

1. O.A. No. 206/95

- (i) Mahendra Kumar son of Shri R.K. Verma aged 30 years S.B.A. E/170, Railway D.S. Colony, Jodhpur.
- (ii) Shyam Lal son of Shri Maga Ram aged 32 years Lineman, r/o. outside Hem Niwas, Mahamandir, Jodhpur.
- (iii) Kuldeep Sing son of Shri Kishan Singh aged 31 years, M.P.A. Gulab Sagar, Jodhpur.
- (iv) Anil Bohra son of Shri Gauri Shanker aged 33 years M.P.A. Bohoron Ki Pol, Jodhpur.
- (v) Ram Prasad son of Shri Prasad Lal aged 30 years, M.P.A. Defence Laboratory, Jodhpur.
- (vi) Babu Lal son of Shri Ram Niwas aged 31 years, Electrician, G.E. Air Force, Jaisalmer.
- (vii) Dinesh Kumar son of Shri Sushil Kumar aged 32 years Refrigerator Mechanic, outside Sojati Gate, Near Arun Hotel, Jodhpur.
- (viii) Sudhir Chand son of Shri K.C. Harsh aged 32 years, Lineman, Veer Mohalla, Jodhpur -
All employees of G.E., Air Force, Jaisalmer.

... Applicants.

versus

- (i) Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
- (ii) Commandar Works Engineer, Air Force, Jodhpur.
- (iii) Garrison Engineer, Air Force, Jaisalmer.

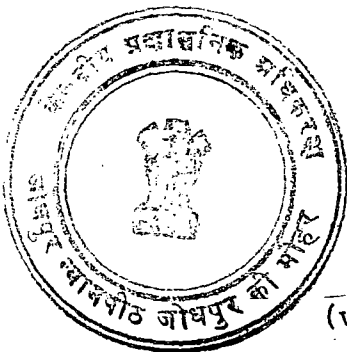
... Respondents.

2. O.A. No. 324/95

- (i) Trilok Ram son of Shri Panchu Ram aged 30 years Refrigerator Mechanic, Office of the Garrison Engineer (Air Force), Jaisalmer.

... Applicant.

versus



- (i) Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
- (ii) Commander Works Engineer, Air Force, Bikaner.
- (iii) Garrison Engineer (Army), Suratgarh.
- (iv) Garrison Engineer (Air Force), Jaisalmer.
- (v) Engineer in Chief's Branch, Army Headquarters, New Delhi.

... Respondents.

Mr. Vijay Mehta, Counsel for the applicants in both the OAs.

Mr. S.S. Purohit, Counsel for the respondents in OA No. 206/95.

Mr. S.K. Nanda, Counsel for the respondents in OA No. 324/95.

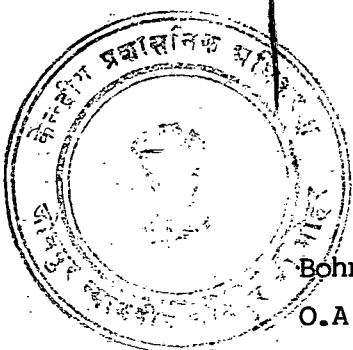
CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(Per Hon'ble Mr. Gopal Singh)



Applicants, Mahendra Kumar, Shyam Lal, Kuldeep Singh, Anil Bohra, Ram Prasad, Babu Lal, Dinesh Kumar and Sudhir Chand, have filed O.A. No. 206/95 under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the orders at Annexures A/1 to A/8, Annexures A/30 to A/36 and similar orders with regard to applicant No.8 and further for issuing a direction to the respondents not to recover any part of the salary paid to them in grade Rs. 950-1500 and for not altering their pay scale Rs. 950-1500 and to declare that the applicants are entitled to receive salary in pay scale of Rs. 950-1500 from the day of their initial appointment.

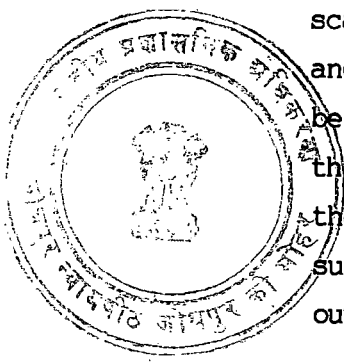
2. Applicant, Trilok Ram, in O.A. No. 324/95 has prayed for quashing the order dated 3.8.1995 (Annexure A/1) and the orders passed by the respondent No. 2 referred to in Annexure A/1 and for issuing a direction to the respondents to pay the applicant the salary in the pay scale of Rs. 950-1500 from the date of his appointment.

3. Since the issue involved in both these cases is the same, therefore, both these applications are being disposed of by this common order.

4. Applicants in OA No. 206/95 were initially appointed as Skilled

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Workmen in the scale of Rs. 950-1500. The respondents vide their letter dated 28.9.88 tried to change the pay scale from Rs. 950-1500 to Rs. 800-1150. These orders were earlier challenged by the applicants before this Tribunal and this Tribunal vide its order dated 13.7.93 passed in O.A. No. 347/87, quashed the order dated 28.9.88 and directed the respondents to return the amount recovered from the applicants. The applicants had to file a Contempt Petition for compliance of the Tribunal's order referred to above and finally, the respondents paid back the recovered amount to the applicants. Further, the applicants were issued show cause notices on 29.7.94 which was replied by the applicants on 1.9.94. The applicants' representation in reply to the show cause notice was rejected by the respondents vide their order dated 29.4.95 and it was held by the respondents that the applicants were not eligible to the skilled pay scale of Rs. 950-1500 from the day of their initial appointment and the amount overpaid to the applicants in this regard was ordered to be recovered. The entire exercise of recovery of overpayment due to fixation of pay of the applicants in the scale of Rs. 950-1500 was based on respondents' orders dated 15.10.84 and 11.1.85. These orders were challenged earlier in O.A. No. 79/92 before this Tribunal. While disposing of the said OA, it was observed that the amendments were not made in the Recruitment Rules of 1971 at the time of issuance of the appointment orders in the year 1988 and as such, the applicants would not be governed by the amendments carried out later on in the Recruitment Rules which were published on 10.1.91.



5. Applicant in O.A. No. 324/95 was initially appointed in the grade Rs. 800-1150 in June, 1987. His contention is that since there was no provision for the pay scale of Rs. 800-1150 meant for Semi-skilled worker in the Recruitment Rules, 1971, he has been discriminated against vis-a-vis other Skilled Workmen though he has been discharging the same duties and function.

6. Notices were issued to the respondents and they have filed the reply.

7. We have heard the learned counsel for the parties and perused the records of the case.

8. As has been mentioned above, the implementation of the Government of India orders dated 15.10.84 and 11.1.85 came under scrutiny before this Tribunal in O.A. No. 79/92, which was decided on

8.8.94. While disposing of the said O.A. this Tribunal had observed as under :-

"The case of the applicants is that during 1989 and 1988 they were recruited, but amendments in the rules had not been made in the skilled and semi skilled categories or in the service orders of the skilled workmen, as such they have been appointed in the skilled grade of Rs. 800-1150, whereas the other persons working in skilled grade were drawing salary in the grade of Rs. 950-1500. The applicants were then promoted in the skilled grade Rs. 950-1500 from 30th July, 1989 on completion of two year of probation period. According to the applicant, the grade of skilled category was 950-1500 and the applicants were wrongly placed in the grade of Rs. 800-1150, though no amendment had been made in the rules. It has, therefore, been said by the applicants that the orders Annexure R/1 and R/2 should be quashed and the respondents should be directed to pay allowances and other benefits to applicants in the skilled grade 950-1500 from the date of their appointment and they should be accordingly fixed in that grade.

2. Notice of this O.A. was sent to the respondents. They have filed the reply. Alongwith the reply, the respondents have relied on Annexure R/1 and R/2, and said that the applicants were appointed in the semi skilled grade Rs. 800-1150, and after completion of their probation period, they were promoted in the skilled grade of Rs. 950-1500.

3. We have heard the arguments on behalf of both the sides, and perused Annexure R/1 and R.2 which have been issued by the Government of India, Ministry of Defence on 15th October, 1984, by which upgradation of jobs from semi skilled grade to skilled grade has been made. On the basis of Annexure R/1, Annexure R/2 have been issued by the Engineer-in-Chief, Army Headquarters, New Delhi, and in para 4 of Annexure R/2, it has been said as follows :-

"4. With immediate effect, all future recruitment will be made with the above qualifications after the existing ban on direct recruitment is lifted by the Government. Necessary amendment to recruitment rules will be issued separately. Direct recruitment to the skilled grade (Rs.260-400) will cease forthwith."

A further endorsement below the letter Annexure R/2 has been made in the following words :

"With a request to issue necessary amendment to Recruitment Rules. A copy of Ministry of Defence letter No. 3810/DS(O&M)/Civ.I/84 dated 15th October, 84 is enclosed."

4. The argument of the learned counsel for the applicant is that in pursuance of Annexure R/1 and R/2, amendment in rules has not been made on the day on which the applicants were recruited and only the skilled grade of Rs. 950-1500 was existing and therefore, the applicants should not have placed



in the scale of Rs. 800-1150. According to the learned counsel for the respondents the rules have been amended in the year 1991 and it has been argued by him that the applicants were placed in the pay scale of Rs. 800-1150 on the basis of circulars Annexure R/1 and R/2.

5. We agree with the counsel for the respondents that on the date when the applicants were recruited on the post of semi skilled or skilled the respondents had no knowledge about any amendment in the rules.

6. In view of this, we dispose of this O.A. by giving a direction to the respondents that in case the rules had not been amended on the basis of Annexure R/1 and R/2 then the applicants should have been fixed in the pay scale of Rs. 950-1500 as such they shall reconsider the case of the applicants for fixing them in the scale of Rs. 950-1500 within a period of three months of this order."

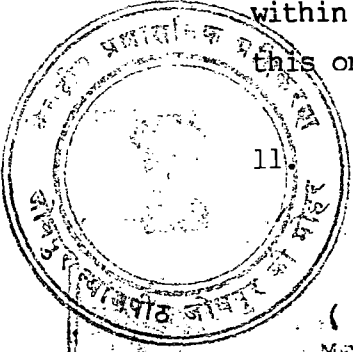
9. The respondents have relied on the judgement of Hon'ble the Supreme Court in Writ Petition No. 40 of 1991, Association of Examiners, Muradnagar Ordinance Factory vs. Union of India & Ors., in support of their contention that the applicants are not entitled to the pay scale of Rs. 950-1500 on their initial appointment. The relevant portion of the said judgement is extracted below :



"We would, therefore, direct the respondents to verify the service records of these employees and grant the benefit to those who were in position on 16th October, 1981 in the grade of Rs. 210-290 by upgrading them to the skilled category of Rs. 260-400 with effect from that date on the ratio of this Court's decision in Bhagwan Sahai vs. The Union of India (AIR 1989 SC 1215), vide paragraph 11 of the judgement. Those who were not in position as on 16th October, 1981 in the semi-skilled grade of Rs. 210-290 will be entitled to placement in the skilled category of Rs. 260-400 if they satisfy the requirements of Clauses 'a', 'b', and 'c' of Clause (IV) in Chapter X of the Anomalies Committee's report to the extent of its acceptance, with or without modifications, by the Government of India."

This judgement of ~~the~~ Hon'ble the Supreme Court deals with upgradation of the employees in the semi skilled grade as on 16.10.81 to the skilled grade from that date. It has also been mentioned that those who were not in position as on 16.10.81 in the semi skilled grade of 210-290 will be entitled to placement in the skilled category of Rs. 260-400 if they satisfy the requirements of Clauses 'a', 'b', and 'c' of Clause (IV) in Chapter X of the Anomalies Committee's report to the extent of its acceptance, with or without modications, by the Government of India. It would thus be seen that the quoted judgement of Hon'ble the Supreme Court is not applicable to the case in hand as the applicants in this case were recruited during the year 1987 and 1988.

10. In the light of the above discussion, we do not find any strong reason to deviate from the stand already taken by this Tribunal in O.A. No. 79/92 (supra). We thus find that the applications have much force and deserve to be allowed. Both the OAs are accordingly allowed with a direction to the respondents that the applicants should be fixed in the pay scale of Rs. 950-1500 from the date of their initial appointment, within a period of three months from the date of receipt of a copy of this order.



11. Parties are left to bear their own costs.

sd/-

(GOPAL SINGH)
MEMBER (ADMN.)

sd/-

(A.K. MISRA)
MEMBER (JUDL.)

न्यायिक

सत्य प्रतिनिधि

अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

Copy given from original order

28/12/98