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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A.NO.221/2004

5th Sept., 2006

CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. J.P.SHUKLA, MEMBER (A)

1. Kamaljeet Singh S/o Sh. Joginder Singh ji, Aged about 43 years, R/o Ward No.26, Near Govt. Middle School No.2, Suratgarh, Distt. Sriganganagar (Rajasthan).
2. Digamber Singh S/o Sh. Hari Krishan ji, Aged about 44 years, R/o MES Colony, Garrison Engineer (Air Force), Suratgarh, Distt. Sriganganagar (Rajasthan).
3. Shambhu Dayal S/o Sh. Ram Kumar Ji, Aged about 38 years, R/o Ward No.27, Pratap Nagar, Suratgarh, Distt. Sriganganagar, (Rajasthan).
4. Lal Bihari S/o Sh.Chokhe Lal ji, aged about 43 years, R/o Qtr. No.520, Rajasthan Canal Project, Tibbna Colony, Suratgarh, Distt. Sriganganagar (Rajasthan).
5. Krishan Kumar S/o Sh. Kaushal Singh ji, Aged about 44 years, R/o Ward No.12/309, Bypass, Suratgarh, Distt. Sriganganagar (Rajasthan).

At present all the applicants are working on the post of Mazdoor, in the office of Garrison Engineer (Air Force), Suratgarh, Distt. Sriganganagar (Rajasthan).

Applicants

BY : Mr.S.K.Malik, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi-110011.
2. Director General, Engineer-in-Chief Branch, Army Head Quarters, Kashmir House, DHQ Post, New Delhi.
3. Chief Engineer, Air Force, WAC, Delhi Cantt-110010.
4. Commander Works Engineer (Air Force) Bikaner (Rajasthan).
5. Garrison Engineer (Air Force), Suratgarh, Distt. Sriganganagar (Rajasthan).

..... Respondents

By : Mr.Vineet Mathur, Advocate.

ORDER (Oral)

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KULDIP SINGH, VICE CHAIRMAN

Five applicants have joined in this O.A. claiming that they were initially engaged as Diesel Engine Static (DES) / Motor Pump Attendant (MPA), which posts were redesignated as Fitter General Mechanic (hereinafter to be referred to as "FGM"). The applicants joined during the years 1985-87 and they were fulfilling the qualifications for their respective posts. In April, 1987, their services were terminated against which they filed O.A.No.93/1987 before this Tribunal which was allowed on 19.7.1988, by setting aside the termination order with direction to respondents to reinstate the applicants in service with full back wages (Annexure A-2).

The respondents filed an Appeal Nos.4201-4208 of 1989 titled Union of India & Others Vs. Bhawani Singh & Others, before the Hon'ble Supreme Court. By order dated 5.10.1989 (Annexure A-3), the Apex Court upheld the order passed by this Tribunal but with modification by directing the respondents to reinstate the applicants on the posts held by them before their retrenchment, without any back wages. The services of those who satisfy the prescribed qualifications according to the rules prescribed, shall be regularized in the post in which they are reinstated.

The applicants were reinstated in service w.e.f. 18.11.1989, but on the post of Mazdoor, instead of the posts from which they were retrenched. It is submitted that a similarly situated person filed O.A.No.385/1993 titled Jagdish Vs. Union of India & Others, which was allowed on 4.3.1998 (Annexure A-4), in terms of the judgment of the Hon'ble Supreme Court. Shri Jagdish was appointed as Carpenter

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(Semi Skilled) w.e.f. 22.9.1999 in the pay scale of Rs.2650-4000 (Annexure A-5), dated 11.10.1999. The applicants plead that they are senior to Shri Jagdish but they have been denied benefit. Thus, applicants filed a representation to the respondents on which some internal correspondence took place amongst Respondents 3, 4 and 5.

Finding no response, the applicants filed O.A.No.206 of 2003 titled Kamaljeet Singh & Others Vs. Union of India & others, and vide order dated 7.10.2003 (Annexure A-11), a direction was issued to the respondents to take a decision within 4 months. Finally, the respondent No.3, rejected the prayer of the applicants vide order dated 12.8.2004 (Annexure A-1), on the ground that the applicants were not eligible in accordance with the rules for appointment as MPA/DES and as such they were rightly regularized as mazdoors.

Respondents have contested the O.A. In their reply, they pleaded that once the order of the Hon'ble Supreme Court was implemented by the respondents, the position was settled as once they have accepted the post of Mazdoor commensurate with their educational qualifications, reopening of issue is not permissible at this belated stage. They were not holding the requisite qualification for regularisation of their services on the post of MPA/DES. The requisite qualification for the post of MPA/DES (FGM), is middle/matric standard, along with ITI in the concerned trade. The applicants do not fulfill these qualifications. A rejoinder has also been filed by the applicants reiterating the pleas taken in the O.A. They have also placed on record a decision of the Chandigarh Bench of C.A.T. In O.A.No.189-PB-2002 decided on 24.3.2003 (Kashmir Singh & others Vs. UOI etc.).



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(Annexure A-15). This decision has been implemented by the respondents vide PTO Order dated 22.12.2003 (Annexure A-16). The respondents have also filed an additional affidavit with Annexures R-1 to R-3, which are copies of letter dated 15.10.1984, 26.10.1989 and 28.10.1989 respectively. They plead that the reinstatement of the applicants was governed by SRO dated 24.6.1971, which was subsequently amended in 1984 and further amended / modified as Rules of 1991. Thus, the post on which the applicants were working prior to their retrenchment was fully governed by the Rules of 1971 and 1984 amendments. Even prior to the 1989, as per these rules, the technical qualification for the post was prescribed two years certificate from ITI/NCTVT or equivalent in the trade of Mechanic Motor/Electricians and Mechanic Diesel Engine/Fitter.

We have heard learned counsel for the parties at length and have perused the material on the file.

Learned counsel for the applicant produced a copy of judgment in O.A.No.273 of 2004 dated 22.11.2005 of this Tribunal in the case of Narayan Ram & others Vs. Union of India & Others, submitting that the issue as raised in this O.A. is now stands settled in the said decision and the present O.A. is also liable to be disposed of in the same terms. On perusal of the decision, we find that in the said case there is reference to various decisions including in the case of Kashmir Singh (supra) and other O. As, such as O.A.no.188-HR-1987 (Surinder Pal Gupta); O.A.No.447-HR-1987 (Harish Chander); O.A.No.189-HR-1987 (Deepak Kumar Dhall,CED; O.A.no.448-HR-1987 (Tek Chand), O.A.No.449-HR-87 (Tilak Raj) Vs. Union of India & others, and several



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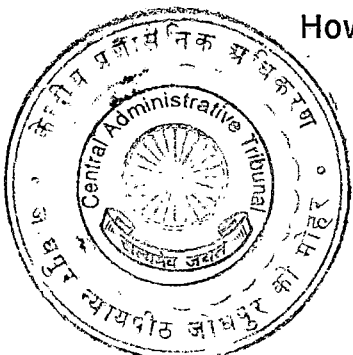
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other O.As. After noting these decisions, It was held by the Bench that :-

"The applicants in this case were also appointed under the earlier rules, which do not prescribe any qualification. The qualification of ITI was introduced only w.e.f. 12.9.1991. so, there was no defect in their appointment when they were initially appointed as wireman, DES & MPA respectively and once they were ordered to be reinstated on the posts from which they were retrenched, they were required to be reinstated on the same post and not in a lower one and appointment of applicants on lower post of Mazdoor shows the clandestine implementation of the directions given by the Courts which is more in disobedience rather than compliance. It is clear from Annexure A-9 that the qualification of ITI was introduced in the letter dated 12.9.1991 and in this case the applicants have been reinstated in November, 1989 itself, when earlier rules were still in force which did not prescribe any qualification for holding the post of wireman, DES and MPA, so there was no reason for respondents to appoint the applicants on lower posts in the guise of lack of new qualifications".

A direction was issued to the respondents to consider regularization of the applicants on the posts on which they were initially appointed which stands re-designated as FGM w.e.f. 18.11.1989, when they were reinstated in service, by virtue of order passed by the Hon'ble Supreme Court. The applicants were also held entitled to all the consequential benefits of difference of pay and allowances for the said period. The facts of the present case are fully covered by the decision in the case of Narayan Ram (supra) and we do not find any element of difference between these two cases.

However, learned counsel for the respondents took us through



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Annexure R-1 and submitted that on the basis of same the applicants are not qualified to be posted as FGM. However, the perusal of Annexure R-1, shows that it is a direction to the Department regarding implementation of the report of the 3rd Pay Commission and it does not refer to the recruitment rules of 1971 with regard to appointment of the applicants. The short question in this case is as to on what post the applicants were initially appointed and whether the recruitment rules provided any specific qualifications for their recruitment to the post of DES/MPA, redesignated as FGM. The counsel for the applicants has pointed out that when the applicants were appointed, there did not exist any qualification in the recruitment rules. Despite giving opportunity, learned counsel for the respondents could not provide any amendment in the recruitment rules having taken place prior to the reinstatement of the applicants indicating that there were any qualifications at the time of initial appointment of the applicants. There is a specific finding in the case of Narayan Ram (supra) which stands implemented and accepted by the respondents that the Military Engineering Service (Industrial Class III and IV) Recruitment Rules, 1971, do not prescribe any qualification and the qualification of ITI was introduced only w.e.f. 12.9.1991. In view of this specific finding, we do see any material or reason to record a different finding. Thus, it will be safe to conclude that there was no defect in the appointment of the applicants when they were initially appointed as DES/MPA and once they were ordered to be reinstated on the posts from which they were retrenched, they were required to be reinstated on the same posts and not on the post of Mazdoor.

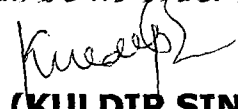


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Learned counsel for the respondents has submitted that the O.A. is barred by time and as such the it is liable to be dismissed. However, we find that the applicants have filed an M.A. For condonation of delay. Undisputedly, when the applicants were retrenched, they had approached the Court of law in 1987 and were reinstated in 1989. However, they were not reinstated on the proper post and pay scale and were put on a lower post. The grant of correct pay scale and pay fixation is a recurring cause of action and cannot be defeated on the plea of limitation, particularly, when the fault lies on the part of the respondents. It is a case of implementation of judgement of the Apex Court in letter and spirit as applicants were required to be reinstated on the posts against which they were initially appointed. Once the applicants in the case of Narayan Ram & others (supra) have been extended benefit of arrears of pay and allowances from the very beginning, denial of same to the applicants would amount to discrimination. Thus, M.A for condonation of delay in filing O.A. is allowed and disposed of accordingly.


In view of above discussion, this O.A. is allowed. Impugned order, Annexure A-1, is quashed and set aside. Respondents are directed to consider the regularisation of the applicants in the posts against which they were initially appointed as per Recruitment Rules, 1971, w.e.f. 18.11.1989 when they were reinstated in service, by virtue of order passed by the Hon'ble Supreme Court. They are also held entitled to the consequential benefits of difference of pay and allowances for the said period. There shall be no order as to costs.


(J.P.SHUKLA)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

HC.



Rec

S.K. Malik
Adw
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