

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.02.2019

PRONOUNCED ON :13.03.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And

THE HON'BLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.5457 to 5459 of 2017

and

W.M.P.Nos.5810 to 5812 of 2017

W.P.No.5457 of 2017:

- 1.P.S.Vinoth
- 2.Karthikesan G
- 3.Prabakaran K
- 4.Pachamuthu
- 5.Perumal E
- 6.Kumaran D
- 7.Raja
- 8.Sivaprakasam A
- 9.Najimuthin.A
- 10.Paramasivam
- 11.Paranthaman V
- 12.Bathinathan A
- 13.Mahendran K
- 14.Thirumurugan S
- 15.S.Selvi
- 16.A.Rajaselvam

.. Petitioners

Vs.

1. Union of India, rep. By
Secretary to Government,
Ministry of Defence, South Block,
New Delhi - 110 001.
2. Ordnance Factory Board,
Rep. By its Chairman,
No.10-A, S.K.Bose Road,
Kolkata - 700 001.
3. General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.

4. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Buildings, Chennai 600 104.

5. Saranraj S

6. Senthilkumar R

7. Govindan N.T.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 4th Respondent in its order dated 27.09.2016 made in O.A.No.879 of 2016, quash the same and consequently direct the Respondents open the Sealed Cover of the Petitioners in relation to their results in the recruitment process initiated vide Advertisement dated 15.10.2014 for the post of Machinist and give effect to the same and appoint the Petitioners as Machinists/Machinist (Examiner) Semiskilled from the due date with all consequential benefits flowing therefrom.

W.P.No.5458 of 2017:

1.T.Vijayan
2.M.Rajkamal
3.M.Sangeetha
4.M.R.Dhanalakshmi
5.R.G.Usha
6.Nithya
7.Manoj Kumar J
8.A.Augustin Jebadurai

.. Petitioners

V.

1.Union of India, rep. By
Secretary to Government,
Ministry of Defence, South Block,
New Delhi - 110 001.

2. Ordnance Factory Board,
Rep. By its Chairman,
No.10-A, S.K.Bose Road,
Kolkata - 700 001.

3. General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.

4. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Buildings, Chennai 600 104.

5.P.Amal Kumar

6.A.Ethiraj

.. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 4th Respondent in its order dated 27.09.2016 made in O.A.No.1365 of 2016, quash the same and consequently direct the Respondents to appoint the Petitioners as Machinists Semiskilled from the due date with all consequential benefits flowing therefrom.

W.P.No.5459 of 2017:

1.A.Manoj
2.G.Selvi
3.A.Edwin Charles
4.R.Dhivya
5.D.Eliyarajan
6.V.Gnanaiah
7.KummariParamesh
8.S.Mohamed Mansur Alikan
9.A.M.Balasubramanian
10.B.Sakthivel
11.A.Naushad Ali

.. Petitioners

V.

1.Union of India, rep. By
Secretary to Government,
Ministry of Defence, South Block,
New Delhi - 110 001.

2.Ordnance Factory Board,
Rep. By its Chairman,
No.10-A, S.K.Bose Road,
Kolkata - 700 001.

3.General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.

4.The Registrar,
Central Administrative Tribunal,
High Court Buildings, Chennai 600 104.

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 4th Respondent in its order dated 27.09.2016 made in O.A.No.1402 of 2016, quash the same and consequently direct the Respondents to appoint the Petitioners as Machinists Semiskilled from the due date with all consequential benefits flowing therefrom.

For Petitioners : Mr.Karthick Raja
For M/s.Menon, Karthick,
Mukundan and Neelakandan

For Respondents 1 to 3 : Mr.K.Seetha Ram, CGC
(all WPs)

For 4th Respondent : Mr.Tribunal

For RR 5 to 7 : No appearance
(W.P.5457/2017)

For RR 5 and 6 : No appearance
(W.P.5458/2017)

For R5 : No appearance
(W.P.5459/2017)

COMMON ORDER

M.VENUGOPAL, J.

Preamble:

The Petitioners have preferred the instant Writ Petitions before this Court seeking the following reliefs:

"W.P.No.5457/2017:

To call for the records of the 4th Respondent in its order dated 27.09.2016 made in O.A.No.879 of 2016, quash the same and consequently direct the Respondents open the Sealed Cover of the Petitioners in relation to their results in the recruitment process initiated vide Advertisement dated 15.10.2014 for the post of Machinist and give effect to the same and appoint the Petitioners as Machinists/Machinist (Examiner) Semiskilled from the due date with all consequential benefits flowing therefrom.

W.P.No.5458/2017:

To call for the records of the 4th Respondent in its order dated 27.09.2016 made in O.A.No.1365 of 2016, quash the same and consequently direct the Respondents to appoint the Petitioners as Machinists Semiskilled from the due date with all consequential benefits flowing therefrom.

W.P.No.5459/2017:

To call for the records of the 4th Respondent in its order dated 27.09.2016 made in O.A.No.1402 of 2016, quash the same and consequently direct the Respondents to appoint the Petitioners as Machinists Semiskilled from the due date with all consequential benefits flowing therefrom."

2.Writ Summary Facts:

2.1. According to the Petitioners, they are 'Trade Apprentices' possessing National Apprenticeship Certificate/National Trade Certificate (NAC/NTC) issued by National Council for Vocational Training (NCVT) coming under Ministry of Labour, Government of India, in the Turner Trade.

2.2. The 3rd Respondent Factory was established in the year 1965 and was under the direct control of the Ministry of Defence viz., the 1st Respondent. In earlier years, Trade and Grade structure in HVF was not appointed on any scientific pattern. Although this factory was modelled on Ordinance Factory Board (OFB) structure, there was no proper structuring of Trades and Grades and this had resulted in the evolution of unique and mixed pattern in the Factory.

2.3. The stand of the Petitioners is that the Employees were qualified in the Trades of 'Turner', Miller and Grinder etc. were also considered and appointed as 'Machinist'. But, in respect of other Ordinance Factories, Tradesmen were recruited separately in their concerned Trades. Because of the aforesaid peculiar position available in the 3rd Respondent Factory, pay anomalies arose which in turn lead to an Industrial unrest and ultimately lockout for 13 days. Later, the impasse was sought to be resolved and one Man Committee i.e. 'Agarwala Committee' was constituted to submit a Report on the 'Issues'. The Report taking cognizance of the peculiar position submitted its recommendations which were also accepted and implemented by the Respondents 1 and 2. Also, it was made clear that the recommendations would apply only to HVF, that too the Machinist Trade and not to any other trade or in any other Ordnance

Factory. The issue as to date of implementation of the Report is still pending.

2.4. The version of the Petitioners is that although the 3rd Respondent/Factory from the year 1980 came under the control of the 2nd Respondent/Board, hitherto recruitment process followed in the Machinist because of the unique situation prevailing in the Factory was continued. In this connection, as per Recruitment Rules of Industrial Employees in Group C and Group D in Ordnance Factories and Ordnance Equipment and Clothing Factories vide S.R.O.185 dated 01.11.1994 the qualification required is Matriculation with National Apprenticeship Certificate / National Trade Certificate (NAC/NTC) issued by National Council for Vocational Training (NCVT) coming under the Ministry of Labour in the relevant Trade. However, because of the peculiar position available in the 3rd Respondent/Factory, wherein the Trade of Machinist was a composite of 9 trades including Turner, persons holding the above certificates in Trades such as Turner, Miller etc. were also being considered for appointment as Machinist and the same was accepted and it was the consistent past practice for the last 50 years.

2.5. The Petitioners had averred that as per the Apprentices Act, the 3rd Respondent/Heavy Vehicles Factory, Avadi recruits 'Apprentices' every year for imparting 3 years training in its training school. Further, candidates with SSLC are inducted as fresh trainees for three years period and imparted training. Those students who possessed ITI qualification are recruited as 'Ex-ITI Apprentice' and given the training for one year period.

2.6. As a matter of fact, the induction of 'Apprentice' is in all the trades such as Turner, Miller etc. and on successful completion, they are issued with the National Apprenticeship Certificate (NAC) issued by NCTV, Ministry of Labour, Government of India. Previously, upon completion of such Apprenticeship Training, a seniority List of such Trade Apprentices would be maintained by Batch wise and on that basis, depending on 'Recruitment', they would be inducted into the semi skilled grade in the concerned Trades. As regards induction into the semi skilled grade in the 'Trade of Machinist' is concerned, a combined seniority of 'Trade Apprentices' Batch wise in Trades of Machinist, Turner, Grinder, Miller etc. were operated and now all eligible persons whether Trade Apprentice or not are to be considered only pursuant to an open market recruitment process competing with Outsiders.

2.7. It is represented by the Petitioners that during February 2011, the 3rd Respondent had advertised for filling up posts in the Machinist Trade and in the recruitment process,

persons holding NCTVT Certificate from the Turner Trade were appointed as Machinist similarly, many ITI Holders in the Turner Trades were appointed as Machinist and the details of the some of the Trade Apprentices possessing 'Turner NCTVT Certificate' and appointed as Machinist are as follows:

1.Duraimurugan	T.No.93360/10082
2.Kalidass	T.No.93374/10560
3.Senthil	T.No.93356/10075
4.Rajasingham	T.No.93355/10074
5.Sakthidasan	T.No.93348/10047
6.Barani	T.No.93350/10050

2.8. In fact, Outsiders who possessed NTC issued by NCVT were also appointed as Machinist and they are mentioned as under:

1.R.Muthukumar	T.No.69591/10354
2.K.Velmurugan	T.No.69560/10172
3.R.Dinesh Kumar	T.No.69561/10173
4.B.Raghu	T.No.69552/10131
5.V.Dineshkumar	T.No.69548/10119
6.M.Ganesan	T.No.69564/10182
7.A.Subramani	T.No.69581/10300

2.9. Indeed, some Petitioners who were permitted to participate in the Selection Process conducted in the year 2011 for appointment to the post of Machinists, but they were not successful and hence, they were not appointed. In the adjoining Factory, Avadi (adjacent to the 3rd Respondent) which was a Section of Heavy Vehicles Factory till the year 1995 and separated, a similar recruitment process was initiated as per Advertisement dated 18.02.2012 wherein NCTVT Certificate holders in the Turner were also selected and appointed as Machinist.

2.10. In this background, the 3rd Respondent issued an advertisement on 15.10.2014 for filling up post in various trades including that of Machinist. In the Machinist and Machinist (Examiner) Trades, 220 posts and 5 posts were advertised. The Petitioners 1 to 14 (in WP.No.5457/2017) who are possessing NCTVT Certificates from Trades such as Turner applied for the post of Machinist and the 15th Petitioner applied for the post of Machinist (Examiner) and they were called for written examination which they cleared on merits. Based on the formula of 1:1.25 for 220 posts, 318 persons who cleared the examination were called in the order of merit for the Trade test (practical) and the Trade test (practical) were held on 03.05.2015, 17.05.2015, 24.05.2015 and 31.05.2015.

2.11. The grievance of the Petitioner is that the 3rd Respondent/Factory in a sudden and drastic departure from the

practice followed for the last 50 years, refused to permit the Petitioners to participate in the Trade test (practical) on the premise that they do not possess requisite qualification in Machinist Trade. The Petitioners immediately made representation highlighting the past practice followed by the 3rd Respondent and the past instances where identically situated persons was appointed as Machinist. Moreover, the Engine Factory based on the recruitment notification dated 20.05.2014 had already recruited 28 persons as Machinist who possessed NCTVT in metal cutting trade such as Turner etc.

3. Petitioners' Contentions:

3.1. The Learned Counsel for the Petitioners submits that the Petitioners 1 to 15 (in WP.No.5457/2017) together filed O.A.No.754 of 2015 before the Tribunal praying for passing of an order by directing the Respondents therein to consider the Applicants for appointment to the post of semi skilled Machinist/Machinist (Examiner) by calling them for the Trade Test (practical) and if found fit in the recruitment process, appoint them as semi skilled Machinist/Machinist (Examiner) in the 3rd Respondent with all consequential benefits flowing therefrom. Likewise, the 16th Petitioner (in W.P.No.5457/2017) filed O.A.No.786 of 2015. As an interim relief, by way of an interim order dated 05.06.2015 and 12.06.2015 the 4th Respondent/Tribunal permitted the Petitioners to participate in the practical test but their prospects were directed to be kept in a sealed cover and the Petitioners took part in the practical test and performed well and their prospects were kept in a sealed cover.

3.2. The 4th Respondent/Tribunal, while passing the common order in O.A.No.754 of 2015 on 22.03.2016 observed that the One Man Committee's Report (Aggarwala Committee) would exemplify and demonstrate that the post of Machinist is an amalgamation of various trades and it is a 'Composite Trade' in the 3rd Respondent Factory. Further, the Tribunal opined that it could not see any rationale on the part of the Board in holding that the persons in the trade of Turner should not be allowed to be recruited for the post of Machinist and came to the conclusion that the Board's letter dated 06.01.2011 was to be reconsidered by the 2nd Respondent therein/ Ordnance Factory Board represented by its Chairman, Kolkata and after reconsideration in the light of the same, the candidature of the Applicants was to be considered and processed within a period of three months from the date of receipt of a copy of this order and accordingly, OAs were disposed of without costs.

3.3. The Learned Counsel for the Petitioners brings it to the notice of this Court that the Petitioners made

representations to implement the orders of the Tribunal and pending reconsideration of the matter, the 3rd Respondent/Factory issued a fresh Notification for filling up vacancies in Semi skilled Grades in various Trades including that of Machinist and Machinist Examiner. Further, as seen from the vacancy chart provided in the Notification dated 13.04.2016, it is seen that 187 vacancies were notified in the Machinist Trade and 11 vacancies in the Machinist Examiner Trade and these vacancies including the unfilled vacancies of around 90-95 from the last recruitment in which the Petitioners had applied for and participated.

3.4. The Learned Counsel for the Petitioners points out that the 2nd Respondent passed an order dated 11.05.2016 to the effect that upon reconsideration of the matter, it was found not feasible to permit the Petitioners possessing Turner Trade Certificate to participate for recruitment to the post of Machinist/Machinist Examiner in the 3rd Respondent Factory [which was duly communicated to the Petitioners].

3.5. The Learned Counsel for the Petitioners submits that the Petitioners jointly filed O.A.No.879 of 2016 before the Tribunal to set aside the impugned order dated 11.05.2016 passed by the 2nd Respondent and sought an order in directing the Respondents to consider the Applicants for appointment to the post of Semi-skilled Machinist/Machinist Examiner and they were found fit in the recruitment process appoint them as Semi-skilled Machinist/Machinist Examiner in the 3rd Respondent Factory with all consequential benefits flowing therefrom. After contest, the 4th Respondent/Tribunal passed a common order on 27.09.2016 in O.A.Nos.879, 1365 and 1402 of 2016 stating that it was of the view that 'Turner' is a 'Turner' and 'Machinist' is a 'Machinist' and also opined that it is not a competent body to decide this matter and granted liberty to the Respondents therein to proceed with the matter as per the procedure known to Law. Added further, the Tribunal was of the opinion that the Applicants (Petitioners) had not challenged the selection process, and ultimately dismissed the Original Applications.

3.6. The Learned Counsel for the Petitioners contends that the impugned order of the 4th Respondent/Tribunal is a perverse one and further that, the Tribunal had not assigned any reason for its conclusion that the Turner cannot be treated as a 'Machinist'.

3.7. The Learned Counsel for the Petitioners comes out with a plea that the 4th Respondent/Tribunal had failed to appreciate the substantive issue as to whether 'Turner' can be considered for the post of Machinist in HVF due to the peculiar nature of the post of Machinist available in the said factory was already

decided in O.A.No.754 of 2014 which became final and binding between the parties. Therefore, it is the contention of the Petitioners that the principle of res judicata would apply.

3.8. The Learned Counsel for the Petitioners projects an argument that the 2nd Respondent had lost sight of the fact that the Rule clearly prescribes possession of qualification in the relevant Trade for appointment to the post and the post in question is that of Machinist in HVF and not in any other Ordnance Factory.

3.9. The Learned Counsel for the Petitioners contends that as held by the Tribunal, the 'Machinist post' in HVF is a composite one and it is an amalgam of nine Trades including 'Turner' and it is different from the post of Machinist available in other Ordnance Factories and in such circumstances, for the post of 'Machinist' in Heavy Vehicles Factory, the qualification in the relevant Trade would not just be that of Machinist trade but any of the other eight Trades including Turner and therefore, the Petitioners are entitled to be considered for the post of Machinist.

3.10. The Learned Counsel for the Petitioners draws the attention of this Court that the 3rd Respondent/Factory was recruiting persons with relevant Trade qualifications for appointment to such composite posts of Machinists and for about 50 years, this past practice was followed, not de hors the Rules, but is in consonance with the Rules and therefore, the past practice cannot be ignored by the Respondents and the same is binding.

3.11. The Learned Counsel for the Petitioners submits that in S.R.O. 185 dated 01.11.1994, there is a power to relax any of the provisions of these Rules, if the Central Government is of the opinion that it is necessary or expedient to do so and in fact, Note 10 of the Rule clearly mentions that whether a qualification possessed by a person is equivalent to the prescribed qualifications for any post shall be determined by the Ordnance Factory Board and applying the said provision, taking into account the nature of the post of Machinist which is available in HVF which is distinct and different from the post of Machinists as available in other Ordnance Factories, the 2nd Respondent should have treated the qualification if Turner or other allied Trades which form part of the composite trade of Machinist in HVF as a valid qualification for recruitment to the unique post of Machinist in HVF.

3.12. The Learned Counsel for the Petitioners takes a plea that in the past, the 2nd Respondent/Ordnance Factory Board, Kolkatta had issued orders in regard to the recruitment to the

Semi-skilled Grade in Danger Building Works Trade and there is no ITI/NCVT trade Certificate in DBW or Chemical process worker trade. But the S.R.O. relating to the Danger Building Works Trade prescribes qualification in the relevant Trade. In reality, the 2nd Respondent through an order dated 06.11.2012, had directed the Trade Certificates in 13 other enumerated Trades were to be considered to be valid qualifications for recruitment to the D.B.W. Trade.

3.13. The categorical plea of the Petitioners is that as long as the Trade Certificate is relevant for the job recruitment, consideration of such allied Trades cannot be said to be de hors the Recruitment Rules and under these circumstances, there is no reason as to why a similar approach is not being adopted as in the case of Petitioners for recruitment to the unique post of 'Machinist' in 3rd Respondent's Factory.

3.14. The Learned Counsel for the Petitioners contends that the 4th Respondent/Tribunal had failed to appreciate that in the Engine Factory, Avadi (3rd Respondent), an adjoining Factory, which was carved out of the 3rd Respondent's Factory and governed by S.R.O.185 of 1994 is still recruiting Turners for the post of Machinists and three persons viz., R.Balaji, R.Sunitha Selvakumar and C.Kasturi, who were applicants in the earlier round of litigation in O.A.No.754 of 2014, were appointed subsequently as Machinists in Engine Factory, Avadi by an order dated 16.12.2005 and as such, the impugned order is an arbitrary and discriminatory one.

3.15. The Learned Counsel for the Petitioners emphatically points out that the Petitioners who were allowed to participate in the earlier recruitment process in 2011, initiated by the 3rd Respondent /Factory cannot deny them an opportunity.

3.16. The Learned Counsel for the Petitioners submits that although the Petitioners made an endeavour to enter the NCTVT Trade of Turner for the post of Machinist, the HVF online application form did not accept the Turner Trade and many of the Petitioners had also applied for recruitment in Machinist Trade clearly mentioning that they had obtained Trade Certificate is only in Turner Trade and they were later called for Written Examination as well as for the Practicals. Furthermore, the Applicants in O.A.No.754 of 2015 viz., R.Balaji at S.No.11; Kasthuri, at S.No.16 and Sunitha Selvakumari, at S.No.20 were appointed as Machinist Semi-skilled in Engine Factory despite the fact that they possess Trade Certificates in Turner Trade and the recruitment is governed also by the same SRO 185.

3.17. The Learned Counsel for the Petitioners strenuously takes a plea that the 4th Respondent/Tribunal had failed to take into account that consequent upon restructuring of the cadre in respect of the Industrial Employees, pursuant to the Sixth Central Pay Commission, a Draft SRO was prepared and circulated on 07.05.2015 and the Annexure thereto lists out the various Trades and the respective Educational and other Qualifications which are required for Direct Recruitment. In fact, Serial No.20 for the Machinist Trade, the qualification prescribed is NAC/NTC in Machinist/Turner/Miller/Operator advanced machine tool/CNC Programmer cum Operator and this only strengthens the contentions of the Applicants and in fact, expressly provides for consideration of allied Trades for the post of Machinist which all along been filled up on such lines.

3.18. In short, the plea of the Petitioners is that the prevailing SRO 185 dated 01.11.1994 does not in any manner prohibit the consideration of such allied Trades and the Chairman of the Ordnance Factory Board in the JCM III Level Meeting that took place on 14.06.2016 at OFB, Kolkatta announced as 'also the SRO of Industrial category is more than 20 years old and needs revision and fresh inputs and the same is under consideration of the Ministry of Defence, also Ministry of Skill Development and Entrepreneurship is being consulted for alignment of OFB's SRO with Government Policy.

3.19. The Learned Counsel for the Petitioners contends that the 5th Applicant in O.A.No.879 of 2016 (Senthilkumar) had applied simultaneously for the post of Machinist in the adjoining Factory viz., Engines Factory, Avadi, was later selected for the post of Machinist but in the Heavy Vehicles Factory, his candidature was rejected.

3.20. The Learned Counsel for the Petitioners points out that the Recruitment Notification dated 15.10.2014 advertised 224 posts out of which 95 vacancies were unfilled and these vacancies were later clubbed in the Notification dated 13.04.2016, wherein a total number of 187 vacancies were notified for Machinists and for one vacancy for Machinist Examiner. In fact, by means of an impugned order in O.A.No.754 of 2015, the Petitioners took part in the practical test and their prospects were kept in a sealed cover and pursuant to the Notification dated 13.04.2016, only 107 vacancies were filled up out of 187.

3.21. The Learned Counsel for the Petitioners cites the decision of the Hon'ble Supreme Court in N.Suresh Nathan and another V. Union of India and others, 1992 Supp (1) Supreme Court Cases 584 at special page 586 & 587 wherein at paragraphs 4 and 5, it is observed as follows:

"4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents Diploma-holders that the practice followed in the Department for a long time was that in the case of Diploma-holder Junior Engineers who obtained the Degree during service, the period of three years' service in the grade for eligibility for promotion as Degree-holders commenced from the date of obtaining the Degree and the earlier period of service as Diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents Diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

5. The Recruitment Rules for the post of Assistant Engineers in the P.W.D. (Annexure-C) are at pages 57 to 59 of the paper book. Rule 7 lays down the qualifications for direct recruitment from the two sources, namely, Degree-holders and Diploma-holders with three years' professional experience. In other words, a Degree is equated to Diploma with three years' professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers now called Junior Engineers. There are two categories provided therein - one is of Degree-holder Junior Engineers with three years' service in the grade and the other is of Diploma holder Junior Engineers with six years' service in the grade, the provision being for 50% from

each category. This matches with Rule 7 wherein a Degree is equated with Diploma with three years professional experience. In the first category meant for Degree-holders, it is also provided that if Degree-holders with three years' service in the grade are not available in sufficient number, then Diploma-holders with six years' service in the grade may be considered in the category of Degree-holders also for the 50% vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years' service in the grade required for Degree-holders according to Rule 11 as the qualification for promotion in that category must mean three years' service in the grade as a Degree holder and, therefore, that period of three years can commence only from the date of obtaining the Degree and not earlier. The service in the grade as a Diploma-holder prior to obtaining the Degree cannot be counted as service in the grade with a Degree for the purpose of three years' service as a Degree holder. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants Degree-holders that the rules must be construed to mean that the three years' service in the grade of a Degree holder for the purpose of Rule 11 is three years from the date of obtaining the Degree is quite tenable and commends to us being in conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the respondents. The tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the Department."

3.22. The Learned Counsel for the Petitioners relies on the decision of the Hon'ble Supreme Court in Union of India and others V. Alok Kumar reported in (2010) 5 Supreme Court Cases 349 at special page 372 & 373 wherein at paragraphs 64 to 66, it is observed as under:

"64. It is not opposed to any canons of service jurisprudence that a practice cannot adopt the status of an instruction, provided it is in consonance with law and has been followed for a considerable time. This concept is not an absolute proposition of law but can be applied depending on the facts and circumstances of a given case.

65. This Court in the case of Confederation of Ex-Service Men Associations and Ors. v. Union of India and Ors., [(2006) 8 SCC 699] was concerned with providing of Medicare /Medical aid to ex-servicemen and the scheme framed by the Government to provide ex-defence personnel medical services provided they paid "one- time contribution", was held not to be arbitrary and based on the practice followed earlier. In such circumstances, this Court held as under: (SCC p.417, para 35)

"In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised." (emphasis in original)

66. A practice adopted for a considerable time, which is not violative of the Constitution or otherwise bad in law or against public policy can be termed good in law as well. It is a settled principle of law, that practice adopted and followed in the past and within the knowledge of the public at large, can legitimately be treated as good practice acceptable in law. What has been part of the general functioning of the authority concerned can safely be adopted as good practice, particularly, when such practices are clarificatory in nature and have been consistently implemented by the concerned authority, unless it is in conflict with the statutory provisions or principal document. A practice which is uniformly

applied and is in the larger public interest may introduce an element of fairness. A good practice of the past can even provide good guidance for future. This accepted principle can safely be applied to a case where the need so arises, keeping in view the facts of that case. This view has been taken by different High Courts and one also finds glimpse of the same in a judgment of this Court in the case of Commissioner of Police V. Mohd. Khaja Ali (2000) 9 SCC 50."

3.23. The Learned Counsel for the Petitioners relies on the decision of the Hon'ble Supreme Court in State of Uttarakhand and others V. Kanhaya Lal, (2014) 14 Supreme Court Cases 388 at special page 389 wherein at paragraph 3, it is observed as follows:

"3. On a perusal of the SLP paper book, we are disturbed to note that pursuant to the orders of the learned Single Judge, the Additional Director of Education, Garhwal Division, Pauri, instead of investigating the aspect whether or not any other obstacles existed, has revisited the entire case and has virtually overruled the order passed by the learned Single Judge. Having perused the report/ order of the Additional Director of Education, Pauri dated 23.5.2008, it would be possible to view his action as contemptuous of the orders of the High Court. The learned Single Judge had directed for appointment to the post of Assistant Teacher (Language) LT Grade "unless there was some other impediment in selection". As we have already opined, the Additional Director of Education has not disclosed "any other impediment" and instead has merely reiterated the already articulated case of the State, which had not found favour with the High Court. It is palpably clear that the Additional Director of Education, Garhwal Division, Pauri, has contumaciously adorned itself with appellate powers over the decision of the learned Single Judge of the High Court. We shall desist from making any further directions, however, leaving it open to the respondent to initiate proceedings, if so advised."

3.24. The Learned Counsel for the Petitioners refers to the Common Order in O.A.Nos.754, 786, 797 & 798 of 2015 [filed by P.S.Vinoth and others) wherein a prayer was made to consider the Applicants therein for appointment to the post of Semi-skilled Machinist/Machinist (Examiner) by calling them for the Trade Test (Practical) and if found fit in the recruitment process, appoint them as semi-skilled Machinist/Machinist (Examiner) in the 3rd Respondent with all consequential benefits flowing therefrom and the Tribunal on 22.03.2016 at paragraph 8 had observed the following:

"8.... At the time of selection process, if other things being equal, trained apprentices shall be given preference. As such the ratio decidendi of the said judgment is only to the aforesaid fact and nowhere it is stated that a person having qualification in the trade of Turner should not be considered for the post of Machinist. In the light of the above finding the said letter dated 06.01.2011 is analyzed. It is glaringly clear that there are misconceptions on the part of the Board in construing the purport of the judgment of the Hon'ble Madras High Court and because of that the Board deviated from the erstwhile practice of allowing even Turners to participate in the selection process for the post of Machinist in the 3rd Respondent factory. Over and above that, the learned counsel for the applicant would draw out attention to the report of the One Man Committee, namely, Aggarwala Committee of 1972. An expert from it would be relevant:

"5.13 Prima facie it may appear that the grade structure in respect of Machinists, as arrived at, based on the job content, is not at par with the existing accepted grade structure of Machinist as per accepted Trade Specifications, but it has to be read in this instance with the job content of Machinist as elaborated above vis-a-vis Job content of existing Machinists in accordance with accepted Trade Test Specifications. Further, the same has got to be seen in the light of the fact that higher trades viz., Millers, Turners, Borers, Jig Borers, Markers, Tool Setters, Tool Makers, etc., have a three tier accepted grade structure have also been amalgamated in the trade of

Machinists in the process of rationalisation already effected at HVF thus evolving a composite trade.

24.2 In respect of Machinists who comprise a composite trade arrived at after rationalisation of various other trades viz: Millers, Borers, Turners, Grinders, Jig Borers, Machinists, Markers, Tool Setters, Tool Markers, etc. The Committee's findings are that the job content at HVF Avadi falls into a grade structure within the existing gamut of scales although slightly different from that at present applicable for the Machinists.

25.2 In respect of the Machining Trade it is seen that at HVF, following 9 trades have been amalgamated into one single trade of Machinist for better flexibility. These are:

1. Turner
2. Miller
3. Grinder
4. Jig Borer
5. Borer
6. Marker
7. Tool Setter
8. Tool Maker
9. Machinist"

and opined that it could not see any rationale on the part of the Board in holding that the persons in the trade of Turner should not be allowed to be recruited for the post of Machinist and the 2nd Respondent/Ordnance Factory Board's letter dated 06.01.2011 and after reconsideration, the candidature of the Applicants were to be considered and processed within a period of three months from the date of receipt of a copy of this order.

3.25. The Learned Counsel for the Petitioners submits that the Petitioners in O.A.Nos.754, 786, 797 & 798 of 2015 have possessed certificates of Turner Trade and there are various trades and they applied for the post of Machinist Semi-skilled and they cleared the written examination, but they were not permitted to take the practical test.

3.26. The Learned Counsel for the Petitioners points out that the Petitioners had filed O.A.Nos.879 of 2016, 1365/2016 and 1402 of 2016 on the file of the 4th Respondent/Tribunal and they sought a relief to set aside the impugned order dated

11.05.2016 issued by the Ordnance Factory Board, Kolkata and resultantly direct the Respondents to consider them for appointment to the post of semi-skilled Machinist/Machinist (Examiner) and if found fit in the recruitment process appoint them as Semi Skilled Machinist/ Machinist Examiner in the 3rd Respondent/Heavy Vehicles Factory, Avadi, Chennai and the Tribunal on 27.09.2016 had observed that the Applicants were directed to participate provisionally in the selection process subject to the outcome of the OAs and the results of the examination were kept in sealed cover and further, the Tribunal had observed that if the results of the Applicants are kept in sealed cover and it was to be opened and Applicants results can be published and as per the results, the Respondents are at liberty to proceed with the matter. The Tribunal had observed that 'Turner' is a 'Turner' and 'Machinist' is a 'Machinist' and dismissed the Original Applications. In fact, the Tribunal had observed in the order dated 27.09.2016 that the Applicants had not challenged the selection process.

3.27. The Learned Counsel for the Petitioners contends that as per S.R.O.185 dated 01.11.1994 (In respect of Industrial employees in Group C and Group D in Ordnance Factories and Ordnance Equipment and Clothing Factories), the Ordnance Factories Group C and Group D Industrial Posts Recruitment Rules, 1994, Serial No.8, it is mentioned as under:

"National Council of Trades for Vocational Training Certificate in the relevant trade failing which by ITI or equivalent Diploma certificate holder."

3.28. The Learned Counsel for the Petitioners points out that there is no post as 'Turner' and that the letter of the 2nd Respondent in Reference No.570/A/I(PT)/54/Vol. IV/294 dated 06.01.2011 in respect of 'Recruitment of Ex-Trade Apprentices in OFs' by referring to the OFB letter No.570/A/I(PT)/54/Vol.IV/ 294 dated 24.11.2010, reads as under:

"Vide letter under reference, the Factories were requested to keep in abeyance all the recruitment actions/ processes to the post of Industrial Employees (Semi-Skilled Tradesmen) where ex-trade apprentices of Ordnance Factories have been considered or which may be otherwise at variance from the direction contained in SLP(C)No.21454 of 2008 of the Hon'ble Supreme Court of India and WA(MD). No.316 of 2007 of the Hon'ble Madurai Bench of Madras High Court.

It has since been decided that :-

(a) Recruitment action involving only outside candidates through open advertisement/ Employment Exchange may be processed and finalized by carrying out selection strictly on relative merit.

(b) Cases in which recruitment action is yet to be initiated or selection is yet to be completed will be processed in accordance with revised procedure pursuant to Hon'ble Supreme Court Judgment on the subject annexed herewith.

(c) In case of recruitment process for which selection has been completed before the date of Hon'ble Supreme Court Judgment, further necessary action may be taken.

This issues with the approval of the DGOF & Chairman/OFB."

3.29. The Learned Counsel for the Petitioners refers to the Report of One Man Committee on job classification for Industrial Employees in HVF, Avadi, Madras (3rd Respondent). Also, the Learned Counsel for the Petitioners refers to R.Balaji, Kasthuri and Sunithaselvakumari R (11, 16 and 20th Applicants in O.A.No.754 of 2015) and brings it to the notice of this Court that all of them are Turners and that they were all appointed in Engine Factory.

3.30. The Learned Counsel for the Petitioners draws the attention of this Court that one P.S.Vinoth and 18 others filed O.A.No.879 of 2016 on the file of the 4th Respondent/Tribunal and in para (e) of the Application, it was averred as follows:

"e.It is also submitted that the 2nd Respondent has lost sight of the past practice which has been followed by the Department. The contention of the Respondent that any past practice contrary to the Recruitment Rules, is of no value, is fallacious. The past practice adopted in the 3rd Respondent Factory is with reference to the ground reality existing in the 3rd Respondent factory, namely that the Machinist Trade is not like those found in other Ordinance Factories, but in fact is a composite Trade comprising of nine trades including that of Turner. The 3rd Respondent taking into account this factual admitted position, has been recruiting persons with relevant Trade qualifications for appointment to such composite posts of

Machinist. This past practice, which has been followed for about 50 years, is not dehors the rules, but is in consonance with the Rules. Past Practice, in such circumstances, is binding on the Respondents and the same cannot be ignored."

Also, in paragraph (h) of the O.A.No.879 of 2016, the Petitioners therein had, among other things, mentioned as under:

"h. In the instant case, in S.R.O.185 of 1994, there is a power to relax any of the provisions of these Rules, if the Central Government is of the opinion that it is necessary or expedient to do so. Likewise, Note 10 of the Rule clearly states that whether a qualification possessed by an individual is equivalent to the prescribed qualification for any post shall be decided by the Ordnance Factory Board. Applying the said provision, taking into account the nature of the post of Machinist which is available in H.V.F. which is distinct and different from the post of Machinists as available in other Ordnance Factories, the 2nd Respondent ought to have treated the qualification of Turner or other allied Trades which form part of the composite trade of Machinist in H.V.F. as a valid qualification for recruitment to the unique post of Machinist in H.V.F. Such an action would have been in consonance with the Rules and giving full effect to the Rules and not denying the valuable constitutional rights under Article 16 to persons applying for public employment."

3.31. The Learned Counsel for the Petitioner submits that the Detailed Advertisement dated 15.10.2014 inviting Online Applications for filling up the following post of Machinist etc. does not speak about the 'Turner' post and that the fresh Recruitment Notification dated 13.04.2016 of the 3rd Respondent/Factory speaks of 'Circulation of vacancies for recruitment of Industrial Employees in Semi Skilled Trade and Non-Industrial Employees' and that in Serial No.5, number of vacancies mentions that 'Examiner-Machinist' wherein UR - 5, OBC - 4, SC - 2 and totally 11 vacancies and number of vacancies in Serial No.4 mentions that 'Machinist' wherein UR - 62, OBC - 86, SC - 36, ST - 3 and totally 187 vacancies.

3.32. The Learned Counsel for the Petitioners refers to the order of the 3rd Respondent/Heavy Vehicles Factory dated 11.05.2016 wherein at paragraphs 10 to 12, it is mentioned as under:

"10. WHEREAS, the Recruitment to the Industrial cadre had to be governed by these Statutory Rules only. In these rules, the recruitment to these individual trades and their conditions of eligibility is specifically prescribed. In fact in the SRO 185 of 1994 there exists specific qualification for the Turners and other relevant trades. Further in the above SRO there is no "save otherwise clause" in respect of HVF or even any exceptions to recruit in other trades other than the qualified trades which has been prescribed. In the absence of any such clauses, recruiting candidates from any other trade who do not have the requisite qualification will be in violation of the SRO.

11. WHEREAS, as per the OF Board instructions No.570/A/I/(PT)/ 54/Vol.IV/294 dated 06.01.2011, Para 6(b) of Annexure, the educational qualification for direct recruitment for the post of semi skilled tradesmen listed in the Annexure of the existing SRO is NAC/NTC issued by NCVT in the relevant trade. Hence, an applicant will be eligible as a candidate for a particular semi skilled trade provided he/she possessess the above qualification in that trade only i.e., no interchange of trade is permissible. As directed by Hon'ble CAT, the 2nd Respondent has reconsidered its' letter dated 06.01.2011, and has come to the conclusion that any modification or amendment to the said letter (specifically in respect of HVF or otherwise) would be in violation of the existing SRO.

12. AND WHEREAS, considering the applicants' candidature at this stage would cause injustice to those similarly placed candidates who could have also applied and appeared for the written examination but did not misrepresent their original qualification of Turner as Machinist to avail the opportunity to write the examination."

4.Submissions of Respondents 1 to 3:

4.1. Per contra, the Learned Counsel for the Respondents 1 to 3 that the 3rd Respondent invited Online Application as per advertisement dated 15.10.2014 for filling up several industrial trades in semi-skilled grade in the pay band of Rs.5,200 - 20,200/- and grade pay Rs.1,800/- at Heavy Vehicle Factory (Ministry of Defence, Avadi) from the citizens of India specifying the requisite qualification i.e., Matriculation or equivalent + National Apprenticeship Certificate (NAC) / National Trade Certificate (NTC) issued by National Council for Training in the Vocational Trades (NCTVT) and based on the said Notification, the Petitioners submitted their Applications to the post of Semi-Skilled Machinists even though they were possessing NTA/NTC qualification in 'Turners' Trade.

4.2. The Learned Counsel for the Respondents 1 to 3 points out that the Petitioners appeared for written examination and qualified for the Trade test and at the time of document verification before the Trade test, the 3rd Respondent found that the Petitioners had submitted their application Online by misrepresenting the fact that they possess NTC/NAC in Machinist Trade while they possess the NTC/NAC qualification in the Turner Trade and hence, they were not permitted to participate in the practical examination/trade test. Therefore, they filed O.A.No.310/00754/2015 before the 4th Respondent/Tribunal and on 05.06.2015 the Tribunal permitted them to participate in the practical examination/trade test and that their results were ordered to be kept in a sealed cover until further orders.

4.3. The Learned Counsel for the Respondents 1 to 3 draws the attention of this Court that the Tribunal in O.A.No.754 of 2015 on 22.03.2016 had directed the 2nd Respondent to consider the report of One Man Committee pertaining to amalgamation of various trades into a composite trade in the 3rd Respondent/Factory and after such reconsideration, the Petitioners' candidature were to be considered and processed within three months.

4.4. The Learned Counsel for the Respondents 1 to 3 points out that on examination, the Competent Authority noted that the method of recruitment in the post of Industrial Employees in Ordnance Factories and Ordnance Equipment and Clothing Factories and other offices/establishments is governed by existing SRO.185/1994 and that any recruitment process should comply with the provisions of SRO and that the retrospective application of a Committee's Report from an earlier period will be in negation of statutory provisions.

4.5. The Learned Counsel for the Respondents 1 to 3 contends that on examination of Trade test specifications for Machinist and Turner, it is reveal that they are distinct trades and specifications are entirely different according to the Ordnance Factories Group 'C' and Group 'D' Industrial Post Recruitment Rules, 1994 (SRO 185 dated 01.11.1994) the educational qualification required for semi-skilled workmen is National Council of Trades for Vocational Training Certificate in the relevant trade and inasmuch as the Petitioners, who do not possess NTC/NAC in the relevant trade, i.e. Machinist Trade, they were found to be unqualified for the Machinist trade and in fact, the 3rd Respondent through proceedings dated 11.05.2016 passed a detailed order rejecting the Petitioners applications.

4.6. The Learned Counsel for the Respondents 1 to 3 submits that the Petitioners applied for vacancies of Machinist/Examiner Machinist Semi Skilled published during the year 2016 by the 3rd Respondent Factory and that the Petitioners were not eligible to apply for the Machinist/Examiner Machinist vacancy as per the Recruitment Rules (vide SRO 185 of 1994). Also that, it is represented on behalf of the Respondents 1 to 3 that interchanging of trade is not permissible and since the Petitioners did not possess the requisite educational qualification in the trade of Machinists viz., NAC/NTC in the trade o Machinist as per the Rules of the Recruitment, they were not permitted to participate in the Trade.

4.7. It is the stand of the Respondents 1 to 3 that although the 3rd Respondent/Factory was under Ministry of Defence initially, it was merged with the Ordnance Factory Board only during 1980 and once the Factory came under the Ordnance Factory then all Rules and Regulations framed by the 2nd Respondent shall be applicable to the 3rd Respondent/Factory. As such, the Petitioners contention that there was no proper structuring of Trades/Grades in the 2nd Respondent Organisation is incorrect.

4.8. The Learned Counsel for the Respondents 1 to 3 emphatically takes a plea that Turner post is not available in the 3rd Respondent/Factory and in regard to the plea of the Petitioners that the amalgamation of various operations like Turning, Milling, Grinding, Boring, Jigboring, Tool Setting, Tool Making, Tool Cutting and marking into a composite trade as Machinist is not supported by any specific Statutory Orders issued by the 2nd Respondent or the 3rd Respondent and in other Ordnance Factories, tradesmen were recruited separately in their concerned Trades. That apart, previously Ex-trade Apprentices only from Ordnance Factories were appointed as skilled workman in Ordnance Factories as per the 2nd Respondent instruction dated 15th/20th October, 1999 and accordingly, Ex-trade Apprentices from both Turner/Machinist were considered to facilitate appointment

of the Ex-trade apprentices of 3rd Respondent/Factory and the same was subject matter of challenge in W.A.(MD).No.316 of 2007 in W.P.No.4500 of 2007 and on 14.12.2007 this Court had observed the following:

"13. On the careful reading of the decisions of the Apex Court, cited by both the counsel, and also the records we deem it appropriate to follow the principles laid down in U.P. State Road Transport Corporation and another -Vs- U.P. Parivahan Nigam Shishukhas Berozgar Sangh and others 1995 (2) SCC 1, and Excise Superintendent, Malkapatnam, - Vs- K.B.N. Visweswara Rao, 1996(6) Supreme Court case 216, and hold that the requisitioning department should call for the list of eligible candidates from employment exchange and the apprentice department or undertaking or establishment shall invite candidates by publication in newspapers and other media, and then consider the cases of all the candidates, who have applied, and, in the selection process, other things being equal, trained apprentices shall be given preference. The said procedure shall be adopted on future occasions and the appointments made hitherto shall stand unchanged."

4.9. The Learned Counsel for the Respondents 1 to 3 draws the attention of this Court that the 2nd Respondent filed S.L.P.No.21454 of 2008 before the Hon'ble Supreme Court and the same was dismissed. Hence, the 2nd Respondent issued an instruction dated 06.01.2011 stating that all the appointments in the industrial trades should be made only from the open market wherein all Ex-trades apprentices have to compete with the outside candidates. After the issuance of O.F. Board instructions dated 06.01.2011, it is envisaged that no interchanging of trades is permissible and the candidates for direct recruitment in the Machinist trade must have NCTVT certificate in the relevant trade.

4.10. In this connection, the Learned Counsel for the Respondents 1 to 3 refers to O.F. Board Instruction dated 06.01.2011 which reads as under:

"6(B). The educational qualification for direct recruitment to the post of semi-skilled tradesman listed in Annexure 'A' of the existing SRO is NCTVT in the relevant trade failing which by ITI or equivalent Diploma/Certificate. Hence, an applicant

will be eligible as a candidate for a particular semi-skilled trade provided he/she possesses the above said qualification "in that trade only" i.e., no inter-changing of trade is permissible. The syllabus for written test for a trade will be broadly as that of the NCTVT examination syllabus for that trade. The syllabus for trade test (Practical) will be as per Trade Test Specification of the semi-skilled grade of the relevant trade."

4.11. The Learned Counsel for the Respondents 1 to 3 strenuously contends that the 3rd Respondent had followed the aforesaid instructions dated 06.01.2011 in all later recruitments and when the goal posts, were clearly drawn by means of framing of the Statutory Rules and Administrative Instructions, then, the Petitioners cannot ask for changing/shifting of the procedure to be followed, which will be in violation of 'Statutory Rules'.

4.12. The Learned Counsel for the Respondents 1 to 3 submits that at the time of submission of 'Agarwala Committee Report', Heavy Vehicles Factory was manufacturing 'Battle Tanks' in collaboration with M/s.Vickers Armstrong, UK and later in the last 40 years, this product mix was changed to T-72, T-90, Bridge Laying Tank and TRAWL manufacture, largely consisting of technology of Russian origin and MBT ARJUN of indigenous technology etc. Besides these, the recruitment was also systematized based on skill requirement governed by Statutory Rules and that the manufacturer is to employ the suitable/relevant trade suiting to his final product requirement rather than continuing with trades where requirement does not exist. Furthermore, it is the stand of the Respondents 1 to 3 that Agarwala Committee Report has no relevance to the recruitment of Machinist in 3rd Respondent Factory.

4.13. The Learned Counsel for the Respondents 1 to 3 contends that the Petitioners had not challenged the SRO of the Respondents and that the 3rd Respondent/Factory published a direct recruitment involving outside candidates through open advertisement on 15-20 January, 2011 which was forwarded to DAVP on 24.12.2010 and as per existing instructions available at that time all Ex-trade Apprentices who completed their apprenticeship training from 3rd Respondent Factory were called to participate in the open recruitment and as such, Turners, Millers, Grinders were permitted to participate in the written examination for Machinist and the employment notice published in February, 2011 referred to by the Petitioners is a corrigendum to the earlier advertisement.

4.14. At this stage, it is represented on behalf of the Respondents 1 to 3 that the 2nd Respondent issued instruction dated 06.01.2011 which clearly mentioned about the mandatory facts that ought to be followed for direct recruitment and since the 3rd Respondent already published the advertisement and commenced receiving applications from outside candidates and also prepared a list of Ex-trade Apprentices who will be allowed to participate in the written examination, it was too late to implement the 2nd Respondent's instruction and this was done on the ground that any change of advertisement condition for recruitment after publication is not permissible and that the candidates possessing NAC/NTC in trades other than Machinist could have cleared the written examination and selected for appointment.

4.15. The Learned Counsel for the Respondents 1 to 3 takes a stand that the 3rd Respondent is bound by the instructions of the 2nd Respondent in respect of direct recruitment of Industrial Employees in the post of Semi Skilled Tradesmen and the instructions are followed scrupulously and as such, the 3rd Respondent's action in rejecting the candidature of candidates holding NAC/NTC in Turner trade including the Petitioners who had applied/appeared for vacancies of Machinist Semi-skilled advertised on 15.10.2014 is as per the Recruitment Rules.

4.16. The Learned Counsel for the Respondents 1 to 3 contends that the 3rd Respondent/Factory requires only Machinist due to large number of installations of CNC Machines and therefore, the 3rd Respondent/Factory had only advertised for the post of Machinist and accordingly candidates possessing only NAC/NTC in the trade of Machinist alone are eligible to be selected for the post of Machinist Trade. Further, the Tribunal in its common order dated 27.09.2016 in O.A.No.879 of 2016 had clearly pointed out that the educational qualification of Turner is entirely different from the educational qualification of Machinist and they could be treated as one and the same.

4.17. In short, it is the submission of the Respondents 1 to 3 that the Petitioners are not entitled to be considered with the post of Machinist. The Learned Counsel for the Respondents 1 to 3 proceeds to point out that a candidate who is possessing NAC/ NTC in Machinists shall be able to operate turning, grinding and boring machines whereas a Turner shall be able to operate only Turning machines and thus, the Respondents are having flexibility in job allocation to Machinists and that some of the candidates will be trade tested for Turning operations, some of them will be trade tested for grinding operations and some of the candidates will be trade tested for milling operations or some may be trade tested for a combination of these operations depending on the nature of the jobs given.

However, it is reiterated on the side of the Respondents 1 to 3 that qualification admissible in the relevant trade only is to be taken into account. Apart from that, the 3rd Respondent had designed the online application in such a way that, if a candidate desires to apply for the post of Machinist, the default educational qualification would be shown as Machinist and that the candidate cannot enter any other data and the candidate is to mandatorily possess the Requisite qualification in 'NAC/NTC in the Trade of Machinist', if he intends to apply for the same. Inasmuch as the Petitioners are possessing educational qualification of NAC/NTC in the 'Turner Trade', as such, they are not qualified for the post of Machinist (SS) grade as per SRO.

4.18. Lastly, it is the submission of the Learned Counsel for the Respondents 1 to 3 that the applicants are not eligible for the post of Machinist as they do not possess the requisite educational qualification of Machinist as mandated under SRO 185 of 1994 as per Tribunal's order dated 27.09.2016 in O.A.No.879 of 2016 between P.S.Vinoth and others V. Union of India coupled with other two Original Applications and in consonance with the Statutory Rule for recruitment for IEs (viz., SRO 185/1994).

4.19. The Learned Counsel for the Respondents 1 to 3 points out that the 2nd Respondent had issued Clarification Letter dated 2.10.2016 inter alia mentioning that '... It is evident from EFA reply that the decision of EFA to allow Turners to appear for recruitment exam for the post of Machinist is incorrect..' and this will clear the midst, cloud and shroud if any, in the subject matter in issue.

5. This Court has heard the Learned Counsel for the Petitioners and the Learned Counsel for the Respondents 1 to 3 and noticed their contentions.

An Appraisal:

6. In so far as the plea of 'Res Judicata' taken on behalf of the Petitioners to the effect that the Tribunal in O.A.Nos.754, 786, 797 and 798 of 2015 on 22.03.2016 had observed that the post of Machinist is an amalgamation of various trades and it is a 'Composite Trade' in the 3rd Respondent/Heavy Vehicles Factory, Avadi etc., are binding between the Inter se parties, this Court is of the considered view that the Respondents 1 to 3 are bound to follow the instructions of the O.F. Board in No.570/A/I(PT)/54/ Vol.IV/294 dated 06.01.2011 and also the Recruitment Rules of SRO 185 of 1994 dated 01.11.1994 and the Clarification issued by the 2nd Respondent dated 21.09.2016 [subsequent to the Tribunal's findings/observations made in O.A.Nos.754, 786, 797 & 798 of 2015 dated 22.03.2016] in stricto sense of the term. As

such, the plea of 'Res Judicata' taken on behalf of the Petitioners cannot be countenanced, in the eye of Law.

7. In short, by virtue of the Clarification Letter of the 2nd Respondent/Ordnance Factory Board dated 21.09.2016 unerringly points out that the decision of the Engine Factory, Avadi to allow Turners to appear for recruitment exam for the post of 'Machinist' is an incorrect one and when a mistake/error was committed by the Engine Factory, there is no mandatory requirement that the 3rd Respondent is to follow the same. Further, the contents of the Letter dated 21.09.2016 of the 2nd Respondent/Ordnance Factory Board are quite 'explicit' and admit of no 'exceptions', in the considered opinion of this Court.

8. In regard to the plea of the Petitioners that the 2nd Respondent/Ordnance Factory Board had lost sight of the past practice which was followed by the Department, it is to be pointed out that the 3rd Respondent/Heavy Vehicles Factory, Avadi had followed the instructions of the 2nd Respondent/Ordnance Factory Board, Avadi dated 06.01.2011 in all later recruitments and when clear-cut Statutory Rules and Administrative Instructions are made and issued, which govern the present case, then, to take a plea by the Petitioners to follow the settled past practice is nothing, but a violation of Statutory Rules and Procedure, besides the same will deny/deprive the legitimate aspirations of the Genuine, Bona fide, Qualified Machinists, who are eligible under the Statutory Rules to compete for the post of Machinists. As such, the action of the 3rd Respondent, in rejecting the candidature of the candidates holding NAC/NTC in Turner Trade (including the Petitioners), who applied/ appeared for Machinist Semi skilled vacancies, is well inconformity with the Statutory Rule requirement, as opined by this Court. In any event, the Petitioners cannot lay a claim on the past practice to be followed as a rightful precedent, especially in the teeth of Clarification issued by the 2nd Respondent dated 21.09.2016.

9. Be that as it may, on a careful consideration of respective contentions and considering the fact that the Recruitment Rules of SRO 185 of 1994 dated 01.11.1994 in a crystalline fashion specifies that a candidate ought to be in possession of a qualification in the relevant Trade and as such, for the post of Machinist Semi-skilled Trade, the requisite qualification being NAC/NTC in the Trade of Machinist only and also keeping in mind of a primordial fact that the Petitioners are possessing the qualification of NAC/NTC in the 'Turner Trade', this Court comes to an inescapable conclusion that they are not entitled to be considered for the post of Machinists (SS) grade. Looking at from that angle, the views taken by the 4th Respondent/Tribunal in dismissing the O.A.Nos.879, 1365 and 1402 of 2016 especially by observing that the 'Turner' is a

'Turner' and 'Machinist' is a 'Machinist' and that it is not a competent body to decide this matter etc. are free from any legal infirmities. Resultantly, the Writ Petitions fail.

10. In fine, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. Secretary to Government,
Union of India
Ministry of Defence, South Block,
New Delhi - 110 001.
 2. Ordnance Factory Board,
Rep. By its Chairman,
No.10-A, S.K.Bose Road,
Kolkata - 700 001.
 3. General Manager,
Heavy Vehicles Factory,
Avadi, Chennai - 600 054.
 4. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Buildings, Chennai 600 104.
- +3 ccs to M/s.Menon, Karthik,
Mukundan & Neelakantan, Advocate, S.R.No.23671
- +1 cc to Mr.K.Seetha Ram, Advocate, S.R.No.23731

VD(CO)
SSM(01/04/2019).

ORDER in
W.P.Nos.5457 to 5459 of 2017