

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On:4th August, 2010*
Judgment Delivered On:19th August, 2010

+ **W.P.(C) 1425/2007**

Smt. BHAGWATI Petitioner
Through: Mr. A.K. Triwedi, Advocate

Versus

UOI & ORS Respondents
Through: Mr. J.P Sharma Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The various pay commissions have the mandate to recommend revision in pay scales to various posts under the Government of India and in respect of workmen the Pay Commissioner recommends revision of pay scales not in respect of individual trades but by classifying the workmen into three categories; unskilled, semi-skilled and skilled workmen. Thereafter it is left to the departmental heads to make applicable the pay scales depending upon the nature of trade in which a workman is engaged.

2. An issue cropped up when tailors under the Ministry of Defence deployed at different Army Units and engaged in the work of tailoring raised an issue of being categorized as semi-skilled workmen, claiming that the trade in which they were engaged required special skill. They contrasted their

work with rope makers, carpenters and tent menders by pointing out that if these workmen were to be treated as skilled workmen, which they were, tailors could not be treated as semi-skilled.

3. The offending letter dated 15.10.1984 issued by the Ministry of Defence pertaining to the categorization of posts reads as under:-

“The Ministry of Defence by OM 3822/DS/O &M)/CW-1 84 dt. 15.10.84 on the recommendation of Anomalies Committee/Third Pay Commission communicated sanction of upgradation of posts as follows:

Based on the decision taken by the Government on the unanimous recommendations of the Anomalies Committee, I am directed to convey the sanction of the President to the following:

(i) Upgradation of the following jobs from semi-skilled grade (Rs.210-290) to the skilled grade (Rs.260-400):-

S. No.	Job Title	Existing scale	Revised scale
1.	Boot Maker	Rs.210-290	Rs.260-400
2.	Carpenter	-do-	-do-
3.	Painter/ Painter-III	-do-	-do-
4.	Painter (IRC)	-do-	-do-

These orders supercede the earlier orders in regard to fitment of the above categories of workers in the relevant scales of pay from the date of issue of this letter.

Fresh induction to the trades listed in (i) above shall be from:-

(a) Semi skilled categories to be identified by and 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 three years service in the grade and

after passing the prescribed trade tests; and

(b) 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.

(ii) Provision/introduction of Highly skilled Gde II (Rs.330-480) and Highly skilled GDE I (Rs.380-560) for common category jobs listed in Annexure I classified as 'Skilled' depending on the functional requirement of highly skilled jobs in the following manner as a benchmark percentage.

(a)	Highly skilled Gde I (Rs.380-560)	15%
(b)	Highly skilled Gde II (Rs.330-480)	20%
(c)	Highly skilled Gde (Rs.260-400)	65%

4. When the said letter was circulated, clarification was sought by various units of the army from the headquarter and the clarification was communicated to the regiments vide letter dated 19.9.1986, which reads as under:-

"The Army Headquarters directed all Regimental Centres vide letter No.895500/Pay/Org 1 (pers) (a) dt. 19.9.1986 as follows:

S. No.	Job Group	Pay Scale	
		(Existing (Rs.))	Revised (Rs.)
(a)	Bootmaker	<u>200-250</u> 196-232	210-290
(b)	Carpenter	<u>225-308</u>	210-290
(c)	Painter (IRC)	225-308	210-290
(d)	Tailor	<u>200-250</u> 210-270	210-290

5. Apparently, the letter dated 19.9.1986, in the usual telegraphic form peculiar to the army, required tailors to be placed at par with carpenters and painters in the same category but of semi-skilled workers. Thus, it is apparent that the tailors got equality but as sinkers for the reason their

representations resulted in carpenters and painters being downgraded from skilled workmen to semi-skilled workmen.

6. But, there was confusion all around. Different branches/units/regiments of the Air Force, Navy and Army placed workers under different categories and some units of the 3 wings placed Painters, Cobbler, Carpenter, Book-binder, Water fitter, Brick Layer Moulder Grade "C", Mason, Polisher etc. as skilled workmen and some put them or some of them as semi-skilled workmen. However, tailors were uniformly treated by all as semi-skilled.

7. Repeated representations were sent by the tailors working in the Ordnance Wing of the Army to the Director of Ordnance Services, Army Headquarters, to consider tailors being treated as skilled workers and especially with reference to the fact that tent menders were being treated as skilled workers. They got no response and hence a few tailors petitioned the Central Administrative Tribunal at Guwhati by filing OA No.158/1994 in which they pleaded that if boot makers, carpenters, painters and tent menders were skilled workmen there was no justification to treat tailors as semi-skilled.

8. Vide judgment and order dated 19.10.1995, a Division Bench of the Tribunal granted relief to the applicants. While examining the merits of the case, the Tribunal observed that the applicants before it, working as tailors with the respondents, were subjected to unjust discrimination by placing them in the category of semi-skilled workers when the other equivalents were placed under the skilled category. It may be noted that semi-skilled workers were placed in the pay scale of Rs.210-290/- whereas the skilled worker were placed in the pay scale of Rs.260-400/- as recommended by the 3rd Pay Commission and with the implementation of the 4th Pay

Commission the pay scale for the semi-skilled workers was revised to Rs.800-1150/-, that of the skilled workers to Rs.950-1500/-. Surprisingly enough, tailor mates which forms the feeder cadre for promotion to the post of tailor were also treated as semi-skilled and placed in the scale Rs.800-1150/-.

9. The Tribunal dealt with the issue of equivalence of the tailor's job to that of the tent-menders and the rope-workers and other categories in regard to the nature and kind of the work performed by workers. It may be highlighted that the issue was not one of equal pay for equal work but one of correct categorization.

10. In deciding in favour of tailor, the Tribunal accepted the correctness of the averments made in paragraph 1 of the original application filed and reflected upon the same as under:-

"7. The applicants have averred in paragraph 1 of the application that their job is a skilled job. They have stated thus:

"The Tailor job is very important and indispensable job in the ordinance Department (Branch) by the Defence Department the intelligence required is no winless than painter, cobbler, carpenter, Book binder, leather, water, fitter, brick layer, moulder grade "C", Boot repair, mason, polisher etc. (different branches be recognized as skilled job and as such should be included them under the skilled group grade."

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11. The nature of the work performed by Tentmender and Ropeworker cannot be as haveloving more skill than required in the tailoring job. We are not, therefore, convinced that on any rational ground the applicants

could be treated as unskilled workers. It appears that their category has remained to be considered owing to sheer neglect on the part of the authorities concerned.”

11. Thus, after evaluating the plea on merits, the Tribunal granted relief to the applicants before it with direction to the respondents therein to include the applicants therein in the category of the skilled grade under the three grade structure without any delay in the following manner:-

“11. In the result following order is passed:

I) We, direct the respondents to take effective steps for obtaining the sanction of the President and concurrence of the concerned Ministries of the Government of India to declare the applicants in the Tailor grade as “skilled workers” and to grant them thereafter subject to the sanction, the skilled grade with effect from 9.11.1984 as prayed by them on the conditions contained in the Government letter dated 15.10.1984 as modified by the decision of the Government of India contained in the letter dated 19.3.1993.

II) We direct the respondents to carry out the aforesaid exercise within a period of three months from the date of communication of this order and thereafter subject to the decision taken, to pay the arrears of pay and allowances to the respective applicants as may be found payable as a result of granting antedated skilled grade scale in accordance with the aforesaid guidelines, within a period of months thereafter.”

12. The decision of the Tribunal at Guwhati was followed by the Tribunals at Calcutta, Lucknow, Bangalore and the decision was affirmed by the Supreme Court when the respondent department filed petitions for Special Leave to Appeal which were dismissed in limine.

13. The controversy resurfaced before the Tribunal at Mumbai with reference to another letter dated 18.12.1998

issued by the Ministry of Defence with reference to the letter dated 15.10.1984, contents whereof have been noted in para 3 above. The controversy arose with reference to the undernoted passage from the letter dated 18.12.1998:-

"2. Army Headquarters vide letter No.B/87068/AG.PM dt.15 Dec 98 and No.53281/Misc. org 4 (Civil) (d) dt. 8.12.98 copy att) have intimated this office that the Ministry of Def/D (Civ-1) has clarified that only those trades which have been given upgraded skilled grades in Ministry of Defence letter No.3822/DS(C &D) Civ-1/84 dt.15 Oct 84 in the respective organizations can be given as skilled grade and no other tradesman. *Since Tailor category has not been upgraded to skilled grade vide Ministry of Defence letter dt. 18 Oct 1984, the pay scale of Rs.260-400 is not applicable to tailor category working in Provost units and CMP Centre & School. The correct pay to Tailor category as per Vth Pay Commission recommendations is Rs.2650-65-3300-70-4000. You are requested to fix the pay of the above category accordingly.*"

14. After the afore noted clarificatory letter, tailors who were earlier granted the benefit of upgradation as skilled workers and were placed in the same pay scale that of skilled workers on the recommendations of the Anomalies Committee of the 3rd Pay Commission, were reverted in the pay scale of Rs.210-290/-; the benefit granted to them was withdrawn. The reason given by the respondents for the said downgrading of the petitioners was that the Anomalies Committee of the 3rd Pay Commission did not grant the said benefit and as per the category of the petitioners of non-industrial semi-skilled workers were to be placed in the aforesaid scale.

15. Tailors at Mumbai filed various Original Applications before the Mumbai Bench of the Central Administrative Tribunal and placed reliance upon the decision of the Tribunal (Guwhati Bench) to urge that having been held entitled to be

placed in the category of skilled workmen, the respondents could not place them in the category of semi-skilled workmen. The defence taken by the Army authorities was that the letter dated 15.10.1984 was issued erroneously and was misread when letter dated 19.9.1986 was issued and that the mistake was rectified vide letter dated 18.12.1998.

16. Matter was referred to the Full Bench of the Tribunal at Mumbai, but unfortunately the question got posed and answered was whether a mistake was rectified vide letter dated 18.12.1998 and not the basic question whether tailors were entitled to be categorized as skilled workers with reference to people in the other trades such as tent menders etc. This is apparent from the under noted extracts from the decision dated 20.6.2001 of the Full Bench of the Tribunal at Mumbai:-

“08. Before taking up other question we would like to dispose of the argument of counsel for applicants to the fact that the order of Bangalore Bench being upheld by the Hon’ble Supreme Court of India, wherein similar questions in respect of Tailors working under the Ministry of Defence stands determined, has taking effect on this tribunal as the controversy herein is similar to that matter. But under law, such a binding effect is not in respect of legal preposition and not where an SLP is dismissed without assigned reasons. The principles of law stands determined by an order of Full Bench of Principal Bench of the Tribunal. In the case relied upon by the applicants, the order passed by Apex Court reads as follows:

“In view of the decision of this Court in C.A.Nos.8348-8356 of 1997 decided on 25.11.1997, these SLPs are dismissed on merits.

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11. Here we would like to observe that whether a job be treated semi skilled or skilled is a policy matter to be determined by the Ministry with the help of

experts, who are acquainted with the nature of job. It is not for this Tribunal to declare a job to be skilled or semi skilled when the Ministry of Defence has considered the matter taking into consideration relevant factors which have not been challenged on facts.

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12..... It is correct that some jobs have been upgraded and pay scale has also been revised by the Ministry, but that was done on recommendation of Anomalies Committee/Third Pay Commission. The Third Pay Commission was an expired body entrusted to recommend what job be upgraded and pay scale be revised. The Third Pay Commission Recommendation is not under challenge.

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18. Thus, the discussion above, we find that it is due to the mistaken advise of Army Headquarters on seeking of clarification by various units that Army Headquarters erred in clarifying that semi skilled grade of Tailors were upgraded to skilled grade and their pay scale was revised from 210-290 to 260-400 by Anomalies Committee/Third Pay Commission. It was a mistake on the face of it on part of Army headquarters as Ministry of Defence never upgraded the semi skilled tailors grade and by impugned order that mistake has been set right by respondents. The order in question gives effect to the policy decision of Ministry of Defence in correct perspective. The Army Headquarters which is obliged to give effect to order of said Ministry had rightly correct its mistake. Thus, no ground for interference by this Tribunal on merits as made out. All the OAs are liable to be dismissed.

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20. It is for above reason that on 27.4.2001 we dismissed all the OAs (vis. 735/99, 740/99, 891/99, 971/99, 122/2000 and 252/2000) by passing following operative part of order in present group of applicants:

“1. For reasons to be recorded, we hold that the impugned order clearly corrects the

mistake made and is therefore valid. We further hold that the decision by the different benches of the Tribunal taking a contrary view are erroneous and the same are accordingly overrules.

2. In view of the aforesaid finding, the present group of OAs are dismissed. The decision of the respondents, insofar as it seeks to make recoveries of the excess payments made on the basis of placing the applicants erroneously in a higher pay scale will not be enforced. No orders as to costs."

17. In the instant case the Original Application filed by the petitioner who is a tailor at the Ordnance factory at Shakur Basti was originally allowed by the Tribunal at Delhi vide judgment and order dated 27.1.2003 by placing reliance upon the decision of the Guwhati Bench of the Central Administrative Tribunal, but was recalled vide order dated 2.6.2005 when RA No.155/2004 was allowed by placing reliance upon the Full Bench decision of the Mumbai Bench of the Tribunal.

18. Needless to state the Bench of the Tribunal at Delhi has not adjudicated upon the core issue i.e. whether the job of a tailor is a skilled job or is it a semi-skilled job. Further, the Tribunal has not contrasted the work done by others in the trades which have been classified as skilled trades.

19. Let us contrast a tent mender, which work has been classified as skilled with that of a tailor. Now, both work on fabric or with fabric and use needles and threads. A tent mender repairs tents, which we presume, on being worn out get torn. On being torn, a tent needs to be stitched along a straight or a vertical line or along two lines at right angle to each other. A tailor stitches garments cut to size. It is incomprehensible and against common sense to classify a tent

mender as requiring a skill but not a tailor. We note that the Guwhati Bench of the Tribunal has highlighted the comparison with jobs done by tent menders, rope workers and tailors and we fully agree with the discussion on the subject by the Guwhati Bench of the Tribunal. We may note that instant case is not strictly one of equal pay for equal work but relates to categorization of a trade with reference to the skill of the person engaged in the trade. If a book binder, fitter, brick layer, tent mender, rope worker is to be treated as a skilled worker we see no escape to classify a tailor in the same bracket.

20. Before concluding we may note that the Central Public Works Department the largest body under the Union Government engaged in civil construction business treats tailors as skilled workmen.

21. The writ petition is accordingly allowed. Impugned judgment and order dated 2.6.2005 passed by the Tribunal allowing RA No.155/2004 is set aside and RA No.155/2004 is dismissed and as a result the decision dated 27.1.2003 allowing OA No.1110/2001 is restored.

22. The petitioner is held entitled to cost in sum of Rs.5,000/-

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 19, 2010
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