

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00405/2013

Reserved on : 04.02.2020

Jodhpur, this the 18th February, 2020

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Khalil son of Shri Kamrudeen, aged 53 years, Valveman in the office of Garrison Engineer, Banar, District Jodhpur r/o 53, Prathvipura, Rasala Road, Jodhpur.

Through his legal heirs :

1. Sharifan Bano wife of Shri Khalil, aged 52 years.
2. Mumtaz Ali son of Shri Khalil, aged 30 years.
3. Akram Ali son of Shri Khalil, aged 27 years.
4. Sadam Hussain son of Shri Khalil, aged 23 years

Address : 53, Prathvipura, Rasala Road, Jodhpur.

.....Applicant(s)

By Advocate : Mr Vijay Mehta.

Versus

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (P), MES, Banar, Jodhpur.
3. Garrison Engineer, MES, Banar, Jodhpur.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

Per Smt. Hina P. Shah

Earlier this matter has been dismissed by this Tribunal vide order dated 10.03.2017 with following observations :

6. In the present case, the applicant remained careless about his right and watching others agitating their rights before the various Forums. After a period of several years, the applicant submitted this Original Application stating that the similarly situated persons are granted the same benefits. This approach of the applicant cannot be countenanced for any reasons. He cannot be heard to say that he waited till conclusion of the litigation before the Courts and which is not a ground for condoning the delay stretching over long years. There is no reasons satisfactory or sufficient are urged to condone the long delay of about 18 years in filing the Original Application. We are of the considered opinion that the delay in filing of the present Original Application at this stage is an afterthought. The MA for condonation of delay is devoid of any merit and accordingly the same is dismissed.

7. As the application for condonation of delay is dismissed, consequently the Original Application No. 405/2013 also stands dismissed.

2. Challenging the aforesaid order of this Tribunal, Legal Representatives of Shri Khalil (Original Applicant) approached Hon'ble Rajasthan High Court in D.B.C.W.P. No. 5064/2017. The Division Bench of Hon'ble High Court while setting aside the above order of this Tribunal dated 10.03.2017 and restoring Original Application No. 405/2013 for adjudication afresh on merits, observed as under :

3. In the decision reported as AIR 1996 SC 669, M.R. Gupta vs. Union of India & Ors, the Supreme Court held that a claim for fixation of proper pay is a recurring cause of action each month. In our opinion the Tribunal was not justified in dismissing the Original

Application on account of bar of limitation. At best, the Tribunal could have restricted grant of monetary relief to the period of one year prior when the Original Application was filed.

4. The legal heirs of Khalil are adversely effected on account of less family pension being paid to them.

5. The writ petition is disposed of setting aside the impugned order dated 10th March, 2017. Original Application No. 405/2013 is restored for adjudication afresh on merits.

In view of aforesaid order passed by the Hon'ble Rajasthan High Court, issue of limitation stood decided and matter is now only required to be adjudicated afresh on merits.

3. The applicant sought following reliefs :

That in view of the facts and grounds mentioned hereinabove, the applicant prays that the action of the respondents may kindly be quashed and the respondents may kindly be directed to pay the applicant salary in pay scale of Rs 260-400-900-1500/3050-4500 and as further revised from time to time from the date of his promotion to the post of Valveman and consequently to revise his fixation with reference to the benefits of ACP granted to the applicant with all consequential benefits. Any other relief, deemed fit by this Hon'ble Tribunal may also be granted to the applicant. Costs may also be awarded to the applicant.

4. **Brief facts of the case are that the original applicant was appointed on the post of Mazdoor in the respondent-department on 15.12.1980 and thereafter, he was promoted to the post of Valvemen on 20.04.1995. The case of the applicant is that in view of various pronouncements of courts upto Hon'ble Supreme Court, the post of Valveman has been declared as Skilled Category post and therefore, original applicant was entitled for pay-scale attached to the Skilled Category post at relevant times,**

as has been granted to other similarly situated persons, in view of pronouncements of this Tribunal as well as other Hon'ble Courts. Original applicant annexed the judgments alongwith this OA from Annexure A/2 to A/11, whereby the pay scale of applicants therein who were similarly situated to original applicant, held entitled for higher pay-scale of Valveman and their pay scale had been revised from Rs 210-290/800-1150 to Rs 260-400/950-1500, accepting the contention of the applicants therein that post of Valveman is Skilled Category post. Therefore, those applicants working on the post of Valveman allowed pay scale of Rs 260-400/950-1500 revising from Rs 210-290/800-1150 by the respondents. Original applicant has stated that despite observations of this Tribunal in OA No. 170/2002 order dated 09.12.2002, to suo motu extend similar benefits to all other Valaveman, the respondents have not extended the similar benefits to the original applicant. Hence, aggrieved of the same, applicant has filed present OA seeking reliefs mentioned in preceding paragraph.

5. Respondents filed their reply on 23.08.2016 stating therein that as per Recruitment Rules of Valveman published vide SRO No. 215 dated 24th June, 1971 and revised Recruitment Rules of Valveman published vide SRO No. 5 dated 10th January, 1991, the post of Valveman was semi-skilled category. Mazdoor/Chowkidar/Safaiwala in the grade of unskilled category

were feeder categories for promotion to the post of Valveman (Semi-skilled). Hence, claim of the applicant that he was promoted as Valveman (SSK) against the Recruitment Rules of 1971, is not agreed. The post of Valveman till date is semi-skilled. Pay scales prescribed for the post are being paid regularly to the applicant since dates of his promotion, i.e. 21.04.1995 being skilled. Moreover, as per promotion structure, unskilled employee is first promoted to semi-skilled grade and then promoted to skilled grade. In case of the applicant, he was appointed in unskilled grade and was rightly promoted to semi-skilled grade as per line of promotion. Thus, respondents have emphasized in their reply that original applicant was granted right pay-scale and the post of Valveman being semi-skilled post under the Rules, the applicant is not entitled for the grade meant for skilled category.

6. Heard Shri. Vijay Mehta for the Applicant and Shri. K.S. Yadav for the Respondents and perused the record available on record.

7. Learned counsel for the applicant stated that original applicant has been promoted on the post of Valveman on 20.04.1995. He further reiterates that he should have been paid salary of skilled scale but he is paid only of semi skilled scale. This Hon'ble Tribunal in number of cases, as annexed with the

OA, have directed the respondents to pay the salary to Valveman in pay scale of Rs. 260-400/950-1500 as revised from time to time from dates of their appointments on the post of Valveman. Also the writ petitions filed by the respondents have been dismissed. Moreover, the SLP's filed by the respondents in five such cases have also been dismissed.

8. On the other hand , learned counsel for the respondents maintained the stand that as per Recruitment Rules of Valveman published vide SRO No.215 dated 24th June 1971 and revised RR of Valveman published vide SRO No.5 dated 10th January 1991, the post of Valveman is semi-skilled . Since Mazdoor/ Chowkidar /Safaiwala in the grade of unskilled category were feeder categories for promotion to the post of Valveman (semi-skilled) . Hence, claim of the original applicant is not tenable. He, therefore, submits that the applicant is not entitled to any reliefs as prayed by him.

9. We have considered the arguments advanced by learned counsels for the parties and perused record.

10. The sum and substance of arguments advanced by learned counsel for the applicant is that the post of Valveman had been declared as Skilled Category post by this Tribunal and such pronouncement has been upheld by Hon'ble High Court and SLPs against the same filed by Union of India had also been dismissed

by Hon'ble Supreme Court. Pursuant to the same, applicants therein were given benefits of higher pay scale treating post of Valveman as Skilled Category post. On the other hand, learned counsel for the respondents contested the issue, reiterating the grounds earlier raised at different points of time before the courts, that post of Valveman is a Semi-skilled Category post, therefore, original applicant is not entitled for the benefits of higher pay scales attached to the Skilled Category post, i.e. Rs. 260-400/950-1500. Further, since post of Valveman is Semi-skilled Category post, therefore, applicant is entitled for lower pay scale attached, i.e. Rs 210-290/800-1150.

11. On perusal of record and considering arguments advanced, we find that respondents do not dispute the fact that applicant is similarly situated to the persons who have been granted the benefits of higher pay-scale by the Courts considering the post of Valveman as Skilled Category post. Rather, respondents contests in the present OA that the post of Valveman is a Semi-skilled/unskilled post as per Recruitment Rules, therefore, original applicant is not entitled for any relief.

12. The contention raised by the respondents of Recruitment Rules etc. have already been dealt by this Tribunal as well as other superior courts. Thereafter, the issue is settled to the extent that the post of Valveman is to be considered Skilled Category post by the respondents for grant of pay scale of Rs 260-400 in 4th

Pay Commission and Rs 950-1500 in 5th Pay Commission to the incumbents concerned instead of Rs 210-290/800-1150. This Tribunal in judgment dated 09.12.2002 (Annex. A/4) passed in OA No. 170/2002 observed in para 5 to the extent that *“As a matter of fact, once the issue in controversy stands resolved and a legal position clearly established it is expected of the department to extend the same benefit to all the employees similarly placed. This would obviate the need for every individual to rush to the Tribunal/Courts to seek the same relief.”* Thereafter, in number of Original Applications filed by the “Valvemans” of respondent-department, this Tribunal granted the relief of allowing pay scale attached to Skilled Category post, i.e. . Rs. 260-400/950-1500. Original applicant has annexed such orders passed by this Tribunal alongwith the OA from Annex. A/2 to Annex. A/11, which includes order passed by this Tribunal in OA No. 255 & 256 of 2012 dated 31.01.2013 (Annex. A/10) and order dated 29.04.2013 (Annex. A/11) in OA No. 317 of 2012 & other bunch of OAs.

13. Accordingly, main issue involved in the present Original Application is no more res-integra. Original applicant is entitled for grant of higher pay scale attached to the post of Valveman at relevant time, treating the same as a Skilled Category post by the respondents instead of Semi-skilled/Unskilled post. Hence, respondents are directed to revise the pay-scale of original applicant by allowing pay-scale of Skilled Category to the post of

Valveman, i.e. Rs. 260-400/950-1500/3050-4500, as has been granted to the similarly situated persons who approached to this Tribunal. Original applicant shall be entitled for all consequential benefits notionally upto 15th September, 2012, i.e. one year prior to filing of the present O.A., and thereafter, he will be entitled for actual benefits/arrears in view of observations of Hon'ble Rajasthan High Court dated 10.03.2017 made in D.B.C.W.P. No. 5064/2017.

14. In terms of above directions, OA is allowed with no order as to costs.

15. In view of order passed by Hon'ble Rajasthan High Court on 10.03.2017 in D.B.C.W.P. No. 5064/2017, M.A. No. 219/2013 for condonation of delay had already been disposed of.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-