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**Central Administrative Tribunal
Principal Bench**

OA No. 2634/2004

New Delhi, this the 1st day of ^{August} July, 2006

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

Phool Chand
S/o Shri Pohap Singh
R/o J-26, Civil Zone,
Subroto Park,
Delhi Cantt - 10.

...Applicant

(By Advocate: Shri Surinder Singh)

Versus

Union of India through:

1. The Secretary (R),
Ministry of Defence,
South Block,
New Delhi.
2. The Engineer-in-Chief
E-in-Cs Branch, Army HQs,
DHQ, PO, Kashmir House,
New Delhi.
3. The Commander Works Engineer,
Air Force, Palam,
Delhi Cantt - 110 010.

...Respondents

(By Advocate: Shri Padma Kumar proxy for Mrs. Sangeeta Tomar)

ORDER

By Mr. V.K. Agnihotri, Member (A):

The applicant in this OA, who is a Caneman in MES, Ministry of Defence, has sought extension of benefit of revised pay scale of Rs.950-1500 from the date of initial appointment in terms of order of this

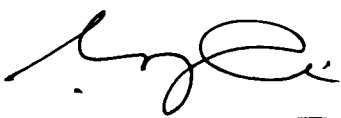


Tribunal in OA No. 804/1998 (decided on 15.09.2000) and in O.A. No. 1018/2003 (decided on 05.01.2004).

2. The brief facts of the case are that the applicant had filed OA No. 2634/2004 seeking extension of benefit of revised pay scale of Rs.950-1500 from the date of his initial appointment as Caneman in MES because according to him he was identically situated with the applicants in OA No. 804/1998 (**Shri Hari Ram Shukla & Ors. v. Union of India & Ors.**) decided on 15.09.2000 as well as in OA No. 1018/2003 (**Man Singh v. Union of India & Ors.**) decided on 05.01.2004. The said OA was dismissed on the ground that the applicant was not identically situated insofar as he was not physically handicapped/visually challenged as well as he did not possess a certificate from a recognized training institute, as was the case with the applicants in the OAs referred to above.

3. Aggrieved by the said order of the Tribunal in OA No. 2634/2004 dated 14.07.2005, the applicant filed RA No. 238/2005, which was allowed through order dated 30.05.2006 with the direction that the matter may be listed for re-hearing before a Bench constituted for the purpose. This OA has accordingly been re-heard for passing a fresh order.

4. In the RA, the applicant had advanced the arguments that an error had crept into the order passed by the Tribunal dated 14.07.2005 because the impact & significance of the Recruitment Rules was not taken into account, which prescribed the educational qualifications and pay scale for Canemen/Caneweaver as a whole and not simply for those who are physically handicapped/visually challenged. Since the



applicant possessed the prescribed qualifications, he should also get the same pay scale which the physically handicapped/visually challenged i.e. applicants in other OAs, mentioned above, have been granted. Once a Caneman/Caneweaver has been granted the benefit of higher pay scale of Rs.950-1500, instead of Rs. 800-1150 stipulated in the recruitment rules, from the date of his initial appointment, the said necessarily becomes due to the rest of the Canemen/Caneweavers doing the same work insofar as the Recruitment Rules are the same for all and there cannot be two scales of pay for the employees in the same category governed by the same Recruitment Rules.

5. The case of the respondents is that the benefit of higher pay scale of Rs.950-1500 was granted to certain physically handicapped/visually challenged Canemen for certain special reasons. The applicant herein is not similarly situated as the applicants in OA No. 804/1998 and OA NO. 1018/2003 (supra). It has been further stated that it is not the case of the applicant that he is not getting the pay sale as per the Recruitment Rules and is, therefore, discriminated.

6. We have carefully considered the rival contentions of the learned counsel for the parties and perused the material on record.

7. It is an admitted fact that as per Recruitment Rules prescribed for Canemen by the Ministry of Defence, the educational and other qualifications required for direct recruits are "8th pass or Ex-servicemen with equivalent Army qualification in the appropriate trade with 3 years' service" and the pay scale prescribed for the post is Rs.800-1150. It is also admitted that in terms of the orders of this Tribunal in OA No. 804/1998 (supra), which was further upheld by the Hon'ble High Court



of Delhi in CWP No. 1054/2001 decided on 15.07.2002, pay scale of certain canemen working with MES, Ministry of Defence, was upgraded to Rs.950-1500. In OA No. 804/1998 (supra), this Tribunal *inter alia* examined the arguments advanced by the respondents for not accepting the claim of the applicants that they belonged to the skilled category and hence were entitled to the pay scale of Rs.950-1500 on par with the canemen in the Railways and gave the direction to the respondents to review the matter to provide opportunities to Canemen in their set up on par with the opportunities available to Canemen in the Indian Railways, particularly in view of the fact that the applicants were matriculates and held certificates issued to them by recognized training institutes. This Tribunal also made the following observations:-

“That just a small number of 20 Canemen, all blind, cannot be treated justly can and should be a matter of eternal regret for a civilized society, and more so when we know that the desired small step taken to dispense justice in this case cannot by any stretch of imagination upset the existing pay structures of inter-related categories in any significant manner.”

8. The decision of this Tribunal in OA No. 804/1998 (supra), having been affirmed by the Hon'ble High Court of Delhi in CWP No. 1054/2001 (supra), the respondents allowed the pay scale of Rs.950-1500 to the applicants therein. In OA No. 1018/2003 (supra), on the strength of the decision in OA No. 804/1998 (supra), the same benefit was extended to another similarly placed Caneman in MES, Ministry of Defence.

9. The general case of Canemen, shorn of the special circumstances of the applicants in OA No. 804/1998 (supra) and OA No. 1018/2003 (supra), needs to be appreciated in the context of the observations made



by this Tribunal in OA NO. 804/1998 (supra) and the Hon'ble High Court of Delhi in their decision in CWP No. 1054/2001 (supra). We would like to quote extensively the relevant portions from these judgments as follows:-

OA No. 804/1998

"...In short, the respondents have refuted the claim of the applicants for three reasons. Firstly, because the qualification prescribed for Canemen is 8th Class without any trade certificate, they cannot be considered for being placed in the skilled category. Secondly, because promotional avenues are already available for them through the route of Upholsterer and they can attain that grade after clearing the prescribed trade test. Thirdly, because the Expert Body has, after consideration, rejected their claim for being placed in the skilled category, they cannot be so placed.

"...It is, according to us, illogical to contend that the category of Canemen cannot be placed into the skilled category only because the initial recruitment rules prescribed the minimal qualification of 8th class without any trade certificate. As we look at it, Cane-weaving is a job involving skill which has to be acquired and there is considerable scope for improving upon the skill with experience and also otherwise.

"...The respondents' contention that Canemen have the opportunity to upgrade themselves by becoming Upholsterer through a trade test, fails to convince us as much as it has failed to convince the applicants. This facility for promotion was created more than a decade ago but as claimed by the applicants and not refuted by the respondents, no one among the Caneman has so far had the opportunity to rise up the ladder and become an Upholsterer. This boon conferred on Caneman is thus more illusory than real and cannot amount to creation of a fair opportunity for this class of workers.

"...The 3rd Pay Commission reduced the number of different pay scales of Industrial workers prevalent in the respondents' establishment from 9 to 5 leaving it to the respondents to carry out the actual fitment of the workers in the newly laid down five different pay scales. The

respondents accordingly appointed an Expert Classification Committee (for short ECC) which carried out the job evaluation in respect of the various categories of Defence Workers and the Committee's report got finalized in 1983. Some categories of Industrial Workers were, however, still left out and could not be considered for being fitted in to the skilled grade. To resolve the issue, the respondent Ministry appointed a Committee known as "Anomalies Committee" in the following year, namely, 1984, to re-evaluate the job content of the left out categories of workers. This particular Committee recommended about 12 categories at the time in the pay scale of Rs. 210-290/- for fitment into the skilled grade of Rs. 260-400/-. The respondent Ministry issued necessary orders thereafter on 15.10.84. The applicants' contention is that the aforesaid Anomalies Committee re-evaluated only those jobs in the semi-skilled category in respect of which the requisite details such as job content, skill required etc. were placed before the Committee. The respondents upgraded yet another category, that of Upholsterer to the skilled grade in 1984. Even the Book Repairer/Maker trade which used to be in the semi-skilled category was upgraded into the skilled grade through the Anomalies Committee procedure. It is the applicants' belief, not seriously disputed by the respondents, that theirs is the only category that has been left out and, for that reason, still continue to be classified as semi-skilled.

"...Admittedly, the recruitment rules for Canemen have remained unchanged for close to 3 decades. The educational qualification prescribed, at that point of time, was a mere 8th class pass. Surely, over time, the Govt. and even non-Govt. agencies and Organizations have increasingly felt the need for higher qualifications in all the areas of work and, at the same time, employers have been treating formal skill acquisition as a pre-requisite for induction into various types of employment. That being the scenario, it is awkward to argue that when it comes to Canemen, one can make do with the old qualification pattern. In this background, we regret to find that no attempt has been made by the respondents to review the qualifications normally required for Canemen and may be for others in the interest of efficient and improved working...



"...In the process, we are made to feel that Cane weaving could as well have been placed in the skilled category only if by a stroke of good-luck some one had prescribed a higher qualification for them in the early stages of their career. We have already hinted earlier in the order that such a possibility always existed. However, since this chance happening did not take place, they (Canemen) must be allowed to stay where they were decades ago. This is clumsy argument and we refuse to accept ... this plea specially since it is taken by a responsible employer like the Ministry of Defence. Our impression is that often the things do not change and huge establishments, like the Defence establishment, remain unaffected by the rapidly changing conditions of work etc. just because those responsible for bringing in the desired changes at the grass-roots level do not place matters for a proper decision before the highest authority in the establishment and persist in sheer cussedness so typical of bureaucratic Organizations.

"...The applicants have drawn our attention to the situation obtaining in the Indian Railways. In that big establishment, the Canemen have been put in the skilled grade long back in November, 82. The respondents have refused to take a lesson from this and have instead insisted, according to us illogically, on saying that the job content etc. in their establishment in respect of Canemen is materially different from the Railways and so giving of the skilled grade to them will not be justified.

"...It is indeed a pity that in respect of the activity of Cane weaving with which most of us are familiar, the respondent Ministry should have come out with a totally unacceptable argument that the job content of a Cane Weaver working in their Ministry, is so very different from the job content etc. of a Cane Weaver working in the Indian Railways, that the two cannot be compared and cannot be said to be similarly situated."

CWP No. 1054/2001

"...The bogie of claim being examined by Expert Body is clearly [a] farce in view of the categorical findings of the learned Tribunal..."





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10. Thus it can be seen that all the arguments advanced by the respondents for not granting the upgraded pay scale of Rs.950-1500 have already been rejected in various judicial fora and this status has achieved finality.

11. In conclusion, we find that in the existing Recruitment Rules, there is no case for providing two pay scales for Canemen working in the Ministry of Defence. Instead of maintaining an unwarranted duality of pay scales for Canemen working with the respondents, it would be better to accept the reality and take necessary corrective measures. A better option would be to upgrade the pay scales of Canemen and simultaneously provide for the higher qualification, if necessary, in the light of the observations of this Tribunal in OA No. 804/1998 (supra) extracted above and also taking into account the qualifications prescribed for Canemen in the Railways and other skilled industrial workers in the Ministry of Defence.

12. In the result, the OA is partly allowed and the respondents are directed to consider grant of pay scale of Rs.950-1500 to the applicant in the light of findings above and issue a speaking and reasoned order in this regard within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.


(V.K. Agnihotri)
Member (A)
/na/


(Shanker Raju)
Member (J)