

CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:
HYDERABAD

OA No. 271 of 1997

BETWEEN:

N.B. ANAND and 46 others

... Applicants

AND

Union of India rep. by its Secretary,
Ministry of Defence,
New Delhi and 2 others

... Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS

I, B NARASIMHA REDDY son of Shri B Linga Reddy aged about 48 years R/O Hyderabad do hereby solemnly affirm and state as follows:

I am working as Chief Administrative Officer in the office of Respondent No.3 as such I am well acquainted with the facts of the case. I file this reply affidavit on behalf of the respondents and I am authorised to file this affidavit.

With reference to Paras 1 to 5, I submit that there are no comments being formal.

With reference to para 6 (i), I submit that it is a fact that all the Applicants in the OA are working in the Respondent's Laboratory as Technician 'C' and they were shown in the common seniority list without distinction among various Trades for the purpose of seniority and other benefits.

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ATTESTOR

DEPONENT

(R SURYA RAO)
Accounts Officer
DMRL, HYDERABAD

(B. NARASIMHA REDDY)
Chief Administrative Officer
DMRL, HYDERABAD

Recd
on 22/7/97
Srs

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With reference to para 6 (ii), I submit 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 score between 206-250 were given semi-skilled grade of 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Grade I were issued on 16 Oct 81 vide Ministry of Defence letter No. F1(2)/80/D(ECC)/IC) dated 16 Oct 81 which was superseded by Ministry of Defence letter No. F1(3)/80/D(ECC/IC) dated 11.05.83.

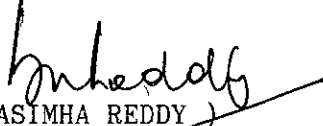
Some anomalies were however noticed in introducing the pay scales on the above orders. Therefore the Anomalies Committee was constituted by Government of India in 1982, for the purpose of job evaluation of certain trades where anomaly was stated to have existed in implementing the ECC recommendations. The Anomalies Committee submitted its report in May 1984. The Government accepted the

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-: 3 :-

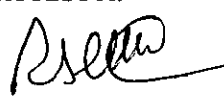
recommendations of the Anomalies Committee and orders were issued vide Ministry of Defence letter No. 3823/DS/(D&M)/Civ-I/84 dated 15 Oct 84 granting higher pay scale and upgrading 11 trades from semi-skilled (Rs.210-290) to skilled grade (Rs.260-400). The applicants were upgraded with effect from 15 Oct 84 on the basis of Government Orders.

In DRDO SRO 221 of 07 Aug 81 has done away with tradewise distinction and grade wise common seniority is maintained irrespective of Trades i.e., in DRDO, Tradesman are categorised as Tradesman 'E', Tradesman 'C', Tradesman 'B' and Tradesman 'A' and not as Carpenter, Book Binder, Machinist etc. in addition when a vacancy occurs in the higher grade, say, Tradesman 'C', the senior most Tradesman 'E' are trade tested in their trade and on qualifying the trade test, are promoted to the higher grade of Tradesman 'C'.

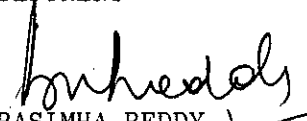
With reference to Para 6 (iii), (iv), (v), (vi) & (vii), I submit that after the implementation of 15 Oct 84 orders mentioned above, some affected Tradesman of MES approached Hon'ble Supreme Court stating that their trades were upgraded from 15 Oct 84 though the anomaly has arisen from Oct 81 on implementation of ECC Recommendations to sort out which the Anomaly Committee was appointed. They accordingly prayed that trades which were recommended for upgradation by the Anomaly Committee should have also been upgraded from 16 Oct 81. The 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.

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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 tradesman. On implementation of the 15 Oct 84 orders of Ministry of Defence mentioned above some senior Tradesman 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 tradesman not recommended for upgradation relied on the Supreme Court Judgment 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 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 Central Administrative Tribunal has decided three more cases in favour of similar applicants and all the judgements have been

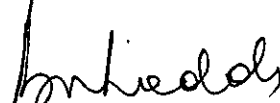
PAGE FOUR

ATTESTOR



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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 a larger Bench under Chairman, Central Administrative Tribunal at Bangalore for hearing and disposal. The larger Bench of the CAT vide their judgment dated 18 Jun 93 in OA No. 111/91 upheld the CAT Hyderabad Bench judgment dated 23 Jun 89 in OA 363/88. Keeping in view the larger Bench judgement of CAT Bangalore in OA No. 111/91, a one time upgradation of all Tradesmen 'E' existing on the seniority roll on 15 Oct 84 has since been made. This was necessitated due to the judgment 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 se result in discrimination against the excluded categories.


With reference to Para 6 (viii) & (ix), I submit that it is a fact that the orders of Hon'ble CAT Hyderabad Bench dt. 15-09-95 in OA No.288/94 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 with effect from 09-02-1988 has been implemented. 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 the matters of seniority nor were they all recommended for upgradation

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vide letter No.96532/IE/ANTD/RD/Pers-3/1023/D(R&D) dated 20 March 1996.

With reference to Grounds A and B, I submit that division bench of CAT Bangalore while hearing the similar matter 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 Central Administrative Tribunal in its judgment dated 18 June 93 in OA No.111/91, referred to it by the division bench as mentioned in preceding paragraph, upheld Hyderabad Bench of Central Administrative Tribunal decision in OA No.363/88 observing following:

(a) Picking and choosing of only 11 trades from common category of trades who are all in the same feeder category for promotion to Tradesmen 'C' would per se result in discrimination against the excluded category.

(b) The Hyderabad Bench in our opinion, is also right 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 of whom belong to the same category and are treated on par, would be discriminatory and violative of Articles 14 & 16 of the constitution.

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With reference to Ground (c), I submit that The Venkatesan Committee Report recommending the benefit of upgradation to all the trades in the feeder category who were in position on 15 Oct 84 as a one time measure has the merit of avoiding discrimination.

With reference to Ground D, I submit that mentioning OA No.146/90 is of no relevance to this OA. It may be observed from all the judgments of various Tribunals in OA Nos.363/88, 87/90, 111/91, 498/92, 1045/92 and 288/94 Hon'ble CAT Hyderabad Bench has directed specifically that Respondent No.1 has to take decision by 31 Mar 1996 as to whether the benefit as per the Memo No.17(5)/89-D(Civ-I) dated 19 Marh 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 Committee. Therefore Respondents have not violated the equality clause enshrined in the constitution.


With reference to Ground E, I submit that The Ministry of Defence while keeping in view the Hon'ble Supreme Court Judgment in Bhagwan Sahai & Others Vs Union of India issued orders/antedating upgradation of all the trades of various organisations that were initially upgraded from 15 Oct 84 to 16 Oct 81 vide their order No.17(5)/69-D(Civ-I) dt. 19 Mar 93. These orders however did not include the trades of DRDO under which the applicants are employed.


The Government, vide Govt. of India letter No.96532/IE/GTRE/RD/PERS-3/4692/D(R&D) dated 17 Nov 93 implemented

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Bangalore (Larger) Bench of Central Administrative Tribunal judgment mentioned above not only in respect of petitioners but all Tradesmen 'E' existing on 15 Oct 84 and upgraded them with effect from 15 Oct 84 since Supreme Court has already dismissed SLP in similar matter in OA 363/88.

The Govt of India vide their letter No.17(5)89/D(Civ-I) dated 19 March 93 has implemented Hon'ble Supreme Court decision in Bhagwan Sahai Vs Union of India mentioned above by antedating to 16 Oct 81 the upgradation of those trades upgraded on 15 Oct 84 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 16 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.

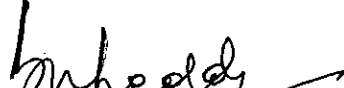
With reference to Ground F, I submit that The contention of the applicants is denied. Hon'ble CAT Hyderabad Bench in their judgment dated 15-09-95 in OA No.288/94, in which applicants in this OA were also party, has directed the following:-

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-: 9 :-

"The case is squarely covered by the judgment in OA 100/92.

For the reasons stated therein, this OA is ordered as under:-

(i) The pay of the applicants has to be notionally fixed in the pay scale of Rs.260-400 as on 15-10-84 and the monetary benefit has to be given with effect from 9-2-1988. But if ultimately R-I is going to take a decision that the monetary benefit has to be given even earlier to 9-2-1988, these applicants also have to be given the monetary benefit accordingly.

(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 19-03-1993 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. The trades of these applicants are not among the 16 trades referred to above."

With reference to Ground G, I submit that the contention of the applicants is denied. Respondents all the while was dealing with the subject of upgradation of Tradesmen '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 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

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upgradation in the grade wise system of DRDO (i.e. all the existing trades are grouped together as Tradesmen 'E', 'C', 'B' etc.)


As regards the reference made to the decision of the Supreme Court in Bhagwan Sahai carpenter and others Vs Union of India and another (AIR 1989 (1) SC 673, it is submitted that petitioners in Bhagwan Sahai case belong to the MES Department 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 81. 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 the some of the members from the earlier date and giving the same benefit to members of other trades from a later date is discriminatory. However the application on hand is different. The upgradation of any particular trade with effect from 16 Oct 81 will mean that all trades as 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 Committee/Anomaly Committee. This is by virtue of having common seniority list of Tradesmen 'E' irrespective of their trades in DRDO.

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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 Tradesmen '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.

With reference to Ground H, I submit that the 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 judgment dated 10 Jun 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 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.

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-: 12 :-

That has to be investigated first before it can be directed to be 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 the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected it is difficult to see how it can 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 pleas 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."

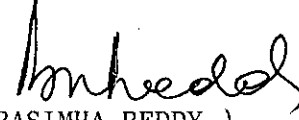
Hon'ble Tribunal may also kindly peruse the judgment dated 30-04-1996 in OA No.1978 of 1993 G. Murugan and 55 others Vs Union of

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-: 13 :-

India represented by the Scientific Adviser 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 1978 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 15.10.1984. The Hon'ble Madras Bench of Central Administrative Tribunal have dismissed the application praying for antedation of their upgradation to 16.10.1981 on the ground that the full bench has treated all the categories in DRDO on the same footing w.r.t. upgradation effective from 15.10.1984. 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 Tradesmen 'E' whose trades have not been recommended for upgradation cannot also claim the benefit.

Further it is submitted that similar petitions have also been filed by DLRL and DRDL, Hyderabad.


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DEPONENT



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-: 14 :-

VERIFICATION

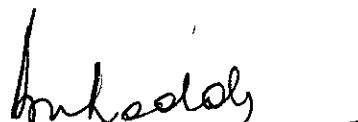
I, B NARASIMHA REDDY son of LINGA REDDY aged about 48 years do hereby solmnly affirms and state that the contents of the above reply statement are true to the best of my knowledge and information. Hence verified on this 9th day of July 1997 at Hyderabad.

ATTESTOR



(R SURYA RAO)
Accounts Officer
DMRL, HYDERABAD

DEPONENT



(B NARASIMHA REDDY)
Chief Administrative Officer
DMRL, HYDERABAD

Returned

The Reply and Memo
is not lagging in the
OA 21/97. The correct
same title and year
should be furnished.

S Softy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH ; AT HYDERABAD

OA NO.271 OF 1997

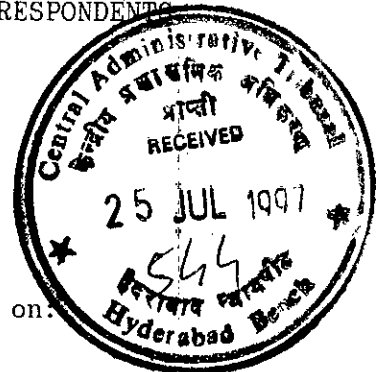
Between:

N B Anand and 46 others .. Applicants

and

Union of India re. by
the Secretary, Ministry
of Defence, New Delhi - 1
and 2 others .. Respondents

COUNTER REPLY FILED ON BEHALF OF
THE RESPONDENTS



Filed on:

Filed by:

V VINOD KUMAR

Addl. Central Govt. Standing Counsel

May be filed
25/7/97