

(Reserved on 31.07.18)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

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**Original Application No. 330/01079/2011**

**Allahabad this the 14<sup>th</sup> day of August, 2018**

**Hon'ble Mr. Gokul Chandra Pati, Member – A  
Hon'ble Mr. Rakesh Sagar Jain, Member - J**

1. Jai Swaroop Sharma, Son of Late Sri Ved Prakash Sharma, aged about 48 years, T. No. 212944/P, R/o 69, Katiya Tola, Near Verma School, shahjahanpur (U.P).
2. Suresh Kumar Saxena, Son of late Sri Ram Bharosey, aged about 48 years, T. No. 212950/P, R/o 782, Badu Jae I, Shahjahanpur (U.P.)
3. Asha Ram, Son of Late Sri Mulla, aged about 52 years, T. No. 213968/P, R/o 10, Mohalla Mahmad Haddaf, Near Shamshi Khan Ki Puliya, Shahjahanpur (U.P.).
4. Om Prakash Maurya, Son of Sri Radhey Shyam, aged about 48 years, T. No. 212956/P, R/o Mohalla Tilhar Jae, Near Lohar Wala Chauraha, Shahjahanpur (U.P).

**Applicants**

**By Advocates: Shri S.K. Pandey**

**V E R S U S**

1. Union of India through THE Secretary, Ministry of Defence (Production), Govt. of India, New Delhi.
2. Additional Director General, Ordnance of Equipment Factories Group (OEF Group), Headquarter, G.T. Road, Kanpur.
3. General Manager, Ordnance Clothing Factory, Shahjahanpur (OCFS).
4. Works Manager (Administration), Ordnance Clothing Factory, Shahjahanpur.

**Respondents**

**By Advocate: Shri Ajay Singh**

## **ORDER**

**By Hon'ble Mr. Gokul Chandra Pati, Member-A.**

This Original Application (in short OA) has been filed by the applicants, who are working as tailors under the Ordnance Clothing Factory (in short OCF) with the prayer for following main reliefs:- -

*“8.1 issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 25.07.2011 (Annexure A-1).*

*8.2. issue a writ, order or direction in the nature of mandamus commanding the respondents to ante date Skilled grade seniority in pay scale Rs. 260-400 of the applicants w.e.f. the initial date of appointment as per recommendation of Expert Classification Committee with all consequential benefits thereof..”*

2. Facts in this case are undisputed. Applicants are working as tailors, initially appointed between 1981 and 1984, They were placed in the skilled grade with effect from 12.04.1988 with the pay scale of Rs. 260-400 (scale as applicable in 1981-84) against the initial appointment of the applicants in semi-skilled scale Rs. 210-290). They represented to the respondents for allowing the skilled pay scale of Rs. 260-400 from the date of their initial appointment instead of 12.04.1988 and this representation has been rejected by the respondents vide the impugned order dated 25.07.2011 (Annexure A-1) which is impugned in this OA.

3. The applicants have filed the OA mainly on the following grounds:-

- i. the Expert Classification Committee has recommended for upgradation of Semi Skilled into Skilled (210-290 into 260-400) w.e.f. 16.10.1981, which was accepted by the respondents.

- ii. The applicants were recruited as trade apprentices tailor in 1981-1983 .
- iii. All the persons appointed in Semi Skilled category between 16.10.1981 to 15.10.1984 (210-290) were liable to be upgraded to skilled category (260-400). This has been done by several branches of the respondents' establishment but the applicants have been discriminated.
- iv. Juniors of the applicants are being allowed to supersede.
- v. The case of the applicants are covered by the judgment of Hon'ble Supreme Court in the case of Bhagwan Sahai.

4. The respondents have filed the Counter Affidavit advancing the following main averments:-

- The applicants were initially appointed on casual basis and appointed on probation w.e.f. 8.12.1983 and after successful completion of the probation period, they were regularized and then re-designated as Machinist (semi-skilled/knitter to tailor) w.e.f. 19.12.1985. Then they were promoted as tailor w.e.f. 12.4.1988 and then as tailor/HS in high-skilled grade w.e.f. 1.1.2006.
- They were allowed the benefit of 2<sup>nd</sup> ACP w.e.f. 8.12.2007 after completion of 24 years of service.
- The claim of the applicants to allow skilled grade scale w.e.f. 15.9.1983, the date of their appointment on casual basis and to count seniority from that date is not admissible.
- Averment in the OA that the applicants' case is covered by the judgment of Hon'ble Apex Court in the case of Bhagwan Sahai Carpenter & Ors. vs. Union of India & Anr, AIR 1989 SC 1215, is not correct. In Bhagwan Sahai case, it was held that upgradation of 23 identified trades w.e.f. 15.10.1984 should be given effect to 16.10.1981 as had been done for some trades.

- In case the applicants were aggrieved for being placed in the scale of Rs. 210-290 on 19.12.1985, then they should have agitated the matter at that point of time.
- As per the policy of the respondents, the seniority of the industrial workers from the date they are placed in skilled grade.

5. The applicants have filed Rejoinder, stating that the respondents appointed some untrained persons directly as Tailor at skilled grade, where as the applicants after training in the trade were placed as semi-skilled grade. Example of some such untrained employees who were appointed directly as Tailor has been furnished. After acceptance of the recommendation of the Expert Classification Committee (in short ECC) by Government by upgrading all semi-skilled category to skilled category of industrial workers, there was no post of semi-skilled grade was available, hence, there was no occasion for the respondents to have placed the applicants in semi-skilled grade at the time of their initial appointment.

6. We heard Sri S.K. Pandey, learned counsel for the applicants. He argued mainly on following points:-

- As per the order dated 15.10.1984 (Annexure CA-8 to the Counter), 23 trades were upgraded from semi-skilled to skilled grade includes the trade Machinist (Engg) at serial no. 12.
- Some untrained employees were directly appointed as Tailor in skilled grade, where as the applicants being trained persons, were first appointed on casual basis and then as semi-skilled grade.
- As per the judgment of Hon'ble Apex Court in the case of Bhagwan Sahai (supra), all semi-skilled grades were

upgraded to skilled. Hence, it was not correct to appoint the applicants in semi-skilled grade which was non-existent.

- The applicants are aggrieved for the decision not to antedate their seniority with skilled grade pay scale w.e.f. the initial appointment of the applicants.

7. Learned counsel for the respondents reiterated the averments in the Counter Affidavit and submitted that if the applicants were aggrieved for being placed in semi-skilled grade at the time of initial appointment, they should have raised their grievance in time and filing the OA in 2011 is barred by limitation.

8. We have considered the pleadings of the parties as well as the submissions of the learned counsels of the parties. First of all, it is seen that the OA has been filed by 5 applicants jointly with a Misc. application no. 2309/2011 under the rule 4(5) of the CAT (Procedure) Rules, 1987. The application, although filed with the OA has not been allowed by this Tribunal. Since the relief being pursued by the applicants and the cause of action are common for all the applicants, the Misc. application no. 2309/2011 under rule 4(5) is allowed in the interest of justice, permitting the applicants to jointly pursue the OA.

9. One of the grounds mentioned in the Counter Affidavit is on account of delay on the part of the applicants to raise this issue of pay scale at the time of appointment after about 26 years of service. The applicants in the Rejoinder have stated that their representation to the respondents has been rejected vide

the impugned order dated 25.07.2011 and as the OA has challenged this order, it is within limitation. It is also submitted that the cause of action is rejection of higher scale of pay, which is stated to be a recurring cause of action. We don't consider the cause of action in this case to be a recurring cause, since the relief pertains to antedating the seniority and allowing higher pay scale at the time of the initial appointment. The claim for higher pay scale is on account of promotion or upgradation, which is not a recurring cause of action. However, the contention that the cause of action arose after rejection of the representation of the applicant vide the impugned order dated 25.07.2011 is acceptable since the said impugned order did not mention the ground of delay as one of the ground while passing the impugned order. Hence, the OA is considered to be within time, counting the time from the date of the impugned order i.e. from 25.07.2011 and the ground of delay, raised in the Counter Affidavit cannot be accepted.

10. Learned counsel for the applicants cited the judgment of Hon'ble Apex Court in the case of Bhagwan Sahai (supra) and the order dated 15.10.1984 while contending that all unskilled grade posts including the post in which they were appointed, have been upgraded to skilled grade post and hence, there was no occasion to post the applicants in the semi-skilled grade of pay and they should have been initially posted in the skilled grade of pay scale. These points have been examined by a Full Bench (Bangalore) of this Tribunal in the case of R. Anniappa

vs. Union of India and ors reported in 2004(1) ATJ 4, before which the following questions were referred for decision:-

- “(a) Whether the orders passed by Division Bench of this Tribunal in OAs 937/99 and 1200/2000 decided on 21<sup>st</sup> August, 2000 and 12<sup>th</sup> January, 2011 respectively are not contrary to the orders passed by the Division Bench of this Tribunal at Bangalore in OA Nos. 147, 389-390/1996 and 264, 279-283/1998 decided on 31<sup>st</sup> January, 1997 and 25<sup>th</sup> January, 1999 respectively, particularly, when the aforesaid order dated 31<sup>st</sup> January, 1997 had been affirmed by the Hon’ble Supreme court by dismissing SLP (CC No. 381-391/98) dated 23<sup>rd</sup> January, 1998. If so, what are its effect ?
- (b) Whether the civilian Tailors in respondents organization would be entitled to pay scale so granted and revised from time to time by Hon’ble Supreme Court in Bhagwan Sahai and Prabhu Lal cases followed by Hyderabad bench as well as by OA No. 147, 383-390/96 i.e. Rs. 3050-4590 or in terms of orders passed in O.A. 937/99 and 1200/2000, i.e. Rs. 2550-3200.
- (c) Any other issue that may be deemed fit in the facts and circumstances of the case.”

After analyzing the legal issues involved and case laws in this regard, the Full Bench answered the questions as under:-

“14. For these reasons, we answer the questions referred to this Full Bench as under:

(1) Keeping in view the decision of the Full Bench of this Tribunal in the case of Prakash Dundappa Mogli and others v. Union of India and others and also reasons which are recorded above, we approve the decision of the Tribunal in O.A.No.937/99 entitled [T.V.Ramachandran v. Union of India](#) and overrule the other decision to the contrary mentioned in question No.1 referred to this Full Bench.

(2) The civilian tailors in the respondent organization would not be entitled to the benefit of the decision rendered by the Apex Court in the case of Bhagwan Sahai Carpenter and others Vs. Union of India and another and Prabhulal and another Vs. Union of India and others (supra).

(3) We make it clear that overruling of certain decisions will not have the effect of taking away the benefit that may have been accrued to those concerned applicants.

(4) Resultantly OA No. 239/02 is dismissed. No cost.”

11. The conflicting views on the issue taken by different coordinate Benches of this Tribunal have been resolved by the above Full Bench decision. In another similar case of Prem Chand Yadav vs. Union of India and others decided by Jabalpur Bench of this Tribunal on 18.8.2016 in OA No. 687/2007, the OA was dismissed. The applicant approached Hon'ble High Court against this decision and directed the Tribunal to consider the claim of the applicant with regard to parity claimed with Indaljeet Singh, who was in a similar situation as the petitioner (Prem Chand Yadav) and who was allowed the benefit of higher pay scale in accordance with the decision of the Apex Court in another case. On consideration of the matter, it was observed that the respondents had considered the case of Indaljeet Singh as an individual case as per their affidavit. Then following the judgment of the Full Bench in the case of R. Anniappa (supra) and considering the case laws with regard to the claim of parity under Article 14, it was finally held by Jabalpur Bench of this Tribunal in the case of Prem Chand Yadav (supra) in OA 687/2007 as under:-

*“9. We may also observe that the issue raised in the present Original Applicant has already been considered by Full Bench of this Tribunal in R. Anniappa Vs. Union of India, 2004 (1) ATJ 4 wherein applicant belonging to the trade of Civilian Tailor as industrial employee in the Madras Engineering Group and Centre, Bangalore sought revised pay scale of Rs.260-400 on the strength of Bhagwan Sahai (supra) and Prabhu Lal (supra).....*

*10. In the matters of [Fuljit Kaur v. State of Punjab](#), (2010) 11 SCC 455 the Hon'ble Supreme Court has held that it is the settled legal proposition that [Article 14](#) of the Constitution of India does not envisage negative equality. [Article 14](#) is not meant to perpetuate illegality or fraud. [Article 14](#) of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality*



and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise [Article 14](#) cannot be stretched too far otherwise it would make function of the administration impossible. (Vide [Coromandel Fertilizers Ltd. v. Union of India](#) 1984 Supp SCC 457 : 1984 SCC (Tax) 225 : AIR 1984 SC 1772 [Panchi Devi v. State of Rajasthan](#) (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408 and [Shanti Sports Club v. Union of India](#)(2009) 15 SCC 705 ). It has further been held by their lordships that thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide [Chandigarh Admn. v. Jagjit Singh](#) (1995) 1 SCC 745 : AIR 1995 SC 705, [Sneh Prabha v. State of U.P.](#) (1996) 7 SCC 426 : AIR 1996 SC 540 [Jalandhar Improvement Trust v. Sampuran Singh](#) (1999) 3 SCC 494 : AIR 1999 SC 1347 [State of Bihar v. Kameshwar Prasad Singh](#)(2000) 9 SCC 94 : 2000 SCC (L&S) 845 : AIR 2000 SC 2306, [Union of India v. Rakesh Kumar](#) (2001) 4 SCC 309 : 2001 SCC (L&S) 707 : AIR 2001 SC 1877, [Yogesh Kumar v. Govt. of NCT, Delhi](#) (2003) 3 SCC 548 : 2003 SCC (L&S) 346 : AIR 2003 SC 1241, [Union of India v. International Trading Co.](#)(2003) 5 SCC 437 : AIR 2003 SC 3983, [Anand Buttons Ltd. v. State of Haryana](#) (2005) 9 SCC 164 : AIR 2005 SC 565, [K.K. Bhalla v. State of M.P.](#) (2006) 3 SCC 581 : AIR 2006 SC 898 and [Krishan Bhatt v. State of J&K](#) (2008) 9 SCC 24 : (2008) 2 SCC (L&S) 783).

11. Thus, in view of the aforementioned discussions and the settled legal proposition on the subject, we are of the considered view that the applicant is not entitled for the same relief of grant of higher pay scale, as has been granted to Indaljeet Singh on the ground of parity, as the case of Indaljeet Singh has been treated by the respondents as an individual case, and there was no decision of the Government of India to upgrade all the Tailors in the Army to skilled grade.”

12. It is noted that in the OA, there no plea regarding promotion or upgradation of some of the juniors of the applicant while overlooking the case of the applicants, except for generally stating in para 4.15 of the OA that some Tailors were appointed subsequent to the appointment of the applicants. In para 5D of

the OA, it was stated that several persons were directly appointed as Tailor in 1983, hence there was vacancy. These contentions were refuted in the Counter Affidavit. However, the para 7 of the Rejoinder refers to the case of three employees who were appointed in 1984 directly as Tailor, although they were not trained like the applicants. The details of these specific cases have not been mentioned in the OA, nor there was any reference to these cases in the representations submitted by the applicants as per the copy of some of the representations attached at Annexure A-4 to the OA. Although the applicants in their OA have not claimed parity with these employees who were appointed directly as Tailor in accordance with the Article 14, it is seen from the findings in the case of Prem Chand Yadav (supra) as discussed above, the claim of parity under the Article 14 will not sustain in view of the following contentions in the Counter Affidavit:-

“21. That, the contents of paragraph no. 4.15 of the OA are not admitted. It is stated that the induction in various trades like Tailor, Machinist (SS)/Knitter is done in Semi Skilled scale of Rs. 210-290. The vacancies were filled based on the functional requirement of the factory and suitability of persons to a particular post.....”

13. In reply to these averments in the Counter Affidavit, the Rejoinder mentions direct appointment of two employees directly in 1984 superseding the applicants. No such contention was mentioned in the OA and no representation submitted by the applicants took such a plea as seen from the copy of the representations furnished in Annexure A-4 to the OA. Further, there no evidence produced before us to show that the

applicants have protested such direct appointment as Tailor in 1984 without considering their case. Hence, such a plea cannot be raised now. Further, such appointment, if it was done was not as per the policy of the respondents as stated in para 21 of the Counter Affidavit as extracted above, for which such direct appointment as Tailor at higher scale for skilled category was not admissible and wrong. Therefore, the applicants cannot claim parity with a wrong decision. As a consequence, this plea of the applicant has no force.

14. In view of the discussions above, we find that the dispute has already been decided earlier, particularly after the Full Bench decision in the case of R. Anniappa (supra). Hence, similar pleas of the applicants in this OA cannot be accepted. Further, we note that the applicants have already been allowed the benefit of higher pay scale in skilled grade w.e.f. 12.04.1988 by the respondents as stated in para 4.4 of the OA. We are of the considered opinion that no case has been made out by the applicants for antedating their promotion or upgradation to the skilled grade made available for them from 12.04.1988 to the date of initial appointment of the applicants during 1983-1984.

15. Hence, the OA is devoid of merit and is, accordingly, dismissed. There will be no order as to the costs.

**(RAKESH SAGAR JAIN)**  
**MEMBER-J**

**(GOKUL CHANDRA PATI)**  
**MEMBER-A**

**Anand...**