

2/10/05

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

M.A.No.136/04 &
O.A.No.273 of 2004

November 22, 2005

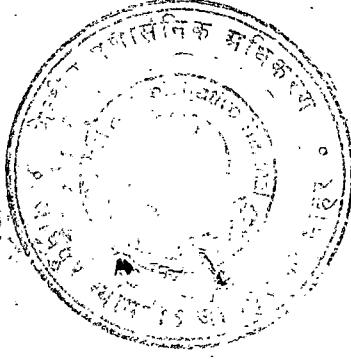
1. Narayan Ram S/o Sh.Hema Ram ji, Aged about 37 years, R/o MES Colony, Garrison Engineer, (Army) Suratgarh, Distt. Sriganganagar (Rajasthan).
2. Raj Kumar S/o Sh.Puran Chand Ji, Aged about 37 years, R/o MES Colony, Garrison Engineer (Army), Suratgarh, Distt. Sriganganagar, (Rajasthan).
3. Jagdish Prasad S/o Sh.Yad Ram Ji, Aged about 37 years, R/o MES Colony, Garrison Engineer (Army), Suratgarh, Distt. Sriganganagar (Rajasthan).

At present all the applicants are working on the post of Mazdoor in the office of Garrison Engineer (Army), Suratgarh, District 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 Headquarters, Kashmir House, DHQ Post, New Delhi.
3. Chief Engineer (Army), Bhatinda Zone, Bhatinda, (Punjab).
4. Commander Works Engineer (Army) Bikaner (Rajasthan).
5. Garrison Engineer (Army) Suratgarh, Distt. Sriganganagar (Rajasthan).

Respondents

By: Mr.M.Prajapat, for Mr.R.Bhansali, Advocate.

ORDER (ORAL)

KULDIP SINGH, VC

The applicants in this O.A. have impugned the order dated 8.10.2004 (Annexure A-1) vide which their request for reinstatement on the post of Wireman, Diesel Engine Static (DES) and Motor Pump Attendant (MPA), now designated as

Fitter General mechanic (FGM), instead of Mazdoor, has been rejected.

Facts in brief as alleged by the applicants are that the applicants were initially recruited on casual basis in the year 1985 on the post of Wireman, DES and MPA, respectively. Their services were terminated in April, 1987.

They filed an O.A. bearing No.93 of 1987 before this Bench of the Tribunal challenging the termination orders. The O.A. was allowed with direction to the respondents to reinstate the applicants in service with full back wages.

The Department filed SLP before the Hon'ble Supreme Court which was decided with direction to the department to *reinstate* restore the applicants on the posts held by them before their retrenchment without any back wages within a period of one month from the date of the order i.e. 5.10.1989. It was also directed that 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 respondents reinstated the applicants in service w.e.f. 18.11.1989 as a mazdoor instead of the posts from which they were terminated on the ground that applicants do not fulfill the qualifications prescribed in the Rules.

The applicants then filed O.A.No.207 of 2003 before this Tribunal praying for direction to the respondents to restore them on the posts of Wireman, DES & MPA (FGM) w.e.f the date of their joining as Mazdoor with all the consequential benefits. The said O.A. was decided with direction to the respondents to take decision on the letter dated 20th September 2002, submitted by applicants claiming reliefs, within a period of four months. The respondents rejected the claim and stuck to their

earlier stand that the applicants were ineligible for the posts from which they were terminated as they were not fulfilling the educational/technical qualifications for the posts in question i.e. Wireman, MPA, DES etc. and they were rightly engaged as mazdoors, so the applicants have filed the present O.A. challenging the impugned order.

The applicants submit that they were initially appointed to the post of Wireman, DES and MPA respectively, which have been redesignated as FGM but at the time of their initial appointment, there was no qualification prescribed for the post in question and it is only after 12th September, 1991 that the qualification have been prescribed which is clear from Annexure A-9 which categorically says that ITI qualification became *applicable* *available* only after introduction of SRO 204 of 12th September, 1991.

The applicants further submit that the similarly situated persons namely Jagdish & Another who are junior to the applicants and who also did not posses the qualification of even Middle Pass have been appointed as Carpenter vide Annexure A-5 whereas such benefit has been denied to the applicants, thus, it is a case of hostile discrimination against the applicants. It is further stated that the applicants fulfill the qualifications when they were initially appointed as per the then existing rules and posts were also available despite that they were given appointment on the post of Mazdoor. The applicants being unemployed and having no bargaining power had to join on the post of mazdoor which appointment was contrary to the directions given by the Hon'ble Supreme Court and when the applicants approached the Court and were successful, but again their claim has been turned down by the respondents by the

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impugned order taking same plea which had been taken earlier. Thus, the impugned order is liable to be quashed with all the consequential benefits.

Respondents are contesting the O.A. they plead that since the applicants did not possess the requisite qualification of ITI, they could not be given the post of FGM but in order to implement the directions given by the Hon'ble Supreme Court, they have been appointed as mazdoor.

I have heard the learned counsel for the parties and gone through the material on the file.

Learned counsel for the applicants submits that after the judgement of the Hon'ble Supreme Court of India, number of similar cases have been decided by the Chandigarh Bench of the Tribunal including O.A.No.189-PB-2004 (Kashmir Singh Vs. Union of India & Others). Before that various other O.As had already been decided by the Chandigarh Bench of the Tribunal, which are mentioned in the said order and are reproduced as under:

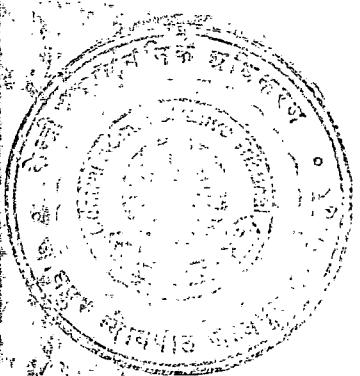
- (i) O.A.No.188/HR/1987, Surinder Pal Gupta and Others Vs. Union of India and Others.
- (ii) O.A.No.447/HR/1987, Harish Chander Versus Union of India and Others.
- (iii) O.A.No.189/HR/1987, Deepak Kumar Dhall CED Vs. Union of India and Others.
- (iv) O.A.No.448/HR/1987 Tek Chand Vs. Union of India and Others.
- (v) O.A.No.449/HR/87, Tilak Raj Vs. Union of India and Others.
- (vi) O.A.No.450/HR/87, Vinay Kumar Vs. Union of India and Others.

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- (vii) O.A.No.451/HR/87, Shiv Kumar Vs. Union of India and Others.
- (viii) O.A.No.918/PB/92, Rajiv Kumar and Others Vs. Union of India & Others.
- (ix) O.A.No.1162/PB/97, Rajiv Kumar and Others Vs. Union of India & Others.

The operative portion of the O.A.No.189/PB/2002 titled Kashmir Singh etc. Vs. UOI etc. shows that direction was issued to the respondents to consider regularization of the applicants in the posts against which they were initially appointed as per Military Engineering Service (Industrial Class III and IV) Recruitment Rules, 1971. It is further directed that the applicants shall be entitled to difference of pay and allowances w.e.f. 15.11.1999 i.e. on which date they had served a legal notice on the respondents claiming benefit of regularization. A perusal of this order shows that the case of the applicants is fully covered on all fours on facts as well as on law. 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 for compliance~~. Once 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 *reason in* there was no *occasion* for respondents to appoint the applicants *lack of a* on lower posts in the guise of new qualifications. So, I am also of the considered opinion that the applicants are entitled to the reinstated on the post on which they were initially appointed.

The applicants have also moved an M.A. for condonation of delay in filing the Original Application, as an abundant caution. I find that since the impugned order was passed in 2004 and the O.A. has also been filed on 1.11.2004, so I am of the view that the O.A. is well within time.

In view of the above discussion, I allow the O.A. with direction to the respondents that the applicants be given appointment to the post on which they were initially appointed which stands redesignated 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 are also entitled to all the consequential benefits of difference of pay and allowances for the said period. The respondents are directed to comply with the order within a period of 3 months from the date of receipt of copy of this order.



Kuldeep
(KULDIP SINGH)
Vice Chairman

November 22, 2005.

HC*

free copy of order,

John
S. K. Marable
Adv
24/11/05

Copy Recd.

Mark
30/11/05