

Date of order : 6.1.2000

O.A.NO. 161/1998

1. Gurdas Yadav S/o Shri Tillu Ram, aged 33 years, MPA
2. Prakash Chand S/o Shri Sardara Lal, DES aged 41 years.
3. Ram Karan S/o Shri Pemaram aged 35 years, Wireman.
4. Harish Chandra S/o Shri Goverdhan Ram aged 38 years, Fitter Pipe.
5. Narendra Singh Chouhan S/o Shri Goverdhan Singh aged 35 years, Fitter Pipe.
6. Mal Singh S/o Shri Ram Gopal aged 35 years, Fitter Pipe.
7. Bhagirath S/o Shri Kashiram aged 35 years, Carpenter.
8. Ram Swaroop S/o Shri Lal Chand aged 32 years, Carpenter.
9. Sumer Singh S/o Shri Jalesingh aged 36 years, Electrician.
10. Daulat Singh S/o Shri Earuram aged 34 years, Electrician.
11. Indrajit Singh S/o Shri Mahendra Singh, aged 34 years, Electrician.
12. Bhola Singh S/o Shri Mukand Singh aged 30 years, Electrician.
13. Hari Pratap S/o Shri Shyam Singh aged 33 years, Electrician.
14. Krishna Kumar S/o Shri Phul Singh aged 35 years, Carpenter.
15. Sunder Ram S/o Shri Ram Chand aged 33 years, Electrician.
16. Kashiram S/o Shri Maruram aged 33 years, M.P.A.
17. Hansraj S/o Shri Ramjilal aged 33 years, M.P.A.
18. Prahilad Singh S/o Shri Rameshwar Lal aged 33 years, Uphoster.
19. Suresh Kumar S/o Shri Devi Lal aged 33 years, M.P.A.

No. 1 to 14 are working under respondent No. 2 at Lalgarh Jattan. Rest are working under respondent No. 3 at Sriganganagar.

..... Applicants.

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1. Union of India through the Secretary to the Government of India, Ministry of Defence, New Delhi.

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2. Garrison Engineer, Lalgarh Jattan.
3. Garrison Engineer, Sriganganagar.
4. Commander Works Engineer (P) Sriganganagar.
5. Engineer-in-Chief, Army Headquarters, New Delhi.

..... Respondents.

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Mr. Vijay Mehta, Counsel for the applicant.

Mr. K.S. Nahar, Counsel for the respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER MR.A.K.MISRA :

The applicants have moved the present O.A. with the prayer that orders Annex.A/1 dated 10.2.98 and Annex.A/2 dated 28.2.98 be quashed and the respondents be directed to pay to the applicants salary in pay scale of Rs. 950-1500 from the date of their initial appointment and consequently to revise their pay fixation. The respondents be further directed to give the applicants same benefits which have been granted in compliance of the order Annex.A/4 and be further directed to treat the applicants at par with the applicants of O.A. No. 79/92.

2. Notice of the Original Application was issued to the respondents who have filed their detailed reply to which no rejoinder was filed by the applicant.

3. It is stated by the applicants that they were appointed by the respondents between 1987 to 1990 on various posts as indicated against their names in the title in the pay scale of Rs. 950-1500. They were selected on the posts to discharge the duties

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of Skilled Workmen but they were given pay in the pay scale of Rs. 800-1500, which is a scale ment for semi skilled category. The applicants are ITI trained and therefore, their recruitment is governed by Military Engineering (Industrial Class-III and Class IV Postal) Recruitment Rules, 1971 (for short "the Rules"). These rules do not provide for semi skilled category. It is thus evident that the applicants were appointed on skilled posts and were discharging duties of skilled post yet they were given salary in semi skilled grade. In the said Rules, there is no provision for semi skilled posts. It is further alleged by the applicant that in order dated 8.8.1994 passed in O.A. No. 79/92 it was held that the recruitment rules do not provide scale of 800-1200 for these posts and their grade is 950-1500. The applicants were given appointment during the period when only these rules were in force. In the instant case also when the applicants were given appointment "1971" Rules were in force, therefore, the pay of the applicants were wrongly fixed and they were paid lesser pay than their entitlements. The applicants had challenged the action of the respondents on the ground that the order passed by the Tribunal in O.A.No. 79/92 has been implemented yet the applicants were not extended the same benefit. The case of the applicant is governed by the rules as they stood at the time of their appointment. The relevant rules were revised in the year 1990 and, therefore, the amended provisions cannot be ^{made} applicable retrospectively to deprive the applicants of their dues hence this O.A.

4. The respondents have filed their reply in which it is stated that the applicants were appointed on probation basis for a period of two years and on successful completion of probation period, they were to be fixed in skilled grade. During the probation period, they were only entitled for semi skilled grade. The applicants on the basis of qualification cannot claim higher pay. The principles of "equal work equal pay" is not applicable in the instant case in view of the judgment of the Hon'ble Supreme

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Court Annex.R/1. The applicants were recruited in terms of letter dated 15.10.1984 issued by the Ministry of Defence and were accordingly granted pay of the semi skilled category for the period of their probation. The order of the Tribunal has been implemented to avoid proceedings under the Contempt of Court Act, therefore, a case of discrimination cannot be made-out by the applicant. The SLPs involving similar issues are pending before the Hon'ble Supreme Court and the controversy has not yet finally been decided by the Hon'ble Supreme Court, therefore, the applicants are not entitled to any relief. The O.A. deserves to be rejected.

5. We have heard the arguments. Both the learned counsels have elaborated their arguments in terms of their pleadings. We have considered the arguments and gone through the case file.

6. It appears that on the basis of recommendations of anomalies committee, the Ministry of Defence issued letter dated 15.10.1984 (Annex.R/3) by which twelve posts of various categories of industrial workers were upgraded from semi skilled grade to skilled grade. Thereafter another letter was issued by the Engineer-in-Chief, Army Headquarter, on 14.1.1985 (Annex.A/8), which is addressed to all lower formations in this regard. This letter further stipulates that steps would be taken to amend the Recruitment Rules. From this, it is clear that Recruitment Rules of 1971 were in force and certain provisions of the said Rules were required to be amended in view of the letters Annex.R/1 and Annex.A/8. In pursuance to these two letters i.e. ^{kind of} upgrading of ^{and stating} posts, technical and educational qualifications relating to recruitment of industrial workers, rules were amended only in the year 1991 whereas the present applicants were recruited for various industrial post's in the organisation of respondents during the year 1987-90. Therefore, in our opinion, the service conditions including their pay scale, would be guided by the then Recruitment Rules in vogue. The Rules cannot be amended by administrative

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orders. In other words, administrative orders cannot supersede the specific provisions of the rules. If rules do not provide for initial recruitment on the ~~post~~ of semi skilled grade then under administrative orders, persons cannot be recruited for semi skilled posts or their pay cannot be regulated as per these administrative instructions. The aforesaid two letters i.e. Annex.R/1 and Annex.A/8 respectively, were scrutinised by this Tribunal in various O.A.s in the past. The order passed by the Tribunal in O.A. No. 79/92 dated 8.8.1994 was implemented by the respondents vide their order dated 17.9.1995 (Annex.A/4). No doubt, in this order, it is mentioned that the out-come of SLPs involving similar issues pending in the Hon'ble Supreme Court will regulate the recovery of the payment so made in these orders.

7. In the order dated 8.8.1994 passed in O.A. No. 79/92, it was held that "in case the Rules had not been amended on the basis of Annex.R/1 and Annex.R/2 (letters dated 15.10.1984 and subsequent communication of Engineer-in-Chief), then the applicants should have been fixed in pay scale of 950-1500....." There is no dispute in this regard that Recruitment Rules were only amended in the year 1991, therefore, in our opinion, appointments made earlier than the amended rules, shall be guided by the then existing provisions of the Rule and not by the administrative orders.

8. ^{also} These two letters came to be scrutinised by us in O.A. No. 206/95 and O.A. No. 324/95 vide order dated 21.12.98, and in O.A. No. 69/96 and 76/96 dated 14.5.1999. In these orders, we have held that in absence of amendment in the Rules, the earlier appointees shall be guided by earlier provisions and we have no reason to differ from the earlier opinion that we have taken on the subject.

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9. The respondents have relied on the judgment of Hon'ble the Supreme Court in Writ Petition No. 40 of 1991, Association of Examiners, Muradnagar Ordinance Factory vs. Union of India & Ors. (Annex.R/2), 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 judgment 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 judgment. 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."

10. This judgment of Hon'ble the Supreme Court deals with upgradation of the employees in the semi skilled grade as on 16.10.1981 to the skilled grade from that date. It has also been mentioned that those who were not in position as on 16.10.1981 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 modifications, by the Government of India. It would thus be seen that the quoted judgment 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 1988-1990.

11. 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 application has much force and deserves to be allowed. The O.A. is 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. The arrears of pay consequent to the pay fixation, as directed above, should also be made to the applicant within the aforesaid period. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)

Adm. Member

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6/11/2000
(A.K.MISRA)
Judl. Member

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