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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 979 of 2005

_____ day, this the 18 day of May 2007

**Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, Member (A)**

1. Bal Bahadur Vishwakarma, Aged about 52 years S/o Late Shri Tila Ram Vishwakarma, R/o 42G/2G/3A, Lala Ki Sarai, Bari Bagia, Post-Teliarganj, Allahabad.
2. Badlu Ram aged about 53 years S/o Late Bhanai Ram R/o Vill-Baripur, P.O. Athrampur, Tehsil-Soraon, Distt. Allahabad.
3. Jagdish Prasad, Aged about 47 years S/o Shri Mahabir Prasad, R/o 67, Bhusauli Tota, Khuldabad, Allahabad.

Applicants

By Advocate Sri K.P. Singh

Versus

1. Union of India through Defence Secretary, Ministry of Defence, New Delhi-110011.
2. Director General, E.M.E. (E.M.E. Civ) Army Head Quarters, D.H.Q.P.O., New Delhi-110011.
3. Commander, Headquarters Base Workshop Group E.M.E., Meerut Cantt.
4. Commandant & M.D., 508 Army Base Workshop, Allahabad.

Respondents

By Advocate Sri Saumitra Singh

ORDER

By K.S. Menon, Member (A)

By this O.A., the applicants seek following reliefs: -

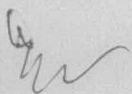
- [i] to quash the Order of notice dated 24.03.2005, 07.05.2005, and intimation letter dated 02.08.2005 (Annexure A-1, A-2, A-3 and A-4 to Compilation No. I), passed by respondent no.4;
- [ii] to direct the respondents to grant the further increments of pay as on 01.03.2005 in the scale of Rs.4000-6000/- including further due increments in future;
- [iii] to direct the respondents not to make any recovery on account of re-fixation of pay by order dated 07th May 2005 and in case any recovery is made from the pay and allowances of the applicants, same may be directed to refund alongwith interest at the rate of 18% per annum.

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2. Applicants no.1 and 2 ~~say that they~~ were appointed as Vehicle Mechanic on 11.11.1982 and promoted to the post of Highly Skilled Grade II Vehicle Mechanic on 31.03.1990 in the pay scale of Rs.1200-1800/-. Thereafter, they were promoted to the post of Engineering Equipment Mechanic (Highly Skilled Grade-I) on 07.12.1996 in the pay scale of Rs.1320-2040/-. They say that both the scales of Rs.1200-1800/- and Rs.1320-2040/- were merged in a single scale of Rs.4000-6000/- from 01.01.1996 under Revised Pay Rules, 1997. Thereafter their pay was fixed at Rs.4300/- w.e.f. 01.01.1996 in the merged scale on the post of Highly Skilled Grade-II. On promotion to Engineering Equipment Mechanic (Highly Skilled Grade-I) on 07.12.1996 their pay was fixed under FR 22-C on 01.03.1997 at Rs.4600/-. They were granted regular increments from then until their pay was raised to Rs.5300/- as on 01.03.2004. They were further promoted to the post of Master Craftsman in the pay scale of Rs.4500-7000/- and their pay was fixed at Rs.5125/- notionally on 01-10-2004 and @ Rs.5375 on 01-03-2005 .

3. The applicant no.3 says that he was also appointed on 11.11.1982 as Turner in Highly Skilled Grade-II in the pay scale of Rs.1200-2040/- (Rs.3050-4590/-RPS). Thereafter he was promoted to the post of Highly Skilled Grade-I on 06.06.1997 in the pay scale of Rs.1320-2040/-. After implementation of Revised Pay Rule, 1997, his pay was fixed on Rs.4600/- notionally on 12.06.1997 in the pay scale of Rs.4000-6000/- and @ Rs. 4900/- on 01-08-1997. He was further promoted to the post of Master Craftsman in the pay scale of Rs.4500-7000/- w.e.f. 01st October 2004 and pay was fixed at Rs.5625/-.

4. The applicant no.1 and 2 have stated that they were due for grant of further increment of pay on 01.03.2005 in the pay scale of Rs.4000-6000/- by which their pay should have been raised to Rs.5400/- and that of respondent no.3 to Rs.5600/-. The applicants allege that instead of granting further increment to the applicants, the respondents cancelled all the D.O. Part II order by which the applicants' pay was fixed on the higher post and further increment of pay vide D.O. Part II No.55/Est-Ind/2005 dated 24.03.2005 (annexure A-1), without show cause notice to the applicants. They maintain that this arbitrary and unilateral action violates the principles of natural justice. Subsequently, the respondent no.4 published another order bearing D.O. Part II No. 73/Est-Ind/2005 dated 07.05.2005 (annexure A-2), by which the pay of the applicants have been reduced arbitrarily and illegally without show cause notice and instead of granting the pay of Rs.5400/- to the applicant no.1 and 2 and Rs.5600/- to the applicant no.3 as on 01.03.2005, the pay of applicant no.1 and 2 have been reduced to Rs.5200/- and Rs.5400/- in respect of applicant no.3. The applicants submit that action of



respondent no.4 is wholly arbitrary, illegal and violative of principles of natural justice and prayed that the impugned orders are liable to be quashed on this ground alone.

5. Learned counsel for the applicants ^{has} ~~have~~ also relied on C.A.T. Hyderabad Bench Judgment passed in the case of B. Bhoobhakar and other Vs. General Manager, South Central Railway, Secunderabad and others reported in 2004 (1) A.T.J. (Hyderabad Bench) page 432, in which it was held that the order reducing the pay scale and recovery of excess amount without giving prior show cause notice to enable them to make a representation, cannot be made. The RPR 1997 came into being on 30-09-1997, it is therefore implicit in the recommendation of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the replacement scale till then. They have relied on the operating portion of Gazette of India extra ordinary. Part B (Annexure I) to the Rejoinder. Rebutting this argument, the respondents argue that Annexure I to the Rejoinder has no relevance with the instant case as the applicant belongs to an industrial category. While admitting that the CCS Revised Pay Rules 1997 came into existence w.e.f. 30.09.1997, they maintain that it is to be implemented w.e.f. 01.01.1996 and not 30.09.1997. The applicants further contend that reduction of pay from 1996 onwards to March 2005 is likely to affect the arrears of pay and allowances paid to the applicants from December 1996 to March 2005. The applicants claim that they have been put to huge financial hardship by the illegal action of respondent no.4. They further claim that their pay was fixed under the provisions of FR 22 (a) (1) and thereafter under FR 22-C, as per which any change made by the respondents should have been intimated to the applicants by issuance of show cause notice to them but no such show cause notice have been issued to the applicants in the present case. The learned counsel for the respondents state that all actions by the respondents have been taken as per policy decisions of the government of India and the directions of the PCDA, Lucknow and is equally applicable to all government employees. Issue of show cause notices to each employee does not arise.

6. The applicants in their written submission at para-3 I of the Rejoinder state that there is no merger of Grade I and Grade II. The pay scale of Rs.4000-6000 denotes the pre-revised pay scale of Rs.1200-1800; Rs.1200-2040/- and Rs.1320-2040/-. Countering this, the learned counsel for the respondents states that Highly Skilled Grade I and Highly Skilled Grade II have been merged into a single grade as Highly Skilled w.e.f. 01.01.1996 as per Government of India, Ministry of Defence letter No. 11 (1)/2002/D (CW I) dated 20.05.2003. He further states that

the pay scale of Rs. 1200-1800 attached to Highly Skilled Grade II and the pay scale of Rs. 1320-2040/- attached to Highly Skilled Grade I/EE Mechanic have also been revised into a single pay scale of Rs.4000-6000/- under CCS (RP Rules 1997) w.e.f. 01.01.1996 (SCA-I). The submission made by the applicant is, therefore, not accepted. The Principal CDA (Central Command) directed a review of pay fixation cases of all affected personnel consequent upon the merger of grades (HSG II/I) in the pay scale of Rs.4000-6000. The learned counsel for the respondents states that the pay fixation in the pay scale of Rs.4000-6000/- of EE Mech/Turner HSG I including increments which were granted earlier vide DO Pt. II orders prior to receipt of Government Orders regarding the merger, were cancelled vide Order dated 24.03.2005. Increments as applicable in the merged H.S.G.scale were subsequently granted to the applicants in the pay scale of Rs.4000-6000/- vide the Order dated 07.05.2005. Shri K.P. Singh states that the details of pay of the applicants shown by the respondents as Rs.4600/- w.e.f. 01.03.1997 on option of the applicants are accepted however, thereafter the pay scale shown by the respondents is Rs.5125/- and Rs.5375/- notionally w.e.f. 01.10.2004 and 01.10.2005 on option are absolutely incorrect. Shri K.P. Singh maintains that the pay of the applicants was fixed earlier at Rs.5300/- and Rs.5500/- notionally w.e.f. 01.10.2005 and Rs.5550/- w.e.f. 01.10.2005 on option. He says the applicants should get the pay in the scale of Rs.1320-2040/- in the revised scale of Rs.4000-6000/- and the increments drawn annually. The applicants say their promotion cannot be scrapped/ withdrawn as per revised pay rules, 1997 and the observation of the A.R.A.O. Allahabad is against the direction of Revised Pay Rules, 1997, and that should be quashed.

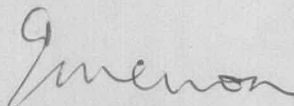
7. In paragraph No. 3 (viii) of the Rejoinder, the applicants contend that as per Annexure-I-Statement of Fixation of pay under CCS (Revised Pay) Rule, 1997 after options have been received from the employees, the statement to be filled clearly states that in case more than one scale of pay is applicable for the post and they have been merged in pursuance of the recommendation of the 5th C.P.C. in a single revised scale, the scale of pay in which the employee was actually drawing the pay should be specified. Further the employee has to give a written undertaking in the statement that in case of excess payment due to wrong fixation, to be noticed subsequently, these would be refunded or adjusted from future payments. Applicants maintain this was not done. The learned counsel for the respondents has also not been able to show proof that these statements were got prepared in respect of the applicants and undertaking obtained from the applicants.

8. The applicants further state that they sent representations dated 10.06.2005, 06.06.2005 and 08.06.2005, addressed to the respondent no. 2 but no reply or action has been taken on it. The learned counsel for the respondents, however, submitted that these representations were never received in the Office of the answering respondents, as such, no comments are being offered.

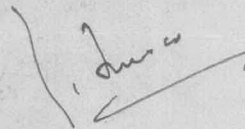
9. We have heard the arguments of the learned counsels and the Written Submission made by both parties. It is well established that the Government has the authority to change or modify policy decisions when such decisions have a prospective applicability, without effecting the right of officials, it cannot be assailed. In the present case, the merger of the two scales has the effect of a reduction in pay and consequential recovery which entails considerable financial loss. It is this change that has effected the future prospects of the applicants. No order can be passed which has the effect of curtailing the right of individuals which had earlier accrued to them.

10. In view of the above, there is merit in the views of the applicant and the arguments of the learned counsel. The OA is therefore allowed and the impugned orders dated 24-03-2005 and 07-05-2005 is quashed. The respondents are directed to reconsider the case of the applicants and ensure that their pay and allowances prior to the date of the merger of the HSG I and HSG II scales became effective is protected and their pay refixed in the new scale wef. 01-03-2005.

11. The above should be done within a period of three months from the receipt of a certified copy of this order. No order as to costs


Member (A)

/M.M./


Vice Chairman