

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

OA.NO.170/00066/2018

DATED THIS THE 18TH DAY OF JANUARY 2019

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV. SANKAR, MEMBER (A)

Rajashekhar,
s/o. late Peddaiah,
aged about 54 years,
working as Mate (Fitter Pipe),
Office of Assistant Garrison
Engineer, B/R Yalahanka,
Bangalore
and residing at No. 62, 2nd cross,
Gajendra Nagar, Old Bypanahalli,
M S Nagar, Bangalore-33.

...Applicant

(By Advocate Shri M.Subramanya Bhat)

V/s.

1.Union of India,
through its Secretary,
Ministry of Defence,
Central Secretariat,
New Delhi-110001.

2.Engineer in Chief,
Engineer in Chief's Branch,
Army Head Quarters, DHQ (PO),
New Delhi-110001.

3.Chief Engineer,
Head Quarters,
Southern Command,
Engineer's Branch, Pune-01.

4.Commander Works Engineer (AF-North),
Bellary Road,

Bangalore-06,

5. Garrison Engineer (Air Force),
Yalahanka, Bangalore-63.

6.Rama,
D/o Late Narasimhaiah,
aged about 55 years,
working as Fitter Pipe (HS-II),
GE(M) AF Jalahalli unit,
residing at No 68, 3rd cross,
Parvathi Nagar,
Laggere Main road, B'llore-58.

7.S. Khajavli,
S/o SK Hussain Sab,
aged about 53 years,
working as Elect(HS-II),
GE Hebbal unit,
residing at #52, 3rd floor,
Khatha No. 141, srinivasapura,
near oxford school Yelahanka north,
Bangalore-560064

8.Varaprasada JN,
S/o Ningegowda,
aged about 30years,
working as Elect (SK),
GE(M) AF Jalahalliunit ,
residing at P-952/12,
54 Civilian Qtrs, Kalanagar,
Kammagondanahalli, jalahalli West,
Bangalore-560 015

9.Sabanna Santoji,
S/o Hanamanth,
aged about 28 years,
working as Elect (SK),
GE(M) AF Jalahalli unit,
residing at No. P-950/2,
54 Civilian Qtr Kalanagar,
Kammagondanahalli,
Jalahalli West, Bangalore-560 015

10.Harendra Babu V,
S/o R Venkatesh ,
aged about 30 years,
working as Elect (SK),
GE(M) AF Jalahalli unit,
residing at # 319, 2nd cross,
11th main, KG Halli,
Jalahalli west, Bangalore- 560015

11.Aboobacker S,
S/o Ismail S,
aged about 28 years,
working as FGM (SK),
GE(M) AF Jalahalli unit,
residing at No. 124,
Raghuram layout, Ramachandrapura,
Jalahalli, Bangalore-560013

12.Arun Kumar M,
S/o A Mani,
aged about 26,
working as Elect (SK),
GE(M) AF Jalahalli unit,
residing at P-284/1,
Old IMH area, GE Complex,
Opp: HMT house Jalahalli Post – 560014

13.Saju A,
S/o Appu P,
aged about 33 years,
working as Elect (SK),
GE(M) AF Jalahalli unit,
residing at P-335/04,
Old IMH area, GE Complex,
Opp: HMT house, Jalahalli Post – 560013

14.M Padmavathi,
D/o Late Venkatraju,
aged about 49 years,
working as FGM (SK),
GE(M) AF Jalahalli unit,
residing at P-334/1,
Old IMH area, GE Complex,
Opp: HMT house Jalahalli Post – 560013

15.Ponnaarasu,
S/o R Kannan,
aged about 41 years,
working as Veh Mech (HS-II),
GE(M) AF Jalahalli unit,
residing at SMQ T-118/1,
Domestic area, Air force,
Jalahalli west B'llore-560015

16.Chenigarayappa N,
S/o Late M Narasimhaiah ,
aged about 55 years,
working as FGM (HS-II),
GE(M) AF Jalahalli unit,
residing at P-1/2,
Powerhouse line ,
Shettyhalli cross, Bangalore-560015

17. B Ravanaiah,
S/o B Venkata Rao,
aged about 53 years,
working as Elect (HS-II),
GE(M) AF Jalahalli unit,
residing at No 135, 4th blk,
6th cross, Doddabomasandra,
Vidyaranyapura post, B'lor-560097

18.S Nirmala,
D/o P Sigamani,
aged about 39 years,
working as FGM (SK) ,
GE(M) AF Jalahalli unit ,
residing at P-951/2,
54 Civ Qtrs, Kalanagar , B'llore-58

19.Ramakka Muniyappa,
D/o Late kembyraiah ,
aged about 48 years,
working as Fitter Pipe (SK),
GE(M) AF Jalahalli unit ,
residing at No 720,
Vishwanagar lyt, Adarsha Nagar,
Arishinakunte, Nelamangala, B'llore.

20.Chidananda AV,
S/o Vijay kumar A,
aged about 33 years,
working as Elect (SK) ,
GE(M) AF Jalahalli unit,
residing at P-283/1,
GE complex, IMH area,
Jalahalli, Banaglore-560013.

21.V Jayalakshmamma,
D/o Late Venkatanagappa,
aged about 46 years,
working as FGM (SK),
GE(M) AF Jalahalli unit,
residing at Siddeshwara Nilaya,
1st cross, Chenappa Badavane,
Nelamangala.

22.Chenthalmani sethi,
S/o Trilochan Sethi,
aged about 30years,
working as Elect (SK),
GE(M) AF Jalahalli unit,
residing at No. 950/10,
54 Civilian Qtr Kalanagar,
Kammagondanahalli, jalahalli West,
Bangalore-560 015

23.Shashi Kumara S,
S/o Sathyappa,
aged about 27 years,
working as Elect (SK),
GE(M) AF Jalahalli unit ,
residing at Sri Rama nagara,
Near srinivasadri clinic,
Kamakshipalya,
Bangalore-560 017.

24.Md F Ershad,
S/o Md Yahiya,
aged about 27 years,
working as Elect (SK),
GE(M) AF Jalahalli unit ,
residing at No 477,
near Mini metro bazaar,

Shettihalli, Jalahalli West ,
Bangalore-560 015.

25.Chennakeshava SR,
S/o Range Gowda,
aged about 33 years,
working as Elect (SK),
GE(M) AF Jalahalli unit ,
residing at No. 950/03,
54 Civilian Qtr Kalanagar,
Kammagondanahalli,
Jalahalli West, Bangalore-560 015

26.P Ganesh
S/o Late Papanna,
aged about 53 years,
working as FGM (HS-II),
GE(M) AF Jalahalli unit ,
residing at T-118/2,
Domestic area, Air force,
Jalahalli West, Bangalore-560015.

27.Rajesh SR,
S/o Sriramulu P,
aged about 37 years,
working as Elect (SK) ,
GE(M) AF Jalahalli unit ,
residing at No 15,
Muneswara C blk, Step down,
Matadhahalli, R T Nagar Post,
Bangalore-560032

28.Sujith K
S/o Sivasankaran K ,
aged about 29 years,
working as Elect (SK),
GE(M) AF Jalahalli unit ,
residing at No. 952/02,
54 Civilian Qtr Kalanagar,
Kammagondanahalli, jalahalli West,
Bangalore-560 015.

29.Deepak Thamatoor Krishnan Kutty
S/o Krishnan Kutty ,
aged about 32 years,

working as Ref Mech (SK),
GE(M) AF Jalahalli unit ,
residing at No. 952/02,
54 Civilian Qtr Kalanagar,
Kammagondanahalli, jalahalli West,
Bangalore-560 015

30.V Rudresha
S/o Late Veeranna,
aged about 54 years,
working as FGM (HS-II),
GE(M) AF Jalahalli unit ,
residing at No 201/A, Malanna Lyt,
Behind lingappa compound,
Abbigere, Chikkabananavara,
Bangalore North, B'llore-560090

31.Srinivasulu,
S/o Late Jeevaiah ,
aged about 47 years,
working as Fitter Pipe (HS-II),
GE(M) AF Jalahalli unit ,
residing at P-952/2, 54 Civ Qtrs,
Kalanagar , B'llore-560058

32.Madhu R,
S/o Ranganatha G,
aged about 27 years,
working as Elect (SK),
GE Hebbal unit, R/a No 03,
4th G cross, Sannakkibayalu,
vrushbhavathi nagar,
Bangalore-560 079.

33.A Murthy
S/o Late Armugam,
aged about 56 years,
working as Fitter Pipe (HS-II),
GE(M) AF Jalahalli unit,
residing at No 107, 14th cross,
Peenya, Bangalore-560058

34.BK Santhosh
S/o S Krishna,
aged about 40 years,

working as FGM (SK),
GE(M) AF Jalahalli unit GE(M)
AF Jalahalli, residing at Biligaje,
Hesaraghatta post, Bangalore (T)
Hobli North, B'llore-560088

35.Venkateshwaralu T
S/o K N Thirupal ,
aged about 32 years,
working as Elect (SK),
unit GE(M) AF Jalahalli,
residing at #85 , Muneswara Lyt,
Manaranpalya, R.T.nagar post,
Bangalore-560 032

36.Mohan Kumar Rao
S/o Venkata Rao,
aged about 59 years,
working as Mason (HS-II),
unit GE Yelahanka,
residing at #E/148, 7th main,
Abbigere main road,
near govt school, K G Halli,
Bangalore-15

37.Chilakala Ravindra
S/o Malakondaiah,
aged about 27 years,
working as Elect (SK),
unit GE Yelahanka,
residing at No. 1060,
5th cross, KG halli, Jalahalli west,
Bangalore-560015.

38.Girish B N
S/o Nagarajappa,
aged about 27 years,
working as Elect (SK),
unit GE Yelahanka,
residing at No. 86/2,
MES Key personal Qtrs,
Air force Stn, Yelahanka,
Bangalore-560 063

39.Shashidhara HS
S/o Sathya Narayana,
aged about 27 years,
working as Elect (SK),
unit GE Yelahanka,
residing at MES key personnel qtrs,
GE, AFS , Yelahanka,
Bangalore-560 063

40.Venkataramanaiah
S/o S Venkataiah,
aged about 34 yers,
working as Fitter Pipe (HS-II),
unit GE Yelahanka,
residing at Bharathnagar,
H M Hobli (P),B'llore-562157

41.K B Ravindra
S/o Late K V Bheemrao,
aged about 56 years,
working as FGM (HS-II),
unit GE Yelahanka,
residing at No 361/B, 3rd cross,
2nd stage Rajajinagar, B blk,
Subramanyanagar , B'llore-21

42Madhava Rao Banti
S/o Purushotham,
aged about 34 years,
working as Elect (SK),
unit GE Yelahanka,
residing at No P- 85/1,
MES key personnel qtrs,
GE, AFS , Yelahanka,
Bangalore-560 063

43.Gokulnath R
S/o P Ravi,
aged about 27 years,
working as FGM (SK),
unit GE Yelahanka,
residing at No. 84/2,
MES key personnel qtrs,
GE, AFS, Yelahanka,
Bangalore-560 063.

44. Hanumanthu,
S/o Ankaiah,
aged about 59 years,
working as Fitter Pipe (HS-II),
unit GE Yelahanka,
residing at Bharathnagar,
H M Hobli (P), B'llore-562157

45. A Gajendran
S/o R Anyappan,
aged about 56 years,
working as Fitter Pipe (HS-II),
unit GE Yelahanka,
residing at No 140, 5th cross,
Goutham Nagar, Srirampuram,
Bangalore-560021.

46. R Srinivasa
S/o Rathnam,
aged about 54 years,
working as Fitter Pipe (HS-II),
unit GE Yelahanka,
residing at No 728/10, 14th B cross,
KN Extn, Yeswanthpur,
Bangalore-560022

47. S Rajendran
S/o N Subramani,
aged about 56 years,
working as Carpenter (SK),
unit GE(M) AF Jalahalli,
residing at No 2555, 7th Main,
RPC Lyt, near Swimming pool,
Vijaynagar 2nd stage,
Bangalore-560040.

48. N Anantharaju
S/o Narayan,
aged about 42 years,
working as Elect (HS-II),
unit GE(M) AF Jalahalli,
residing at P-23/2,
CQAE residential area,
MES Road, Yeswanthpur post,
Bangalore-560022.

49.Sowmya R
D/o B Raju,
aged about 31 years,
working as FGM (SK),
unit AGE (I) Chimney Hills,
residing at No. 1,
Sri Channa Keshava nilaya,
5th Main 2nd cross,
Bhuvaneshwari Nagar ,
T Dasarahalli, Bangalore-560 057

50.Sandeep B
S/o Inderjeet,
aged about 27 years,
working as Ref Mech (SK),
unit GE(M) AF Jalahalli,
residing at P-334/1,
Old IMH area, GE Complex,
Opp HMT house Jalahalli Post – 560013

51.Manjunath K
S/o Kumara A,
aged about 26 years,
working as Elect (SK),
unit AGE (I) Chimney Hills,
residing at No. 483/A, D Subbiah Road,
Ramaswamy circle, Mysore

52.Ashoka H M
S/o Mahadevnaik,
aged about 29 years,
working as Elect (SK),
unit AGE (I) Chimney Hills,
residing at No. P-7/1,
MES Qtrs Mysore570 011

53.S Devdoss
S/o Late Selvaraj,
aged about 52 years,
working as , unit ,
residing at P-281/3, IMH area,
GE complex, Jalahalli,
Bangalore-560013

54.P Lakshminarayananamma
S/o Late Narayanappa,
aged about 56 years,
working as FGM (HS-II),
unit GE(M) AF Jalahalli,
residing at No.248, Kuvempu
Nagar 1st stage, Bangalore-560014

55.Prasanna Kumar
S/o D S Renukaprasad,
aged about 27 years,
working as Elect (SK),
unit GE Chaff,
residing at #265/2, MES Qtrs,
Command Hospital (AF),
Agram post, Bangalore-560 007

56.Vasu B J
S/o Jayanna,
aged about 27 years,
working as Elect (SK),
GE Chaff unit,
residing at #131/13, MES Qtrs,
Command Hospital (AF),
Agram post, Bangalore-560 007

57.Shankar
S/o Shrishailappa,
aged about 30 years,
working as Elect (SK), GE Chaff unit ,
residing at 146, 3rd cross, 4th main,
Nanjappa adugodi,
Bangalore-560 030

58.Namdev P Janagekar
D/o Peeshappa,
aged about 27 years,
working as Elect (SK), GE Chaff unit ,
residing at No. 131/13, MES Qtrs ,
command Hospital, AF,
Agram post , Bangalore-560 007

59.Ravichandran
S/o Channappa Navadagi,
aged about 29 years,

working as Elect (SK),
GE Chaff unit ,
residing at No. 265/403, MES Qtrs ,
command Hospital, AF, Agram post ,
Bangalore-560 007

60.Kishore
S/o E Babu,
aged about 27 years,
working as Fitter Pipe (SK),
GE Chaff unit , residing at P-131/9,
command Hospital, AF,
Agram post , Bangalore-560 007

61.Manjunath E M
S/o Murthy,
aged about 25 years,
working as Ref Mech (SK),
unit GE Chaff, residing at No. 13,
MES Qtrs , command Hospital,
AF, Agram post ,
Bangalore-560 007

62.Mithun
S/o Balakrishna dasar,
aged about 28 years,
working as Pipe-Fitter (SK),
GE Chaff unit ,
residing at GE, command Hospital,
AF, Agram post , Bangalore-560 007

63.Karunanidhi
S/o Doriaswamy,
aged about 55 years,
working as Pipe-Fitter (HS-II),
GE Yelahankaunit ,
residing at 4/4, 7th cross, 9th main,
Srirampuram, Bangalore-560021

64.K Manikandan
S/o Kambattan P,
aged about 40 years,
working as Ref Mech (HS-II),
GE(M) AF Jalahalli unit,
residing at No. 952/1,

54 Civilian Qtr Kalanagar,
Kammagondanahalli, jalahalli West,
Bangalore-560 015

65.Narayanappa
S/o Mutturayappa,
aged about 58 years,
working as Mason (SK),
GE Yelahanka unit ,
residing at # 413, Kebbepalya,
Chikkabananavara (P), B'lore-560090

66.Narayana,
S/o Munivenkatappa,
aged about 65 years,
working as Mason (HS-II),
GE Yelahanka unit ,
residing at #10, Bavi muneswara lyt,
4th cross, Devinagar,
Bangalore-560094

67.Balaraju S,
S/o Subramanyam,
aged about 58 years,
working as Mason (SK),
GE Yelahanka unit ,
residing at E-386, Floor mill road,
Singanayakanahalli, Yelahanka,
Bangalore (North)-560064

68.Avalaiah,
S/o M Balavulayya,
aged about 57 years,
working as Carpenter (HS-II),
GE Yelahanka unit ,
residing at No 962, 4th cross,
B Nanjappa Lyt,
Near Rajv Ghandhi Dental College,
Cholanayakanahalli,
R T Nagar (P), Bangalore-32

...Respondents

(By Shri S.SugumaranACGSC for R1-5
& Paanchajanya & Associates for R6-68)

ORDER (ORAL)

HON'BLE DR K.B.SURESH, MEMBER (J)

1. Heard. The matter is in a very small compass. Vide Annexure-A5, Ernakulam Bench of CAT had passed a detailed order in a similar matter OA.No.109/2012on 12.12.2012 which we quote:-

“ O R D E R

By HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIV MEMBER

The applicants were initially appointed in the posts of Chowkidar/Safaiwala, which were unskilled non-industrial Group-D posts during the period from 18.04.1988 to 14.12.2000. They had opted for promotion to the semi skilled industrial posts for which they had passed the respective trade tests. On the recommendations of the VIth Central Pay Commission, the pay scales of unskilled and semi skilled worker (Mate) were merged together in PB-1 of Rs. 5200-20200 plus Grade Pay of Rs. 1800/- as per Annexure A-3. The applicants were redesignated as Mates. The merger was, however, kept in abeyance as per Annexure A-12 in respect of Chowkidars and Safaiwalas only, leaving the Mazdoors who are juniors to the applicants in the seniority list at Annexure A-2 unaffected. Mazdoors are now proposed to be considered for promotion to the skilled posts. Aggrieved, the the applicants have filed this O.A for the following reliefs:

- (i) Declare that the applicants are eligible and entitled to be considered and merged/redesignated as Mate as ordered in Annexure A-3, A-6 to A-9 and the like and with all the attendant benefits, including monetary benefits with arrears arising therefrom;
- (ii) Issue necessary directions to the respondents to grant the applicants redesignation/merger as Mate as ordered in Annexures A-3, A-6 to A-9 and similar orders, untrammelled by Annexures A-12, A-13 and A-14 with all consequential benefits, including arrears arising therefrom and disburse the same forthwith, at any rate within a time limit to be fixed by the Hon'ble

Tribunal;

- (iii) Issue necessary directions to the respondents to grant and disburse to the applicants the benefits of the order at Annexure A-3 forthwith in preference to their juniors, with anterior dates eligible to them than their juniors, untrammelled by Annexures A-12, A-13 and A-14;
- (iv) Issue necessary directions to the respondents not to unsettle the seniority of the applicants in Annexure A-2 with that of the Mazdoors juniors to them therein, pursuant to Annexures A-12, A-13 and A-14 orders, and not to conduct proceedings to grant them promotion to skilled posts in preference to the applicants who are seniors to them.;
- (v) Award costs of these proceedings; and
- (vi) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper.

2. The applicants contended that Annexure A-12 is arbitrary, discriminatory and opposed to Annexure A-3. Consequential orders at Annexures A-13 and A-14 are, therefore, liable to be set aside. Although they were granted Group-C post of Mate, the same has been cancelled without any justifiable reasons, in clear violation of principles of natural justice. The clarification sought by the 3rd respondent from the 4th respondent is not a justifiable reason to cancel the merger of the posts as Mate as per Annexure A-3. They would loss seniority for no fault of theirs. Their settled service conditions are adversely affected resulting in senior becoming junior affecting their career progression. The order passed by the higher authority at Annexure A-3 cannot be cancelled by the lower authority as done herein. The applicants are also eligible to be considered for skilled posts. Those Mazdoors who are juniors to the applicants in Annexure A-2 had already been granted the designation as Mates and they are going to be considered and promoted to skilled posts in preference to the applicants.

3. The respondents in their reply statement submitted that it was clarified vide letter dated 14.02.2012 received under letter dated 29.02.2012 that Chowkidars/Safaiwalas are non industrial category and hence those posts cannot be merged with Mate which is an industrial category post. However, those Chowkidars/Safaiwalas who had already been promoted as Mates before the date of issue of letter dated 08.02.2011 would remain so and they should not be demoted.. They have acted as per the clarification received from the competent authority.

Therefore, their action cancelling the reclassification of the applicants from Chowkidars/Safaiwalas to Mates is in order.

4. In the rejoinder statement, the applicants submitted that the Chowkidar/Safaiwala and the Mazdoor (Unskilled) have been in the feeder categories for Mate (Semi Skilled) and they were further promoted to various skilled trades in the industrial category. Accordingly, a common service seniority list of Chowkidar, Safaiwala and the Mazdoor are maintained. The clarification given by the 4th respondent in the letter dated 14.02.2012 appears to be contrary to the established position with reference to the career prospects of Chowkidar and Safaiwala in the MES. The differentiation of Chowkidars/Safaiwalas who have been promoted as Mates before 08.02.2011 and promoted thereafter is unreasonable. 29.02.2012 has not been produced by the respondents, nor the letter dated 14.02.2012. The applicants who were waiting for promotion are now deprived of their further career prospects in service as only Mazdoors have been merged with Mate (Semi Skilled) with effect from 09.09.2008. Even those Mazdoors who are juniors to the applicants in the common seniority list, have been given the benefit of Annexure A-3.

5. We have heard Mr. P.K. Madhusoodhanan, learned counsel for the applicants and Mr. Sunil Jacob Jose, SCGSC, appearing for the respondents and perused the records.

6. As per Annexure A-2 seniority list, Chowkidar/Safaiwala/Mazdoor are having a common integrated seniority list. They are all unskilled workers as per Annexure A-3 dated 08.02.2011. All unskilled trades were merged with corresponding semi skilled trades with effect from 09.09.2008. Annexure A-3 does not discriminate against any unskilled category. The respondents uniformly implemented the merger, treating Chowkidars and Safaiwalas as unskilled workers for the purpose of their promotion to the industrial line as they had already passed the trade test for promotion to the semi skilled category. But the letter dated 14.02.2012 from the competent authority received under letter dated 29.02.2012 clarified that being non industrial posts, the posts of Chowkidar/Safaiwala cannot be merged with the post of Mate and that those who have already been promoted as Mate before the issue of letter dated 08.02.2011 would remain so and they should not be demoted. Neither the letter of 14.02.2012 nor the letter of 29.02.2012 is produced by the respondents. What is produced at Annexure R-

1 is the letter dated 08.02.2011 available at Annexure A-3. The action taken by the respondents show that these letters travel in a direction reverse to the policy of the Government to integrate the cadres consequent to VIIth CPC. They segregate the Chowkidars/Safaiwalas from the Mazdoors and nullify their promotion prospects inspite of the integrated seniority list and inspite of being in the feeder cadres and qualified for promotion to the post of Mate as per the Recruitment Rules. This is patent discrimination against the Chowkidars and Safaiwalas which is further aggravated by the division of Chowkidars and Safaiwalas by imposing the fortuitous cut off date of 08.02.2011 to protect those who have already been promoted as Mate. Those Chowkidars and Safaiwalas who could not be promoted before 08.02.2011 are left in the lurch. When the Mazdoors who are juniors to the applicants are made Mates, denial of the same to the applicants who are fully qualified for promotion as Mate is a clear violation of settled service conditions and the principle of equality and equality of opportunity enshrined in Articles 14 and 16 of the Constitution of India. The author of Annexure A-12 who requested to keep in abeyance the merger of Chowkidar and Safaiwala with Mate (Semi Skilled) till further orders perhaps, did not realise what it does to the applicants who are subjected to discrimination, denial of natural justice and denial of consideration for promotion. Hence, in the interest of justice, the O.A is allowed as under.

7. Annexures A-12 dated 30.11.2011, A-13 dated 19.12.2011 and A-14 dated 19.12.2011 are quashed. The respondents are directed to grant all the benefits of the order at Annexure A-3 dated 08.02.2011 forthwith as well as to consider them for promotion to skilled posts keeping in mind their seniority in Annexure A-2 seniority list.

8. No order as to costs. (Dated, the 12th December, 2012)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER"

2. Thereafter, Annexure-A6 order was passed. Now the party respondents contend that this is also to be looked into in respect with

Annexure-R1 which they have produced which is 85610/47/ACP/Non-Ind/CSCC-/3187/D-(works) dated 8.11.2004. We quote from it:-

“85610/47/ACP/Non-Ind/CSCC-/3187/D-(works)
Government Of India
Ministry Of Defence
New Delhi
8/11/2004

To,
The Engineer-In-Chief
Engineer-In-Chief's Branch
Army Headquarters
Kashmir House
New Delhi-110011

Subject : Grant Of Acp Benifits To Chowkidar And Safaiwala Of Mes

Sir,

The matter regarding grant of Acp benefits To Chowkidar And Safaiwala (MES Non-Industrial) in The industrial line was under consideration of the Government for sometime. The matter has been deliberated and it was observed that the following system prevails in MES at present.

- a) The Chowkidar And Safaiwala which are non-Industrial categories are eligible for Promotion along with the industrial Category as Mate in the Pay Scale of Rs 2650-4000.
- b) In Other Departments of the Government Of India the Chowkidar And Safaiwala are not eligible for Promotion In the Industrial Stream
- c) The Chowkidar And Safaiwala Have Also Been Eligible For Promotion To The Post Of LDC Which Is A Non Industrial, Ministerial Category Post.
- d) For The Grant Of ACP Introduced By Government Of India Vide Dop&T Om No. 35034/1/97- Estt(D) Dt 09 Aug 99 As Amended From Time To Time. The Chowkidars And Safaiwalas Are Eligible For First Acp In The Pay Scale Of Rs 2740-70-3800-75-4400 Benifits If They Are Considered Eligible For First Acp In The Pay Scale Of Rs 3050-75-3950-80-4590 If They Are Considered Part Of Industrial Hierarchy.
- e) After Due Deliberation And To End Duality In Matter Of Entitlement Under Acp, it Has Been Decided As Under:-
 - i. Chowkidar And Safaiwala Are Entitled For Acp Benefits Only In Th industrial Line.
 - ii. Chowkidar And Safaiwalas (Rs 2550-55-2660-60-3200) Will Get First Acp In The Pay Scale Of Rs 2650-65-3300-70-4000 And Second Acp In The pay Scale Of Rs 3050-75-3950-80-4590 On

Passing Prescribed Trade Tests.

- iii. The category of Chowkidar/Safaiwala Shall Continue To Be Non-Industrial And Shall Continue To Have Avenues For Promotion Of LDC if otherwise Eligible And Not Absorbed In Industrial Establishment By Way Of Functional Promotion As Mate
 - iv. With Issue Of This Letter First An Dsecond Acp Available To Chowkidar/Safaiwala As Per Dop&T On No. 35034/2/2001-Est(D) Dated 01 June 2001 In The Pay Scale Of Rs 2610-60-2910-65-3300-70-4000(S-2a) And Rs 2750-70-3800-75-4400 (S-4) Respectively Shall Be Discontinued.
2. This Issues With The Cocurrence Of Def/Fin. Vide U.O No. 827/Fin./w-1 Dt 24.08.2004.

Yours Faithfully,
Sd/-

(Bp Sharma)

Deputy Secretary To The Government Of India"

3. Therefore, as early as 2004 itself, even though discussion on it might have started from 1990, the position is fixed as according to what he stated in annexure-R-1. "Chowkidars and Safaiwalas which are non-industrial categories are eligible for promotion along with industrial category as made." Therefore, as applicant had passed the Trade Test in 2001 itself he became eligible for promotion at that point of time.

4. Shri S.Sugumaran, learned counsel for the respondents would contend that after having taken a policy decision in 2014, they have given this posting to the applicant also w.e.f. 9.9.2008. But then the legitimate expectation which had arisen for the applicant cannot be killed of by the delay on the part of the respondents when they advertised for examination and the examination was conducted. The applicant having

passed it, he obtained a right. Therefore, we will now remit this matter back to the respondents to decide what will be the effect of the passing of the Trade test vis-a-vis a promotion granted to him in 2008, that also will be considered and a speaking order passed. If the order is against him, we grant liberty to the applicant.

5. Regarding the option, he had given option foregoing his seniority to become Pipe-Fitter. The applicant contends that he is illiterate and he had been cajoled by some other senior officers to do that. Whether it has been done or not, no government servant can back track and say that he did a wrong thing and obtained benefit. The law of election will then prevail. He had got the benefit because he had foregone his seniority and came into another stream of promotion. Therefore, the ground taken by the applicant in this connection is not correct and not applicable, not relevant. It is hereby declared that the applicant will continue and he is eligible for promotion in the same stream. But a decision now to be taken would be the interregnum period of 2001-2008 by the respondents within next 2 months and after giving an opportunity of being heard to the applicant.

6. The learned counsel for the party respondents seeks the decision in this connection may be made by the respondents by advertizing to Annexure-R-3. But then, it cannot be done because Annexure-R-3 takes a contrary view and policy decision which had been clearly mentioned in Annexure-R-1. If a policy decision has to be changed, it

cannot have retrospective effect on any person. Even Annexure-R-1 is in 2004, whereas applicant's right arose in 2001. Therefore, there cannot be a retrospective operation of a policy which is prospective in nature. Therefore, Annexure-R-3 produced by the party respondents has no value at all.

7. OA is disposed off, as above. No order as to costs.
8. The sealed cover will now be opened and the consequences will be brought into effect. OA is disposed off, as above. No order as to costs.

(CV. SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the Applicant in OA.No.66/2018

Annexure – A1 - Copy Of The Order Of Appointment Dated 21.11.1987

Annexure – A2 - Copy Of Result Sheet.

Annexure – A3 - Copy Of The Recruitment Rules Dated 09.11.2004

Annexure – A4 - Copy Of The Order Dated 08.02.2011

Annexure – A5 - Copy Of The Order Dated 12.12.2012 In OA No. 109/2012

Annexure – A6 - Copy Of The Order Dated 12.07.2013 In Oa No. 956/2012

Annexure – A7 – Copy Of The Result Sheet Of Trade Test Dated 14.6.2016

Annexure – A8 - Copy Of The Promotion order Dated 14.09.2016

Annexure – A9 – Copy Of The Notification Dated 20.02.2018

Annexures referred to by the respondents in reply by R1-5

Annexure– R1 - Copy of Notification Dated 20.01.2018

Annexure– R2 - Copy of Pto No. 04/(G)/2001 Dated 26.04.2001

Annexure– R3 – Copy of Cat Order Dated: 12.07.2013

Annexure– R4 – Copy of Promotion Of The Post Of Mate Dated: 26.08.2014

Annexure– R5 – Copy of Pto No. 20, Dated: 18.05.2015

Annexure– R6 - Copy of R4 Letter, Dated 31.10.2014

Annexure– R7- Copy of R4 Clarification Letter Dated 11.11.2014

Annexure– R8- Copy of Representation Forward Dated 30.05.2015

Annexure– R9- Copy of Rejection Of Above Representation On 20.04.2015

Annexure– R10- Copy of Representation Dated: 15.05.2015

Annexure– R11- Copy of Rejection Of Above Vide Letter Dated 03.09.2015

Annexure– R12- Copy of Letter Dated: 24.08.2015

Annexure– R13- Copy of Forwarding Letter Dated: 19.05.2016

Annexure– R14- Copy of Intimation Letter Dated: 25.05.2016

Annexure– R15- Copy of Revised Application Dated 01.06.2016

Annexure– R16- Copy of Part II Order No. 32 Dated: 08.08.2016

Annexure– R17- Copy of Promotion To Mate Part II Order Dated: 19.09.2016

Annexure– R18- Copy of Seniority List Dated 04.04.2017

Annexure– R19- Copy of Rectification Vide Letter Dated 20.07.2018

Annexure– R20- Copy of Part II Order No. 38 Dated 18.09.2017

Annexures referred to by the respondents in reply by R6-68

Annexure– R1 - Copy of communication Dated 20.01.2018

Annexure– R2 - Copy of order Dated 08.02.2011

Annexure– R3 – Copy of Clarification Letter Dated 23.3.2011

Annexure– R4 – Copy of Promotion order Dated: 26.08.2014

Annexure– R5 – Copy of convening order for conducting trade test ,
Dated: 28.04.2015

Annexure– R6 - Copy of results of trade test , Dated 11.5.2015

Annexure– R7- Copy of Representation Dated 7.5.2015

Annexure– R8- Copy of undertaking given by applicant Dated 1.6.2016

Annexures referred to by the Applicant in Rejoinder

Annexure-A10: True copy of the transfer certificate.