

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

ORIGINAL APPLICATION No. 1770/2015

ORIGINAL APPLICATION No. 1771/2015

ORIGINAL APPLICATION No. 1772/2015

ORIGINAL APPLICATION No. 1773/2015



HYDERABAD, this the 21st day of June, 2022

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. K.V. Eapen, Admn. Member

1. Mohd. Abdul Ayub,
S/o. Mohd. Abdul Qaiyum,
Aged about 39 years, Occ: Borer,
O/o. Ordnance Factory Projects,
Yeddumailaram, Medak District.

...Applicant in OA 1770/2015.

2. Shaik Chand, S/o. Shaik Khajamiya,
Aged about 45 years, Occ: Examiner,
O/o. Ordnance Factory Projects,
Yeddumailaram, Medak District.

...Applicant in OA 1771/2015.

3. Ch. Janga Reddy, S/o. Penta Reddy,
Aged about 45 years, Occ: Machinist,
O/o. Ordnance Factory Projects,
Yeddumailaram, Medak District.

...Applicant in OA 1772/2015.

4. N. Sathaiah, S/o. N. Venkaiah,
Aged about 49 years, Occ: Grinder,
O/o. Ordnance Factory Projects,
Yeddumailaram, Medak District.

...Applicant in OA 1773/2015.

(By Advocate: Dr. A Raghu Kumar)

Vs.

1. Union of India rep. by its Chairman,
Ordnance Factory Board,
Ministry of Defence, Ayudh Bhavan,
10-A, Shaheed Khudiram Bose Road,
Kolkata- 700 001.



2. The Additional Director General,
Ordnance Factory Board,
Armored Vehicles Head Quarters,
Ministry of Defence, Avadi,
Chennai, Tamilnadu- 600 054.
3. The General Manager,
Ordnance Factory,
Yeddumailaram,
Medak District- 502 205.

... Respondents.

(By Advocate: Mrs. K Rajitha, Sr. PC for CG.)

ORAL ORDER
(As per Hon'ble Mr. Ashish Kalia, Judl. Member)

Through Video Conferencing:

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:



“That this Hon'ble Tribunal may be pleased to call for the records pertaining to 1st respondent Lr.No.PER/I/OFFPM/2014-15 dt. 27.05.2014 and quash and set aside the same as illegal, arbitrary, violative of Article 14 and 16 of the Constitution of India and rules on the subject matter and consequently declare that the applicants are entitled for grant of one increment @ 3% from the date of their promotion from Labourer(Semi-skilled) to concerned Tradesman(Semi-skilled) with all consequential benefits, in the interest of justice and be pleased to pass such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case.”

2. I) The brief facts of the case are that the Applicant No.1 joined the Ordnance Factory on 10.02.2001 as 'Peon' which was later re-designated as 'Labourer' on 16.06.2008. Similarly, Applicant Nos. 2, 3 & 4 joined on 26.05.1992, 02.01.1992 & 25.01.1991 respectively as Labourer(Unskilled). As per SRO 185(A-II), two types of trades were identified which are annexed as Annexure 'A' & 'B'. The method of recruitment for the trades in Annexure-A is 80% by transfer, failing which, by direct recruitment and the remaining 20% by promotion. And, for the trades in Annexure-B, 100% by promotion. It is submitted that the posts of Borer, which is a semi-skilled post, falls under Annexure-B at Sl.No.3. Similarly, the posts of Examiner, Machinist, Grinder, which are semi-skilled posts, falls under Annexure-A at Sl.Nos. 26, 12 & 11 respectively. The applicants were subjected to Trade Tests and were promoted to the semi-skilled posts. The Applicant No.1 was promoted from the post of Labourer(semi-skilled) to



Borer(semi-skilled) against existing vacancy consequent on passing the Trade Test vide Order dt. 21.07.2010. Similarly, the Applicant Nos. 2, 3 & 4 were promoted to Examiner, Machinist & Grinder vide Order dt. 25.08.2011, 11.07.2011 & 13.09.2011 respectively. However, the pay scales of both Labourer and the promotional posts of the applicants are same i.e. Rs.5200-20200 with GP of Rs.1800. Prior to the implementation of the 6th CPC, the scale of pay of Labourer(Un-skilled) was Rs.2550-3200 and that of the Tradesman/Borer and other allied cadres was Rs.2650-4000. It is further submitted that the VIth CPC has issued CCS(Revised Pay) Rules, 2008 which were adopted by the Ministry of Defence vide notification dated 09.09.2008 circulated vide No.131 dt. 15.09.2008 of the 3rd respondent. Rule 13 of the said rules is reproduced below:

“13. Fixation of pay on promotion on or after 01.01.2006- In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:

i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.”

II) The Govt. of India, Ministry of Finance, has considered the situation where both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 6th CPC, where it was provided, inter-alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional, operational and



administrative considerations, extension of the benefit of fixation of pay under FR 22(1)(a)(i) could be considered on the merits of each case. At the same time, 6th CPC provided for increment at the rate of 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10 to the existing pay in the pay band while fixing the pay of promotional posts as per the procedure prescribed in Rule 13 of the CCS(RP) Rules, 2008. The above situations were considered and the Ministry of Finance, Department of Expenditure issued OM dt. 07.01.2013 communicating the decision of the President that in such cases, the fixation of pay will be done in the manner as prescribed in Rule 13(1) of the CCS(RP) Rules 2008, provided fixation of pay in such cases was done prior to 01.01.2006 in terms of Ministry's OM dt. 24.11.2000. The Department of Expenditure has also issued Clarificatory Orders dt. 07.01.2013 and the applicants have made representations dt. 04.04.2013 & 15.06.2013 seeking grant of one increment @ 3% from their date of promotion which was rejected by the respondents vide Letter dt. 27.05.2014. Aggrieved over the same, the applicants have approached this Tribunal for redressal of their grievances.

3. Notices were issued. The respondents have filed a detailed reply as below:

“1) It is submitted that as per note at point No.4 of SRO 184, it is mentioned that wherever the word ‘Transfer’ occur in column 11 or 12 of this Schedule, it shall include transfer in public interest by the Management. The transfers in public interest will include Transfers from one grade, inter se promotions from another grade where from two different grades. The transfer in public interest will also include filling

of posts by transfer of persons holding post from which there is no promotion to any other posts or grade whether or not such posts are declared equivalent posts and such appointments by transfer may be made prior to filling of posts by promotion from other grades or by direct recruitment. The transfer in public interest will also include Transfer of persons in the Trades to be abolished or merged with other trades on administrative grounds.



II) As per the SRO, in case of recruitment by promotion/deputation/transfer, the incumbents will be considered for promotion / transfer to another trade (in the same grade) or from one grade to another on passing the prescribed trade test. Accordingly on passing the prescribed trade test the applicants herein were re- designated/transferred to the trades of Borer/Examiner/Machinist/Grinder from Labourer (Semi skilled). Consequent upon implementation of VI CPC the pay scales of Labour (Semi Skilled) and Tradesman (Semi Skilled) have been same and shown in the Pay Band -1 with Grade Pay of Rs. 1800/-. Further it is submitted that the applicants' contention that they were promoted to next grades is not correct. The applicants were transferred/re-designated to the post of Tradesman (Semi-Skilled) which is not treated as promotion.

III) It is submitted that the applicants herein are well aware of the Rules and on their own mentioned in the OA that how pay fixation will be done on getting promotion on or after 01.01.2006. It is clear that if the promotion is from one grade pay in the promotional hierarchy of the cadre i.e., if the promotion has been taken place in the line of hierarchy in the cadre, they will be eligible for one increment equal to 3% of the sum of the pay in the pay band and the existing grade pay. But in the case of applicants herein were considered for transfer / re-designation from Semi Skilled grade of a particular trade to semi skilled grade of another trade which are not in the line of hierarchy in the cadre, hence they were not eligible for the additional increment. As stated above, Semi Skilled grade of a particular trade cannot be hierarchy to another trade since it is in the same grade i.e., Semi Skilled grade. Earlier also, the 1st respondent herein vide letter No. dated 27.05.2014 clarified/informed that for conversion from Labour (Semi-Skilled) to Tradesman (Semi Skilled), benefit of increment is not to be given, since the same being treated as appointment by transfer. It is submitted that the pay fixation benefits under FR 22 (1)(a)(i) will be considered on the merits of each case provided all the conditions precedent for the grant of benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities. Where as in the case of applicants herein they were not assumed the higher responsibilities and moreover

they were only re-designated/transferred to the post of Tradesman Semi Skilled from Labourer Semi Skilled in the same grade pay.



IV) Further, it is submitted that the President is pleased to decide that in cases of promotion from one post to another where the promotional post carries the same Grade Pay as the feeder post, the fixation of pay in such cases will be done in the manner as prescribed in Rule 13(1) of the CCS (RP) Rules, 2008, provided fixation of pay in such cases was done prior to 01.01.2006 in terms of this Ministry's aforesaid OM dated 24.11.2000. From the above, it is clear that if a post which is feeder post to the promotional post then pay fixation will be done as per rules. But in the case of applicants herein they were holding the Semi Skilled grade in the trade of Labourer prior to their transfer / redesignation. Accordingly, they were transferred / re-designated to semi skilled grades of different trades viz., Borer, Examiner, Machinist etc. As stated above, as per SRO 185 of 1994, Semi Skilled grade of a particular trade cannot be hierarchy to another trade though it is in the same grade i.e., Semi Skilled grade. Hence the contentions of the applicants herein are denied. The respondents prayed for dismissal of the OA.”

4. Heard the counsels for the parties at length and perused the pleadings on record.

5. I) The short issue raised in the present original application is that whether the applicants are entitled for an increment having been re-designated/promoted from labourer(SS) to Tradesman(SS) or not. Learned counsel for the applicant has drawn our attention to Page 15 of the OA where method of recruitment is mentioned as below:

“i) For trades listed at Annexure A – 80% by transfer failing which by direct recruitment. 20% by promotion for each trade including allied trades after adjustment of surplus.

ii) For trades at Annexure B – 100% by promotion for each trade including allied trades after adjustment of surplus and transfers. In any trade(such as new trade on failure of recruitment by promotion by transfer failing which by direct recruitment.”



II) He has further drawn our attention to Annexures 'A' & 'B' where the posts are differently categorised. According to the applicant's counsel, the respondents should have taken the post of Tradesman from Labourer as a promotional post but they have chosen to take it as a transferal post, though the applicants have qualified in the trade test and working on the said posts, which requires special skill. He has further drawn our attention to Note 4(supra) of the said SRO. The learned applicant's counsel has referred OM dt. 07.01.2013 and relied upon Para Nos. 2 & 3 of the said OM. Lastly, he has cited Para V of the Letter dt. 10.10.2015 in which the concerned General Manager has strongly recommended the applicants' case as below:

“5. It is pertinent to mention that even though the movement from Labourer(SS) to Tradesman(SS) is being treated as appointment by transfer, the element of assumption of higher charges involved in the said movement being a Tradesman(SS). As such, benefit of one increment i.e. 3% incremental benefit is justified as per the directives of Ministry of Finance O.M. dt. 07.01.2013.”

III) It seems that, being tradesman, the applicants are now doing a particular/specialized job, as it depicts from their designation of the posts i.e. Borer, Examiner, Machinist & Grinder. This shows that they are no more a casual labour, who can be assigned any nature of work. Now, they are being utilized by the respondents for a specialized job. Prior to VIth Pay Commission, there was a different pay scale for Labourer and Tradesman i.e. Rs.2550-3200 and Rs.2650-4000 respectively. After VIth Pay Commission came into existence, the pay scales of these two posts were merged. The



applicants are no more a casual labour. Now, they are performing a specialized job after qualifying the trade test. Learned counsel for the respondents argues that it is simply a transition from the post of Labourer to Tradesman and nothing has changed with regard to nature of duties, as envisaged in the recruitment rules and they are on the same scale. Hence, it is not a promotional post at all and, the applicants are not entitled for an increment. We are not in agreement with the learned counsel for the respondents for the simple reason that, had there been a change in the nature of duties, they could have been provided with next higher pay scale. As it is a transition from labourer(SS) to Tradesman(SS), but they have been assigned the specialized job, it has to be compensated by the Department concerned. The argument of the applicants is that working as Tradesman, they are answerable for doing a particular work whereas in casual labour duties, they can be assigned miscellaneous non-specialized jobs. Now, they are performing a specialized job and they should have been considered by the respondents for grant of an increment. For the said reason, the General Manager, who is in-charge of the factory concerned, has also strongly recommended the applicants' case. Thus, we are convinced that the applicants have made out a case for an increment as they are performing a specialized job. Hence, we hereby set aside the impugned order dt. 27.05.2014 and remand this matter back to the concerned authority for re-consideration of the applicants' case for grant of one increment @ 3% from the date of their promotion from Labourer(SS) to concerned Tradesman(SS) in light of the discussion hereinabove. After

reconsideration, the respondents shall pass speaking order and communicate to the applicants herein. This exercise shall be completed by the respondents within a period of four months from the date of receipt of a copy of this order. Ordered accordingly.



IV) With the above observation, the OA is allowed. There shall be no order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/Ram/