorities gave promotions to the applicants after arranging for a trade test and for a selection by the Board. Admittedly, they applicants

had qualified themselves in the trade test held in April 1988 and were subsequently selected by the Board for promotion. Now, in that case it is the direction issued by the Ministry of Defence that the workers qualifying in the trade test shall be promoted to Highly Skilled Grade I with effect from 15.10.85. It is the applicants' contention that having worked in Highly Skilled Grade II for a period of one year they were eligible for promotion to High Skilled Grade I as per the circular issued by the Ministry of Defence. We find substance in this contention. It is mentioned in the said circular that so far as experience criteria is concerned, it shall be relaxed from normal 2/3 years to one year as a special one time concession. It is not known to us as to why that special one time concession to one year was not given to the applicants. The applicants having worked from 15.10.84 were entitled to be considered for promotion to High Skilled Grade I on and from 15.10.85 on the expiry of the period of one year. It is not disputed that after October 1985 no trade test could be arranged by the respondents before April 1988. For such administrative lapse on the part of the respondents the applicants i.e. workers should not suffer. In any event, when the applicants had come out successful in the trade test though arranged at a late stage it does not stand to reason as to why their promotion was not given effect to from 15.10.85 giving them a special one time concession by relaxing the experience criterion to one year. In their application the applicants have pleaded discrimination. According to them, some Carpenters were promoted to High Skilled Grade I with effect from 15.10.85 although they were trade tested in April 1987. In their reply the respondents have not clarified the position. It cannot be disputed that the Carpenters being industrial workers would come under the purview of the circular issued by the Ministry of Defence reference of which has been made above. So, when in their case they were given promotion with retrospective effect from 15.10.85 although they were trade

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

~~O.A.No. 578 of 1996~~

and

O.A.No. 580 of 1996

Between

Nelapati Dharmiah
and seven others Applicants

and

Secretary, Ministry
of Defence, Government
of India, New Delhi
and six others Respondents

REJOINDER

*Recd
Munir
DoddSC
5-8-98*



Filed by:

Sri G.V.Subba
Advocate,
1-8-230/33,
Chikkadapalli,
HYDERABAD-500020

Counsel for Applicants.

*may be filed
5/8/98*

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tested much later, it is not understandable to us as to why the same benefit could not be given to the applicants. For the delay in arranging the trade test and in constituting the Selection Board the applicants cannot be held liable in any way. So, when we look for the administrative lapses the trade test could not be held earlier and when the applicants had passed such trade test they should have been given the benefit of the circular by giving effect to their date of promotion from 15.10.85. We find absolutely no reason as to why there should be a discrimination between the Carpenters mentioned at para 11 of the application and the present applicants. So, considering all we are of opinion that the applicants are entitled to get the benefit of the promotion to High Skilled Grade I with effect from 15.10.85 pursuant to the circular issued by the Ministry of Defence on 8.4.86 as shown in Annexure-A to the application.

6.*** In view of our findings made above the application shall succeed. We allow this application without, however, making any order as to cost. The respondents are directed to pass an order within six weeks from this date giving effect to the promotion of the applicants to High Skilled Grade I as shown in Annexure-C to the application as well as Annexure-C to the Reply from 15.10.85. The applicants are entitled to get all consequential benefits arising out of giving such promotion with retrospective effect.

(H. DAL/SUBJUDGE 1A11) 11/11/89
ADMINISTRATIVE MEMBER
8.9.89

(A.P. BHATTACHARYA)
ADMINISTRATIVE MEMBER
8.9.89

CERTIFIED TO BE TRUE COPY
8.9.89
Deputy Registrar
Central Administrative Tribunal
Calcutta

(64)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A. NO. 580 /96

Dt. of Order: 15.9.98.

Between:

1. Nelapati Dharmiah
2. B. Umamaheswara Rao
3. B. Prabhakara Rao
4. M. Siva Prasad
5. P. Ravindran
6. M. Narsinga Rao

...Applicants.

And

1. The Secretary, Min. of Defence, New Delhi.
2. The Engineer in Chief, Army Head Quarters, New Delhi.
3. The Chief Engineer/MES, Southern Command, Pune.
4. The Chief Engineer, Dry Dock & Vizag Zone, Visakhapatnam.
5. The Command Works Engineer, Station Road, Visakhapatnam.
6. The Garrison Engineer, Naval Depot, Visakhapatnam.
7. The Garrison Engineer, Naval Base, Visakhapatnam.

...Respondents.

Counsel for the Applicants : Mr. G.V. Subba Rao
Mr. N. Ethirajulu

Counsel for the Respondents : Mr. V. Bhimanna

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (J)

THE TRIBUNAL MADE THE FOLLOWING ORDER:

List it on 22.9.98 for judgement above admissions. If no proof in regard to the applicant having called for trade test in 1986 & 87 is produced on that day, the case will be decided as the applicants have not called for trade test in 1986 & 1987.


DEPUTY REGISTRAR.

II COURT

TYPED BY
COMPALED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED: 3

15/9/88

ORDER/JUDGMENT

M.A./T.A/C.P.NO.

in

G.A.NO. 580/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

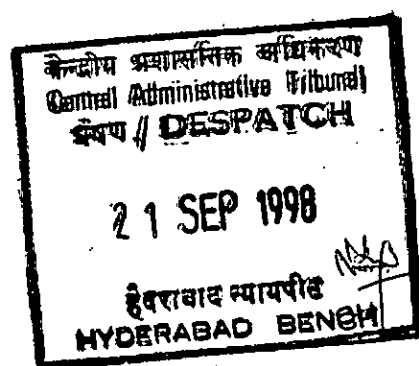
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR



O.As. 578/580 OF '96

--: 2 :-

COMMON ORDER

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. G.V. Subba Rao, Learned Counsel for the applicants and Mr. V. Bhimanna, Learned Standing Counsel for the respondents.

2. There are 2 applicants in O.A. 578/96 and 6 applicants in O.A. 580/96. Both these applications were filed on 14.5.96.

3. Brief facts are these :

By proceedings dt. 20.9.88 of the respondent No.5 8 applicants herein were promoted to the cadre of Senior Mechanical Refrigeration in HS Grade-I in the scale of pay of Rs.1320-2040 effective from 15.10.85. Subsequently, the respondents admitted to have modified the date of promotion of the applicants to the cadre of HS Gr-I and proposed recovery of excess pay and allowances paid to the applicants from 15.10.85 to 30.1.90. Accordingly, the respondents issued proceedings dt. 30.1.90.

4. Being aggrieved by the proceedings dt. 30.1.90, the applicants herein had approached this Tribunal in O.A.1022/90 and 1024/90 questioning the action of the respondents.

5. On 27.10.93 this Tribunal disposed off both the O.As. by the common order giving direction as under :

"Within three months from the date of receipt of this



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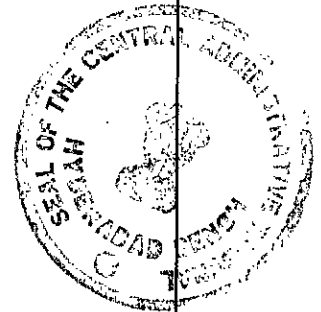
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 578/96 & 580/96Dated, the 7th January, '99.

BETWEEN :

1. Nelapati Dharmaiah (OA 580/96)
2. B. Umamaheswara Rao (OA 580/96)
3. B. Prabhakara Rao (OA 580/96)
4. M. Siva Prasad (OA 580/96)
5. P. Ravindran (OA 580/96)
6. M. Narasinga Rao (OA 580/96)
7. N. Nukaraju (OA 578/96)
8. S. Lakshmana Rao (OA 578/96)



A N D

... Applicants

1. The Secretary,
Ministry of Defence, New Delhi.
2. The Engineer-in-Chief,
Army Headquarters, New Delhi.
3. The Chief Engineer,
Southern Command, Pune.
4. The Chief Engineer,
Dry Dock & Vizag Zone, Visakhapatnam.
5. The Commander Works Engineer,
Naval Depot, Visakhapatnam.
6. The Garrison Engineer,
Naval Depot, Visakhapatnam.
7. The Garrison Engineer,
Naval Base,
Visakhapatnam.

... Respondents.

COUNSELS: (BOTH THE CASES)

For the Applicants : Mr. G.V. Subba Rao
 For the Respondents : Mr. V. Bhimanna.

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)
 THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

Contd...2

-:4:-

6. In compliance with the above directions of this Tribunal the respondents No.4 passed the impugned order dt. 28.4.94 (Annexure-I to O.A.578/96) informing the applicants that their promotion to HS Gr.I w.e.f. 15.10.85 as ordered by the respondent No.5 dt. 20.9.88 has been modified by the impugned proceedings dt. 30.1.90 giving promotion to HS Gr.I w.e.f. 24.9.88-- the date on which they passed the Trade Test; that they were neither qualified nor had appeared for Trade Test during the years 1985 and 1986 and that they were entitled for pay in the HS Gr.I only from the date of their passing the Trade Test i.e. from 24.9.88; and that accordingly their pay has been revised and that the excess pay and allowances paid to them in the grade of HS Gr-I from 15.10.85 to 23.9.88 would be recovered.

7. Being aggrieved by the impugned order dt. 28.4.94 the applicants filed M.A.584/94 in O.A.1022/90, M.A.466/94 in O.A.1024/90 on 28.3.96. These M.As. were disposed of directing the applicants to challenge the impugned order dt.28.4.94 by filing a substantive application under Section 19 of the Administrative Tribunals Act, 1985 and further that directed/suspension of the impugned order made by this Tribunal by its ^{interim} order dt. 27.7.94 would be continued.

8. Earlier all the 8 applicants had filed M.A. 380/96 in O.A.SR 1593/96 (O.A.578/96) seeking permission to file a single O.A. While passing the order in M.A.380/96 only 2 applicants were permitted to file a single O.A. and ^{the} remaining applicants were directed to file a separate O.A. Accordingly the 6 applicants have filed O.A.580/96.

9. The prayer in the O.A. is as under :

"To direct the respondents to produce the records pertaining to the restructuring of the grades of Highly Skilled A/C Mechanics of HS-I, II and III and quash the letter dated

R

-: 3 :-

COMMON ORDER

order R-4(in OA 1024/90) has to pass final order about the date from which the applicants have to be given promotion to the category of HSK Gr.I after determining as to when the vacancies in the said category had arisen. For determination of the same R-4 has to give notice to the applicants and has to allow them to look into their relevant record which has^a/bearing in determination of the said vacancies. Pending the final order to be passed by R-4, the recovery as per the impugned orders dated 30.1.90 is stayed till the final order is going to be passed by R-4, even the applicants in OA 1024/90 have to be paid salary from January, 1994, in accordance with the pay fixed as per impugned proceedings dated 30.1.90. If ultimately the applicants succeed, they have to be paid as per the pay fixed as per proceedings dated 24.9.1988 for the period for which they were paid at a lesser rate, within three months from the date of order of R-4. Of course if the order of R-4 is going to be adverse to the applicants herein, the recovery for the relevant period can be made and then the applicants are free to move this Tribunal by way of MA for challenging the same. If R-4 is not going to pass any final order within three months from the date of receipt of this order, the applicants herein are free to move this Tribunal by way of MA for necessary instructions."

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Contd...4

-: 6 :-

Skilled	- . 77
HS Gr.II	- 24
HS Gr.I	- 17
Unskilled	- 1

	119

(c) The contention of the respondents that there were no vacancies as on 15.10.8⁴ is not correct. ~~They say~~

(d) They rely on the letter No.9070/89/EIC dt. 4.7.85 from Army HQrs. Engineer-in-Chief, New Delhi addressed to the Chief Engineer, Secunderabad to contend that they are to be fitted into HS Gr.I and Gr.II respectively against the restructured upgraded posts.

(e) They submit that prior to the upgradation of the skilled category posts there were no posts available in the HS Gr.II and Gr.I. In the case of Refrigeration Mechanic upgradation was implemented w.e.f. 15.10.84 and 15.10.85 to HS Gr.I and HS Gr.II categories respectively.

(f) In terms of the instructions contained in para 23 the procedure for selection to the Higher Grades which was in existence either by way of Trade Test or DPC was dispensed with as one time measure. Hence, they submit that constituting a DPC for promotion to HS Gr.I did not arise and there was nothing on record to show that DPC was in fact constituted from 1985 to 1987. They question the very constitution of the DPC in 1988 by contending that the same was contrary to the instructions contained in letter dt. 4.7.85.

(g) They submit that the respondents fixed their pay in HS Gr.II effective from 15.10.8~~4~~ and in HS Gr.I from 15.10.85 as per the instructions of the Engineer-in-Chief, Delhi. They submit that they should have been fixed in the HS Gr.I effective from 15.10.84 itself as was done in the case of Refrigeration Mechanics working

-: 5 :-

28.4.94 issued by the Chief Engineer, Navy Visakhapatnam under his letter No.11500/133/86/EILC read with Proceedings dt. 30.1.90 of CWE/Visakhapatnam(R5) by declaring it as arbitrary, illegal and unconstitutional violative of articles 311(2), 14 and 16 of the Constitution of India by directing the respondents to treat the applicants as having been promoted w.e.f. 15.10.85 to the grade of HS-I against ^{the} restructured vacancies as the promotions were ordered dispensing with the Trade Test as one time measure consequent on the cadre restructure, and direct the respondents not to reduce their pay and ^{to} recover the arrears of their pay as per rules."

10. Since the impugned order dt. 28.4.94 has been challenged by the applicants in these O.As. on similar grounds we have clubbed both the O.As., heard the Learned Counsels and they are being disposed off by this Common Order.

11. On 9.5.96, the order suspending the impugned order dt. 28.4.94 in M.A.380/96 was continued until further orders.

12. The challenge to the impugned order is made on the following grounds :

(a) As per representation dt. 22.4.94 the total authorised strength as on 15.10.84 was shown as 119 and classified as below :

Skilled	-	77
HS Gr-II	-	24
HS Gr.I	-	17
Unskilled	-	1

		119

(b) In terms of upgradation the skilled grade posts are to be distributed in the ratio of 15 : 20 : 65. The lowest category is that of skilled grade and the rest of the posts are to be fitted into HS Gr.II & Gr.I in the ratio of 20 : 15. The applicants submit that on the said ratio the total authorised strength is to be classified as under :

R

O.A.578/580 OF '96

-:8:-

14. They submit that consequent upon the introduction of 3 grade structure in certain industrial categories vide OM dt. 15.10.84, the posts were classified as HS Gr.I, Gr.II and Skilled Grade with Bench Mark percentage of 15, 20 & 65 per cent respectively; that the promotion to the HS Gr.I could have been made if the workers/^{had}satisfied the prescribed criteria in the recruitment rules; that they had issued a Circular dated 23.4.86 (Annexure-R3 to the reply) proposing to conduct a Trade Test to all Trades including HS Gr.I/^{to the candidates}eligible for promotion to all Grade-I posts with effect from 15.10.88; that Chief Engineer, SC, Pune issued a letter dt. 13/17.7.90 (Annexure-R-6 to the reply) informing that the applicants had to pass the Trade Test in the year 1988 and that they had not availed the opportunities given to them for appearing in Trade Test. Earlier they were eligible to be promoted only from the date/^{of}passing the Trade Test; and that their contention that their cases must be considered to HS Gr.I without passing the Trade Test cannot be accepted; that the applicants are relying on the para/²²of the Engineer-in-Chief letter dt. 4.7.88 (Annexur -R7 to the reply). The correct para is 23 and not 22 of the said letter; that before implementation of the 3 grade structure there were vacancies in the HS Gr.I in the Department; that as per Para 23 of the said letter the promotion to HS Gr.I and HS Gr.II is regulated in accordance with the provisions of OM dt. 8.4.86 (Annexure R-8 to the reply); that as per the said OM workers who have passed the Trade Test alone can be considered for promotion to Gr.I and after clearance of by DPC. As on 15th October, 1984 the recruitment rules were not in existence in the MES for Refrigeration Mechanic Gr.I as such, passing of Trade Test and clearance of DPC was an essential condition applicable to the applicants; that their contention that they should have been promoted directly to HS Gr.I w.e.f. 15.10.85 without passing the Trade Test is not acceptable; that the letter dt. 4.7.88 of the Engineer-in-Chief, New Delhi

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-:7:-

in the office of Chief Engineer Works.

- (h) They submit that the respondents have misinterpreted the letter dt. 4.7.85 stating that the Carpenters and Mechanics were given the HS Gr.I without subjecting them to Trade Test and no recovery has been ordered in their cases. They have cited instances of 7 officials.
- (i) They submit that in the order dt.20.9.88 there was no indication that they would be subjected to a Trade Test or a selection through DPC; that the said letter also was silent as to the effect of their promotion being either on ad hoc or officiating basis and that for all known and practical purposes the earlier proceedings dt. 20.9.88 must be treated as a regular promotion. They allege that the DPC constituted in 1988 subjecting the applicants to a Trade Test is illegal and contrary to the instructions contained in letter dt. 4.7.85. They dispute that they had failed to appear for the Trade Test.

13. The respondents have filed a reply admitting the position indicated by the applicants in the O.A. Further confirmed that the vacancies available as on 15.10.84 on account of implementation of 3 grade structure. However, they submit that the existing Chief Mechanic Refrigeration has to be considered first to fill up the vacancies of HS Gr.I and that the criteria for promotion to HS Gr.I was to qualify in the Trade Test before being considered for promotion. Thus they submit that the applicants had not passed the qualifying Trade Test and were not eligible for promotion to HS Gr.I during the year 1985.

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-:10:-

produced the said register in support of their contention that the records have been destroyed which were 5 years old. Had they produced the attested extract of the said register, we could have verified and ascertained whether or not the contention of the respondents is acceptable. In fact, in the reply to the OA they did not take up such a contention.

17. In the letter dt. 23.4.86 (Annexure-R-4 to the reply in para 2 it has been stated as follows :

"The trade test of Highly Skilled Grade II has been dispensed with as one time relaxation by the Govt. In view of this Trade test of Highly Skilled Gde II scheduled to be held during Apr/May 86 will not be held now. The DPC may please be conducted and 20% of vacancies in Skilled Grade be upgraded to Highly Skilled Gde II and be filled strictly on seniority basis without trade test. The promotion of these grades will be with retrospective effect i.e. 15 Oct 84. Completion report on this may please be submitted to this HQ by 15 May 86."

18. From this para it is revealed that the Trade Test of HS Gr.I had been dispensed with as a one time relaxation by the Govt.

19. The applicants mainly relied upon the letter dt. 4.7.85 of the Engineer-in-Chief. The said letter is at Annexure-R-7 to the reply. In para 11 it is stated as follows :

"11. Fitter Refrigeration/Refrigeration Mech : 20% of the existing authorised strength to be upgraded to HS GII Gde (Rs.330-400). The existing posts will be redesignated Refrigeration Mech (SK and Refrigeration Mech (HS-II))."

20. In para 21 as regards the DPC the said letter state as follows :

"21. Introduction of HS Gde II to Skilled tradesmen and HS Gde I to HS Gde II tradesmen will be carried out by CsWE through a DPC. A number of queries have been raised by different establishments on certain points relating to the implementation of Govt. orders dt. 15 Oct 84. The Ministry of Defence OM No.1(2)/80/D(ECC/IC) Vol.III(PC) dt. 19 Apr 85 clarifying some of the points is reproduced as Annexure-I to this letter."

21. It is stated that clarification was issued to OM dt.19.4.85 that OM dt. 19.4.84 was enclosed as Annexure to the letter dated 4.7.85. However, the respondents have not

R

does not have any bearing on their contention for direct promotion to HS Gr.I without passing the requisite Trade Test; that constitution of DPC is mandatory for promotion to HS Gr.I and thus the applicants were correctly fitted into Gr.I w.e.f. 24.9.88, the date on which they qualified in the Trade Test; that accordingly they are eligible for pay and allowances in Gr.I w.e.f. 24.9.88; that the excess payment made to the applicants as HS Gr.I from 15.10.85 to 23.9.88 is to be recovered and that the impugned order is quite in order. Thus they submit that the O.A. is liable to be dismissed.

15. The applicants herein are aggrieved of the post-poning the date of promotion from 15.10.85 to 24.9.88. The respondents contend that postponing ^{became} necessary because the applicants failed to appear for the Trade Test conducted during the years 1986 and 1988. We directed the respondents to produce the records to show that the Trade Tests were conducted during the years 1986 and 1988 and that the applicants were given chance to appear for the Trade Test. They could not produce the records. However, at the time of hearing the learned counsel for the respondents produced a letter dt. 28.11.88 wherein they stated that they made all efforts to trace out the files to furnish the required information; that the old files which were more than 5 years were destroyed and that no representations had been received from any individual during the said period and that the applicants are taking advantage of the Rule position to justify their ignorance of the fact.

16. They have not produced any Rule which prescribes for destroying the records of 5 years old. Mere saying that the records ^{of 5 years old} have been destroyed cannot be accepted. Normally, at the time of destroying the records they should have maintained a Register to show that all the records were destroyed under the relevant rules then in force. At least, the respondents should have

O.A. 578/580 OF '96

-: 12 :-

24. In view of the above discussion we issue the following directions :

- (a) Both the O.As. No.578/96 and 580/96 are allowed.
- (b) The impugned order dt. 28.4.94 is hereby set aside.
- (c) A copy of the order shall be kept in the file of O.A.580/96.

25. With the above directions, the O.As. are allowed leaving the parties to bear their own costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY

कॉपी नं. O.A. 578/580/96
दि. 7-1-99
प्रति 14-1-99
COP 1

Section Officer
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
हैदराबाद ब्याचपीठ
HYDERABAD BENCH.

O.A.578/580 '95

--:11:--

produced the said letter along with the letter dt. 4.7.85.

22. In the letter dt. 28.11.98 the respondents ~~present~~ state that the applicants are taking advantage of the rule position. If the rule position exists as contended by the applicants then they are entitled to take advantage of the said rule position. What the applicants contend is that there was dispensation of the Trade Test as a one time measure and that they were promoted to Gr.II on 15.10.84 and on completion of of 1 year service, they were promoted to Gr.I w.e.f. 15.10.85. Thus they submit that they were promoted to Gr.I from 15.10.85 without subjecting them to Trade Test.

22. The respondents submit that the letter dt. 4.7.85 of the Engineer-in-Chief has no relevance. Had they produced some material to show that the applicants were called for Trade ^{during the years 1985 and 1986 and that the} Test ~~/applicants~~ ^{by} deliberately remained absent from attending the same, then they could have justifiably contended that the post ponement of the date of their promotion ^{was} ~~/~~ in order and the same contention could have been accepted. In the absence of any material on record, it is not possible to accept the contention of the respondents.

23. Hence, the respondents have issued the impugned order dt. 28.4.94 without proper verification and justification, post poning the dates of promotion of the applicants from 15.10.85 to 24.9.88 and attempted to recover the excess pay and allowances paid to them. In our humble opinion recovery of the excess amounts paid is not justified because during that period the applicants had discharged the duties in the HS Gr.I. When that is so recovery of excess amount paid to them from 15.10.85 to 23.9.88 is unjustified, and unwarranted

23. In that view of the matter both the O.As. are liable to be accepted. The impugned order dt. 28.4.94 is liable to be set aside.



(See. Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYD.

ep. 33/2000

O.A. 580/96 of

N. Dharmadik

Applicants.

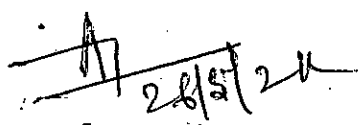
VERSUS

Brig. S.S. Tezpal, Chief Engineer, Vishakhapatnam

Respondents.

INDEX SHEET

S.L.No.	Description of Documents & Date	Pages
1.	Docket Orders	1
2.	Interim Orders.	
3.	Orders in MA.(s)	
4.	Reply Statements.	
5.	Rejoinder.	
6.	Orders in (Final orders). 13/4/20	15-17


Signature of dealing Head
in Record Section.

Signature of S.O.

(SEE RULE 12)

FORM No. 4

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: AT HYDERABAD

ORDER - SHEET

Case No. 33 OF 2000 MDA 1580/88

N. Dhanoo Dhanoo (Applicant(s))

Through M/s _____ (Advocate)

V E R S U S

CE. Dhanoo Dhanoo

Respondents

Date	Note of the Registry	Order of the Tribunal
13/4/2000		<p>31/3/2000</p> <p>Let the MD. no. 237/2000 along with C.P. on 10/4/2000-</p> <p>MDA MDA MDA</p> <p>C.P. closed. order on separate sheets. No costs.</p> <p>MDA MDA MDA</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT: HYDERABAD

C.P.NO. 33 OF 1990

IN

O.A.NO. 580 OF 1996

BETWEEN:

1. Nelapati Dharmaiah, S/o. Late
Sri Venkanna, aged about 58 years.
2. B. Umamaheswara Rao, S/o. Ramanaih,
aged about 41 years.
3. B. Prabhakara Rao, S/o. Late
Appala Rao, aged about 41 years.
4. M. Siva Prasad, S/o. Late Sri
Simhachalam, aged about 41 years.
5. P. Ravindran, S/o. Late P. Parameswari
Menon, aged about 52 years.
6. M. Narasinga Rao, S/o. M. Adinarayana
Murthy, Aged about 48 years.

(All Senior Refrigeration Mechanics,
HE-I of the Naval Depot and Base,
Visakhapatnam)

... APPLICANTS/
PETITIONERS

A N D

1. Brig. S.S. Tezpal,
Chief Engineer,
Navy Visakhapatnam,
Visakhapatnam- 530 004 (Respondent No.4 in O.A.)
2. Sri A.C. Koura, S.E.,
Commander Works Engr.,
Naval Depot,
Visakhapatnam - 530 004. (Respondent No.5 in O.A.)
3. Sri S.C. Chowdary, E.E.,
Garrison Engineer,
Naval Depot,
Visakhapatnam- 530 007 (Respondent No.6 in O.A.)
4. Major Sunil Kumar, Dha,
Garrison Engineer,
Naval Base,
Visakhapatnam - 530 004 (Respondent No.7 in O.A.)

... RESPONDENTS/
CONTEMNORS

(Necessary parties are only included)

MEMORANDUM OF CONTEMPT PETITION UNDER SEC. 17 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985:

For the reasons stated in the accompanying affidavit
the applicants pray that this Hon'ble Tribunal may be pleased

contd...

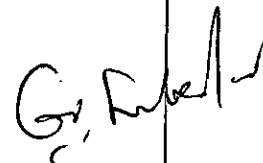
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to direct the respondents/contemnors to appear before the Hon'ble Tribunal and punish them for contempt of Court or in the alternative to file compliance of the orders. The applicants also pray that ~~this~~ this Hon'ble Tribunal may be pleased to direct the respondents to pay interest @ 18% for the delayed payment that has been caused ~~in~~ for non-compliance of the orders.

Hyderabad

Dt.: 18.10.1999


COUNSEL FOR THE APPLICANTS

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT: HYDERABAD

C.P.NO. OF 1999

IN

O.A.NO. 580 OF 1996

BETWEEN:

1. Nelapati Dharmaiah.
2. B. Umamaheswara Rao.
3. B. Prabhakara Rao.
4. M. Siva Prasad.
5. P. Ravindran.
6. M. Narasinga Rao.

... APPLICANTS/
PETITIONERS

A N D

1. Brig. S.S. Tezpal, Chief Engineer,
Navy Visakhapatnam, Visakhapatnam-
530 004 and others.

... RESPONDENTS/
CONTEMNORS

A F F I D A V I T

We (1) Nelapati Dharmaiah, S/o. Late Sri Venkanna, aged about 58 years, (2) B. Umamaheswara Rao, S/o. Ramanaiah, aged about 41 years, (3) B. Prabhakara Rao, S/o. Late Appala Rao, aged about 41 years, (4) M. Siva Prasad, S/o. Late Sri Simhachalam, aged about 41 years, (5) P. Ravindran, S/o. Late P. Parameswari Menon, aged about 52 years and (6) M. Narasinga Rao, S/o. M. Adinarayana Murthy, aged about 48 years, all Sr. Refrigeration Mechanics, HS Gr.I of the Naval Depot and Base, Visakhapatnam do hereby solemnly affirm and state as under:-

1. We are the applicants in O.A.No.580/96 and are well acquainted with the facts of the case.
2. We filed the O.A.No.580/96 in this Hon'ble Tribunal seeking a direction to the respondents to produce the records pertaining to the restructuring of the grade of Highly Skilled A.C. Mechanics HS Gr-II and III and quash the letter dt.28.4.94 issued by the Chief Engineer, Navy Visakhapatnam under his letter No. 11500/133/86/EILC read with proceedings dt.30.1.90 of CWE/Visakhapatnam (R-5) by declaring it as arbitrary, illegal, and unconstitutional violative of Articles 311(2), 14 & 16 of the Constitution of India by directing the respondents to treat the applicants as having been promoted w.e.f. 15.10.85 to the grade of H.S.-I against

contd...

restructured vacancies as the promotions were ordered dispensing with the trade test as one time measure consequent on the cadre restructure and direct the respondents not to reduce their pay and recover the arrears from their pay as per rules. This Hon'ble Tribunal by observing "Hence the respondents have issued the impugned order dt.28.4.94 without proper verification and justification postponing the dates of promotion of the applicants from 15.10.85 to 24.9.88 and attempted to recover the excess pay and allowance paid to them. In our humble opinion recovery of the excess amounts paid is not justified because during that period the applicants had discharged the duties in the HS Gr.I. When that is so recovery of excess amount paid to them from 15.10.85 to 23.9.88 is unjustified and unwarranted.

In that view of the matter both the O.As are liable to be accepted. The impugned order dt.28.4.91 is liable to be set aside."

3. It is further submitted that the said order was passed on 7.1.99 and it is more than 9 months have since elapsed and the respondents have not evinced any interest in implementing the orders of the Tribunal. Immediately after receipt of the judgement we made representation to the authorities requesting for the implementation of the order.

4. It is respectfully submitted that we filed O.A.No.1024/90 in this Hon'ble Tribunal challenging the proposed recovery and re-fixation of our pay in the grade of HS-I mechanics and the O.A. was disposed off with a direction to the respondents to pass the final orders about the date from which the applicants have to be given promotion to the category of HS-I. The respondents reiterated their earlier stand and issued the same impugned order which was challenged in O.A.No.580/96. We are entitled for increments etc., from the date we have been promoted to the Grade of HS-I w.e.f.15.10.1985. This Hon'ble Tribunal set aside the impugned order and allowed the O.As. Consequently we are entitled for increments annually from 15.10.85 till date and the same has to be regulated in the fixation of pay w.e.f.1.1.96 consequent on the implementation of the 5th Pay Commission recommendations.

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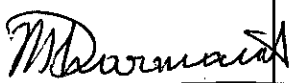
5. The respondents have not taken action on the individual representations submitted by us due to which we are put to unwarranted loss in our monthly emoluments. The inaction of the respondents in not implementing the orders even after lapse of nine months is clear proof that they have no regard for the orders of the Hon'ble Tribunal and thereby deliberately committed Contempt of Court for which they are liable to be punished under the Contempt of Courts Act.

We therefore, pray that this Hon'ble Tribunal may be pleased to direct the respondents/contemnors to appear before the Hon'ble Tribunal and punish them for contempt of court or in the alternative to file compliance of the orders. The applicants also pray that this Hon'ble Tribunal may be pleased to direct the respondents to pay interest @ 18% for the delayed payment that has been caused in non-implementation of the orders.

Solemnly affirmed and
signed in my presence
on this 18th day of
October, 1999 at
Hyderabad.

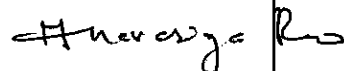
BEFORE ME

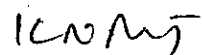

ADVOCATE














DEPONENTS

COMMON ORDER

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. G.V. Subba Rao, Learned Counsel for the applicants and Mr. V. Bhimanna, Learned Standing Counsel for the respondents.
2. There are 2 applicants in O.A. 578/96 and 6 applicants in O.A. 580/96. Both these applications were filed on 14.5.96.
3. Brief facts are these :
By proceedings dt. 20.9.88 of the respondent No.5 8 applicants herein were promoted to the cadre of Senior Mechanical Refrigeration in HS Grade-I in the scale of pay of Rs.1320-2040 effective from 15.10.85. Subsequently, the respondents admitted to have modified the date of promotion of the applicants to the cadre of HS Gr-I and proposed recovery of excess pay and allowances paid to the applicants from 15.10.85 to 30.1.90. Accordingly, the respondents issued proceedings dt. 30.1.90.
4. Being aggrieved by the proceedings dt. 30.1.90, the applicants herein had approached this Tribunal in O.A.1022/90 and 1024/90 questioning the action of the respondents.
5. On 27.10.93 this Tribunal disposed off both the O.As. by the common order giving direction as under :

"Within three months from the date of receipt of this



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 578/96 & 580/96

Dated, the 7th January, 1999.

BETWEEN :

1. Nelapati Dharmiah (OA 580/96)
2. B. Umamaheswara Rao (OA 580/96)
3. B. Prabhakara Rao (OA 580/96)
4. M. Siva Prasad (OA 580/96)
5. P. Ravindran (OA 580/96)
6. M. Narsinga Rao (OA 580/96)
7. N. Nukaraju (OA 578/96)
8. S. Lakshmana Rao (OA 578/96)

A N D

... Applicants

1. The Secretary,
Ministry of Defence, New Delhi.
2. The Engineer-in-Chief,
Army Headquarters, New Delhi.
3. The Chief Engineer,
Southern Command, Pune.
4. The Chief Engineer,
Dry Dock & Vizag Zone, Visakhapatnam.
5. The Commander Works Engineer,
Naval Depot, Visakhapatnam.
6. The Garrison Engineer,
Naval Depot, Visakhapatnam.
7. The Garrison Engineer,
Naval Base,
Visakhapatnam.

... Respondents.

COUNSELS: (BOTH THE CASES)

For the Applicants : Mr. G.V. Subba Rao

For the Respondents : Mr. V. Bhimanna.

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

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6. In compliance with the above directions of this Tribunal the respondents No.4 passed the impugned order dt. 28.4.94 (Annexure-I to O.A.578/96) informing the applicants that their promotion to HS Gr.I w.e.f. 15.10.85 as ordered by the respondent No.5 dt. 20.9.88 has been modified by the impugned proceedings dt. 30.1.90 giving promotion to HS Gr.I w.e.f. 24.9.88-- the date on which they passed the Trade Test; that they were neither qualified nor had appeared for Trade Test during the years 1985 and 1986 and that they were entitled for pay in the HS Gr.I only from the date of their passing the Trade Test i.e. from 24.9.88; and that accordingly their pay has been revised and that the excess pay and allowances paid to them in the grade of HS Gr-I from 15.10.85 to 23.9.88 would be recovered.

7. Being aggrieved by the impugned order dt. 28.4.94 the applicants filed M.A.584/94 in O.A.1022/90, M.A.466/94 in O.A.1024/90 on 28.3.96. These M.As. were disposed of directing the applicants to challenge the impugned order dt.28.4.94 by filing a substantive application under Section 19 of the Administrative Tribunals Act, 1985 and further that directed/suspension of the impugned order made by this Tribunal by its ^{interim} order dt. 27.7.94 would be continued.

8. Earlier all the 8 applicants had filed M.A. 380/96 in O.A.SR 1593/96 (O.A.578/96) seeking permission to file a single O.A. While passing the order in M.A.380/96 only 2 applicants were permitted to file a single O.A. and the remaining applicants were directed to file a separate O.A. Accordingly the 6 applicants have filed O.A.580/96.

9. The prayer in the O.A. is as under :

"To direct the respondents to produce the records pertaining to the restructuring of the grades of Highly Skilled A/C Mechanics of HS-I, II and III and quash the letter dated

--: 3 :-

COMMON ORDER

order R-4 (in OA 1024/90) has to pass final order about the date from which the applicants have to be given promotion to the category of HSK Gr.I after determining as to when the vacancies in the said category had arisen. For determination of the same R-4 has to give notice to the applicants and has to allow them to look into their relevant record which has bearing in determination of the said vacancies. Pending the final order to be passed by R-4, the recovery as per the impugned orders dated 30.1.90 is stayed till the final order is going to be passed by R-4, even the applicants in OA 1024/90 have to be paid salary from January, 1994, in accordance with the pay fixed as per impugned proceedings dated 30.1.90. If ultimately the applicants succeed, they have to be paid as per the pay fixed as per proceedings dated 24.9.1988 for the period for which they were paid at a lesser rate, within three months from the date of order of R-4. Of course if the order of R-4 is going to be adverse to the applicants herein, the recovery for the relevant period can be made and then the applicants are free to move this Tribunal by way of MA for challenging the same. If R-4 is not going to pass any final order within three months from the date of receipt of this order, the applicants herein are free to move this Tribunal by way of MA for necessary instructions."

Centd...4

-: 6 :-

Skilled	- . 77
HS Gr.II	- 24
HS Gr.I	- 17
Unskilled	- 1

	119

(c) The contention of the respondents that there were no vacancies as on 15.10.85 is not correct.

(d) They rely on the letter No.9070/89/EIC dt. 4.7.85 from Army HQrs. Engineer-in-Chief, New Delhi addressed to the Chief Engineer, Secunderabad to contend that they are to be fitted into HS Gr.I and Gr.II respectively against the restructured upgraded posts.

(e) They submit that prior to the upgradation of the skilled category posts there were no posts available in the HS Gr.II and Gr.I. In the case of Refrigeration Mechanic upgradation was implemented w.e.f. 15.10.84 and 15.10.85 to HS Gr.I and HS Gr.II categories respectively.

(f) In terms of the instructions contained in para 23 the procedure for selection to the Higher Grades which was in existence either by way of Trade Test or DPC was dispensed with as one time measure. Hence, they submit that constituting a DPC for promotion to HS Gr.I did not arise and there was nothing on record to show that DPC was in fact constituted from 1985 to 1987. They question the very constitution of the DPC in 1988 by contending that the same was contrary to the instructions contained in letter dt. 4.7.85.

(g) They submit that the respondents fixed their pay in HS Gr.II effective from 15.10.84 and in HS Gr.I from 15.10.85 as per the instructions of the Engineer-in-Chief, Delhi. They submit that they should have been fixed in the HS Gr.I effective from 15.10.84 itself as was done in the case of Refrigeration Mechanics working

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28.4.94 issued by the Chief Engineer, Navy Visakhapatnam under his letter No.11500/133/86/EILC read with Proceedings dt. 30.1.90 of CWE/Visakhapatnam(R5) by declaring it as arbitrary, illegal and unconstitutional violative of articles 311(2), 14 and 16 of the Constitution of India by directing the respondents to treat the applicants as having been promoted w.e.f. 15.10.85 to the grade of HS-I against ^{the} restructured vacancies as the promotions were ordered dispensing with the Trade Test as one time measure consequent on the cadre restructure, and direct the respondents not to reduce their pay and ^{to} recover the arrears of their pay as per rules."

10. Since the impugned order dt. 28.4.94 has been challenged by the applicants in these O.As. on similar grounds we have clubbed both the O.As., heard the Learned Counsels and they are being disposed off by this Common Order.

11. On 9.5.96, the order suspending the impugned order dt. 28.4.94 in M.A.380/96 was continued until further orders.

12. The challenge to the impugned order is made on the following grounds :

(a) As per representation dt. 22.4.94 the total authorised strength as on 15.10.84 was shown as 119 and classified as below :

Skilled	-	77
HS Gr-II	-	24
HS Gr.I	-	17
Unskilled	-	1
		--- 119

(b) In terms of upgradation the skilled grade posts are to be distributed in the ratio of 15 : 20 : 65. The lowest category is that of skilled grade and the rest of the posts are to be fitted into HS Gr.II & Gr.I in the ratio of 20 : 15. The applicants submit that on the said ratio the total authorised strength is to be classified as under :

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-18:-

14. They submit that consequent upon the introduction of 3 grade structure in certain industrial categories vide OM dt. 15.10.84, the posts were classified as HS Gr.I, Gr.II and Skilled Grade with Bench Mark percentage of 15, 20 & 65 per cent respectively; that the promotion to the HS Gr.I could have been made if the workers ^{had} satisfied the prescribed criteria in the recruitment rules; that they had issued a Circular dated 23.4.86 (Annexure-R3 to the reply) proposing to conduct a Trade Test to all Trades including HS Gr.I ^{to the candidates} eligible for promotion to all Grade-I posts with effect from 15.10.88; that Chief Engineer, SC, Pune issued a letter dt. 13/17.7.90 (Annexure-R-6 to the reply) informing that the applicants had to pass the Trade Test in the year 1988 and that they had not availed the opportunities given to them for appearing in Trade Test. Earlier they were eligible to be promoted only from the date ^{of} passing the Trade Test; and that their contention that their cases must be considered to HS Gr.I without passing the Trade Test cannot be accepted; that the applicants are relying on the para ²² of the Engineer-in-Chief letter dt. 4.7.88 (Annexure -R7 to the reply). The correct para is 23 and not 22 of the said letter; that before implementation of the 3 grade structure there were vacancies in the HS Gr.I in the Department; that as per para 23 of the said letter the promotion to HS Gr.I and HS Gr.II is regulated in accordance with the provisions of OM dt. 8.4.86 (Annexure R-8 to the reply); that as per the said OM workers who have passed the Trade Test alone can be considered for promotion to Gr.I and after clearance of by DPC. As on 15th October, 1984 the recruitment rules were not in existence in the MES for Refrigeration Mechanic Gr.I as such, passing of Trade Test and clearance of DPC was an essential condition applicable to the applicants; that their contention that they should have been promoted directly to Gr.I w.e.f. 15.10.85 without passing the Trade Test is not acceptable; that the letter dt. 4.7.88 of the Engineer-in-Chief, New Delhi

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-:7:-

in the office of Chief Engineer Works.

- (h) They submit that the respondents have misinterpreted the letter dt. 4.7.85 stating that the Carpenters and Mechanics were given the HS Gr.I without subjecting them to Trade Test and no recovery has been ordered in their cases. They have cited instances of 7 officials.
- (i) They submit that in the order dt.20.9.88 there was no indication that they would be subjected to a Trade Test or a selection through DPC; that the said letter also was silent as to the effect of their promotion being either on ad hoc or officiating basis and that for all known and practical purposes the earlier proceedings dt. 20.9.88 must be treated as a regular promotion. They allege that the DPC constituted in 1988 subjecting the applicants to a Trade Test is illegal and contrary to the instructions contained in letter dt. 4.7.85. They dispute that they had failed to appear for the Trade Test.

13. The respondents have filed a reply admitting the position indicated by the applicants in the O.A. Further confirmed the vacancies available as on 15.10.84 on account of implementation of 3 grade structure. However, they submit that the existing Chief Mechanic Refrigeration has to be considered first to fill up the vacancies of HS Gr.I and that the criteria for promotion to HS Gr.I was to qualify in the Trade Test before being considered for promotion. Thus they submit that the applicants had not passed the qualifying Trade Test and were not eligible for promotion to HS Gr.I during the year 1985.

-:10:-

produced the said register in support of their contention that the records have been destroyed which were 5 years old. Had they produced the attested extract of the said register, we could have verified and ascertained whether or not the contention of the respondents is acceptable. In fact, in the reply to the OA they did not take up such a contention.

17. In the letter dt. 23.4.86 (Annexure-R-4 to the reply in para 2 it has been stated as follows :

"The trade test of Highly Skilled Grade II has been dispensed with as one time relaxation by the Govt. In view of this Trade test of Highly Skilled Gde II scheduled to be held during Apr/May 86 will not be held now. The DPC may please be conducted and 20% of vacancies in Skilled Grade be upgraded to Highly Skilled Gde II and be filled strictly on seniority basis without trade test. The promotion of these grades will be with retrospective effect i.e. 15 Oct 84. Completion report on this may please be submitted to this HQ by 15 May 86."

18. From this para it is revealed that the Trade Test of HS Gr.I had been dispensed with as a one time relaxation by the Govt.

19. The applicants mainly relied upon the letter dt. 4.7.85 of the Engineer-in-Chief. The said letter is at Annexure-R-7 to the reply. In para 11 it is stated as follows :

"11. Fitter Refrigeration/Refrigeration Mech : 20% of the existing existing authorised strength to be upgraded to HS GII Gde (Rs.330-400). The existing posts will be redesignated Refrigeration Mech (SK and Refrigeration Mech (HS-II))."

20. In para 21 as regards the DPC the said letter state as follows :

"21. Introduction of HS Gde II to Skilled tradesmen and HS Gde I to HS Gde II tradesmen will be carried out by CSWE through a DPC. A number of queries have been raised by different establishments on certain points relating to the implementation of Govt. orders dt. 15 Oct 84. The Ministry of Defence, OM No.1(2)/80/D(ECC/IC) Vol.III(PC) dt. 19 Apr 85 clarifying some of the points is reproduced as Annexure-I to this letter."

21. It is stated that clarification was issued to OM dt.19.4.85 that OM dt. 19.4.84 was enclosed as Annexure to the letter dated 4.7.85. However, the respondents have not

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does not have any bearing on their contention for direct promotion to HS Gr.I without passing the requisite Trade Test; that constitution of DPC is mandatory for promotion to HS Gr.I and thus the applicants were correctly fitted into Gr.I w.e.f. 24.9.88, the date on which they qualified in the Trade Test; that accordingly they are eligible for pay and allowances in Gr.I w.e.f. 24.9.88; that the excess payment made to the applicants as HS Gr.I from 15.10.85 to 23.9.88 is to be recovered and that the impugned order is quite in order. Thus they submit that the O.A. is liable to be dismissed.

15. The applicants herein are aggrieved of the postponing the date of promotion from 15.10.85 to 24.9.88. The respondents contend that postponing ^{became} necessary because the applicants failed to appear for the Trade Test conducted during the years 1986 and 1988. We directed the respondents to produce the records to show that the Trade Tests were conducted during the years 1986 and 1988 and that the applicants were given chance to appear for the Trade Test. They could not produce the records. However, at the time of hearing the learned counsel for the respondents produced a letter dt. 28.11.88 wherein they stated that they made all efforts to trace out the files to furnish the required information; that the old files which were more than 5 years were destroyed and that no representations had been received from any individual during the said period and that the applicants are taking advantage of the Rule position to justify their ignorance of the fact.

16. They have not produced any Rule which prescribed for destroying the records of 5 years old. Mere saying that the records ^{of 5 years old} have been destroyed cannot be accepted. Normally, at the time of destroying the records they should have maintained a Register to show that all the records were destroyed under the relevant rules then in force. At least the respondents should have



-: 12 :-

24. In view of the above discussion we issue the following directions :

- (a) Both the O.As. No.578/96 and 580/96 are allowed.
- (b) The impugned order dt. 28.4.94 is hereby set aside.
- (c) A copy of the order shall be kept in the file of O.A.580/96.

25. With the above directions, the O.As. are allowed leaving the parties to bear their own costs.

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CERTIFIED TRUE COPY

CA 578 / 186 / 96

2-1-99

14-1-99

Prin

Hyderabad Bench.

-11:-

produced the said letter along with the letter dt. 4.7.85.

22. In the letter dt. 28.11.98 the respondents state that the applicants are taking advantage of the rule position. If the rule position exists as contended by the applicants then they are ~~entitled~~ rule position. What the applicants contend is that there was dispensation of the Trade Test as a one time measure and that they were promoted to Gr.II on 15.10.84 and on completion of 1 year service, they were promoted to Gr.I w.e.f. 15.10.85. Thus they submit that they were promoted to Gr.I from 15.10.85 without subjecting them to Trade Test.

22. The respondents submit that the letter dt. 4.7.85 of the Engineer-in-Chief has no relevance. Had they produced some material to show that the applicants were called for Trade Test during the years 1985 and 1986 and that the ~~Test/applicants~~ deliberately remained absent from attending the same, then they could have justifiably contended that the post ponement of the date of their promotion ^{was} in order and the same contention could have been accepted. In the absence of any material on record, it is not possible to accept the contention of the respondents.

23. Hence, the respondents have issued the impugned order dt. 28.4.94 without proper verification and justification, post poning the dates of promotion of the applicants from 15.10.85 to 24.9.88 and attempted to recover the excess pay and allowances paid to them. In our humble opinion recovery of the excess amounts paid is not justified because during that period the applicants had discharged the duties in the HS Gr.I. When that is so recovery of excess amount paid to them from 15.10.85 to 23.9.88 is unjustified, and unwarranted.

23. In that view of the matter both the O.As. are liable to be accepted. The impugned order dt. 28.4.94 is liable to be set aside.

R

COUNSEL FOR THE APPLICANTS

... 2 ...

0005-1-16 0000

1. The Registrar, Central Administrative Tribunal, Hyderabad.
2. M. Dharmalaiah S/o. late Sri Venkanna
3. R. Ganesanwar Rao S/o. Ramachalaiah
4. S. Prabhakara Rao S/o. late Sri Appala Rao
5. M. Niva Prasad S/o. late Sri Sindhulalan
6. P. Ravindran, S/o. P. Parameswari Menon
7. M. Narsing Rao S/o. M. Adinarayana Murthy

(All are Senior refrigerator mechanics HS-1, Naval Base and Depot, Visakhapatnam (RPA))

8. One Cc to Mr. M. Adinarayana Rao, Advocate (OPUC)
9. One spare copy.

YVH

W.P. No. 3005 of 1974

THE REGISTRAR, C.A.T.

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

CP 33/2000 in OA 580/1996

DATE OF ORDER : 13-4-2000

Between :-

- | | |
|-----------------------|--------------------|
| 1. Nelapati Dharmaiah | 4. M.Siva Prasad |
| 2. B.Umamaheswara Rao | 5. P.Ravindran |
| 3. B.Prabhakara Rao | 6. M.Narasinga Rao |

...Applicants/Petitioners

And

1. Brig.S.S.Tezpal, Chief Engineer,
Navy Visakhapatnam, Visakhapatnam-
530 004.
2. Sri A.C.Koura, S.E.,
Commander Works Engineer,
Naval Depot,
Visakhapatnam - 530 004.
3. Sri S.C.Chowdary, E.E.,
Garrison Engineer,
Naval Depot,
Visakhapatnam-530 007.
4. Major Sunil Kumar, Dha,
Garrison Engineer, Naval
Base, Visakhapatnam-530 004.

...Respondents/Contemnors

--- -- --
Counsel for the Applicants : Shri G.V.Subba Rao

Counsel for the Respondents : Shri V.Bhimanna, Addl.CGSC

--- -- --
CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

Heard Sri G.V.Subba Rao, learned counsel for the applicant
and Sri V.Bhimanna, learned Standing Counsel for the Respondents.

2. The order of this Tribunal in OA 598/96 and OA 580/96 has been
stayed by the High Court of Andhra Pradesh. Hence the CP is closed.

No costs.


(B.S. JAI PARAMESHWAR)

Member (J)

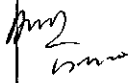
13.4.00



(R. RANGARAJAN)
Member (A)

Dated: 13th April, 2000.

Dictated in Open Court.



avl/

28 APR 2000
Despatch day
~~RECEIVED~~
जका विभाग / APPAL SECTION

Regl - condone delay of 70
days in representing the
contempt petition
IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : HYDERABAD BENCH
AT: HYDERABAD

M.A.NO. OF 2000

in

C.P.NO.. OF 2000

in

O.A.NO. 580 OF 1996

Between:

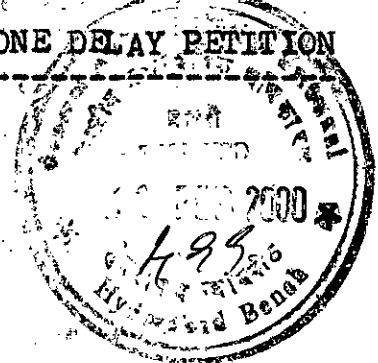
Nelapati Dharmaiah and
five others. .. Applicants

and

Brig. S.S.Tezpal,
Chief Engineer,
Naval Visakhapatnam,
Visakhapatnam and
others. .. Respondents

Recd copy
Admin. Secy
Addl. Secy
10-2-2000

CONDONE DELAY PETITION



Filed on : 9.2.2000

Filed by :

G.V. Subba Rao,
Advocate,
1-1-230/33, Jyothi Bhavan,
Chikkadpally, Hyderabad-20

COUNSEL FOR THE APPLICANTS

may be filed

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT: HYDERABAD

M.A.NO.. 237 OF 2000

in
C.P.NO. 4361 OF 2000

in
O.A.NO.. 580 OF 1996

Between:

1. Nelapati Dharmaiah, S/o.Late Sri Venkanna, aged about 58 years.
2. B. Umamaheswara Rao, S/o.Ramanaiah, aged about 41 years.
3. B. Prabhakara Rao, S/o. Late Appala Rao, aged about 41 years.
4. M. Siva Prasad, S/o.Late Sri Simhachalam aged about 41 years.
5. P. Ravindran, S/o.Late P. Parameswari Menon, aged about 52 years.
6. M. Narasinga Rao, S/o.M. Adinarayana Murthy, aged about 48 years.

(All Senior Refrigeration Mechanics, HS-I of the Naval Depot and Base, Visakhapatnam).

... APPLICANTS

a n d

1. Brig. S.S.Tezpal, Chief Engineer, Naval Visakhapatnam, Visakhapatnam-530 004. ..(Resp. No.4 in OA)
2. Sri A.C. Koura, S.E., Commander Works Engr., Naval Depot, Visakhapatnam- 530 004. ..(Resp. No.5 in OA)
3. Sri S.C.Chowdary, E.E., Garrison Engineer, Naval Depot, Visakhapatnam-530 007. ..(Resp. No.6 in OA)
4. Major Sunil Kumar Dha, Garrison Engineer, Naval Base, Visakhapatnam- 530 004. ..(Resp. No.7 in OA)

(Necessary parties are only included)

.. RESPONDENTS

MEMORANDUM OF MISCELLANEOUS APPLICATION UNDER RULE 8 OF THE CAT (PROC) RULES OF 1987 FOR CONDONATION OF DELAY IN REPRESENTATION:

For the reasons stated in the accompanying affidavit the applicants pray that the delay of 42 days in representing the C.P. was beyond their control and as such pray that this Hon'ble Tribunal may be pleased to condone the delay of 42 days in representing the C.P. in the interest of justice.

Hyderabad,

Dt.9.2.2000.


COUNSEL FOR THE APPLICANTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT: HYDERABAD

~~Ex. No.~~

M.A.NO.. 237 OF 2000

in

C.P.NO. 4361 OF 2009

in

O.A.NO. 580 OF 1996

Between:

Nelapati Dharmaiah and five others:

... APPLICANTS

a n d

Brig. S.S.Tezpal, Chief Engineer,
Navy Visakhapatnam, Visakhapatnam-530 004
and others.

... RESPONDENTS

MISCELLANEOUS APPLICATION U/S. 8 OF THE CAT (PROC) RULES OF 1987
FOR CONDONATION OF DELAY IN REPRESENTING THE C.P.

I, G.V. Subba Rao, S/o.Late G. Kotaiah, Advocate for the
applicants do hereby solemnly affirm and state asunder:-

1. The applicants in OA No.580/96 have filed the CP /99
in this Hon'ble Tribunal for the non-implementation of the orders
in OA No.378/96 and 580/96 dt.7.1.99. The Registry raised some
objections which have been complied with.
2. It is submitted that the bundle was misplaced by my clerk
in the office as a result of which there is a delay of about 42 days
in representing the C.P. which delay was due to the reasons beyond
my control and as such it is prayed that this Hon'ble Tribunal may
be pleased to condone the delay in representing the C.P. in the
interest of justice.

Solemnly affirm and signed
in my presence this 9th day
of February, 2000.


DEPONENT

BEFORE ME


ADVOCATE

MA 237/2000 in CFSR 4361/99

1 in OA 580/96

16.3.2000

Post on 23.3.2000

✓
HBSJP HRRN
M/J M/H

23/3/00

Post on 31/3/00

✓
HBSJP HRRN
H(J) H(P)

31/3/2000

Post on 10/4/2000

✓
HBSJP HRRN
M/J M/H

10.4.2000

Heard Sr. G.V. Subbarao for the applicant and Sr. V. Bhinnamma for the Respondents.

The delay in re-representation is undue. Register the C.R. and file tomorrow for order.

✓
HBSJP HRRN
M/J M/H

DEFENCE
BENCH CASE

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

ORIGINAL

M.A.No. 237 of 2000
IN

CFSR 4361/99

O.A.No. 580 of 1996

Delay representation

Mr. G.V. Subbarao
COUNSEL FOR THE APPLICANTS

AND

Mrs. V. Bhinnamma

Standing Counsel
Addl Standing Counsel for Gen.
Govt.,
Sr. STANDING COUNSEL FOR Gen.
Govt.,
S.C. for RLYS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

MA NO. 381 OF 96

in

SR
OA NO. 1595 OF 96

Between:

1. Nelapati Dharmaiah
 2. M. Umamaheswara Rao
 3. B. Prabhakara Rao
 4. M. Siva Prasad
 5. P. Ravindran,
 6. M. Narsinga Rao
- ...Applicants

A N D

1. The Secretary,
Ministry of Defence,
New Delhi.
 2. The Engineer-in-Chief,
Army Headquarters,
New Delhi.
 3. The Chief Engineer,
Southern Command,
Pune.
 4. The Chief Engineer,
Dry Dock & Vizag Zone,
Visakhapatnam,
 5. The Commander Works Engineer,
Station Road,
Visakhapatnam.
 6. The Garrison Engineer,
Naval Depot,
Visakhapatnam.
 7. The Garrison Engineer,
Naval Base,
Visakhapatnam.
- ...Respondents

APPLICATION FOR SINGLE OA FILED UNDER RULE 4 (5) (a)
OF CAT PROC. RULES, 1985

The applicants humbly submit that they are presently working as HS Grade.I Refrigeration AC Mechanics in Navy, at Visakhapatnam. They filed OA No.1024/90 in this Hon'ble

Tribunal assailing the order of the proposed recovery from their salaries and reducing their pay consequent on modified promotion to the grade of HS-I with effect from 13.10.1985 instead of from 24.9.1988 and this Hon'ble Tribunal disposed the OA with a direction to the respondents to permit the applicants to peruse the records and make representations. The applicants were given an opportunity to peruse the records and they made representation to the authorities against the original order. But without considering the Chief Engineer issued an order dated 28.4.1994 reiterating their earlier stand. The applicants filed MA No. 466/94 in this Hon'ble Tribunal and stay was granted against the proposed recovery. The MA was disposed of with a direction to the applicants to file a fresh OA, as the MA is not maintainable and accordingly the Present OA is filed in this Hon'ble Tribunal praying for quashing of the common order issued to all the applicants herein. As the subject matter to all the applicants of the OA is the same and the applicants are aggrieved by the same common order and grievances of the applicants is one and the same in all respects, they pray that this Hon'ble Tribunal may be pleased to permit the applicants to file one single OA in respect of the common order by which they are aggrieved and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case, as this Hon'ble Tribunal directed the applicants to file a fresh OA on 9.5.1996 and accordingly the present OA is filed.

APPLICANTS

Singh OA Peta
IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

MA No. 381 of 1996

in

SR
OA No. 1595 of 1996

Between:

.E

N. Dhamaiah and
others.

...Applicants

AND

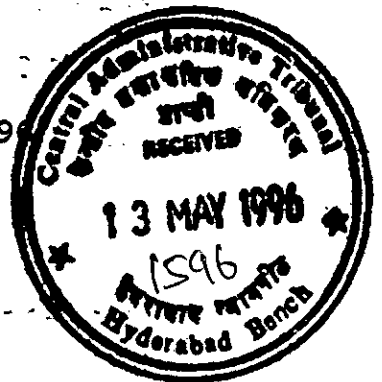
.E

Secretary, Ministry
of Defence, New Delhi
and 6 others.

...Applicants

MA FILED UNDER RULE 4 (5) (a) OF
CAT (PROC) RULES, 1985

Filed on: 12.5.96



Filed by:

M/s G.V. Subba Rao & N. Ethirajulu,
Advocates, 1-1-230/33, Chikkadapally,
Hyderabad.

COUNSEL FOR APPLICANTS

Handwritten signature and date: 13/5/96

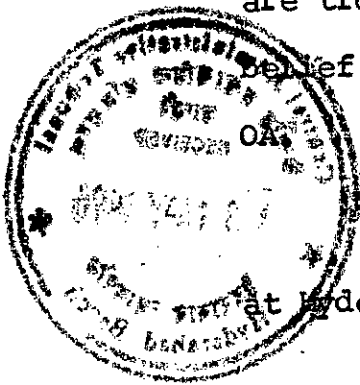
VERIFICATION

- We, 1. Nelapati Sharmaiah, S/o late Shri Venkanna, aged about 55 years,
2. B.Uma Maheswara Rao, S/o Ramanaiah, aged about 38 years,
3. B.Prabhakarao Rao, S/o late Shri Appala Rao, aged about 38 years,
4. M.Siva Prasad, S/o Shri late Simhachalam, aged about 38 years,
5. P.Ravindran, S/o late P.Parameshwari Menon, aged about 49 years,
6. M.Narsinga Rao, S/o Shri M.Adinarayana Murthy aged about 45 years,

working as Senior Refrigeration Mechanics HS-I, Naval Depot & Naval Base, Visakhapatnam, having temporarily come down to Hyderabad, do hereby solemnly and sincerely affirm and verify that the contents of the above application are true and correct to the best of our knowledge and belief and we are filing this application for a single

Hence, verified on this the 12th day of May, 1996

at Hyderabad.



COUNSEL FOR THE APPLICANTS

1. *[Signature]*
2. *[Signature]*
3. *[Signature]*
4. *[Signature]*
5. *[Signature]*
6. *[Signature]*

APPLICANTS

मूल/ORIGINAL

रक्षा/DEFENCE

बेंच केस/BENCH CASE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD.
BENCH AT HYDERABAD

M.A. 381... of 1996

IN

O.ASR 1595 of 1996

PETITION FOR SEEKING
PERMISSION TO ADDITIONAL
APPLICANTS IN A SINGLE
APPLICATION.

AND

Mr. G. V. Subbarao
COUNSEL FOR THE APPLICANTS

AND

Mr. _____
Sr. ADDL. STANDING COUNSEL
FOR C.G. RLYS.