

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT HYDERABAD

O.A.NO.497 of 1997

between:-

K. Veera Reddy & 22 others.

... Applicants

AND

The Union of India, Rep. by the
Secretary, Ministry of Defence,
New Delhi and 2 others

... Respondents

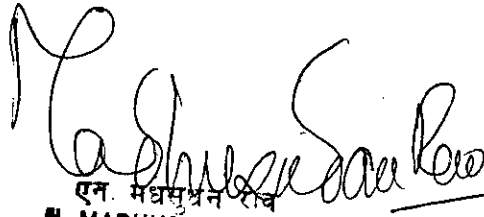
COUNTER AFFIDAVIT FILED BY THE RESPONDENT

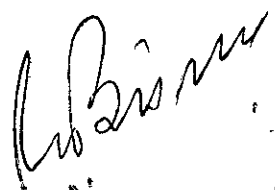
I, N.C.Biswas, S/o. Late Sri M.N.Biswas, Aged about 54 years, R/o. Lab Quarters, Hyderabad do hereby solemnly affirm and state on oath as follows:

1. I am working as Chief Administrative Officer in Defence Research and Development Laboratory and as such I am well acquainted with the facts of the case. I am filing the counter affidavit on behalf of the above Respondents.

2. I have read the contents of the O.A. filed by the Applicant and I submit that it is replete with incorrect facts. All the averments, facts and rules which are inconsistent and at variance with the following history of the case are hereby denied.

3. In reply to para 6(i), it is submitted that all the applicants in the OA are working in the Respondent's Laboratory as Technical Asst. 'A', Technician 'C', Technician 'B' and the

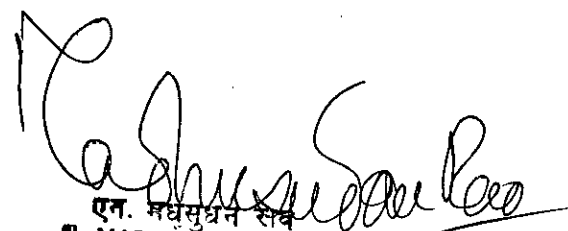

एन. मधुसूदन राव
M. MADHUSUDAN RAO
प्रशासनिक अधिकारी
ADMINISTRATIVE OFFICER
र.अ.वि.प्र. हैदराबाद-५००२५४
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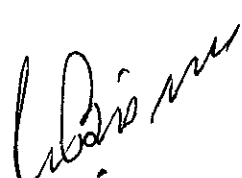

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N. C. BISWAS
मुख्य प्रशासनिक अधिकारी
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र.अ.वि.प्र. हैदराबाद-058.
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were shown in the common seniority list without distinction among various trades for the purpose of seniority and other benefits.

4. In reply to para 6(ii), it is submitted that, as recommended by the 3rd Pay Commission, an Expert Classification Committee, (ECC) was set up to scientifically evaluate the Industrial and certain Non-Industrial jobs to classify various trades getting similar pay scale but performing similar duties for proper fitment of 3rd Pay Commission scales. The classification of various trades was done by the ECC which evaluated 1720 Industrial jobs including those of the applicants. The ECC has evaluated the job centres based on various factors for each trade and awarded point score to each job. Those trades which had obtained point score between 251-328 had been given the grade of Rs.260-400 and those which obtained point scores between 206-250 were given semi-skilled grade of Rs.210-290. The report submitted by the ECC was examined by the government and orders granting five major categories i.e., Unskilled, Semi Skilled, Skilled, Highly Skilled Grade II and Highly Skilled Grade I were issued on 16th Oct 1981 vide Ministry of Defence letter No.F1(2)/80/D(ECC/IC) dt.16th Oct 1981 which was superseded by Ministry of Defence letter No.F1(3)/80/d(ECC/IC) dt.11.05.83. Some anomalies were however noticed in introducing the pay scales on the above orders. Therefore the Anomalies Committee was constituted by Government of India in 1982, for the purpose of evaluation of certain trades where anomaly was stated to have

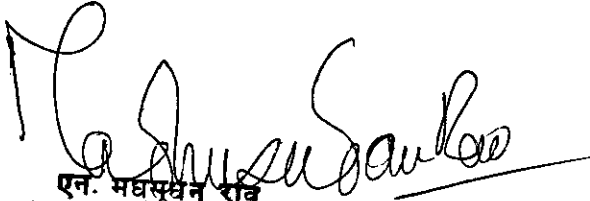

 एम. मधुसूदन राव
 M. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 र.अ.वि.प्र. हैदराबाद-५००२५४
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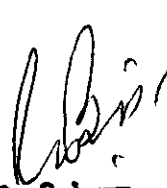

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 N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
 Chief Admin. Officer
 र.अ.वि.प्र. हैदराबाद-०५८
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existed in implementing the ECC recommendations. The Anomalies Committee submitted its report in May 1984. The Government accepted the recommendations of the anomalies committee and orders were issued vide Ministry of Defence letter No.3823/09/(D&M)/civ/I/84 dt.15th Oct 84 granting higher pay scale and upgrading 11 trades from semi-skilled (Rs.210-290) to skilled grade (Rs.260-400). The applicants were upgraded with effect from 15th Oct 1984 on the basis of Government Orders. In DRDO SRO 221 of 07 Aug 81 done away with tradewise distinction and gradewise common seniority is maintained irrespective of Trades i.e., in DRDO, Tradesmen are categorised as Tradesmen 'E', Tradesmen 'C', Tradesmen 'B' and Tradesmen 'A' and not as Carpenter, Book Binder, Machinit etc. In addition when a vacancy occurs in the higher grade, say, Tradesmen 'C', the senior most Tradesmen 'E' are trade tested in their trade and on qualifying the trade test, are promoted to the grade of Tradesmen 'C'.

5. In reply to para 6(iii), (iv), (v), (vi), & (vii), it is submitted that, after the implementation of 15th Oct 1984 orders mentioned above, some affected tradesmen of MES approached Hon'ble Supreme Court stating that their trades were upgraded from 15th Oct 1984 though the anomaly has arisen from Oct 1981 on implementation of ECC Recommendation to sort out which the Anomaly Committee was appointed. They accordingly prayed that trades which were recommended for upgradation of anomaly committee should have also been upgraded from 16 Oct 81. The

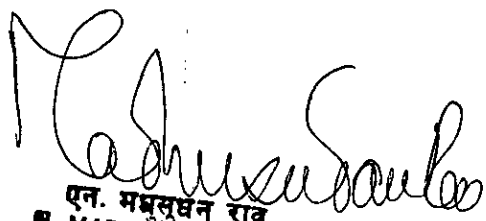

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 N. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 र.अ.वि.प्र. हैदराबाद-058
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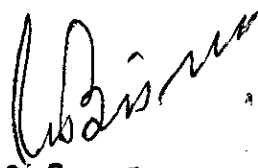

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 N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
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plea was accepted by the Hon'ble Supreme Court in Bhagwan Sahai & others - Vs- Union of India, 1989-2 SCC 299 directing the government to award the revised pay scale from 16.10.81.

It is however submitted that in the Respondents Laboratory which is part of the Defence Research & Development Organisation (DRDO) a five grade structure was already introduced as per SRO 221 of 7 Aug 81. According to this SRO the tradewise seniority was done away with and only grade wise seniority was followed. It is relevant to mention here that the recruitment is based on qualifying in the trade test in the required trade and the promotion is related to qualifying the trade test in the particular trade(s) of the eligible Tradesmen on implementation of the 15th Oct 1984 orders of Ministry of Defence mentioned above some senior Tradesmen whose trades were not upgraded approached Hon'ble Central Administrative Tribunal, Hyderabad vide OA No.363/88 for upgradation of their trades on par with their juniors whose trades have been upgraded from the common seniority list. The Central Administrative Tribunal Bench while examining and granting the pleas of tradesmen not recommended for upgradation relied on the Supreme Court Judgement mentioned and granted for upgradation though both cases are distinguishable on facts. It is submitted that while Bhagwan Sahai's case decided by the Hon'ble Supreme Court involved parity between upgraded trades upgraded on different dates. In OA No.363/88 the applicants belonging to rent dates. In OA No.363/88 the applicants

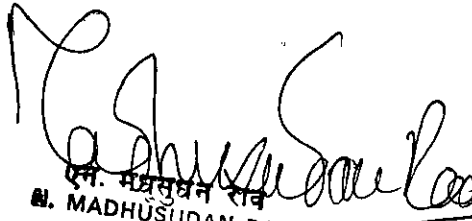

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 M. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
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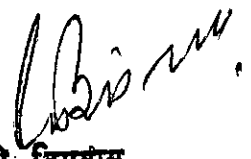

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 N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
 Chief Admin. Officer
 र.अ.वि.प्र. हैदराबाद-०५८.
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belonging to non upgradation trades who prayed for parity with Tradesmen of upgraded trades. Hence the comparison with the Supreme Court cases does not arise. The same bench of the CAT has decided three more cases in favour of similar applicants and all the judgements have been implemented as the SLP filed in the Hon'ble Supreme Court in OA No.363/88 was dismissed. A review application was filed in the matter which was dismissed. However in a similar case in OA No.111/91 the CAT, Bangalore Bench have disagreed with CAT Hyderabad Bench decision in OA No.363/88 and the matter was referred to larger Bench under chairman, CAT at Bangalore for hearing and disposal. The largest bench of the CAT vide their judgement dt.18 Jun 93 in OA No.111/91 upheld the CAT Hyderabad Bench judgement dt.23 Jun 89 in OA No.363/88. Keeping in view the large Bench judgement of CAT Bangalore in OA No.111/91, a one time upgradation of all Tradesmen 'E'. Existing on the seniority roll on 15th Oct 1984 has since been made. This was necessitated due to the judgement which had observed that picking and choosing of only 11 trades from the common category of trades that are in the same grade would per as result in discrimination against the excluded categories.

6. In reply to para 6(viii) & (ix), it is submitted that the orders of Hon'ble CAT Hyderabad Bench dt.15.09.95 in OA No.498/92 with regard to the upgradation of the Applicants in the said OA to the grade of Rs.260-400 with effect from 15-10-1984 and the monetary benefit w.e.f., 09.02.1988 has been implemented.


 एन. मधुसूदन राव
 M. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 र.अ.वि.प्र. हैदराबाद-500258
 O.R.D.L. HYDERABAD-500258

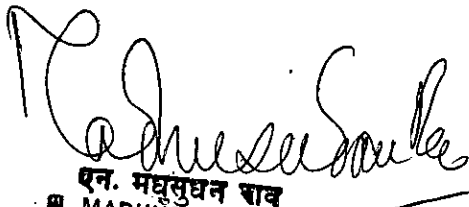

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 N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
 Chief Admin. Officer
 र.अ.वि.प्र. हैदराबाद-058
 D.R.D.L. HYD-058.


Respondent No.1 has taken a clear and correct decision not to extend the benefit of Memo No.17(5)/89-D(Civ-I) dt 19.03.1993 to the other trades specially there was neither tradewise distinction in matters of seniority nor were they all recommended for upgradation vide letter No.965332/IE/ANTD/RD/Pers-3/1023/D(R&D) dated 20th March 1996.

In reply to Grounds A & B, it is submitted that, a division bench of CAT Bangalore while hearing the similar matters in OA No.111/91 differed with decision of CAT, Hyderabad Bench in OA No.363/88 and referred the matter to a larger Bench.

The Bangalore (larger) Bench of CAT in its judgement dt. 18th Jun 1993 in O.A.NO.111/91, referred to it by the division Bench as mentioned in the preceding paragraph, upheld Hyderabad Bench of CAT decision in OA No.363/88 observing the following:

- (a) Picking and choosing of only 11 trades from common category of trades who are all in the sme feeder category for promotion to tradesmen 'C' would pursue results in discrimination against the excluded category.
- (b) This Hon'ble Bench in our opinion, is also right in relying upon the principles laid down by the Supreme Court in Bhagwan Sahai Carpenter's case wherein it has been held that according of different dates for upgradation of trades, all


एन. मधुसूदन राव
N. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 र.अ.वि.प्र. हैदराबाद-५००२५४
 D.R.D.L. HYDERABAD-500258


एन. सी. बिसवास
N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
 Chief Admin. Officer
 र.अ.वि.प्र. हैदराबाद-०५८
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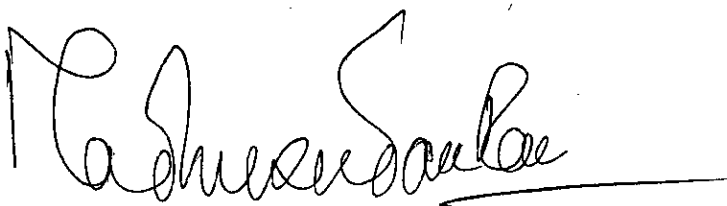
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of whom belong to the same category and are treated on par, would be discriminated and violate of articles 14 & 16 of the constitution.

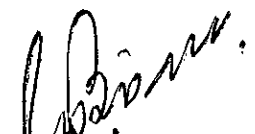
In reply to Ground : (c), it is submitted that, the Venkatesan Committee Report report recommending the benefit of upgradation to all the trades in the feeder category who were in position on 15th Oct 1984 as a one time measure has the merit of avoiding discrimination.

In reply to Ground D: It is submitted that mentioning OA No.87/90 is of no relevance to this OA. It may be observed from all the Judgements of various Tribunals in OA Nos.363/88, 87/90, 498/92 & 1045/92 Hon'ble CAT Hyderabad Bench has directed specifically that if Respondent No.1 has to take decision by 31st March 1996 as to whether the benefit as per the Memo No.17 (5)/89/D(Civ-I) dated 19th March 1993 has to be extended even to the trades other than the five trades identified by the Expert Classification Committee and 11 trades identified by the anomalies committees. Therefore Respondents have not violated of the equality clause enshrined in the constitution.

In reply to Ground E : it is submitted that the Ministry of Defence while keeping in view the Hon'ble Supreme Court Judgement in Bhagwan Sahai & Others Vs Union of India issued orders/antedating upgradation of all the trades of various organisations that were initially upgraded from 15th Oct 1984 to



एन. मधुसूदन राव
M. MADHUSUDAN RAO
प्रशासनिक अधिकारी
ADMINISTRATIVE OFFICER
ए.अ.वि.प्र. हैदराबाद-500258
D.R.D.L. HYD-500258



एन. सी. बिसवास
N. C. BISWAS
मुख्य प्रशासनिक अधिकारी
Chief Admin. Officer
ए.अ.वि.प्र. हैदराबाद-058.
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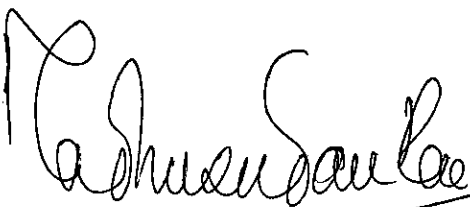
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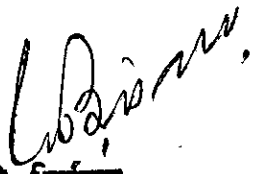
16th Oct 1981 vide their order No.17(5)/69-D(Civ) dt 19th March 1993. These orders however did not include the trades of DRDO under which the applicant are employed. The Govt. vide Govt. of India letter No.96532/IE/GTRE/RD/PERS-3/D(R&D) dated 17 Nov 93 implemented Bangalore (large) Bench of Central Administrative Tribunal Judgement mentioned above not only in respect of petitioners but all Tradesmen 'E' existing on 15 Oct 1984 and upgraded them with effect from 15 Oct 84 since Supreme Court has already dismissed SPL in similar matter in OA 363/88.

The Govt. of India vide their letter No.17(5)/89/D (Civ I) dt. 19 March 93 has implemented Hon'ble Supreme Court's decision in Bhagwan Sahai Vs Union of India mentioned above by antedating to 16th Oct 1991 the upgradation of those trades upgraded on 15th Oct 1984 as per anomalies committee recommendations in all organisations under Ministry of Defence except in DRDO as in DRDO tradewise distinction does not exist and the earlier upgradation of particular tradesmen from common category of trades has been judged to be discriminatory and violative of Articles 14 and 15 of the Constitution as brought out in preceding paras.

In view of the foregoing, the prayer of the applicants for placing them in the revised scale of Rs.260-400 with effect from 16 Oct 1981 may not be allowed.

In reply to Ground F, the contention of the applicants is denied. Hon'ble CAT Hyderabad Bench in their judgement dated

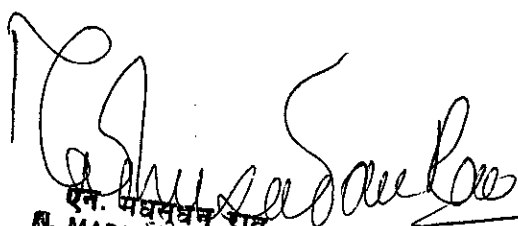

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 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 र.अ.वि.प्र. हैदराबाद-500258
 O.R.D.L. HYDERABAD-500258

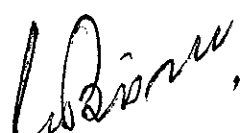

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 मुख्य प्रशासनिक अधिकारी
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 र.अ.वि.प्र. हैदराबाद-058
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15-09-95 in OA No.860/92, in which applicants in this OA were also party, has directed the following:-

- (i) The notional of these applicants in the pay scale of Rs.260-400 was directed to be fixed as on 15-10-1984 as per the orders in the earlier OA filed by them (OA 363/88). The claim in this OA is that the said notional fixation has to be given w.e.f., 16-10-1981. The same is resisted inter-alia for the respondents on the ground of resjudicate.
- (ii) R-I has to take a decision by 31-3-1996 as to whether the benefit as per Memo No.17(5)/89/D(Civ-I) dated 19 Mar 93 has to be extended even to the trades other than the five trades identified by the Expert Classification Committee and the 11 trades identified by the Anomalies Committee.

In reply to Ground G, the contention of the applicants is denied. Respondents all the while was dealing with the subject of upgradation of Tradesman 'E' to 'C' i.e., pay scale of Rs.210-290 to Rs.260-400 and not stepping up of pay on par with juniors as contested now in the OA. Respondents have visualised the case in correct perceptive. Category of Boot Maker never existed in the DRDO. However it is agreed that Boot Maker category was



एन. मधुसूदन राव
N. MADHUSUDAN RAO
प्रशासनिक अधिकारी
ADMINISTRATIVE OFFICER
र.अ.वि.प्र. हैदराबाद-058
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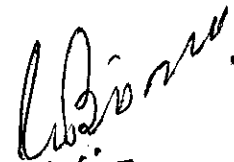

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N. C. BISWAS
मुख्य प्रशासनिक अधिकारी
Chief Admin. Officer
र.अ.वि.प्र. हैदराबाद-058
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recommended by Expert Classification Committee for upgradation. Since there is no trade wise seniority and pay scales are existing in the DRDO, Boot Maker upgradation cannot be compared with that of the upgradation in the grade wise system of DRDO (i.e. all the existing trades are grouped together as Tradesman 'E', 'C', 'B', etc.)

As regards the reference made to the decision of the Supreme Court in Bhagwan Sahai Carpenter and other Vs Union of India and another (AIR 1989 (1) SC 673, it is submitted that where the cadre structure of tradesman are not similar to the one prevailing in Defence Research & Development Organisation. The applicants herein cannot compare their case with the tradesman in MES for the purpose of upgradation from 16 Oct 1981. Moreover it is submitted that Bhagwan Sahai's case relates to the question whether it was discriminatory to have upgraded scales to some of the trades recommended by the Expert Classification Committee/Anomalies Committee from 16 Oct 81 while giving the upgraded scales to other trades recommended for upgradation from 15 Oct 84. It was then held by allowing higher scale to employees of some of the members from the earlier date and giving the same benefit to the members of other trades from a later date is discriminatory. However the application on a hand is different. The upgradation of any particular trade w.e.f. 16 Oct 81 will mean that all trades are existing on 16 Oct 81 will have to be upgraded from 16 Oct 81 irrespective of the trade not being recommended for upgradation either by Expert Classification


 एन. मधुसूदन राव
 M. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 र.अ.वि.प्र. हैदराबाद-५००२५४
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 N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
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 र.अ.वि.प्र. हैदराबाद-०५८
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Committee/Anomaly Committee. This is by virtue of having common seniority list of Tradesman 'E' irrespective of their trades in DRDO.

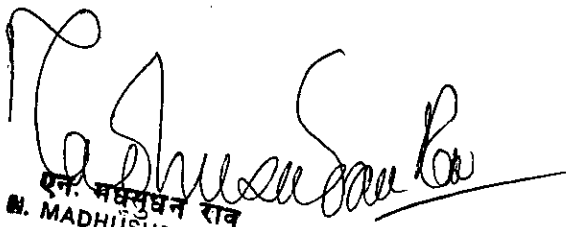
The industrial cadre structure in DRDO is different from those existing in other organisations under Ministry of Defence who are having the grade structure tradewise.

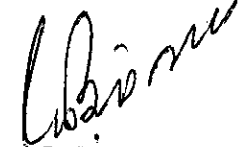
In DRDO, all the trades have been amalgamated and the incumbants are grouped as Tradesman 'A', 'B', 'C' & 'E' irrespective of their original trades. Accordingly the seniority for promotion is taken tradewise in other departments and in DRDO it is done groupwise/gradewise irrespective of trades. Hence the comparison with other departments and the reliance on the Bhagwan Sahai's case does not hold good in this case. For the above mentioned reasons, none of the grounds are tenable.

In reply to Ground H, it is submitted that, JCM minutes cannot be taken into cognigence unless Govt. issues an order on the relevant subject with reference to the minutes for implementation.

With regard to discrimination, the Hon'ble Supreme Court of India held in their judgement dated 19 Jan 95 in CA No.674 of 1995 in Chandigarh Administration and others Vs Jagjit Singh and others, the following:

"Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be granted for issuing a writ

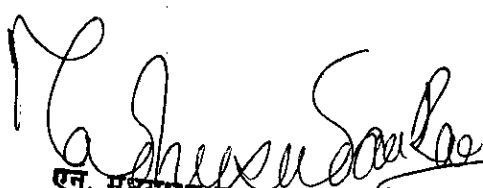

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 प्रशासनिक अधिकारी
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 र.अ.वि.प्र. हैदराबाद-500258
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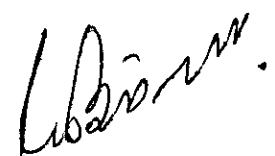

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in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid and it might not be. That has to be investigated first before it can be directed to the followed in the case of petitioner. If the order is in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat the illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law; indeed, wherever it is possible to court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it be made basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such plea would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be negation of law and the rule of law".

Hon'ble Tribunal may also kindly peruse the judgement

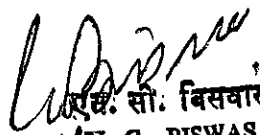

 एन. मधुसूदन राव
 N. MADHUSUDAN RAO
 प्रशासनिक अधिकारी
 ADMINISTRATIVE OFFICER
 रज. वि. प्र. १११२१०
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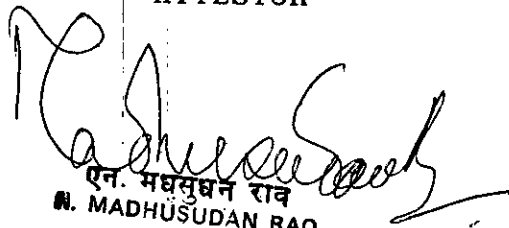

 एन. सी. बिसवास
 N. C. BISWAS
 मुख्य प्रशासनिक अधिकारी
 Chief Admin. Officer
 र.अ.वि.प्र. हैदराबाद-058.
 D.R.D.L. HYD-058.

dated 30-04-1996 in OA No.1978 of 1993 G.Murugan and 55 others Vs Union of India represented by the Scientific Advisor and another of Hon'ble CAT Madras Bench in which the plea of the applicants therein in the similar matter was dismissed. "It is relevant to mention here that in OA 1970 of 93, all the applicants were belonging to the trade of machinist which was one of the trades upgraded initially as per the Ministry of Defence orders dated 15.10.84. The Hon'ble Madras Bench of CAT have dismissed the application praying for antedation of their upgradation to 16.10.81 on the ground that the full bench has treated all the categories in DRDO on the same footing w.r.t. upgradation effective from 15.10.84. Since the benefits of antedation of upgradation was not extended even to those whose trades were recommended for upgradation from 15-10-1984 initially others in the common category of Tradesman 'E' whose trades have not been recommended for upgradation cannot also claim the benefit.

For the reasons stated above, the Applicant has not made out any case either on fact or on Law and there is no merit in the OA, it is therefore, prayed that this Hon'ble Court may be pleased to dismiss the OA, and pass such further and other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Sworn and signed before me
on this 11th day of September,
1997 at Hyderabad


र.स. सी. बिसवास
N. C. BISWAS
DEPONENT प्रशासनिक अधिकारी
Chief Admin. Officer
र.अ.वि.प्र. हैदराबाद-058
D.R.D.L, HYD-058
ATTESTOR


एन. मधुसूदन राव
N. MADHUSUDAN RAO
प्रशासनिक अधिकारी
ADMINISTRATIVE OFFICER
र.अ.वि.प्र. हैदराबाद-500258
D.R.D.L HYD-ERABAD-500258

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD

O.A.NO. 497 OF 1997



COUNTER AFFIDAVIT FILED BY
THE RESPONDENTS

Recd Guntur
Sis
18/9/97

SHRI V. BHEEMANNA

ADDL. CENTRAL GOVT. STANDING
COUNSEL, CAT, HYDERABAD.

May be 6-64
19/9/97