

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3827 OF 1999

1. A.B.Pillay,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
2. S.M.Kumbhar,
Electrician (M.V.) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
3. S.B.Shevate,
Electrician (M.V.) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
4. R.V.Belvelkar,
Electrician (M.V.) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
5. G.B.Sarode,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
6. J.B.Kamble,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
7. P.P.Mate,
Electrician (M.V.) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

8. P.B.Dhavalikar,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
9. S.D.Bhole,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
10. S.C.Karande,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
11. S.T.Bhujbal,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
12. P.S.Shingote,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
13. P.R.Wayal,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
14. C.P.Kedari,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
15. B.M.Jagdale,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

16. D.G.Shete,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
17. M.N.Mohol,
Electrician (MV) Skilled,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
18. R.T.Ubale (since deceased through legal
heir Mrs.Saraswati R. Ubale residing at
Sudarshan Nagar, Pimple Gurav, Pune
Pimpri-Chinchwad, Pune.
19. R.B.Kagale,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
20. D.B.Tilekar,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
21. Y.S.Chavan,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
22. S.C.Salunke,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.
23. A.B.Chaskar,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

24. K.S.Ovhal,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

25. S.J.Ranjane,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

26. M.G.Yadav,
Skilled Precision Grinder,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

... Petitioners.

V/s.

1. The Union of India,
through the Director General,
Directorate General of E.M.E.,
Master General of Ordnance Br.
Army Headquarters, DHQ. P.O.,
New Delhi- 110 001.

2. The Commandant,
512, Army Base Workshop,
Kirkee, Poona- 411 003.

... Respondents.

A.S.Rao with S.P.Saxena for the petitioners.

Mrs.Anjali Helekar with N.R.Prajapati for the respondents.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 21st September 2017.

ORAL JUDGMENT : (PER A.S.OKA, J.)

The submissions of the learned counsel for the petitioner and the learned counsel for the respondents were heard on the earlier date.

2. By this petition under Article 226 of the Constitution of India, the petitioners have taken an exception to the judgment and order dated 15th September 1998 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai on two separate original applications filed by the petitioners. By the said judgment and order, the original applications were dismissed by the Bench of the Central Administrative Tribunal (for short "CAT"). There is also a challenge to the order dated 4th December 1998 passed by CAT by which the petitions filed by the petitioners for review of the said judgment were rejected.

3. The factual controversy involved is brief and narrow. The petitioners are the applicants in Original Application No.771/1991 and Original Application No.797/1991. The applicants in Original Application No.771/1991 were appointed in the employment of the respondents as Electricians (MV). The applicants in Original Application No.797/1991 were appointed by the respondents on the post of Precision Grinders. The Recruitment Rules of 1988 for the said two posts were brought into force in January 1988. Prior to the Recruitment Rules of

1988, the Recruitment Rules of 1982 were in force. According to the case of the petitioners, the process of their recruitment commenced much prior to the Recruitment Rules of 1988 came into force and, in fact, the petitioners were selected much prior to the coming into force of the Recruitment Rules of 1988. According to the case made out by the petitioners in their respective original applications, at the time of their selection, they were informed that they will be placed in the pay-scale of Rs.1200-30-1440-EB-30-1800. All the petitioners were appointed after the date on which the Recruitment Rules of 1988 came into force and they were placed in a lower pay-scale. It is pointed out that they were placed in lower pay-scale of 950-1,500. The basic contention in the original applications filed by the petitioners was that as per the Recruitment Rules prevailing at the time of their selection, they were entitled to higher pay-scale of Rs.1200-1800, but erroneously they have been put in the pay-scale of Rs.950-1500 by applying the Recruitment Rules of 1988. The other grounds on which the petitioners sought pay-scale of Rs.1200-1800 was that certain persons, who were appointed on the same posts before the Recruitment Rules of 1988 came in to force, were placed in the pay-scale of Rs.1200-1800. The petitioners invoked the principle of equal pay for equal work.

4. By the impugned judgment and order, while dismissing the original applications filed by the petitioners, the CAT accepted the contention of the petitioners that they were governed by the old Rules of Recruitment and not the Rules which were notified in January 1988. The original applications were dismissed by the CAT by relying upon the

recommendations of the Anomaly Committee which were notified for implementation by the order dated 15th October 1984. The findings recorded by the Tribunal on this aspect reads thus:

“10. On going through this letter, it is noted that in respect of the skilled grade in the common categories, the minimum grade is Rs.260-400 and the higher grades have been provided as highly skilled Grade II and Grade I on percentage basis. As per this, the recruitment is required to be made in the scale of Rs.260-400, i.e. Rs.950-1500. With the implementation of these recommendations, the grade of the Precision Grinder as well as the Electrician Motor Vehicle for recruitment purpose is the initial grade of Rs.260-400, i.e. Rs.950-1500. Therefore, as per the Recruitment Rules of 1982, the recruitment for the category of Precision Grinder and Electrician Motor Vehicle was required to be done in the grade of Rs.950-1500. Although, the respondents have taken a plea that the recruitment of the applicants in both the OAs. Will be governed by the Recruitment Rules of 1988, but on examination of the issue with reference to the 1982 rules, which we have already held would be applicable to the case of the applicants, the recruitment of the applicants in the grade of Rs.950-1500 is in order. In view of this, the claim made by the applicants in both the OAs. is not sustainable.”

In paragraph-11 of the impugned judgment, the Tribunal negated the second ground urged by the petitioners of equal pay for equal work.

5. The learned counsel appearing for the petitioners invited our attention to the letter dated 16th October 1981 addressed by the Government of India, Ministry of Defence to the Chief of the Army Staff,

New Delhi. He pointed out that the petitioners were appointed on the establishment of the Commandant, Army Workshop, Kirkee at Pune. He also invited our attention to another communication dated 11th May 1983 issued by the Government of India to the Chief of the Army Staff. These two communications have been annexed to the affidavit-in-reply as Annexure R-2 and R-3. He pointed out an annexure to the communication dated 11th May 1983 which shows that the pay-scale of Electrician (MV) was fixed at 330-480 and the pay-scale of Grinder Precision was fixed at 330-480. He pointed out this fact from the annexure to the communication dated 11th May 1983. Thereafter he invited our attention to the communication dated 15th October 1984. He pointed out that the said communication relied upon by the CAT which directs implementation of recommendations of the Anomaly Committee. He pointed out that as provided in the recommendations, 15% post of highly skilled grade-I were recommended in pay-scale 380-560, 20% posts of Highly Skilled Grade-II were recommended in pay-scale of 330-480, and 65% posts of Skilled Grade were given pay-scale of 260-400. He pointed out that list of common categories of skilled jobs which is a part of this communication dated 15th October 1984 includes Electricians and Grinders but not the Electricians (MV) and Precision Grinders. He would, therefore, submit that even after the recommendations of the Anomaly Committee were accepted by the Government of India, the post of Electrician (MV) and Precision Grinder were covered either by Highly Skilled Grade-1 or Highly Skilled Grade-2. He would, therefore, submit that the findings recorded by the CAT are completely erroneous. He also relied upon a communication dated 25th June 1996 issued by the Ministry

of Defence which he tendered on record on 13th July 2017. He pointed out that the recruitment of 140 workers was made during the years 1985-1987 and they have been ratified in pay-scale of Rs.330-480.

6. The learned counsel appearing for the respondents supported the impugned judgment and orders. The learned counsel invited our attention to the annexures to the communication dated 16th October 1981 and 11th May 1983 issued by the Government of India to the Chief of the Army Staff, New Delhi. By referring to the said communications and especially the communication dated 16th October 1981, she pointed out the Precision Grinder and Electrician (MV) were given two pay-scales i.e. 330-480 and 260-400 depending upon whether the person appointed can be categorized as skilled or highly skilled. She pointed out that certain posts were filled in by skilled category as per the recommendations of the Anomaly Committee which were accepted by the Government of India and that is how the petitioners were placed in pay-scale of 260-400 which is equivalent to pay-scale of 950-1500 as per the Fourth Pay Commission. She submitted that the Tribunal has, therefore, rightly held that the fitment of the petitioners in the pay-scale of 950-1500 was correctly made. Her submission is that no interference is called for in writ jurisdiction.

7. We have given careful consideration to the submissions. There is a categorical finding recorded by the Tribunal that the service conditions of the petitioners would be governed by 1982 Recruitment Rules and not by the 1988 Recruitment Rules which were notified on 7th January 1988. We may note here that 1988 Recruitment Rules provided

pay-scale of 950-1500 to the post of Electrician (MV) Skilled and post of Precision Grinder.

8. In the written statement filed to both the original applications, the respondents relied upon the letter dated 16th October 1981 addressed by the Government of India to the Chief of the Army Staff, New Delhi. Reliance was also placed on the communication dated 15th October 1984 issued by the Government of India directing implementation of the recommendations of the Anomalies Committee. Specific contention in that behalf was raised in clauses 'K' and 'L' of paragraph-4 of the written statement filed by the respondents before the CAT which read thus:

(k) Upon enquiry, the applicants found that the Deputy Secretary to the Govt. of India, Ministry of Defence, by his letter dated 16th October 1981, addressed to the Chief of the Army Staff conveyed the sanction of the Hon'ble President for the fitment of the existing industrial workers in EME in the scales mentioned therein. The relevant categories and scales are enumerated hereunder for the ready reference of the Hon'ble Tribunal viz:-

<u>Category</u>	<u>Scale</u>
Skilled	Rs. 260-6-390-EB-6-326-8-366-EB-390-10-400
Highly Skilled Grade II	Rs.330-8-370-10-400-EB-10-480
Highly Skilled Grade I	Rs.380-12-500-EB-15-560

(i) The Learned Deputy Secretary to the Government of India, Ministry of Defence, by his another letter dated 15th October, 1984, addressed to the Chief of the Army Staff, New Delhi, conveyed the sanction for the things mentioned therein. In para (ii) of the letter a BENCHMARK PERCENTAGE was fixed for the Trades enumerated in Annexure-I with viable number of jobs. Hereto annexed and marked as Exhibit 'N' (collectively) is a copy of the said letter dated 15/10/1984 fixing the Bench Mark Percentage for the Trades enumerated in Annexure thereto. The pay scales referred to above came to be revised w.e.f. 1-1-1986 as under:-

	<u>Old Pay Scale</u>	<u>Revised Pay Scale</u>
i)	260-400 (Skilled)	950-1500
ii)	330-480 (H.S. Gr. II)	1200-1800
iii)	380-560 (H.S. Gr. I)	1320-2040

The Recruitment Rules were sought to be implemented by the Respondent no.2 from January 1988 applying thereby the Three Grade Structure. The lowest grade being skilled in the time scale of pay of Rs.950-20-1150-EB-25-1500 was to be for the direct new recruits. The duty performed by the 'Skilled' employee is identical with the one working as 'Highly Skilled Grade-II'. Employees working in these two Grades work for identical hours. The applicants have given separately the chart showing the work performed by both Grades, as Exhibit 'I'. The chart be treated to be the integral part of the application.....”

9. In the impugned judgment, by which the original applications filed by the petitioners were dismissed, the Tribunal has relied upon only one communication i.e. the communication dated 15th October 1984 by which recommendations of the Anomaly Committee were accepted by the Central Government.

10. We have carefully perused the letter dated 16th October 1981 addressed by the Government of India to the Chief of the Army Staff, New Delhi (Exh. R-2 to the affidavit-in-reply). It provides for fitment of the existing industrial workers in EME into five categories which are specified in clause (i) of the first paragraph of the said letter, which reads thus:

“(i) Fitment of the existing industrial workers in EME in the following five scales of pay as per details set out in Annexure I :-

<u>Category</u>	<u>Scales</u>
Unskilled	Rs. 196-3-220-EB-3-232
Semi-skilled	Rs. 210-4-226-EB-4-250- EB-5-290
Skilled	Rs. 260-6-290-EB-6-326- 8-366-EB-8-390-10-400
Highly Skilled Gr. II	Rs. 330-8-370-10-400-EB- 10-480
Highly Skilled Gr. I”	Rs. 380-12-500-EB-15-560

As per the annexure to the said letter, the post of Grinder Precision was given two pay-scales i.e. 330-480 and 260-400 and the same two pay-scales were provided to the post of Electrician (MV). What is material is the further communication dated 11th May 1983 addressed by the Government of India to the Chief of the Army Staff, New Delhi. It referred to the recommendations of the Expert Classification Committee on the report of the Third Pay Commission. It again provided for fitment of industrial workers of EME in five categories which are the same categories provided in letter dated 16th October 1981. Clause-6 of the said letter dated 11th May 1983 specifically records that the said letter supersedes the Government order/ communication dated 16th October 1981. Annexure to the said order/communication dated 11th May 1983 provides for only one pay-scale to the Electrician (MV) and the Precision Grinder. It is of Rs.330-480. Thus, it is crystal clear that the order/communication dated 11th May 1983 puts the posts of Electrician (MV) and Precision Grinder in the category of Highly Skilled- Grade-II having pay-scale of 330-480.

11. Then comes the communication dated 15th October 1984 on which heavy reliance is placed by the respondents as well as by the Bench of CAT. Clause (ii) of the first paragraph of the said communication dated 15th October 1984 reads thus:

“(ii) Provision/introduction of Highly Skilled Grade-II (Rs.330-480) and Highly Skilled Grade-I (Rs.380-560) for common category jobs listed in Annexure I classified as 'Skilled' depending on the functional requirement of the Highly Skilled jobs, in the following manner as a bench-mark percentage :-

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

This should be given to the trades enumerated in Annexure I with viable number of jobs and if there are non-viable trades these should be grouped together for the purpose of giving the above benefit. In the trades where the above bench-mark percentages are introduced, the selection grade for the skilled grade, if provided, will stand simultaneously abolished as a one time measure.”

Annexure I mentioned in clause (ii) is at page-200. Annexure I gives 19 categories of skilled jobs and it includes the posts of Grinder and Electrician but not the posts of Precision Grinder and Electrician (MV). As stated earlier, the order/communication dated 11th May 1983 specifically supersedes the earlier order dated 16th October 1981. Moreover, as noted earlier, as mentioned in the communication dated 11th May 1983, there are two separate posts of electricians i.e. Electrician (MV) and Electrician Mate and there are three posts of grinders i.e. Crystal Grinder, Grinder Precision and Grinder Mate. As per the communication dated 11th May 1983, the post of Crystal Grinder was classified as Highly Skilled Grade-I and was given higher pay-scale of Rs.380-560 and the post of Grinder Precision was placed in the category of Highly Skilled Grade-II and was given pay-scale of Rs.330-480. As noted earlier, clause (ii) of the communication dated 15th October 1984 provides that in the trades where the bench-mark percentages as specified in the said clause are introduced, the selection grade for the skilled grade, if provided, will

stand simultaneously abolished as a one time measure. There is no dispute that the equivalent pay-scale of pay-scale of Rs.330-480 in Fourth Pay Commission is Rs.1200-1800. The learned counsel for the petitioners tendered across the bar a communication dated 25th June 1996 issued by the Ministry of Defence. The subject of the communication reads thus:

“Sub: Ratification of recruitment of 140 tradesmen at 512 Army Base Workshop, Kirkee, Pune, during 1985-87.”

The first paragraph of the said document reads thus:

“ A case regarding recruitment of 140 tradesmen in the undermentioned trades was referred to the Ministry by Army HQ wherein CDA Southern Command had observed that the said appointments should have been made in lower pay scale of 260-480 as against the pay scale of Rs.330-480 made in this case.”

Fifth to seventh paragraphs of the said document read thus:

“5. 3 grade structure was not existing when SRO SRO-233/82 was notified and hence there was only one grade in the pay scale of 260-350 to which direct recruitment was permitted, this pay scale having been revised 330-480 vide Govt letter dated 11 May 83. The SRO 233/82 was superseded by SRO 1/89 published in Feb 88 which provided three skilled categories vis. Skilled (Pay scale 260-400) Highly Skilled Grade II (pay scale 330-480) and Highly Skilled Grade I (Pay scale 360-560). It has vide this SRO dated 1/88 only that a specific provision that direct recruitment be made to lowest skilled grade in the pay scale of 260-400 was laid down.

6. It is thus observed that the recruitment of 140 worker in four trades made by EME authorities during 1985-87 in the pay scale of 330-480 was based on the orders prevailing then in terms of SRO 233/82 in conjunction with Govt. letter dated 11 May 83.

7. In view of the above, the recruitment of 140 tradesmen made at 512 Army Base Workshop during the period 85-87 may be considered ratified. CDA Southern Command may be advised accordingly with ref to the letter No.Pay/Tech/559/XVI/512 dated 26 03 91, Pay/Tech/559/XVI/512 dated 16-09-91 Pay/Tech/559/XVI/512 dated 08-08-94.

12. We may note one more factual aspect that in the original applications, the specific case of the petitioners was that they were called for the trade test/ interview by informing them that the pay-scale of post would be Rs.1320/- as basis pay. There is a specific averment in the original applications that at the time of interview, the petitioners were informed that they will be placed in pay-scale of basic pay of Rs.1200/-. Now by virtue of the communications referred in paragraph-11 above, the appointments made in the posts of Grinder Precision and Electrician (MV) during the years 1984-87 in the pay-scale of Rs.330-480 have been ratified. The petitioners are similarly placed. Hence, even otherwise the petitioners are entitled to be placed in the same position.

13. Therefore, in our considered view, the findings of the CAT are erroneous and, in fact, the case of the petitioners that they are entitled to the pay-scale of 1200-1800 ought to have been accepted.

14. Most of the petitioners must have been superannuated by this time. Therefore, they will be entitled to consequent benefit of revision in pension, if they are otherwise entitled to pension.

Accordingly, we pass the following order:

ORDER

(i) The impugned judgment and order is quashed and set aside. Original Application Nos.771/1991 and 797/1991 are hereby allowed. We hold that the petitioners were entitled to pay-scale of Rs.1200-1800 from the date of their appointment.

(ii) We grant time of six months to the respondents from the date on which this judgment and order is uploaded to re-fix the pay and allowances payable to the petitioners and pay consequential monetary benefits to the petitioners. Needless to add that if the petitioners or some of them are getting pensionary benefits, even the quantum of pension shall be revised accordingly.

(iii) Rule is made absolute on the above terms with no order as to costs.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)

