

(1999) 07 SC CK 0001

In the Supreme Court Of India

Case No : C.A. No. 7314 of 1997 etc. etc.

Union of India and Others

APPELLANT

Vs

Anil Kumar and Others

RESPONDENT

Date of Decision : 13-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39
Technical Cadre Recruitment Rules, 1995 — Rule 6(3), 8(1)

Citation : AIR 1999 SC 2229 : (1999) AIRSCW 2264 : (1999) 4 JT 502 : (1999) 4 SCALE 61 : (1999) 5 SCC 743 : (1999) 3 SCR 835 : (2000) 2 SLJ 129 : (1999) 6 Supreme 50 : (1999) 3 UPLBEC 1799

Hon'ble Judges : R.P. Sethi, J;K. Venkataswami, J

Bench : Division Bench

Advocate : C.S. Vaidyanathan, Additional Solicitor General, V.C. Mahajan, Raju Ramachandran, V.C. Mahajan, Shiv Ram, K.P.G. Kutty, T.A. Khan, Anubha Jain, A.K. Sharma, Anil Katiyar, Makarand D. Adkar, S.D. Singh, Vishwajit Singh and S. Ravindra Bhat, for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Sethi, J.—Claims, rival claims and counter claims of the Senior Scientific Assistants (Junior Grade) in the pay scale of Rs. 1640-2900 the Assistant Foremen in the grade of Rs. 2000-3200 and Chief Draughtsman in the junior grade of Rs. 2000-3200 in the Aeronautical Development Establishment (ADE), Electronics and Radar Development Establishment (EARDE) and Gas Turbine Research Institute (GTRI) in the Defence Research and Development Organisation (DRDO) before implementation of DRTC are sought to be settled in these appeals which arise out of the orders passed by the Central Administrative Tribunals of Bangalore and Bombay Benches.

2. Appellants in Civil Appeal Nos. 7316-7317/97 had filed OAs 2001 & 2041/95 in the Central Administrative Tribunal, Bangalore Bench , praying for the issuance of direction to declare that their inclusion as Senior Scientific Assistants in the pay scale of Rs. 1640-2900 appointed upto 25-8-1995 in the grade IV of the DRDO

Technical Cadre Research Recruitment Rules was arbitrary and discriminatory. They prayed for a further direction to the respondents to include all such SSAs also in grade II of category III alongwith Foremen and SSAs (senior grade) in pay-scale of Rs. 2375-3500 and for granting them all the consequential benefits. The applications are shown to have been filed on behalf of the Scientific Workers Association which was claimed to be the recognised association by the Government of India.

3. Civil Appeal No. 7315/97 has also been filed by and on behalf of the Scientific and Technical Workers Association through Shri P.M. Choudhary against the judgment and order of the Central Administrative Tribunal, Bangalore Bench, passed in O.A. 2311/95 dated 19-8-1996. The aforesaid Original Application was filed by the Assistant Foremen in the pay-scale of Rs. 2000-3200 serving in the Defence Research and Development Organisation. They had been brought over to the newly designated level of Senior Technical Assistant (STA) as per the Defence Research and Development Organisation Technical Cadre Recruitment Rules, 1995 (DRTC Rules 1995). Their plea was that their placement at the level of STA in the scale of pay of Rs. 1640-2900 alongwith Senior Scientific Assistants (SSAs), Chief Draughtsman (COM), Chargeman, Grade-I, (CM-I) and Draughtsman Grade-I (DM-I) was arbitrary and unconstitutional. They specifically challenged Rule 6(3)(b) of the DRTC Rules, 1995 which had placed them en bloc junior to the incumbents of the erstwhile cadre of Chief Draughtsman and Senior Scientific Assistants while determining their seniority in the new grade of STA. They prayed for their placement at a level higher than that of the SSA, Chargeman Grade-I, Draughtsman Grade-I by assigning a pay-scale either equivalent to or higher than the scale in which they were drawing pay as Assistant Foremen. Their application was disposed of by the Tribunal holding that the Rule 6(3)(b) of the DRTC Rules, 1995 in so far as it sought to place the Assistant Foremen en bloc junior to CDMs in the scale of pay of Rs. 2000-3200 and SSAs in the scale of pay of Rs. 1640-2900 was discriminatory and liable to be struck down. The Tribunal further directed the Department to amend Rule 6(3) (b) of the DRTC Rules, 1995 to provide that the inter se seniority of the incumbents of the posts of CDMs, SSAs and also Assistant Foremen shall be drawn on the basis of the length of their regular service in their original relative seniority in such grades. It was further directed that the applicants therein be ranked en bloc senior to the incumbents of the posts of Draughtsman (Grade-I) and Chargeman Grade-I. Directions for promotion from the level of the STA to the Technical Officer (A) was also ordered to be carried out.

4. Civil Appeal No. 7314/97 is an appeal filed by the Union of India against the orders passed by the Central Administrative Tribunal, Bangalore Bench, in Original Application No. 2311/95 quashing Rule 6(3)(b) of the DRTC Rules, 1995.

5. Civil Appeal Nos. 3338/96 and 3339/96 have been filed against the orders of the Central Administrative Tribunal, Bombay Bench, by which various applications filed by the Scientific Staff Association and its Members were dismissed with the

observation that "the question of relativities in the pay-scale of different cadres, in the present case between technical and scientific cadres of the DRD and DGI is essentially a matter for expert bodies and even after implementation of the award, if there are any disputes still to be resolved, they are required to be resolved by making appropriate representations to the Vth Pay Commission which is at present going into the question of revision of pay-scale of Central Government staff." The petitioners had made similar prayers projecting the grievances of the SSAs (Junior Grade) as were considered and noticed by the Bangalore Bench of the Central Administrative Tribunal. The Bombay Bench of the Central Administrative Tribunal noticed that the total number of posts of SSAs in DRDO was 1677 of which 822 posts had been given the benefit of higher pay-scale on the basis of an award passed keeping in view the length of service of the SSAs on the basis of the Arbitration Award.

6. Before amendment of the Rules in 1995 the promotion to the post of JSO (Junior Scientific Officer) was made out of the SSA, Foremen and Chief Draughtsman. The then existing organisation was as under:

7. After amendment the posts of SSAs in the grade of Rs. 1640-2900, Chief Draughtsman (CDM) in the grade of Rs. 2000-3200 and Assistant Foreman were clubbed together and designated as Senior Technical Assistants in the pay-scale of Rs. 1640-2900 being the feeding cadre for promotion (TOA). Whereas the grievance of the Senior Scientific Assistant in the pay-scale of Rs. 1640-2900 was that their placement in the junior grade was unconstitutional being violative of Articles 14 and 16 of the Constitution, the Assistant Foremen felt that their en bloc placement as junior to the SSAs in the grade of Rs. 1640-2900 was arbitrary and illegal. As noticed earlier the applicants specifically challenged the constitutional validity of Rule 6(3)(b) of the DRTC Rules, 1995. After the amendment of the Rules and creation of the posts of Senior Technical Assistant being eligible for promotion to TOA, their grievance in so far as it related to promotion has lost all its significance. However, if the SSAs in the grade of Rs. 1640-2900 are granted relief as prayed for by giving them the grade of Rs. 2375-3500 the position would be totally different as they would be deemed to have automatically been promoted as TOA being eligible for promotion to TOB. It is, therefore, necessary to adjudge their claims first before deciding the other appeals.

8. The erstwhile SSAs, SS grade II have submitted that the bifurcation of SSAs cadre with effect from 1992 is arbitrary as there does not exist any rational for the classification. It is further submitted that the creation of two pay-scales in the grade of SSAs was imaginary and artificial. All SSAs are alleged to be performing the same nature of work. Referring to the job description part, it is contended that there is no distinction whatsoever between the different levels or categories of SSAs. Even before the arbitration it was pointed out that Government had virtually accepted the case of SSAs for parity of pay-scales. There is no legal basis for putting the SSAs in different categories i.e. Technical

Officer 'A' and Senior Technical Assistant respectively in the matter of eligibility for promotion. It is alleged that the Government has admitted that the higher scale of SSAs is a non-functional selection grade which would not justify the split up of the SSAs for the purpose of further promotion under the amended Rules of 1995. The splitting up is alleged to be violative of Articles 14 and 16 of the Constitution of India. They have also relied upon the doctrine of 'equal pay for equal work.' According to them an anomaly had crept in the pay-scale allowed to the SSAs with effect from 1-1-1973 consequent upon the implementation of the recommendation of the 3rd Pay Commission. It was contended that the maximum of the pay-scale of the SSAs and Foremen used to be essentially equal and the maximum of the Assistant Foreman scale was less than that of the SSAs till the 2nd Pay Commission. They relied upon the letter dated 30-8-1973 issued by the R&E Headquarters indicating that the matter had been taken up with the higher authorities. Consequently, the matter was referred to the Expert Classification Committee and ultimately to the Arbitration in terms of JCM Scheme. After the award was submitted the order impugned before the Central Administrative Tribunal was issued. The Arbitration Award had recommended for its implementation from 22-9-1982 but the Government issued orders for its implementation only with effect from 1-1-1988.

9. The appellant-Association in their application before the Central Administrative Tribunal had assailed the award passed by the Arbitration and the order dated 11-11-1988 issued by the Government in consequence thereof. It was submitted that the impugned award and the order were both vitiated on account of alleged unreasonable classification, discrimination and arbitrary action of the respondent.

10. The prayer itself appears to be self-contradictory. If the award of the Arbitration was set aside, there was not question of giving any relief to SSAs (Junior Grade) as admittedly the higher grade for which they had staked claim was given on the basis of the recommendation made by the Board of Arbitration who had given the award in consequence of the reference made at the instance of the SSAs. Thus the setting aside of the award in no case benefited the appellants. Otherwise, also it is evident that the reference to the Arbitration was made at the instance of the scientific staff employees in various Directorates of the Ministry of Defence who had claimed their entitlement to the pay-scales and grades structures namely, level I-Rs. 380-560, level II-Rs. 425-700, level III Rs. 550-900 level IV Rs. 840-1040 and if so in what promotion.

11. It was alleged before the Board of Arbitration that the duties and responsibilities of the Senior Scientific Assistants were not less than those of the Foremen. However, while the Senior Scientific Assistants were in the pay scale of Rs. 840-1040. The educational qualifications of the scientific staff were stated to be higher than that of the Foremen. They alleged that promotion avenue for both the categories being the same i.e. Junior Scientific Officer, there was no justification for not giving them the same pay scale as was being given to the Foremen. After considering all pros and cons of the matter, the Board of

Arbitration passed the following award:

1. (a) The demand of the staff side for the grant of pay scale of Rs. 840-1040. to Senior Scientific Assistants and Draughtsman working in the Research & Development Organisation and the Directorate General of Inspection (both in the Ministry of Defence) is accepted. This pay will be addition to those which are already admissible to these categories in the said two organisations.

(b) The proportion of posts to be allocated in the above mentioned new pay scale should broadly bear the same proportion as that obtaining at present in the foremen category vis a vis the highest grade of Assistant Foreman in the said organisation.

(c) The demand for introduction of the scale of pay of Rs. 840-1040 in respect of the Draughtsman working in other organisations of the Ministry of Defence is rejected.

2. The demand of the staff side for the introduction of a new pay scale of Rs. 700-900 to be made available to storekeeping staff employed in all the Directorates of the Ministry of Defence (wherever not applicable at present) is accepted. The proportion of posts in this new scale of pay shall be 20% of the post in the next lower grade.

3. The demand of the staff side of the introduction of the pay scale of Rs. 380-560 as Grade I for Civilian Motor Drivers working in the various Directorates of the Ministry of Defence is accepted. This will be treated as a selection grade and 20% of the posts of Drivers in the scale Rs. 320-400 will be placed in the grade in Rs. 380-560.

4. This Award will come into operation with effect from the 22nd September, 1982.

12. Acting upon the award of the Arbitration the Government of India vide Order dated 11.11.1988 upgraded the post of Scientific Assistants in RDO and DGI to the extent as under:

13. It was specifically mentioned that the upgradation of the post was on the basis of the award of the Arbitration and as per annexures attached therewith. The recruitment rules were to be amended suitably in due course. It is on record that the total number of post of SSAs in the DRDO were 1677 of which 822 posts were given the benefit of higher pay scales. It is not denied before us that the upgradation of post and grant of higher pay scales had been done on the basis of the experience and length of service. The Central Administrative Tribunal was, therefore, justified in holding:

It is not disputed that the claim of SSAs who belong to scientific cadre is for parity with the technical cadre to which Asstt. Foreman and Forman belong. It was in this background that after protracted deliberations and negotiations the matter stood referred to Board of Arbitration for a final decision and the Board of

Arbitration decided to give the higher revised scale to the Sr. SSAs in the same proportion on the date of award as that between Foremen and Assistant Foreman on Technical side in the concerned organisation i.e. DRDO and DBI. According to us, although Savita's judgment proceeds on the undiluted doctrine of equal pay for equal work, there has been further evaluation of the doctrine as revealed by the Supreme Court judgment in Jaghnath v. Union of India. It is now well settled that several factors are required to be gone into before fixing the pay scale and one of the relevant factors is the historical background in which a particular decision relating to pay fixation is taken. In our view, keeping the ratio in Jagannath's case and dispute in view the background of the whole dispute and keeping in view the nature of the JCM scheme in which the staff association as well as individual members of staff are required to be held to the binding nature of the arbitration award with its modified date of implementation as confirmed by Supreme Court, the Tribunal should be chary before unsettling settled issues, especially after protracted litigation. There should be a finality to such disputes. The question relativities in the pay scales of different cadres, in the present case between technical and scientific cadres of the DRD and DGI is essentially a matter for expert bodies and even after the implementation of the award, if there are any disputes still to be resolved, they are required to be resolved by making appropriate representations to the 5th Pay Commission which is at present going into the question of revision of pay scale of Central Government Staff. We are, therefore, not satisfied that this is a fit case in which we should interfere. We have already given the reasons as to why the various contentions raised by the applicants in support of their prayers cannot be accepted on a survey of administrative legal grounds.

14. A Constitution Bench of this Court in Kishori Mohanlal Bakshi Vs. Union of India, while dealing with alleged violation of Article 14 of the Constitution of India on account of the grant of two pay-scales to Income Tax Officers allegedly doing the same kind of work, held that incremental scales of pay can be validly fixed dependent on the duration of an officer's service, and in that event the abstract doctrine of 'equal pay for equal work' cannot be invoked with the aid of argument of the claimants therein the Court held that:

It is fantastic to suppose that Article 16 of the Constitution forbids the creation of different grades in the government service; that is what the petitioner's argument amounts to. The contention that Article 16 has been violated because Class II Income Tax Officers are not eligible for promotion to higher posts, like the post of Commissioners and Assistant Commissioners directly is, therefore, wholly unsound.

15. While dealing with the Preamble of the Constitution and Articles 14, 16 and 39(d) of the Constitution, this Court again in Randhir Singh Vs. Union of India (UOI) and Others, , held that whereas it was true that equation of posts and equation of pay were the matters for the Executive Government and expert bodies like the Pay Commission and not for the Courts but where everything was

found to be equal and relevant consideration being the same, persons holding identical posts should not normally be treated differently in the matter of their pay merely because they belong to different departments. If officers of the same rank perform dissimilar functions and the powers and duties and responsibilities of the posts held by them vary, such officers cannot be heard to complain of dissimilar pay merely because the posts were of the same rank and the nomenclature. While dealing with the gradation in the service the Court declared that "it is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualification or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Article 14 if sought to be applied to them."

16. Again in *Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others*, the Court considered the position of Assistants in Civil Secretariat, Tripura as against the position of Assistants (Selection Grade) and held that the Administration can provide two pay scales in the same category of posts. Making such a provision is normally done with the object of providing incentives to the employees who have no outlays or very limited outlets for promotion to higher posts. In this context it was observed:

It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotion should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency.

17. To the same effect is the judgment of this Court in *Union of India (UOI) and Another Vs. S.S. Ranade*, wherein the Court held:

In the present case, an element of selection is involved in granting selection grade because there is no automatic promotion to the selection grade pay scale. But this factor is not decisive. In the present case also, as in the above cases, Selection Grade posts are created entirely for the purpose of granting some relief to those who have very limited avenues of getting promotion to a higher post. That is why a higher pay or pay scale is granted in the same post. Thus, by its very nature, a selection grade post cannot be considered as a higher post for the purposes of Rules 9.

18. In support of the claim of the appellants *Shri Raju Ramachandran*, the learned senior counsel relied upon the judgment of this Court in *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, and submitted that the classification of the

Senior Scientific Assistants in the same department merely on the basis of the seniority was unconstitutional. The submission though attractive on the face of it yet is without substance when examined in depth. In that case, the Court was considering the classification of Senior Draughtsman holding identical posts discharging identical duties in the same department and where the selection to the higher scale was based on seniority-cum-fitness instead of merit-cum-seniority. The Court agreed with the conclusions arrived at in the Randhir Singh's case (supra) and finding of facts of the case before it different held, "for the purpose of the case on hand, it is sufficient to note that classification between two groups of Senior Draughtsman is without any basis." As noticed earlier, in the instant case, pay-scales were granted to a number of Senior Scientific Assistants on the basis of the award at the instance of the appellant-association with the objective of giving them incentives. There was no intention of creating any discrimination as has been argued before us. The reliance of the learned Counsel for the appellant on the judgment of this Court in U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd., U.P. Vs. Its Workmen, , is also misplaced inasmuch as in that case this Court had considered the validity of the award of the Industrial Tribunal which had found on facts that the workmen doing similar type of work were entitled to equal pay. The Court observed thus:

The Tribunal's finding that both the groups were doing the same type of work has rightly not been challenged by the employer-Bank as it is a pure finding of fact. If irrespective of classification of junior and senior groups, the same work was done by both, the principle of equal pay for equal work is definitely attracted and on the finding of fact the Tribunal was justified in applying the principle to give the same benefit to those who had been left out. We see no justification in the stand of the employer-Bank and the challenge is without merit. The appeal is accordingly dismissed. The parties are directed to bear their own costs in this Court.

19. The judgment of this Court in Jagdish Parsad Sinha and Others Vs. Bhagwat Prasad and Others, does not either help the appellants. In that case the Court held the bifurcation in the validly constituted cadre merely for providing equal promotional avenues to those beyond eligible zone in the undivided cadre unconstitutional being violative of Article 14 and 16 of the Constitution. Such is not the position in the present case.

20. In Chandra Mohan Tiwari and another Vs. State of Madhya Pradesh, relied upon by the appellants the Court held contrary to what has been argued before us. Relying upon its earlier judgment in State of U.P. and Others Vs. J.P. Chaurasia and Others, it was held that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in the administration. It was further observed that the quality of work performed by

persons of longer experience was superior than the work of new comers.

21. We are, therefore, of the opinion that the Central Administrative Tribunal had rightly rejected the applications of the appellants as it did not find any illegality or unconstitutionality in the classification of two grades of the SSAs particularly when the classification was shown to have been made on the basis of an award in which the SSAs themselves were shown to have demanded two pay-scales.

22. However to give a finality to the dispute raised by the appellants, the Central Administrative Tribunal permitted them to make appropriate representation to the 5th Pay Commission which at that time was going into the question of revision of pay-scales of the government staff for resolving the anomaly, if any, by giving them the appropriate relief being a body comprising of experts aware of the difficulties faced by different sections of the services.

23. In the other set of appeals, the respondents Assistant Foremen in the Defence Research and Development Organisation (DRDO) approached the Central Administrative Tribunal with prayer to declare Rule 3(a) and 3(b) of the DRTC Rules 1995 as illegal and unconstitutional, with a further direction that the rule making authorities were bound to place them in an appropriate newly designated post either in the pay-scale of Rs. 2000-3200 or of the higher pay-scale and not in the lower pay-scale was done vide the impugned rules. They contended that the Defence Research and Development Organisation under the control of Ministry of Defence, the Class III non-gazetted technical scientific and non-ministerial posts were earlier governed by the Recruitment Rules issued under SR 230 called "Defence Research and Development Organisation Class III non-gazetted (technical scientific and other non-ministerial) post Recruitment Rules 1968", dated 26.6.1968. The cadre of Chief Draughtsman, Draughtsman Grade I came under non-ministerial cadre and the cadre of Chargeman Grade I, and Assistant Foreman under the technical cadre. The Cadre of Senior Scientific Assistance came under the scientific cadre. The cadres of Senior Scientific Assistants on the scientific cadre and Chargeman Grade I and Draughtsman Grade I on the non-ministerial cadre had the pay-scales lower than that of pay-scales of the Assistant Foreman and the cadre of Chief Draughtsman on the non-ministerial cadre had the same pay-scale of Rs. 2000-3200 as that of the cadre of Assistant Foreman on the technical cadre. In the technical cadre there were four stages and the post of Foreman was the highest on the technical cadre. On the non-ministerial cadre there were 5 stages and the post of Chief Draughtsman was the highest post in the non-gazetted cadre Class III post under the 1968 Rules. According to the Assistant Foreman, the official joining the service as Chargeman Grade II or Draughtsman Grade II had to pass through three stages to reach the cadre of Foreman or Chief Draughtsman. On the contrary, in the scientific cadre there were only two stages to reach the post of Senior Scientific Assistants. The promotional prospects in so far as the post held on the technical cadre and non-ministerial cadre were concerned, was very less as compared to the posts in scientific cadre under the said rules. The promotions to the post of

JSO were made on the basis of the common seniority of the posts of Chief Draughtsman, Foreman and Senior Scientific Assistants as per the SRO-166 dated 17-6-1985. The ration fixed for different categories was Chief Draughtsman 4%. Foreman 12% and Senior Scientific Assistants 84% for the purpose of promotion to the cadre of JSO. The said percentage was revised vide SRO-13E dated 8-11-1988 by fixing as Chief Draughtsman 7%, Foreman 10% and Senior Scientific Assistants 83% which according to the Assistant Foreman permitted the creating in of anomalies in the rules providing very meagre chances of promotion to the officials holding post on the technical and non-technical ministerial cadres. The Defence Research and Development Organisation, Junior Scientific Officers Recruitment Rules 1980 vide SRO 81 dated 8-3-1980, provided the post of Foreman in the pay-scale of Rs. 840-1040 by making it a feeder cadre for promotion to the post of JSO in the pay-scale of Rs. 650-1200. While providing promotional avenues on the technical and non-technical cadres the authorities were stated to have taken into consideration that the said cadre would have lessor credential and experience on the scientific cadre and as such the post having the pay scale of Rs. 840-1040 and Rs. 700-900 as per the 3rd Pay Commission were treated as feeder cadre for the promotion to the cadre of JSO. Union of India then framed the new rules of 1995 vide SRO 177 dated 16-8-1995 which were made effective from 26-8-1995. The rules were apparently framed to restructure the scientific and technical cadres and to create new organisation service called 'DRTC' with the intention to rationalise the cadre structure, to remove disparity in the career prospects by providing reasonable promotional opportunities to group B and C scientific and technical staff in the DRDO Organisation. It was however alleged that the amended rules provided several anomalies detrimental to the rights and interest of the Assistant Foreman which affected their status and service conditions adversely. It was submitted that the cadre of Senior-Scientific Assistant had the pay-scale of Rs. 1640-2900 and there were as many as 1072 posts in the said cadre. Similarly, in the cadre of Chief Draughtsman the pay-scale was Rs. 2000-3200 being equivalent to the pay-scale of the Assistant Foreman. The cadre of Draughtsman Grade I and Chargeman Grade I which were included in the Rule 3(a) to have the scales lower than that of the pay-scales of Assistant Foreman. The amended rules further provide that the existing employees holding posts shown in Schedule I attached therewith shall have rights to opt for their old pay-scales. The Assistant Foremen made representations against the alleged injustice done to them submitting that having the pay-scale of Rs. 2000-3200 they have been put in long period of service to reach the said post having equivalent or higher qualification than that of the other cadres namely, SSAs, Chargeman Grade I, Draughtsman Grade I and the Chief Draughtsman. It was contended that the status of the representations as compared on the basis of the pay-scales was equivalent to that of the JSO and as such their status could either be made higher or equivalent to that of the Senior Scientific Assistants, Draughtsman Grade I, and Chargeman Grade II. The cadre of SSAs and Chief Draughtsman was bifurcated into two groups based on their pay-scales as the purpose of the

new rules was stated to be for merging the cadres and creating a new cadre on the basis of the pay-scale which the officials were drawing at the time of framing of the said rules. No discrimination infringing the rights and status of Assistant Foreman could be made particularly when it deprived them promotional avenues. The official working as Senior Scientific Assistants in the pay-scale of Rs. 1640-2900 and Draughtsman Grade I and Chargeman Grade I in the pay-scale of Rs. 1640-2900 could not be equated and treated at par with the cadre of Assistant Foreman as was intended to be done vide Rule 3(b). They prayed for:

Quash the impugned Rules 3(a) and 3(b) of the Reference Research & Development Organisation Technical Cadre Recruitment Rules 1995, as per SRO-177 dated 16-8-1995, in so far as they relate to inclusion and merger of the cadre of Assistant Foreman alongwith the cadres of Chief Draughtsman, Senior Scientific Assistant, Chargeman Grade I and Draughtsman Grade I and placing the applicants in Grade I of category III Schedule II in the pay scale of Rs. 1640-2900, vide Annexure 'A6' by appropriate order or direction holding that the same are unconstitutional and ultra vires the Constitution of India.

Issue appropriate orders or direction directing the respondents to frame appropriate rules to make provisions for proper placement of the cadre of Assistant Foreman in the DRTC Rules, 1995, vide Annexure 'A6' based on the qualification, experience and the pay scale and place the cadre of Assistant Foreman over and above the cadres of Chief Draughtsman, Senior Scientific Assistant, Chargeman Grade I and Draughtsman Grade I, assigning the pay scale either equivalent to or higher than the pay scale in which the applicants are presently working.

Issue appropriate orders or direction directing the respondents to maintain the seniority of the cadre of Asstt. Foreman in the newly designated post on the basis of the pay scale which they are drawing at present.

24. As already noticed the applications filed by the Assistant Foremen were disposed of with the following directions/observations:

(1) We hold that Rule 6(3)(a) of the Defence Research and Development Organisation Technical Cadre Recruitment Rules, 1995 is not arbitrary or unconstitutional and is not liable to be struck down.

(2) We strike down Rule 6(3)(b) of the ORTC Rules, 1995 in so far as it seeks to place all Assistant Foremen en bloc junior to CDMs in the scale of Rs. 2000-3200 and the SSAs in the scale of Rs. 1640-2900 and direct the department to effect necessary amendment to this part of the rule before considering and effecting promotions to the next higher level as stated in the proceeding para.

25. Rule 6(3)(a) and (b) of 1995 Rules provided:

6(3)(a) All persons holding the posts of Chief Draughtsman and Senior Scientific Assistant in the pay scales of Rs. 2000-3200 and Rs. 1640-2900 respectively, the Assistant Foreman, Draughtsmen Grade I and Chargeman Grade-I shall be

placed in grade-I of Category III.

(b) The inter se seniority of the incumbents of the posts of Chief Draughtsman and Senior Scientific Assistant shall first be drawn on the basis of length of their regular service in their respective grades subject to maintenance of their original relative seniority in such grades and they shall rank en bloc senior to the incumbents of the posts of Assistant Foreman.

26. It was argued on behalf of the Assistant Foreman that their placement in the level of STA vide 1995 rules was in the nature of demotion and amounted to infliction of a penalty because they were allowed post of STA in the pay scale of Rs. 1640-2900 whereas before amendment they were drawing the pay-scale of Rs. 2000-3200. It was further contended that the effect of the new rules was to demote them to the lower level of Chargeman Grade I which in fact was the feeder cadre. It was argued that the mere fact that they were given the option to opt for their old pay scales under FR 23 could not cure the illegality. They had prayed for being equated with Junior Scientific Officers. Dealing with this aspect of the matter the Central Administrative Tribunal held:

There is no substance in the argument that placement of the Assistant Foreman at the level of STA in the scale of Rs. 1640-2900 amounts to reduction in rank and is in the nature of a penalty. The Assistant Foreman did not enjoy a status higher than that of the SSA or the Chief Draughtsman. Of Course, they were superior to Chargeman-I, which was the feeder cadre for promotion to Assistant Foreman and also to that of Draughtsman-I which was equivalent to Chargeman-I, which was the feeder cadre for promotion to Assistant Foreman and also to that of Draughtsman-I which was equivalent to Chargeman-I. We do not, however, agree that placement of Assistant Foreman alongwith Chargeman-I and Draughtsman-I in the new level of STA virtually amounts to demotion of the Assistant Foreman to the lower level. In the restructured set up, the Assistant Foreman have been placed en bloc senior to the incumbents of Chargeman-I and Draughtsman-I. There is no requirement that the earlier hierarchical structure should be maintained for all time to come. The department has attempted to streamline and simplify the service rules and in this endeavour, they have decided to reduce the number of levels and the number of pay scales. While effecting this re-organisation they had retained the scale of Rs. 2375-3500 which was given to sections of CDMs and SSAs as per the Award of the Board of Arbitration and placed the JSOs in the same bracket but en bloc senior to the erstwhile Foremen SSAs and CDMs. The decision to retain this scale while omitting scales of Rs. 2000-3200 seems to be based on rational considerations and respondents have denied the allegation of any bias in favour of SSAs. In any case, the department is competent to take decision to reduce the number of levels and pay-scales. They are also competent to decide as to which scale should be retained and which should be omitted, so long as the same is not arbitrary, we cannot, therefore, fault the department for retaining the scale of Rs. 2375-3500 and that of Rs. 1640-2900 while omitting the scale of Rs. 2000-3200.

There is a decision to reduce the number of pay scales and the scale of Rs. 2000-3200 has been omitted and the level of STA has been constituted in the scale of Rs. 1640-2900, In view of this position, we cannot direct the Government to re-introduce the scale of Rs. 2000- 3200 to accommodate the applicants when in any case they have been given an option to retain this scale under FR 23. In such situation when levels and pay-scales are reduced, it becomes inevitable to group together some of the categories which were earlier kept separate and place them at the appropriate levels. The department has endeavoured to do so taking into account the existing pay scales, promotion prospects etc. In this process, some employees have received substantial benefits as in the case of Chargeman-I, whereas for other cadres, their existing entitlements have in any case been safeguarded. The level of satisfaction of some employees like Chargeman-I will naturally be higher than the others like the Assistant Foreman but according to the department, the promotional opportunities have expanded at all levels and the AFMs have been kept en bloc senior to Chargeman-I. We may in this connection refer to the second proviso to Rule 8(1) of 1995 Rules which provides that if a junior is eligible for assessment having completed minimum residency period all individuals senior to him shall also be eligible for assessment. In the new structure, all erstwhile AFMs have been placed en bloc senior to the feeder cadres and the new placement, therefore, does not in any way adversely affect the interest of the AFMs as compared to their earlier position vis-a-vis Chargeman, Grade-I. No service rule can satisfy each employee and reasonableness should be considered from the stand point of justice to the majority. As such, grouping the AFM, with CM-I in the new set up while placing AFM, en bloc senior to CM-I and permitting the AFM to retain the old pay scale of Rs. 2000-3200 under FR 23 does not amount to demotion of the A.F.M. as alleged.

Promotions to the level of STA will take place from the new cadre of Technical Assistant 'B' in the scale of Rs. 1400-3200. There is no problem in future as the officials will get promotions to the scale of Rs. 1640-2900 from that of the scale of Rs. 1400-2300. As regards existing incumbents of the AFMs, they have been given an option under FR 23 to retain their old pay scale. The department have submitted a memorandum dated 25.6.1996 where they have stated that they have apprised the Fifth Central Pay Commission about the old system of promotion as well as about the new scheme and that incumbents in the pay scale of Rs. 2000-3200 are likely to get equivalent replacement of scales as personal to them whereas the replacement scale to the post of STA will be corresponding to that of 1640-2900. As such the applicants need not have any apprehension as stated in para 5 of the rejoinder statement that they will be asked to work at a lower level without protection of their higher pay-scale after the pay scales are revised on the basis of the Fifth Pay Commission's Recommendations. In any case, such an apprehension is premature and if they feel aggrieved by the decision of the Government on the recommendations of the Fifth Pay Commission in this regard, it is open to them seek appropriate remedies at the relevant time.

It further held that the Assistant Foremen in the DRDO were earlier categorised as group 'c' and in the new set up as STA they have been conferred with group 'b' non-gazetted status which showed that there was no reduction in their status in the restructured set up. We agree with the findings arrived at by the Central Administrative Tribunal on appreciation of all relevant facts. Learned Counsel appearing for the Assistant Foreman have also not been very enthusiastic to challenge the aforesaid finding of Central Administrative Tribunal.

27. The validity of Rule 6(3)(b) of 1995 rules was challenged on the ground that it sought wrongly to provide the Senior Scientific Assistants and Chief Draughtsmen en bloc senior to the incumbents of the post of Assistant Foremen. The reason given to justify the placement of Assistant Foremen en bloc junior to SSAs and CDMs were in direct line of promotion to the erstwhile line of JSO whereas Assistant Foreman had to be promoted as Foreman before receiving further promotion as JSO. It was not claimed by the Union of India that the qualifications and status of the SSAs and CDMs were superior to that of the Assistant Foremen. The pay-scales prescribed for the erstwhile cadre of Assistant Foremen was admittedly higher than the SSAs. There does not appear to be any justification for placing the Assistant Foreman en bloc junior to the CDMs and SSAs. After referring to the rival claims of the SSAs and the award of the Board of Arbitration, the Tribunal held:

It is, thus, clear that the award of the Board of Arbitration had resulted in one more grade being available to SSAs and CDMs before promotion as JSO on the analogy of Assistant Foremen. Even if it is contended as has been held by the Bangalore Bench of the Tribunal in Pinto's case, in OA 458 to 500/90 disposed of on 30.12.1991 that the placement of the SSAs in the higher scale does not amount to promotion for the purpose of operation of the reservation roster, the fact remains that an upgraded scale was available for sections of the SSAs and CDMs and the same was given on the basis of seniority subject to rejection of the unfit. It is true that all SSAs irrespective of their pay-scale were eligible for promotion to the level of JSOs. In practice, however, in vast majority of cases such promotions would be given only to SSAs in the higher scale. Appointment to the higher grade of 2375-3500 was on the basis of seniority-cum-fitness while promotion to the next higher level of JSO was on the basis of selection. In such a situation, the question of promotion of SSAs in the lower grade directly as JSOs would not normally arise. Shri M.N. Swamy for the private respondents has cited some cases of direct promotion to the level of JSOs from the lower grade of SSAs but these were isolated instances. In fact, the Tribunal had to intervene in some cases to direct the respondents to give higher grade of SSAs to the concerned officials who were senior. In those cases, the department had found them meritorious enough for promotion by selection as JSOs, but denied them the upgraded scale of SSAs even though they were senior on the ground that they were unfit. We also find from Schedule I of the 1995 Rules that at the time of the commencement of these Rules, the number of posts of JSOs was 893. The earlier arrangement for promotion was on the basis of vacancies and the number of

vacancies in any particular year at the level of JSOs would not be many. The number of SSAs in both scales was shown as 2394 of whom about half would have been in the scale of 2375-3500. Taking into account the quota available for SSAs for promotion to JSOs in the normal course, only the senior SSAs who were in the higher scale would have little chance for the junior SSAs in the lower grade for being promoted directly as JSOs without passing through the higher scale of 2375-3500. The fact that CDMs and SSAs unlike the AFMs were in direct line of promotion to JSOs, is, therefore, not a good ground to support the department's action in placing all SSAs and CDMs en bloc senior to AFM at the level of the Senior Technical Assistant when in practice the SSAs in the lower scale would have been through the upgraded scale of 2375-3500 before being promoted as JSOs. The same position holds good in respect of CDMs also. As has been indicated earlier, this step by the department is also inconsistent with their stand to bifurcate the cadres of CDMs and SSAs and place those CDMs and SSAs in the upgraded scale at the level of Technical Officer 'A' while retaining others at the level of STA. We, therefore, find no justification in placing an Assistant Foreman drawing pay in the scale of 2000-3200 and with much longer service, as junior even to a newly appointed SSA in the scale of 1640-2900 which would be the result when all Assistant Foremen are placed en bloc junior to CDMs and SSAs.

28. We do not find any reason to disagree either with the reasoning or the conclusions arrived at by the Central Administrative Tribunal in this regard. The action of putting the Assistant Foremen en bloc junior to the SSAs was without any rationale or valid basis of which has rightly been held to be arbitrary being violative of the fundamental rights guaranteeing equality in service matters.

29. This view is strengthened more on account of the dismissal of the claim of the SSAs praying for their placement in the senior pay-scale. There is no denial of the fact that before and after the recommendations of the various Pay Commission the Assistant Foremen had been in the higher pay-scale as compared to the SSAs and Draughtsman Grade I. For a Welfare State the healthy and energetic civil services is a guarantee for good administrative system entrusted with the governance for the establishment of a rule of law. Security of tenure and the service conditions of the employees is of paramount consideration to achieve the goals for having an effective and vibrant civil service in the society. No government can resort to actions depriving the benefits to a section of the service en bloc which admittedly is to their disadvantage. Such en bloc deprivation of the promotional avenues and service benefits cannot be sustained when on cogent reasons are assigned by the administrative set up. Resort to differential treatment in the service can be had only for achieving the efficiency in the service or any other specified objective declared to be attained. No discrimination can be permitted only at the whims of the administration or to satisfy another section of the civil service. The Union of India in this case has not been in a position to justify the differential treatment made to the Assistant Foremen by putting them en bloc junior to the Senior Scientific Assistants particularly when they have all along been found to be enjoying better position

and higher grade as compared to the SSAs in the junior pay-scale.

30. Dealing with the similar situation, this Court in *R.K. Sethi and another Vs. Oil and Natural Gas Commission and others*, held that in service jurisprudence, the "next below the rule" contemplates to ensure that if junior employee is given promotion without considering his senior than the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted. It was approved that:

where .. two or more categories have been merged, for purposes of promotions to the next higher pay scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in the higher erstwhile scale, being treated as senior to those in the lower erstwhile scale, en bloc.

31. This Court in *State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others*, enunciated the principles which are required to be kept in mind while considering the question of equation of posts allotted to the service. It was reiterated in *S.P. Shivprasad Pipal Vs. Union of India and Others*, that the principles formulated in the matter of equation of posts were:

(1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis but (2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:

(a) Nature and duties of a post;

(b) Powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) The minimum qualifications, if any, prescribed, for recruitment to the post and;

(d) The salary of the post.

32. We, therefore, do not find any substance in the submissions made by the learned Counsel for the Union of India and of the Senior Scientific Assistants (Junior Grade) assailing the judgment of the Central Administrative Tribunal holding Rule 6(3)(b) to be unconstitutional. The discrimination visa-vis the Assistant foreman is writ large and has rightly been set aside vide the orders impugned in these appeals.

33. In view of what has been stated hereinabove, we find no substances in any of appeals which are accordingly dismissed but without any order as to costs.