

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00119/2013

with

Misc. Application No.290/00056/2013

Pronounced on : 24.01.2020
(Reserved on : 09.01.2020)

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CORAM: **HON'BLE SMT. HINA P. SHAH, MEMBER (J)**
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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1. Surinder Pal Singh S/o Sh. Gurcharn Singh, aged about 52 years, R/o Village & Post Bhagwansar, District Sriganganagar.
 2. Om Prakash S/o Sh. Shri Lal, aged about 56 years, R/o village & Post Suratgarh, District Sriganganagar.
- Presently both are working on the post of Fireman Engine Driver (FED) Army, 211 Petroleum PL. Army Supply Corps C/o APO 56.

...APPLICANTS

BY ADVOCATE : Mr.S.K. Malik.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director General of Supplies and Transport, quarter Master, General's Branch, Army HQ, New Delhi.
3. The Officer Commanding, 211 Petroleum PL, ASC, C/O APO 56.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Bishnoi

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicants are seeking the following reliefs:

- “(i) By an appropriate writ order or direction respondents may be directed to grant the pay scale of Rs.4000-6000/- w.e.f. 03.02.2000 on the post of FED with all consequential benefits as has been granted to similarly situated employees.
- (ii) By an order or direction applicants may be allowed to file joint application.
- (iii) Any other relief which is found just and proper be passed in favour of the applicants in the interest of justice by the Hon'ble Tribunal.”

2. The factual matrix of the present case as narrated by the applicants are that the applicant No.1 was initially appointed on the post of Fireman Grade II w.e.f. 01.07.1980 in the pay scale of Rs.206-250/- and thereafter he was promoted on the post of Fireman Grade I w.e.f.01.12.1986 in the pay scale of Rs.825-1200/-. Lastly he was promoted on the post of Fire Engine Driver (FED) w.e.f. 12.02.1991 in the pay scale of Rs.950-1500/- revised to Rs.3050-4590/- w.e.f. 01.01.1996. Likewise applicant No.2 was appointment Fireman Grade II w.e.f. 05.05.1980 and thereafter promoted as Fireman Grade I w.e.f. 01.01.1986 and Fire Engine Driver w.e.f. 05.06.1990.

3. Vide Annexure-A/1 letter dated 03.02.2000 the Government of India, Ministry of Defence has issued restructuring of Fire Fighting cadre in the army, wherein Fire Engine Driver has been conferred the pay scale of Rs.4000-6000. Accordingly, the number of units in the army, granted the pay scale of Rs.4000-6000 to Fire Engine Driver w.e.f.

03.02.2000 vide Part II order dated 21.07.2000 (Annexure-A/2). When the said pay scale was not granted in the unit of applicants, then one of the employee namely Shri Jagjit Singh filed an Original Application No.270/2006 before this Hon'ble Tribunal for implementation of restructuring of Fire Fighting cadre as ordered by the respondent No.1. The said OA was allowed by the Hon'ble Tribunal vide order dated 22.07.2009 and accordingly the respondents vide letter dated 24.09.2010 (Annexure-A/3) implemented the order of the Hon'ble Tribunal and granted pay scale of Rs.4000-60000 w.e.f. 03.02.2000 (Annexure-A/4) to Shri Jagjit Singh FED.

4. The applicants also requested respondent no.3 to grant them benefit of restructuring as has been granted to Shri Jagjit Singh who is similarly situated as that of applicant. But, no action was taken by the respondents. They have also made representations dated 04.11.2011 and 11.04.2011 before respondent No.3. But the respondent No.3 instead of deciding the representations of the applicants issued service certificate dated 19.03.2013 and 18.03.2013 that they are free to approach the Court and file Courts. Hence, aggrieved of illegal action/omissions on the part of respondents for not implementing restructuring scheme and not to grant pay scale of Rs.4000-6000/- w.e.f 03.02.2000, the applicants has filed the present OA.

5. By way of the reply, the respondents submitted that the present Original Application has been filed by the applicant in the year 2013 for the conferring the benefits from last 13 years which is barred by limitation. The Annexure-A/1 order are applicable for Army Ordinance

Corps and not for Army Service Corps as per ASC Records (South) Letter No.6405497/CC//SPS/02/CA-7 (Civ) dated 18.04.2013. Further, the case was taken up with ASC Records (South) vide this unit letter No.1068/PF/Civ/ST-12 dated 21.11.2011. Further, Shri Jagjit Singh was granted the pay scale of Rs.4000-6000 on the orders of the Hon'ble Court, which were issued only for him and not for others. Further, under the Annexure-R/1 it is clearly mentioned that case has already been projected to Government for review and decision is still awaited. The applicant is trying to mislead the Tribunal by placing incorrect facts before this Tribunal. Therefore, the OA deserves to be dismissed.

6. in rejoinder, the applicant submitted that there is no delay or laches in grant of pay scale and fixation of pay, more over the similarly situated persons after the decision of the Hon'ble Court has been granted pay scale of Rs.4000-6000/-. Further, the Fire Fighting service are same under the Ministry of Defence and there is no change in the nomenclature or pay scale whether it is Ordnance Corps to ASC Corps. There may be different Branch/Corps in the army, particularly civilians their pay scale are same. As per the recommendations of 6th CPC, the respondent themselves granted the pay scale to Fire fighting staff vide letter dated 26.07.2010 and the same is circulated vide letter dated 10.08.2010. It is submitted that the case of Shri Rasheel Singh Sodhi decided by the CAT, Chandigarh Bench and the case of Shri Jagjit Singh decided by the CAT Jodhpur Bench are similar and identical and belong to ASC Corps and not granting the similar benefit to the applicant is clearly a hostile discrimination, which is clearly violative of Articles 14 and 16 of the Constitution of India. Further, the respondents are stating

that the case of the applicant was taken up with ASC Corps (South) vide letter dated 21.11.2011 but only reply received with regard to Shri Jagjit Singh who has been granted the pay scale of Rs.4000-6000-. When the similarly situation persons is granted the benefit of pay scale of Rs.4000-6000/- then why the other similarly situated persons should be deprived of the benefit.

7. In additional affidavit, the respondents submitted that the individuals are given all the benefits as entitled to them and the system is fair, just and impartial and applicable to all the DFS pers to ASC. In so far as Shri Jagjit Singh is concerned, he has been granted pay scale of Rs.4000-6000/- in compliance of the orders passed by the Hon'ble Court and the said pay scale has not been provided to others and the case of the applicant is quite different from the case of said Jagjit Singh. Further the recruitment rules at Annexure-R/2 is applicable only to the Army Ordnance Corps and the individuals are governed by rules applicable in Arm Service Corps and not Army Ordnance Corps. These rules were not challenged by the applicant or amended by the Army Service Corps and therefore no specific relief can be granted. Further, the rules are binding upon the Corps and are being followed as its words and spirit.

8. Heard Shri S.K. Malik, learned counsel for the applicant and Shri B.L. Bishnoi, learned counsel for the respondents and perused the material available on record.

9. It is seen that the applicant has filed a Misc. Application No.56/2013 for condoning the delay in filing the OA No.119/2013. In support of it, the applicant submitted that it would be incorrect to say that there has been delay of 13 years as has been stated by the respondents, who have reckoned the delay from the date of issuing of order dated 3rd February, 2000 regarding restructuring of Fire Fighting Cadre in the Army Ordnance Corps. Applicant's case is that he is not seeking any relief against a particular order; rather he has filed the present OA for directing the respondents to grant the pay scale of Rs.4000-6000/- with effect from the date the other units in the Army have been granted, which details are shown in Annexure-A/2. Therefore, there is no delay in filing the present OA.

10. In support of his contention, the applicant has also placed reliance upon the judgment of Hon'ble High Court of Judicature for Rajasthan at Jodhpur in DB Civil Writ Petition No.1471/2012 (Diller Singh & ors. Vs. Union of India & others) decided on 25.08.2015. In this judgment, the Hon'ble High Court of Rajasthan has examined a case where the applicant has approached the Tribunal after compliance/disposal of the cases filed by similarly situated persons, which has been dismissed by the Tribunal being barred by limitation. Thereafter, the case came up before the Hon'ble High Court of Rajasthan and the learned counsel in that case substantiated the contention by placing reliance upon the judgment of Hon'ble Supreme Court in the case of K.C. Sharma vs. Union of India reported in (1997) 6 SCC 721. The para 6 of that judgment is as follows:-

"6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and

the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No.774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16.12.1993 in OAs Nos. 395-403 of 1993 and connected matter. No order as to costs."

11. Further, in the said judgment, the Hon'ble High Court of Rajasthan has held as under :-

"Be that as it may. In the case of K.C. Sharma (Supra), Hon'ble the Supreme Court found it fit to condone the delay where the persons approached the Tribunal after disposal of the cases filed by the similarly situated persons.

Applying the same logic, we are of the opinion that in the instant matter also, the tribunal should have condoned the delay and should have examined the original application on merits. Accordingly, the petition for writ is allowed. The judgment given by the Central Administrative Tribunal, Jodhpur in Original Application No.157/2009 and Misc. Application No.95/2009 is set aside. The original application is remanded to the Central Administrative Tribunal, Jodhpur for its adjudication afresh on merits. No order as to costs."

12. In view of the decision of the Hon'ble Supreme Court in the case of K.C. Sharma (Supra) and the decision of the Hon'ble High Court of Rajasthan in Diler Singh's case, it would appear that the case of the applicant and other similarly situated person can also be considered and the delay can be condoned as the applicants in the present case also have approached this Tribunal immediately after compliance/disposal of the order in the similarly situated persons. Accordingly, MA No.56/2013 is allowed and the delay in filing the Original Application No.119/2013 is condoned.

13. It would now be worthwhile to examine the matter for grant of relief which was granted to the similarly situated person. Respondents

in their submissions have stated that the applicants belong to the Army Service Corps, whereas Annexure-A/1 is relevant only for Army Ordnance Corps. They have also tried to distinguish the Duties and Responsibilities of Fire Fighting service personnel in the Army Service Corps vis-a-vis Army Ordnance Corps. The counsel for the applicants, on the other hand, made out a case that the essential tasks for which responsibilities assigned to Fire Fighting service are same under the Ministry of Defence and there is no change in the nomenclature or pay scale whether it is Ordnance Corps to ASC Corps. Therefore, there was no case for discriminating against Fire Engine Driver such as the applicants.

14. In this context reference has also been drawn to the letter No.A/26576/Fire Staff/06-20/188/D(P-II) Ministry of Defence New Delhi dated 03rd February, 2000 (Annexure-A/1) regarding restricting of Fire Fighting Cadre in the Army Ordnance Corps and this itself indicated that the job assigned to the other similar situated persons are not very different.

15. Counsel for the applicant draw attention to the OA No.270/2006 filed by Shri Jagjit Singh before the Central Administrative Tribunal for implementation of Restructuring of Fire Fighting cadre. Hon'ble Tribunal vide order dated 22.07.2009 granted the pay scale of Rs.4000-6000 to said Shri Jagjit Singh. Accordingly, respondents vide their letter dated 24.09.2010 (Annexure-A3) implemented the order of the Tribunal and granted the said scale w.e.f 3rd Feb. 2000 Annexure-A/4 to him. While granting the said pay scale, it has been mentioned by the respondents

that the said benefits were granted on the basis of the direction given by the Hon'ble CAT in OA no.270/2006 and cannot be granted to other equally situated persons, as the order of the Hon'ble Tribunal is applicable only to his case.

16. However, when the applicants requested to the respondent No.3 by way of representations dated 04.01.2011 and 11.04.2011 to grant them similar benefits of restructuring as granted to Shri Jagjit Singh, no action was taken upon the said representations, instead, they were told that they were free to approach the Hon'ble Tribunal. This according to the learned counsel for the applicants amounted to discrimination and such discrimination is not permitted as it leads to tremendous heart burn.

17. Counsel for the respondents submitted that the matter regarding grant of pay scale of Rs.4000-6000/- to Shri Jagjit Singh is under review by the Department and the grant of higher pay scale to Fire Fighting Staff working under ASC during the period 03.feb, 2000 to 31 Dec 2005 has been referred to Ministry of Defence where the same are under active consideration. Attention was also drawn to the reminder issued in this regard, wherein it has been mentioned that the Ministry of Defence has been approached for expediting decision of Ministry of Finance (Department of Expenditure) and the same is still awaited.

18. It certainly should not be the case of Ministry of Defence that to avoid hostile discrimination, a whole bunch of similarly situated persons should go into litigation and approach the Tribunals and Hon'ble High

Courts all over the country. It is not understood why after grant of pay scale of Rs.4000-6000/- to employee Shri Jagjit Singh w.e.f. 03rdn Feb. 2000, the respondents have not yet been finalized the restructuring of the Fire Engine Driver cadre and regulate the pay subsequently to the restructuring. It has been stated that as on January, 2013, the approval of Ministry of Defence and Department of Finance to the subject matter is still awaited. The inordinate delay on the part of the respondents in seeking necessary approval and finalizing the cadre restructuring certainly makes a case for grant of benefit as sought for by the applicant in their relief claims in OA.

19. Since, the case of the present applicants are identical to the case of Shri Jagjit Singh, therefore, we are inclined to grant the same benefits to the applicant as granted in the case of Jagjit Singh. Accordingly, the respondents are directed to grant the pay scale of Rs.4000-6000 to the applicant from the date the similarly situated person i.e. Shri Jagjit Singh has been granted by the respondents.

20. As stated above it has been submitted by respondents that the proposal for higher scales consequent to the restructuring exercise in the cadre of Fire Engine Drivers is pending with the Ministry of Defence and Ministry of Finance even after 13 years ,the armed forces certainly deserve better than this: it is expected from the respondent department to expedite such cases of restructuring so that the employee like the applicants do not have to go through long period of waiting and heartburn leading to litigation.

21. In view of the facts hereinabove, we are inclined to give directions to the respondents to grant the pay scale of Rs.4000-6000 with effect from 03.02.2000 on the post of FED with all consequential benefits as has been granted to similarly situated employees within a period of three months' from the date of receipt of a certified copy of this order.

22. Accordingly, the OA is allowed as stated above. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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