



**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

O.A. No. 423 of 2003.

Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

1. Shri Ashim Kumar Kundu, son of Late Amulya Kumar Kundu, aged about 47 Years, residing at Prantik, Ichapur, Nababganj, 24-Parganas(N), working As "Skilled", Section P.D., Ticket No.40 in the Metal & Steel Factory, Ichapur, Government of India, Ministry of Defence.
2. Jadunandan Saha, son of Late Sachinath Saha, aged about 57 years, residing at C/o Ashim Kumar Kundu, Prantik, Ichapur, Nababganj, 24-Parganas(N), working As "Skilled", Section P.D., Ticket No.127 P.No.103382 in the Metal & Steel Factory, Ichapur, Government of India, Ministry of Defence.
3. Jagadish Chandra Debnath, son of Late Raj Kumar Debnath, aged about 59 years, residing at C/o Ashim Kumar Kundu, Prantik, Ichapur, Nababganj, 24-Parganas(N), working As "Skilled", Section P.D., Ticket No.116 P.No.103369 in the Metal & Steel Factory, Ichapur, Government of India, Ministry of Defence.
4. Sukharanjan Das, son of Late Ananta Behari Das, aged about 59 years, residing at C/o Ashim Kumar Kundu, Prantik, Ichapur, Nababganj, 24-Parganas(N), Working As "Skilled", Section P.D., Ticket No.29 P.No.103055 in the Metal & Steel Factory, Ichapur, Government of India, Ministry of Defence.
5. Bakul Kumar Neogi, son of Nagendra Nath Neogi, aged about 58 years,

Working As "Skilled", Section P.D., Ticket
No.29 P.No.103055 in the Metal & Steel Factory,
Ichapur, Government of India,
Ministry of Defence,
Residing at C/o Ashim Kumar Kundu,
Prantik, Ichapur, Nababganj, 24-Parganas(N)

..... Applicants.

-Versus-

1. Union of India,
Through the Secretary,
Ministry of defence, South Block,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
7A, Auckland Road,
Calcutta-700 001.
3. The General Manager,
Metal & Steel Factory,
Ichapur, P.O. Nabaganj,
District 24-Parganas (N).

..... Respondents.

For the Applicants : Mr P.C. Das, Counsel

For the Respondents : Mr. M.K. Bandyopadhyay, Counsel

Date of Hearing 21.09.2016

Date of order: 30.09.2016

ORDER

JUSTICE V.C. GUPTA, JM

By means of this application the applicant has sought the following

reliefs:

- a) For pass an appropriate order directing upon the respondents to quash and set aside the impugned office order dated 21.3.2003, the impugned office

letter dated 24.3.2003 and the impugned office order dated 10.4.2003 being Annexures "D" "E" and "G" respectively of this application.

- b) For pass an appropriate order directing upon the respondents to implement the judgment of the Hon'ble Tribunal dated 10.1.2003 in O.A.No. 1281 of 1995 as well as the order of the Hon'ble High Court, Calcutta dated 15.1.2002 in W.P.C.T.No.300/2000 in respect of the present applicants regarding granting of subsequent benefit of promotion notionally with effect from 11.6.1990 with arrears and monetary benefits with effect from 26.8.1993 in the scale of Rs.4000-6000/- which your applicants are entitled to in terms of the above order within a very short period with upto date interest.
- c) For pass an appropriate order directing upon the respondents to produce the entire records before the Hon'ble Tribunal at the time of hearing.
- d) For pass an appropriate order directing upon the respondents to impose heavy cost upon the respondents for harassing the present applicants.
- e) For leave to move one single application jointly under rule 4(5)(a) of the C.A.T (Procedure) Rules, 1987.

2. The brief facts of this case as per pleadings of the applicants are that the similarly situated persons to the applicants approached before this Tribunal earlier by filing O.A.700/1995 for extension of benefit of judgment in O.A.357/1988, C. Kanan & Others vs. O.F.B & Ors.) passed by the Madras Bench of the Tribunal. The said matter was disposed of by this Tribunal vide order dated 09.02.2010. Against the aforesaid order the respondents filed W.P.C.T.No.300 of 2000 which has been disposed of by a



judgment and order dated 15.01.2002. Relevant portion of the judgment deciding the controversy reads as under:

"We accordingly, allow the writ application and modify the order of the learned Tribunal to the extent that the writ petitioners will extend to the respondents Nos. 1 to 15 the benefit of the judgment of the Madras Bench of the Central Administrative Tribunal in O.A.No. 357 of 1988 with notional effect from 16th October, 1981 and with actual effect with full monetary benefit from the date of the application made before the learned Tribunal, being O.a.No.987 of 1993. All arrears on account of such re-fixation are to be paid to the said respondents within three months from date."

That applicant along with 7 others filed O.A.1281/1995 (Shri K.M.Sadhukhan and 12 others vs. Union of India & Ors.) which was decided by the Tribunal on 10.01.2003. The order passed by the Tribunal is extracted herein below:

"The applicants seek direction to the respondents to grant them the revised pay scale w.e.f. 16.10.1981 on actual basis with all consequential benefits.

When the matter was taken up for hearing the Ld. Counsel for both the parties submitted that the dispute in this O.A has been decided by the Division Bench of Calcutta High Court in W.P.C.T.No.300 of 2000 in which the Calcutta High Court directed that the Switch Board Attendants will be entitled to notional benefit w.e.f. 16.10.1981 and with actual effect with full monetary benefit from the date of the application made to this Tribunal and that the arrears on account of re-fixation should be paid to the Switch Board Attendants. Accordingly, the respondents are directed to grant the revised pay scale to the applicants w.e.f. 16.10.1981 on notional basis and w.e.f. the date of the above application with actual benefit. The respondents are further directed to pay the arrears to the applicants on account of the said re-fixation, within a period of three months from the date of receipt of a copy of this order.

(Signature)

In the result, the O.A is allowed as indicated above. No order as to costs."

Thereafter, the General Manager of Metal & Steel Factory, Ishapur, the respondent No.3 passed an order dated 21.3.2003 in respect applicants of which order of one of the applicants Shri A.K.Kundu, applicant No.1 is extracted herein below :

To

Date 21-03-2003.

Shri A.K.Kundu, (P No.103072)
Designation – Skilled (SBA),
T/No.PD/40, MSF, Ishapur

Through JWM/PD

Sub : OA No.1281 of 1995 – Shri K.M.Sadhukhan & 12 Ors.
Vs. U.O.I & Ors.

Ref : Hon'ble CAT, Calcutta Bench Order dated 10.01.03.

The Hon'ble CAT, Calcutta Bench while delivering its order quoted under reference in the subject OA in accordance with the decision in an analogous mater arrived at by the Hon'ble High Court, Kolkata in WPCT No. 300/2000 (decided on 15.01.02) has decided that –

"The respondents are directed to grant the revised pay scale to the applicant w.e.f. 16.10.1981 on notional basis and w.e.f. the date of filing of the above application with actual benefit with arrears of pay on re-fixation within 3 (three) months from the date of receipt of the copy of the order."

The aforesaid direction of the Hon'ble CAT has been considered by the respondent no.3 being the competent authority and in deference with the said order of the Hon'ble CAT, you being the applicant no.13 in the subject OA, are entitled to get the following benefit:-

- (1) *In terms with the order dt. 15.9.93 made by the CAT, Kolkata Bench in OA No. 987/93, you have already been given the benefit of Skilled Grade (SBA) notionally w.e.f. 18.09.82 (but not from 16.10.81 as you were not in the strength of MSF on that day) with actual monetary benefit from*



the date of filing of the above application i.e. w.e.f. 26.8.93.

- (2) Although you were given the benefit of Skilled Grade notionally w.e.f. 18.09.82, the said benefit would have been awarded to you actually w.e.f. 18.09.84 in terms with the provision at para (i)(b) of Govt. of India, Ministry of Defence Order dated 15.10.84 which reads: "Direct recruits with ITI Certificate/Ex-Trade Apprentices/NCTVT, etc. inducted in the Semi-skilled Grade, who have rendered 2 years service in that grade".
- (3) The said order of Govt. of India dated 15.10.84 was issued based on the decision taken by the Govt. on the unanimous recommendations of the Anomalies Committee which was constituted after the ECC evaluation to dispel the anomalies.
- (4) Accordingly, your notional seniority in the skilled grade of SBA should be reckoned w.e.f. 18.9.84 and as a result of which your notional promotion in the next higher grade of HSW(SBA) would be effected w.e.f. 1.6.2000 as Shri S. Basu Roy, T/No. PD/119, junior to you, was promoted to the said grade on that very day i.e. on 01.06.2000. In view of the above benefit being granted to you, Shri Basu Roy will be junior to you in the said grade.
- (5) Meanwhile, you were granted the benefit of ACP-I w.e.f. 9.8.99.
- (6) Consequent upon your notional promotion w.e.f. 1.6.2000 in HSW (SBA) pursuant to the order of the Hon'ble CAT, Calcutta Bench with reference to Hon'ble High Court, Kolkata, order as stated *ibid*, you will be entitled to a financial benefit on re-fixation of pay w.e.f. 9.8.99 in the grade of HSW (SBA).
- (7) Accordingly, the monetary benefit will accrue to you not from the date of filing application for the reason stated in para (1) above.

(D.V.K. Rao)

Addl. General Manager/Admin.
For General Manager."

3. The main ground for passing the aforesaid order is that applicant was not working under Semi Skilled category as on 16.10.1981 and he was inducted in service on 18.9.1982. Hence, he will not be entitled to the



benefit with effect from 16.10.1981. On 24.3.2003 a show cause notice was issued to Shri A.K.Kundu that he has not been posted on 18.9.1982 in the pay scale of Rs.210-290/- and he has been upgraded with effect from the same date in the scale of Rs. 260-400/- in pursuance of an order passed by CAT Calcutta Bench on 15.09.1993 in O.A.No.987/1993. As per Government instructions the individual who came to occupy their post in semi- skilled from a date beyond 16.10.1981 will be eligible for promotion to skilled grade on completion of 2 years of service (NCTVT holders) in the existing semi-skilled grade on passing the requisite Trade Test. Hence the show cause notice was issued and only thereafter considering the reply of the applicant he was not promoted/ upgraded from 18.9.1982 in terms of the above order. A copy of show cause notice has been annexed to this O.A as Annexure-E, which is extracted herein below:

**"METAL & STEEL FACTORY
ISHAPORE**

FR OM: THE GENERAL MANAGER DATED: 24th MARCH, 2003

**Shri A.K. Kundu, (P.No. 103072) ^{is}
Skilled (SBA)
T.No.PD/40
M.S.F. Ishapore.**

TROUGH WM/PU

**Sub : Fitment of Industrial Employees in the pay
scale recommended by the 3rd Pay Commission
Antedating of the application.**

Ref : M.S.F Order No.220 dated 25.03.94.



It is observed from the records of service that you appointed in the Industrial Establishment of this factory as skilled (S.B. Attndt) post on 18.09.1982 in the scale of 210-290/- and were Up-graded with effect from the same date in scale of Rs. 260-400/- vide M.S.F order quoted above, in reference with Hon'ble CAT/Calcutta Bench order dt. 15.9.93 in O.A. No. 987/93.

As per Govt. instructions, the individuals who have come to occupy their posts in Semi-Skilled from a date beyond 16.10.81 the conditions codified in M of OM at para (i)(a) & dated 15.10.84 will apply ipso facto in other words, they will be eligible for promotion to skilled grade on completion of 2(two) years service (NSTVT holders) in the existing Semi-Skilled grade on passing the requisite Trade Test.

According to the above instructions your Up-gradation affected vide order under reference ought to have been effected to the higher scale of Rs. 260-400/- on 18.09.84 which was inadvertently shown as 18.09.1982.

You are hereby directed to explain the reasons as to why your date of up-gradation i.e. 18.09.1982 should not be amended to promotion i.e. 18.09.1984 in terms with the above Govt. order stated at para - 2 ibid.

Your reply should reach the undersigned within 7(seven) days from the date of receipt of this letter failing which it will be presumed that you have nothing to say in this regard and necessary amendments will be made accordingly.

(PRADEEP KUMAR)
Dy. General Manager/Admin.
For GENERAL MANAGER"

4. The applicant submitted reply on 29.03.2003 which has been annexed with O.A as Annexure-F. In para 5 of the reply he did not dispute that he was appointed initially on 18.09.1982 in semi-skilled grade. Para 5



of the reply to show cause notice is extracted herein below for ready reference:

"5. That without prejudice to the aforesaid submission and relying on the same I submit that the conditions certified in the letter dated 15.10.84, as stated by you, are not applicable in my case in that it has been specifically clarified in the said letter dated 15.10.84 at para 2 thereon that the said modified orders shall take effect from 15.10.84. In other words, persons who were already Semi-skilled before 15.10.84 i.e. till 14.10.84 were not covered by the fresh modification. Since I was appointed as SB Attdt. Semi-skilled on 18.9.1982 the above modified conditions are not applicable in my case. This aspect has already been considered by the Hon'ble Courts before pronouncing judgements."

On 10.4.2003 an office order was passed in respect of applicants with regard to grant of first ACP with effect from 09.08.1999 in the scale of pay of Rs.4000-6000/- and they have been shown to be promoted to HSW Grade-II (SBA) with effect from the date mentioned in column No.5. This letter was issued by the respondents. A copy of which has been annexed as Annexure-G which is being quoted as follows:

*"DRAFT/COPY OF M.S.F. ORDER PART - III NO. 190
DT. 10-04-2003.*

*Sub : Implementation of Judgement of CAT,
CALCUTTA OA No. 987 of 1993 & Div. Bench Kolkata
High Court No. WPCT No. 300/2K arising out of OA Nos.
700 & 1281 of 1995 - I. Eo. Promotion to HSW Gr-II
(SBA) in the Scale of Rs. 4000-6000/-.*

Ref : MSF Order Part-III No. 192 Dated 10-4-2003.

*Consequent of implementation of Hon'ble
Division Bench, Kolkata High Court Order Dated 15.1.02
in WPCT NO. 300/2K arising out of OA No. 700/95 and*

6/5/1

subsequently persued by Hon'ble CAT, Calcutta Bench OA No. 1281 of 95 vide its Order dt. 10.1.2003 the following individual are granted benefits of Promotion to HSW Gr-II (SBA) in the Scale of Rs. 4000-6000/- with effect from 01-06-2000 comparing to their junior Shri S. Basu Roy, T.No. PD/119, P.No. 103374 (who was promoted to I HSW Gr-II (SBA) w.e.f. 1.6.2K) as specified against each:-

Sl. No.	Sec.T.No. Name and P. No.	From	To	REMARKS
(1)	(2)	(3)	(4)	(5)
01.	Ex-ER/420, Sri S.K. Mazumder, P.No.103362 Now Ch'man Gr-II(T) PD Sec. & P.No. 80839	Skilled (SBA) (Rs. 3050-4590/-)	HSW Gr-II (SBA) (Rs. 4000-6000/-)	Promoted to Ch'man Gr-II(T) w.e.f. 24-8-2000 vide MSF ORDER PT-II No.1212 Dated 25.8.2000
02.	PD/10, Sri A.K. Kundu P.No. 103072	-do-	-do-	Granted ACP-I w.e.f. 9.8.99 in the scale of Rs. 4000-6000/-
03.	PD/29, Sri S.R. Das P.No. 103055	-do-	-do-	Will be retired on 30-4-2003.
04.	PD/116, Sri J.C. Debnath P.No. 103369	-do-	-do-	-
05.	PD/127, Sri J.N. Saha P.No. 103381	-do-	-do-	-
06	PD/37, Sri B.K. Neogy	-do-	-do-	-

2. It is certified that the above individuals are found suitable by the DPC-III (Fys) and qualified themselves from promotion to the post of HSW Gr-II (SBA).

3. The above promotion against Sl. No. 2 in respect of Shri A.K. Kundu is regularized against functional post of HSW Gr-II (SBA)

(Authy: - OFB letter No. 01/MSF/A/ECC/BM dt. 7.3.2003)

(PRADEEP KUMAR)
DY. G.M./Admin.
for General Manager."



On the same date the applicants were shown to be promoted to the skilled grade with effect from the date mentioned in para 4. The same is annexed as Annexure-G, which is reproduced herein below :

"DRAFT/COPY OF MSF ORDER PART -III NO. 192 DATED 10-04-2003.

Sub : Implementation of Judgement of CAT, Calcutta No. OA/987 of 1993 & Div. Bench, Kolkata High Court No. – WPECT No. 300/2K arising out of OA Nos. 700 and 1281 of 1995 – les

Ref : MSF Order Part-III No.220 dt. 25-3-94.

As per Judgement in OA/987 of CAT, Calcutta the pay of the following individuals holding the post of Switch Board Attendant 'B' (Semi Skilled) on the Industrial Establishment of this Factory antedating of Up-gradation of pay scale of Rs. 210-290/- to Ts. 260-400/- was granted notionally from the date of holding Semi-Skilled (SBA) post vide MSF Order quoted above. As per Govt. on India, M. of D. OM dated 15.10.84 the Up-gradation granted to the individuals holding the Semi Skilled post in the scale of Rs. 210-290/- after 16.10.81 is being modified to "Promotion" to Skilled Grade Post on completion of 2 years service for NOTVT holders/3 yrs. Of Service for promotes from the date of holding Semi-Skilled post as Specified below against each :-

Sl. No.	Sec., T.No., Name & P.No.	Date of holding Semi Skilled Post (SBA in the Scale of Rs. 210-290/-)	Date of Promotion to Skill Post (SBA in the Scale of Rs. 260-400/- (Notionally)	REMARKS
1.	2.	3.	4.	5.
01.	PD/40, Shri A.K. Kundu P.No.103072	18.09.82	18.09.84	NCTVT holders



02.	EX-ER/ Sri S.K. Mazumder 120, P.No.103362 (Now Ch'm Gr-II(T))	13-05-82	13-05-84	NCTVT holders
03.	PD/29, Sri S.R. Das P.No.103055	04.05.82	04.05.85	Promotee
04.	PD/116, Sri J.C. Debnath P.D.103369	04.05.82	04.05.85	-do-
05.	PD/127, Sri J.N. Saha P.No.103381	04-05-82	04-05-85	-do-
06.	PD/37, Sri B.K. Neogy P.No. 103067	04-05-82	04-05-85	-do-

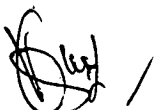
The above promotions have been ordered notionally wef the date shown against each and arrears will be paid to them w.e.f. 26-8-93 (i.e. the date of filing of OA/987 of 93) as ordered by the Hon'ble High Court, Kolkata in its order dated 15.1.2002 duly pursued by Hon'ble CAT, Calcutta in OA No. 1281/95 vide order dt. 10.1.2003

(Authy : - OFB letter No. 01/MSF/A/ECC/BM dt. 7.3.2003)

(PRADEEP KUMAR)
DY. G.M./ADMIN.
FOR GENERAL MANAGER"

Aggrieved by the aforesaid orders the present O.A has been filed.

5. The contention of the applicants is that the Court has passed a specific order to grant benefit to the applicants with effect from 16.10.1981. Hence when the order has not been challenged the same ought to have been implemented in respect of the applicants. It was further contended that the benefit of the judgment has been extended to



other similarly situated applicants and the case cannot be distinguished on the basis of subsequent decision taken by letter dated 15.10.1984.

6. The application was contested by filing the reply. It has been stated in the reply that after the decision in the WPCT No.300/2000 on 15.01.2002, the matter was referred to the respondent No.2 i.e. the appropriate authority for taking decision about the implementation of direction contained in the judgment and order of the Hon'ble High Court and the authority directed to implement the order and a decision has been taken to implement the order in respect of three types of applicants as classified by O.F.B in the letter dated 06.05.2002. The aforesaid letter dated 06.05.2002 is extracted herein below:

*"The General Manager Dated, the 6th May, 2002
Metal and Steel Factory
ISHAPORE*

(Kind attn. Shri D.V.K. Rao, Addl. GM/Per.)

*Sub: WPCT No. 300/2K arising out of O.A. No. 700/95 –
Shri. B.C. Mallick & Ors. Vs. UOI & Ors.*

Ref: MSF letter No. 935/10/VIG Cell dated 06.05.2002

With reference to letter dated 06-05-2002 from MSF, it is intimated that the matter has been examined at OFB along with the opinion received from Govt. Counsel. Factory may take action as per the clarifications given hereunder:

Para (i) of MSF letter under reference:

Action taken by the factory to give the benefit of skilled grade to all 15 applicants notionally w.e.f. 16-10-1981 and/or subsequent dated with actual monetary benefit from the date of filing of application i.e. 26-08-1993 is in order. It may,

however, be verified that all those who were not in the semi-skilled grade as on 16-10-1981 were given higher scale after completion 2/3 years as stipulated in MoD letter dated 15-10-1984.

Para (ii) & (iii) of MSF letter under reference:

The applicants who were otherwise eligible for notional promotion to the next higher grade of IIS-II w.e.f. 11-06-1990 at par with their juniors may be promoted accordingly. The payment of arrears w.e.f. date of filling of application No.987/93 may also be made.

Para (iv) of MSF letter under reference:


The directives of MoD regarding upgradation conveyed vide its letter dated 15-10-1984 will be strictly applicable to the applicants who were not in the semi-skilled grade as on 16-10-1981 in as much as they were to be considered for upgradation only after completion of 2 to 3 years of service. There is no change in the aforesaid directives of MoD which were issued in compliance with a judgement of Hon'ble Apex Court. The arrears in respect of such applicants may be calculated accordingly.

2. Factory may take necessary action in the light of above clarifications under intimation to OFB.

(Anil Kumar)
Director/I.R.

For Director General, Ordnance Factories"

7. It was further stated that a group of Switch Board Attendants were not satisfied with the said mode of implementation filed O.A.893/2003 before this Tribunal and the second batch of 13 Switch Board Operators including the present applicants filed O.A.1281/1995. The said matter came up for hearing and the same was decided as stated herein above



without taking note of difference of date of appointment of the applicants.

The directions were implemented by informing the individual by letter dated 21.03.2003 which has been extracted herein below.

"To

Date: 21-03-2003.

Shri J.C. Debnath, (P.No.103369),
Designation – Skilled (SBA),
T.No. PD/116, MSF, Ishapore.

Through: JWM/PD

Sub: OA No. 1281 of 1995 – Shri K.M. Sadhukhan
& 12 Ors. –vs- UOI & Ors.

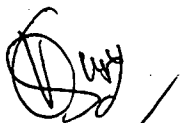
Ref: Hon'ble CAT, Calcutta Bench order dt. 10.01.03.

The Hon'ble CAT, Calcutta Bench while delivering its order quoted under reference in the subject OA in accordance with the decision in an analogous matter arrived at by the Hon'ble High Court, Kolkata in WPCT No.300/2000 (decided on 15.01.02) has decided that-

"The respondents are directed to grant the revised pay scale to the applicants w.e.f. 16.10.181 on notional basis and w.e. the date of filing of the above application with actual benefit with arrears of pay on re-fixation within 3 (three) months from the date of receipt of the copy of the order."

The aforesaid direction of the Hon'ble CAT has been considered by the respondent no.3 being the competent authority and in deference with the said order of the Hon'ble CAT, you being the applicant no.8 in the subject OA, are entitled to get the following benefit:

- (1) In terms with the order dated 15.09.93 made by the CAT, Calcutta Bench in OA No.987/93, you have already been given



the benefit of Skilled grade (SBA) notionally w.e.f. 04.05.82 (but not from 16.10.81 as you were not in the strength of MSF on that day) with actual monetary benefit from the date of filing of the above application i.e. w.e.f. 26.08.93. The said benefit of the order was published in MSF Order Part III No.220 dated 25.03.94.

- (2) Although you were given the benefit of Skilled grade notionally w.e.f. 04.05.82, the said benefit would have been awarded to you actually w.e.f. 04.05.85 in terms with the provision at para (i) (a) of Govt. of India, Ministry of Defence, order dated 15.10.1984 which reads: "Semi-skilled categories to be identified by you or feeder categories in the pay scale of Rs. 210-290/- already existing under the present recruitment rules subject to the workers having rendered a minimum of 3 years of service in the grade and after passing the prescribed trade test".
- (3) The said order of Govt. of India dated 15.10.84 was issued based on the decision taken by the Govt. on the unanimous recommendations of the Anomalies Committee which was constituted after the ECC evaluation to dispel the anomalies.
- (4) Accordingly, your notional seniority in the Skilled grade of SBA should be reckoned w.e.f. 04.05.85 and as a result of which your notional promotion in the next higher grade of HSW (SBA) would be effected w.e.f. 01.06.2000 as Shri S. Basu Roy, T/No. PD/119, junior to you, was promoted to the said grade on that very day i.e. on 01.06.2000. In view of the above benefit being granted to you, Shri Basu Roy will be junior to you in the said grade.
- (5) Since the notional promotion to the post of HSW (SBA) is awarded w.e.f. 01.06.2000, the monetary benefit in the HSW (SBA) grade is also awarded from the said day i.e. 01.06.2000 and not from the day of



filing the application for the reason stated in (1) above.

(D.V.K. Rao)
Addl. General Manager/Admin.
for General Manager."

As such out of the 35 applicants, 5 applicants have approached the Tribunal by the present application not satisfying with the mode of implementation.

8. The controversy in question is not *res-integra*. The Hon'ble Apex Court in **Writ Petition No.40/1991, Association of Examiners, Muradnagar Ordinance Factory vs. Union of India and others** decided the controversy vide order dated 31.07.1991. The whole judgment is extracted herein below:

**"IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION NO.40 OF 1991

Assn. of Examinere, Muradnagar,
Ordinance Factory.

..... Petitioner

Vs.

Union of India & Ors.

..... Respondents.

ORDER

Rule Nioi.

The learned counsel Mr. Hemant Sharma, appears on behalf of the respondents and waives service of rule. We have heard counsel on both



sides and have gone through the relevant papers, the Anomalies Committee Report and the counter filed on behalf of the respondents. We find from Chapter VIII of the Anomalies Committee's Report that the Committee decided that "the existing incumbents in the semi-skilled category, who were in position as on 16th October, 1981 in the grade of Rs. 210-290, may be upgraded to the skilled category Rs. 260-400, commensurate with the point-score given by the Committee". So far as fresh instruction to the skilled category was concerned, the Committee formulated certain propositions which are to be found in Clauses 'a' to 'c' of Clause (IV) of the recommendations of the Anomalies Committee in Chapter X of the report. It is, therefore, obvious that these employees who belong to the semi-skilled category and were in position on 16th October, 1981 in the grade of Rs. 210-290 were to be upgraded to the skilled category carrying a scale of Rs. 260-400 commensurate with the point-score given by the Committee.

This Writ Petition has been filed by the Association of Employees and the names of the members on whose behalf it is filed have been set out in Annexure 'B' to the petition. The total number of the members shown in Annexure 'B' is 60. However, it is not known who out of them were in position on 16th October, 1981. We would, therefore, direct the respondents to verify the service records of these employees and grant the benefit to those who were in position of 16th October, 1981 in the grade of Rs. 210-290 by upgrading them to the skilled category of Rs. 260-400 w.e.f. that date on the ratio of this Court decision in *Bhagwan Sahai Vs. The Union of India* (AIR 1989 SC 1215), vide paragraph 11 of the judgment. Those who were not in position as on 16th October, 1981 in the semi-skilled grade of Rs. 210-290 will be entitled to placement in the skilled category of Rs. 260-400 if they satisfy the requirements of Clauses 'a', 'b' and 'c' of Clause (IV) in Chapter X of the



Anomalies Committee's report to the extent of its acceptance, with or without modifications, by the Government of India. This should be finalized not later than October 31, 1991. The rule is made absolute accordingly with no order as to costs.

Sd-
(A.M. Ahmadi)

New Delhi,
July 31, 1991.

Sd/-
(M.N. Punchhi)"

On the strength of this judgment the Bombay High Court also after relying upon the aforesaid judgment set aside the order of the Tribunal and held that respondents was duty bound to follow the ratio laid down by the Hon'ble Apex Court on the same issue which was agitated up to the Hon'ble Supreme Court in WPC No. 4368/2002. The perusal of the judgment of the Hon'ble Apex Court delivered on 31.07.1991 leave no room to doubt that those who are not in position as in semi-skilled grade of Rs.210-290/- as on 16.10.81 will be entitled to placement in the skilled category of Rs.260-400/- if they satisfy the requirements of clause (a), (b) and (c) of Clause 4 of Chapter 10 of Anomalies Committee Report to the extent of its acceptance without modification by the Government of India and direction was issued that this should be finalised not later than 31st October 1991.

9. Hence in view of the above, and keeping in view that the applicants admittedly were not in position as on 16.10.1981 in the semi-skilled Grade



of Rs.210-290/- , being not born in the cadre and appointed thereafter, would not be entitled to the benefit of up-gradation in the Grade of Rs.260-400/- under the skilled category.

Thus, the O.A. is devoid of merit and accordingly dismissed. There shall be no order as to costs.

(Jaya Das Gupta)²⁰¹⁶
Administrative Member

(Justice V.C. Gupta)
Judicial Member

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