के.प्र.अ. (प्रक्रिया) नियमावली के नियम 42 के अन्तर्गत निर्णय हेतु मुक्त प्रारूप

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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH.

Date of Decision 23.11.2004

CORAM
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. G.R. PATWARDHAN, ADM. MEMBER.

(1) Original Application No. 88 of 2004.

1. Anadaram S/o Shri Motiram Ji, aged 53 years,
2. Bindu S/o Shri Mangu Khan, aged 46 years
3. Ghanshyam Singh S/o Shri Ramdeve Singh, aged 54 years,
4. Chhotu Ram S/o Shri Narayan Ram ji, aged 48 years,
5. Teju Khadia S/o Shri Jhosab Khadia, aged 54 years,
6. Natha Ram S/o Shri Hiralal Ji, aged 46 years,

At all applicants working on the post of Valveman under G.E. (Army) Utility, Jodhpur.
Corresponding Address :- Anadaram S/o Shri Motiram Ji, village – Gujarawas, Post –Banar, District-Jodhpur.

.....Applicants.

(2) Original Application No. 89 of 2004.

1. Vinod S/o Shri Mohanlal Ji, aged 38 years,
2. Rakesh Kumar Bohra S/o Shri Srikishan Bohra, aged 40 years,
3. Shek Imam S/o Shri Shek Kaseem, aged 59 years,
4. Prakash S/o Shri Gordhan Ji, aged 48 years,
5. Hari Bhajan S/o Shri Chelaram Ji, aged 47 years,
6. Hari Singh S/o Shri Ranidan Singh, aged 59 years,

At all applicants working on the post of Valveman under G.E. (Army) Utility, Jodhpur.
Correspondent Address :- Vinod S/o Shri Mohanlal Ji, Plot No. – 9-B, High Court, Jodhpur.

....Applicants.

COMPARED & CHECKED

(3) Original Application No. 90 of 2004.

1. Bhanwarlal S/o Shri Ram Chandra, aged 57 years,
2. Hari Singh S/o Shri Ranidan Singh, aged 55 years,
3. Amer Singh S/o Shri Lakha Ram, aged 46 years,
4. Tuka Ram S/o Shri Ganpat Rai, aged 60 years,
5. Murlidhar S/o Shri Badri Singh, aged 59 years,
6. Babulal S/o Shri Bherulal Ji Lohar, aged 46 years,

Applicants No. 1 to 4 and 6 working on the post of Valveman under G.E. (Army) Utility, Jodhpur and applicant No. 6 working pipe fitter under G.E. (Army) Corresponding Address :- Bhanwarlal S/o Shri Ramchandra Ji, Civil Air Port Road, Pabupura, Jodhpur.

...Applicants.

Rep. By Mr. B. Khan, Advocate for the applicants in all three O.As

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Chief Engineer, Southern Command Pune-I,
3. The Engineer in Chief Army Head Quarters Kashmire House, New Delhi.
4. The Commander Works Engineer (Army) Jodhpur.
5. The Chief Engineer, Jaipur Zone, Jaipur.

....Respondents in all three O.As

(Rep. By Mr. Vinit Mathur, Advocate for the respondents in O.A. Nos. 88/2004 and 90/2004.
And
Mr. B.R. Mehta, Advocate for the respondents in O.A No. 89 of 2004.)

O R D E R
BY J K KAUSHIK, JUDICIAL MEMBER:

Shri Anadaram and five others, Vinod Kumar and five others and Bhanwar Lal and five others have filed Original Application Nos. 89, 90 and 91 of 2004, respectively, under Section 19 of the Administrative Tribunals Act, 1985, and have inter alia prayed for the following reliefs:

> " (i). That the impugned Annexure A/1 dated 21.6.2003 may be quashed and set aside and the applications allowed with all consequentional benefits.
>
> (ii) That in view of the facts and grounds mentioned herein-above the applicants pray that the respondents be directed to pay the applicant salary in pay scale of Rs. 250-400 as revised to Rs. 940-1500 and as further revised from time to time from the date of their initial appointment and promotion to the post of Valveman and consequently to revise his fixation with all consequential benefits."

2. With the consent of the parties, all these cases were taken up for final hearing at the stage of admission and the factual aspect as well the question of law involved being the same; they are being decided through a common order. We have accordingly heard the learned counsel for the parties and have anxiously considered the pleadings and the records of the cases.

3. Brief facts of the cases are as under: -

(1) **OA. No. 88/2004**- the applicant No. 1 was initially appointed as Valveman on dated 14.1.88. The applicants No. 2 to 6 were initially appointed as Mazdoor on various dates and allowed promotion to the post of Valveman

w.e.f 12.2.87, 30.11.79, 28.1.87, 15.1.87 and 8.1.87, respectively.

(2) **OA. No. 89/2004-** The applicants No. 1 to 3 and 5 to 6 were initially appointed as Valveman on dated 29.6.87, 6.7.87, 23.7.87, 18.2.82 and 14.3.88, respectively. The applicant No. 4 was initially appointed as Mazdoor on 1.5.78 and allowed promotion to the post of Valveman w.e.f 14.1.88.

(3) **OA. No. 90/2004**- The applicants No. 1 to 4 were initially appointed as Valveman on Mar. 65, 18.3.81, 10.1.78 and 18.3.81, respectively. The applicants No. 5 and 6 were initially appointed as Mazdoor on 20.2.68 and 6.6.79, and allowed promotion to the post of Valveman w.e.f 24.1.80 and 15.1.87, respectively

4. All of them (except applicant No. 6 in OA No. 90/2004 who is at present employed on the post of Pipe Fitter), continue to work on the post of Valveman in the office of GE (Army) Utility at Jodhpur. The contention of the applicants is that the post of Valveman is a skilled post and not a semi skilled post. At the time of promotion/appointment, the pay scale of skilled post was Rs. 250-400, which was later on revised to Rs. 950-1500 whereas, the grade of semi skilled post at that time was Rs. 210-290, which was later on, revised to Rs. 800-1150. It was

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further contended that recruitment of the applicants was governed by the Military Engineering (Industrial.Class III and IV posts) Recruitment Rules, 1970. These Rules do not provide for semi skilled post but despite the absence of any rule, the respondent No. 1 issued a O.M. dated 11th January, 1985 making the provision that the employees recruited on skilled post, shall be given semi skilled grade for first two years and only after completion of two years they will be given skilled grade. The applicant further mentioned that many Valvemen working under the respondent No. 1 and respondent No. 4 got the decision in their favour vide order dated 13th September, 1999 passed in O.A. 395/1996 and order dated 21st March, 2002 passed in O.A. No. 258/2001, directing the respondents to fix them in the pay scale of Rs. 950-1500 i.e. the pay scale of skilled category. It has, further, been contended by the applicant that the order of this Tribunal got finality when the Hon'ble Rajasthan High Court dismissed the Writ Petition filed against the order of this Tribunal and in one of the cases Hon'ble the Supreme Court of India dismissed the Special Leave Petition filed by the respondents. The respondents in their reply submitted that the post of Valveman is of semi skilled nature, therefore, applicant herein, is not entitled for the grade of skilled post i.e. Rs. 950-1500.

5. We notice and take judicial notice of a recent decision of this very Bench of the Tribunal in Original Application No. 42/2003 Dau Dayal vs. Union of India and others decided on 9th

day of March, 2004, where one of us (J K Kaushik JM) was a party to the decision, wherein similar controversy was involved and adjudicated upon. The issue does not therefore remain res integra and we have no reason to take a different view and rather have no hesitation in following the same. The extract of relevant paras of the same are extracted as under:-

> "6. Number of similarly situated persons appointed initially to the post of Valveman went into litigation before this very Bench of the Tribunal and filed O.As which came to be allowed. But, the relief was given by the respondents only in respect of the employees who went into litigation. The respondents filed Writ Petition and SLP before Hon'ble the Rajasthan High Court and Hon'ble the Supreme Court and experienced dismal failure and finally, were compelled to extend the due benefits.
>
> 7. Now, coming to variances, in reply, the respondents have averred that the grade/scale of Valveman was never upgraded from Rs. 210-290 to 250-400 as per the expert committee and anomalies committee reports. An O.A. No. 504/2001 was filed by the MES Employees Union before the Bombay Bench of this Tribunal and the same has been dismissed vide order dated 27th February, 2002 in view of the stay granted by the Hon'ble Supreme Court against a judgement passed by Hon'ble the J. & K. High Court in favour of the employees in a similar matter.
>
> 8. The learned counsel for respondents Shri P.R. Patel, has next contended that SLP has also been filed in the case of this Bench in Gopa Ram and Ors. Vs. UOI & Ors. [O.A.No. 258/2001 decided on 21.3.2002] which was upheld by Hon'ble the Rajasthan High Court, Jodhpur and the same is pending decision. Thus, the instant case should also be dismissed as has been done by Bombay Bench.
>
> 9. The learned counsel for both the parties have reiterated their pleadings. In the instant case, almost all the facts are

admitted. The rules position regulating the pay scale of Valvemen has already been dealt with in Jaswant Ram and Ors. [O.A. 395/1996 decided on 13.9.1999], Gopal Ram and Ors. [O.A. 258/2001 decided on 21.3.2002], Zahoor Mohammed and Ors. [O.A. 291/2002 decided on 6.10.2003] and in Deena Ram and Ors. [O.A. 290/2002 decided on 19.1.2004]. A zerox copy of the decisions delivered in Zahoor Mohammed's and Deena Ram's case be placed on paper book of this O.A. The contents of para 6 of Gopa Ram's case are relevant and are extracted as under :-

> "6. Learned counsel for the respondents has vehemently opposed this case in as much as an order dated 01.10.2000 in S.L.P. (Civil) No. 19483/99, passed by the Hon'ble the Supreme Court of India has been relied upon in support of his contention. It was averred that in a similar matter filed before the Hon'ble Supreme Court UOI & Others Vs. Amarnath & ors. the stay has been granted. However, no further details could be made available to this Hon'ble Tribunal and also no controversy has been finally settled in that case. On the other hand, learned counsel for the applicants has drawn our attention to certain subsequent developments/events in the matter. It was informed that a writ petition was filed against one of judgement of this Hon'ble Tribunal in O.A. No. 206/95, Mahendra Kumar & Ors. vs. UOI & others (supra). Hon'ble the High Court has upheld the same vide judgement and order dated 16.03.2000 in D.B. (Civil) Writ Petition No. 1391/99. Against the said judgement of Hon'ble the Rajasthan High Court an S.L.P. No. 3948/2000 was filed before the Hon'ble Supreme Court and the same has been dismissed vide order dated 24.09.2001, a copy of the same has been filed and taken on record. Thus, the judgement of this Tribunal in identical case has attained the finality. Undisputedly, the applicants were promoted in skilled category post for which pay has been fixed as Rs. 260-400/950-1500. Thus, Annex. R-1, which has been heavily relied upon by the learned counsel for the respondents has no application to the present controversy. Thus this Original Application deserves to be accepted."

10. The learned counsel for the applicant has thus argued that the earlier orders rendered by this Tribunal have attained finality hence, applicant in the instant case is also entitled for the same relief and as such, he cannot be denied the same benefits only on the ground of an un-reasonable classification of one litigating and other not litigating.

11. We find that the controversy involved in the instant case is squarely covered by the orders given in Jaswant Ram and Gopa Ram's case (supra) which have been upheld by the Rajasthan High Court and the issue does not remain res integra.

12. Apart from above, we cannot ignore the objection raised during arguments by the learned counsel for the department on the issue of limitation. The respondents have not filed any reply to M.A. for condonation of delay. However, since the matter relates to fixation, which gives rise to recurring cause of action, therefore, we are in agreement to the contentions of Mr. Mehta that this law does not come in the way of applicant in such matters. In M.R. Gupta Vs. UOI [reported in AIR 1996 SC 669] their Lordships of Hon'ble the Supreme Court have held that in pay fixation matters, limitation does not apply at all, however, the payment of arrears on that account, is required to be restricted to one year before filing of the case. But, as the present case relates to payment of wages and Article 104 of the Limitation Act provides a period of 'three years', therefore, the relief of arrears shall have to be restricted accordingly."

6. The learned counsel for the respondents have brought to our notice that the Apex Court has been pleased to grant stay in the SLP filed in of Gopa Ram. A copy of order passed therein has been placed on records of this case. The order passed in SLP (Civil) No. cc. 4932 UOI & Anr V. Gopa Ram Valveman is of 26.4.2004 and contents of it are as under:-

> "Meanwhile, there will be stay of payment in terms of impugned judgement"

The bare perusal of the aforesaid order indicates that the stay is only relating to the payment in terms of judgement and

operation of the order has not been stayed. In any case there is no material change in the situation form the facts of the aforesaid case of Dau Dayal (supra).

7. In the result, the O.A. is allowed and the impugned order dated 21.6.2003 Annexure A/1 in all these OAs are herby quashed. The respondents are directed to fix the pay of the applicant in the pay scale of Rs. 950-1500 from their date of appointment/promotion as a Valveman on notional basis, with all the consequential benefits. However, the arrears on account of fixation shall be payable only for a period from three years prior to the date of filing of this O.A., i.e. with effect from 13.4.2001; date of filing of OA being 13.4.2004. This order shall be further subject the final decision of the Apex Court in SLP (Civil) No. cc. 4932 UOI & Anr V. Gopa Ram Valveman, supra.

This order shall be complied with within a period of three months from the date of receipt of a certified copy of the same. Costs made easy.

Sd/-
(G.R.PATWARDHAN)
MEMBER (A)

Sd/-
(J.K.KAUSHIK)
MEMBER (J)

nlk

CERTIFIED TRUE COPY
Dated 24.11.2004
अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

R/C copy
on 20/11/04

Read copy
7/12/04