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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
JODHPUR

O.A. No. 104/2004, 134/2004 ~~198~~ and 150/2004
T.A. No.

DATE OF DECISION 14.2.2005

O.A. No. 104/0~~Laxmi Chand and others~~ Petitioner
O.A. No. 134/04 Binod Kumar and others
O.A. No. 150/2004 Madan Lal and others.

Mr. Vijay Mehta, Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Mr. Deependra Singh, Proxy Counsel for Mr. Ravi Bhansali Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

(G.R. Patwardhan)
Member(A)

(J.K. Kaushik)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

Date OF Decision: 14-2-2005

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

O.A. No. 104/2004

1. Laxmi Chand s/o Shri Mam Chand, aged 41 years.
2. Subhash Bhatia s/o Shri Banarsi Lal, aged 42 years.
3. Kishan Lal s/o Shri Ram, aged 46 years.
4. Mohan Lal s/o Shri Anant Ram, aged 37 years.
5. Metab Singh s/o Shri Balveer Singh, aged 42 years.
6. Tara Chand s/o Shri Ram Naresh, aged 44 years.
7. Mahaveer Prasad s/o Shri Jag Ram, aged 47 years.
8. Bajrang Lal s/o Shri Gorakh Ram, aged 45 years.

Applicants Nos. 1 to 7 Highly Skilled FGM and applicant No. 8 HS Ref. Mechanic in the office of the Garrison Engineer, Shri Ganganagar. Address of applicants for the purposes of notices etc. c/o Laxmi Chand, IIII, Agrasen Nagar, Shri Ganganagar.

Applicants.

O.A. No. 134/04

1. Binod Kumar s/o Shri Yogendra Jha, aged 45 years, Electrician.
2. Nathu Ram s/o Shri Surja Ram, aged 48 years, Electrician HS.
3. Ram Naresh Singh s/o Shri Sarju Singh, aged 45 years, Electrician HS.
4. Deep Chand s/o Shri Hazari Mal, aged 38 years, FGM HS.
5. Kunj Behari s/o Shri Mool Das, aged 48 years, FGM.
6. Prem Shanker s/o Dr. P. Sharma, aged 39 years, FGM HS.
7. Vasaf Ali s/o Shri Sikander Khan, aged 40 years, FGM HS.
8. Jugal Kishore s/o Shri Gauri Shanker, aged 55 years, Veh. Mech HS.
9. Chhagan Lal s/o Shri Babu Lal, aged 42 years, FGM HS.

10. Sanjay Hooja s/o Shri Krishan Lal, aged 39 years, FGM HS.

11. Radhe Shyam s/o Shri Shive Narayan, aged 39 years, FGM HS.

12. Mohan Lal Meena s/o Shri Munga Ram, aged 42 years, FGM HS.

13. Parmatma Swaroop s/o Shri Satya Narayan, aged 36 years, FGM HS.

14. Om Singh s/o Shri Bhopal Singh, aged 49 years, FGM HS.

15. Satya Prakash Tanwar s/o Shri Sita Ram, aged 39 years, FGM HS.

16. Surender Kumar Tulyani s/o Shri Narayan Das, aged 38 years, FGM HS.

17. Mohmmad Rafiq s/o Gulam Rasool, aged 39 years, FGM HS.

18. Ayub Ali s/o Shri Mohmmad Deen, aged 38 years, FGM HS.

Applicant Nos. 1 to 8 presently working under Garrison Engineer (North), Bikaner and applicant Nos. 9 to 18 working under the Garrison Engineer (South), Bikaner, Address of all the applicants: c/o Shri Ayub Ali, Sangam Restaurant, Railway Gate, Chokhuntee, Bikaner.

Applicants.

O.A. No. 150/2004

1. Madan Lal s/o Shri Manfool Ram, aged 41 years, FGMs HS.

2. Gomand Ram s/o Shri Moola Ram, aged 41 years, FGM HS.

3. Samsuddin s/o Shri Nihlouddin, aged 47 years, Elect HS.

4. Ram Lal s/o Shri Deo Karan, aged 44 years, FGM HS.

5. Kulwant Singh s/o Shri Harnek Singh, aged 40 years FGM HS.

6. Santveer Singh s/o Shri Ajeet Singh, aged 41 years, FGM HS.

7. Gurcharan Singh s/o Shri Jeet Singh, aged 41 years, FGM HS.

Applicants working under Garrison Engineer (Army) Suratgarh Cantt. Address of all the applicants: C/o Shri Samsuddin, Ward 12/330, Suratgarh, District Shri Ganganagar.

Applicants.

(Mr. Vijay Mehta, Counsel for the applicants in all the three above-mentioned O.As.)

VERSUS

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

2. Commander Works Engineer, Air Force, Bikaner.

3. Head Quarters Chief Engineer, Chandimandir.

Respondents.

(Mr. Deependra Singh, Proxy counsel for Mr. Ravi Bhansali, Counsel for the respondents in all the three above mentioned O.As.)

O R D E R

Mr. J.K. Kaushik, Judicial Member

Laxmi Chand & others, Madan Lal & others, and Binod Kumar & others have filed their individual OA Nos. 104/2004, 150/2004 and 134/2004, respectively, on identical set of facts and grounds for seeking similar reliefs. The common question of law is involved in all these cases; hence they are being decided through a single common order.

2. The Original Applications were listed for admission today and with the consent of the learned counsel for the parties, the Original Applications were taken up for final disposal at the stage of admission and the pleadings being complete, we have accordingly heard the learned counsels for the parties and have carefully perused the records of this case.

3. For the purpose of adjudication of these cases, we are taking notice of the facts narrated in OA. No. 104/2004. The applicants were initially appointed to the Skilled Artisan Posts during the year 1982-87. All of them enjoyed their further promotion to the post of Highly Skilled Grade II (for brevity HS-II) on various dates in the year 1995. They passed the requisite

trade test and were promoted to the post of Highly Skilled Grade I (for brevity HS-I) with effect from 8.8.98; vide PTO dated 24.8.98 (A/1). In pursuance of the recommendations of Fifth Pay Commission, Restructuring of the Cadre of Artisan Staff has been ordered vide letter dated 20.5.2003, wherein the HS-II and HS-I grades came to be merged into a single grade designated as Highly Skilled in the pay scale of Rs. 4000-6000 with effect from 1.1.96. The next grade in Highly Skilled category shall be the Master Craftsman (for brevity MCM) in scale of Rs. 4500-7000 to the extent of 25 % of HS category.

4. The further facts of the case are that a clarification came to be issued on 24.2.2004 that certain individuals who were juniors as HS-II and have been promoted after 1.1.96 as HS-I on passing the Trade Test, their seniority may be fixed appropriately in the combined list of HS. The applicants in particular and others in general were accordingly re-designated and given their due placement in the combined seniority list of FGM HS etc. for promotion to the post of MCM. The applicants became senior to their seniors on the post of HS-I due to their early promotion since the said seniors did not succeed in the trade test for the same. But the official respondents have secretly prepared another seniority list ignoring the promotion of the applicants and are going to take steps to fill up the vacant posts of MCM ignoring the seniority list at Annexure A/6. Hence this Original application is necessitated for seeking inter alia a

mandate to the respondents for considering the case of applicants as per their seniority at Annexure A/6. The action of the respondents has been assailed on numerous grounds outlined in para 5 and its sub-paras.

5. The respondents have resisted the claim of the applicants and have filed a detailed counter reply to the OA. They have adduced a preliminary objection regarding maintainability of this OA and averred that no written orders have so far been passed, so as to give any cause of action to the applicants for invoking the jurisdiction of this bench of Tribunal. No order for any promotion to the post of MCM has been issued, ignoring the seniority of the applicants. No representation was also filed in the matter. Thus the OA is liable to be dismissed on this count alone.

6. In the OA No. 150/2004 Madan Lal and Ors, Clause (g) of para 3 of order dated 3.3.2004 prescribing " promotions made from HS II to HS I after 1.1.96 shall become infructuous in view of the merger of posts" is also challenged on the ground that no reason has been disclosed for the same. The same is termed as arbitrary and discriminatory deserving quashment.

7. The learned counsel for the applicant has reiterated the facts and grounds enunciated in the pleadings of applicants. He has endeavored hard to demonstrate that they have vested rights to

enjoy the seniority acquired by them on account of subsequent promotion and the same cannot be taken away by a scheme by giving effect from a retrospective effect. He has vociferously contended that the applicants got their promotion after passing the requisite trade test and marched over their erstwhile seniors who did not pass the said test. He has cited a decision of Hon'ble High Court in case of **Chandra Mohan Singh Vs. State of Rajasthan 2004 LAB IC 2544** wherein their Lordships have held that the benefits accrued to an employee under the existing rules can not be taken away by an amendment with retrospective effect. Thus the seniority of the applicants cannot be changed in the garb of implementing the restructuring scheme with retrospective effect and to the extent the order nullifies the effect of promotion of the applicants and denies their due seniority, it can not be sustained in law.

8. Per contra the learned counsel for the respondents, while reiterating their defence as set out in the reply, has strenuously opposed the contentions raised on behalf of the applicant. He has submitted that no cause of action has accrued to the applicants in as much as no order has yet been passed in the matter and the very OA is not maintainable being premature. The cut of date 1.1.96 has reasonable nexus with the object sought to be achieved since the respondents have done nothing except to give effect to the recommendations of the Fifth Pay Commission wherein the benefits have been extended from

1.1.96. The order dated 3.3.2004 Annexure A/3 to OA No. 104/2004 is only a consequentional order to the main scheme dated 20.5.2003 (A/2), which is not under challenge. The very order dated 3.3.2004 also provides vide clause (f) of para 3 that a trade wise seniority list of all highly skilled as on 1.1.96 after merging should be prepared and circulated to all concerned. But there is no challenge to the same. The order has to be read as a whole and not a part of it that may suit the particular individual. He has next contended that so long as the main scheme was in existence, challenge of consequential orders issued for implementing the same would be of no consequence. Thus no fault can be fastened to the action of the respondents and OA deserves to be dismissed being misconceived and devoid of any merits.

9. We have considered the rival submissions and contention put forth on behalf of both the contesting parties. Before adverting to the main controversy, we would clear the peripheral issue relating to the preliminary objection. We find that the applicants have challenged clause (g) of para of order-dated 3.3.2004 and therefore the preliminary objection as such cannot be sustained and the same stands repelled. However, we leave the question of maintainability of OA in absence of specific order, open for adjudication in some appropriate case.

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10. Now we would advert to the main issues involved in this case. As far as the factual aspect of the case is concerned, there is hardly any dispute. It is true that the main scheme dated 20.5.2003 is not under challenge in any of these cases. The scheme came to be framed in pursuance with the recommendations of fifth pay commission. The order-dated 3.3.2004 has been issued in pursuance of implementation of the main scheme. All the applicants have passed the trade test conducted for the post of HS-I and enjoyed promotions subsequent to the cut off date 1.1.96. Their erstwhile seniors did not qualify such examination and thus did not get such promotion. To appreciate the controversy involved in these cases, we find it expedient to reproduce the relevant portions of the recommendations of Fifth Pay Commission as under:

"54.16. There is also a general feeling among the industrial workers that being blue collar they are generally discriminated workers against by the pay commissions, while the white collar categories get a more favourable treatment. As an example, it is said that a skilled workers starts Rs. 950- 1500 just as an LDC does. While the Lower Division Clerk is promoted to the scale of Rs. 1200-2040 as Upper Division Clerk, the skilled worker has to move through an extra scale of Rs. 1200-1800 before he reaches the pay scale of Rs. 1320-2040.

54.17 The Federations of Railway men merger of have represented to us that the skilled artisans pass the requisite trade test and acquire higher knowledge and expertise through practical experience befc re getting the Highly Skilled/Skilled Grade II and Highly Skilled/skilled Grade I. The Federations have argued that there is no justification for retaining the two grades in Highly Skilled category and the same should be merged into a single grade. We find merit in this demand.

54.18. We have considered these word arguments and find that there is some in truth in them. Accordingly, we propose to abolish the nomenclature of 'unskilled' from the dictionary of Government to emphasise the point that we do not consider any job, howsoever lowly, to be devoid of skills. Instead we suggest 'Shramik' to underline the fact that physical labour or 'Shrama' is the basic constituent of the skills used at

that level. We also recommend that the two grades in highly skilled category be merged. This would ensure that artisans also progress directly from the grade of Rs. 950-1500 to that of Rs. 1320- 2040.

As far as the remaining skill classification is concerned, we recommend that it be retained as under:-

Existing		**Recommended**	
Classification	Pay Scale (Rs.)	Classification	Pay Scale (Rs.)
Unskilled	750-940	Shramik	750-940(*)
Semi-skilled	800-1150	Skilled-II	800-1150
Skilled-III	950-1500	Skilled-I	950-1500
Highly Skilled/ Skilled-II	1200-1800}	Highly Skilled	1320-2040
Highly Skilled/skilled I	1320-2040}		
Master Craftsman	1400-2300	Master Craftsman	1400-2300

(*) (Minimum educational qualification of 8th pass be uniformly prescribed)

54.19. We have further received demands particularly from Defence Establishments for abolition of Semi-skilled grade. In our opinion the semi-skilled stage is important for a raw hand to learn skills and there is no justification for its abolition. We do not favour this demand.

11. As per the facts vis-à-vis reliefs prayed for in theses cases, we are required to adjudicate upon the following issues:

(1). Whether without challenge to main provisions of the scheme, the consequential orders issued thereof for implementing the same can be sustained and entertained?

(2). If the answer to the above question is in negative, whether the action of the authorities in fixing the seniority as per the scheme is in order or not?

(3). In case the answer to question (1) is in positive, whether the reliefs claimed is justified or not?

(4). Whether any vested right has accrued to the applicants due to their promotion to the post of FGM HS-I and the newly acquired seniority over their erstwhile senior as on 1.1.96 ?

12. As regards the issue No. 1, we notice that the main restructuring policy is of dated 20.5.2003 (A/2) which clearly stipulates that the merger of HS-II and HS-I shall be treated to have come into effect from 1.1.96. Admittedly, the said restructuring scheme is not under challenge in any of these cases. The order-dated 3.3.2004 also stipulates that the

same is issued in reference to the main scheme dated 20.5.2003 and virtually the subsequent order could be aptly construed as implementation order of the main scheme. Terming the subsequent promotion to the post of HS-I as infructuous is the natural consequence and discernable from the main scheme and does not tantamount to framing a new provision; which is rather consistent with the said scheme. Even if the relief relating to the challenge of clause (f) of para 3 of the said order is accepted, the provisions of main scheme shall remain intact. If that were so, it is difficult to sustain the contentions of the learned counsel for the applicants and no adjudication can be made in absence of such specific challenge of the main scheme. Otherwise also one cannot eat a cake and have it too. The applicant cannot be permitted to enjoy the benefits of merger as well as that of subsequent promotion against a non-existent post of HS-I after 1.1.96. The first issue has, therefore, necessarily to be answered in negative.

13. Now we would examine the 2nd and 4th issues. We may point out that since the merger is to take place with effect from 1.1.96, the seniority on the post of FGM HS scale Rs. 4000-6000 has to be assigned on the said date. Subsequent promotion would be of no consequence since, no promotional post like FGM HS-I remained in existence after the date of merger of HS-II and HS-I i.e. after 1.1.96. There would be no question of assignment of any seniority on a non-existing post. Once the

very promotional post itself is not there, one cannot be said to have any vested right to hold the same and the concept of seniority, which is the shadow of consequence of working on a post, i.e. against such hypothetical post, is misconceived. The inevitable conclusion would be that though the contention of the learned counsel looks attractive but in fact have to be construed as deceptive. Thus these issues also go against the applicants. The issue No. 3 is not required to be examined since the issue No. 1 has been answered in negative.

14. We would also deal with some feeble contentions raised on behalf of the applicants. An argument was advanced the para 2(a) (ii) of very order dated 24.2.2004 (A/4 to OA No. 104/2004) provided that the seniority in respect of individuals who were junior as on 1.1.96 and were promoted after passing the trade test after 1.1.96 (i.e. the applicants in particular) may be fixed appropriately as contained in combined seniority list of HS, but the respondents are not adhering to the same. We find ex facie fallacy in the interpretation being suggested by the learned counsel for the applicants. The confusion seems to be due to the use of word 'appropriately'. But the same is clear from reading the complete provision that unequivocally provides that seniority may be fixed appropriately as contained in combined seniority list of HS. The seniority is to be based on the combined seniority list prepared as on 1.1.96 after giving effect to merger of HS-II and HS-I as per the scheme and that is what

the respondents are intending to do. Thus we are not impressed with the said contention and unable to agree to it.

15. There is yet another contention put forth on behalf of applicants that once the applicants have been extended certain benefits, the same can not be taken away from them and this contention is supported by the decision in case of **Chandra Mohan Singh** supra. In that case certain benefits were extended under existing rules, which were sought to be taken away by making retrospective amendments in the rules. But the facts of this case are dissimilar in as much as in this case the very promotional post did not exist and the applicants were already entitled for grant of pay scale of Rs. 4000-6000 w.e.f. 1.1.96 as FGM HS against which they had no grudge. However, they seem to have been given fixation of pay on their so-called promotion for which suitable protection of pay can be granted so as to diffuse the financial hardships which may be caused to them since there was no misrepresentation on their part.

16. Much has been argued that the applicants would be deprived of from next promotion to the post of MCM. We would clear the overwhelming confusion prevailing in the minds of applicants. The post of MCM is not in the hierarchy and not a promotional post under the normal promotional rule or under ACP Scheme; rather it the highly skilled post only and 25% of HS Grade post will be placed in the grade of MCM as envisaged

in para 2(b) (e) (i)(iii) etc of very scheme dated 20.5.2003 and shall be so considered for the promotion to the grade of charge man. Thus the contention has no legs to stand.

17. There is yet another paramount confusion from the side of applicants that the pay scales for HS-II and HS-I prior to their merger were identical. We expected that the contesting parties would help us in giving the correct position but the information was scanty. However, we gathered the same as reproduced in para 10 above that clears the misapprehension that both the said grades were not identical prior to their merger. In view the entire facts and circumstances of this case, examining the same from any angle, we are not persuaded that they have been wronged in any way or the action of the respondents is in infraction to any of the rules in force.

18. In the backdrop of above analysis, the legal and factual position that has come to be crystallized takes in its sweep the emerging conclusion that the OA Nos. 104/2004, 134/2004 and 150/2004 san merits and the same stand dismissed accordingly. However, the pay of the applicants shall be protected, by treating the difference of pay as personal pay to be adjusted in future increments. No costs.

(G.R. Patwardhan)
Administrative Member

(J.K. Kaushik)
Judicial Member

Jsv

Dipendra Singh 16/2

R Colly Mehra 16/2

Part II and III destroyed in my presence on 29-1-14 under the supervision of section officer ( ) as per order dated 18/12/13

Section officer (Record)