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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH,
JODHPUR.**

O.A. No. 88 of 2005 &
M.A. No. 47/2005

November 15, 2006

CORAM:

**HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER AND
HON'BLE MR.R.R.BHANDARI, ADMINISTRATIVE MEMBER**

1. Nand Lal S/o Shri Surja Ram, aged about 45 years, presently working as Valve Man at Garrison Engineer, Bikaner.
2. Dashrath Singh S/o Shri Mool Singh Shekhawat, aged about 46 years, presently working as Valveman at Garrison Engineer, Bikaner.
3. Bacchan Singh S/o Shri Ganga Singh, aged about 51 years, presently working as Valveman at Garrison Engineer, Bikaner.
4. Anand Singh S/o Shri Mohan Singh Gehlot (Rajput), aged about 38 years, presently working as Valveman at Garrison Engineer, Bikaner.
5. Shokat Ali S/o Shri Ashraf Ali, aged about 41 years, presently working as Valveman at Garrison Engineer, Bikaner.
6. Ratan Singh S/o Shri Raghnath Singh, aged about 43 years, presently working as Valveman at Garrison Engineer, Bikaner.
7. Roop Singh S/o Shri Budh Singh, aged about 43 years, presently working as Valveman at Garrison Engineer, Bikaner.
8. Jagdish S/o Shri Padma Ram, aged about 43 years, presently working as Valveman at Garrison Engineer, Bikaner.

Residential Address of all the applicant are C/o Shri Anand Singh S/o Shri Mohan Singh Gehlot (Rajput), behind Government Press, near Bajrang Provision Store, Hanuman Hatta, Bikaner.

... Applicants

By : Mr. Manoj Bhandari, Advocate.

Versus

1. The Union of India through – The Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Commander Works Engineer (P), MES (Army), Bikaner.
3. The Engineer in Chief, Army Headquarter, DHQ (PO), New Delhi.
4. Commander Works Engineer (P), Air Force, Bikaner.
5. The Garrison Engineer, MES Army, Bikaner.

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6. The Chief Engineer, Headquarter, Western Command, Engineering Branch, Chandimandir, District Chandigarh.

Respondents

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

ORDER

(HON'BLE MR.J.K.KAUSHIK, JM)

Sh. Nand and 7 others have preferred this Joint Application wherein they have questioned the validity of the communicated dated 16.4.2004 (Annexure A-1) and have sought for quashing of the same with further direction to grant them the pay scale of Rs.950-1500 which has been revised to Rs.3050-4590 (sic 3350-4000) w.e.f. the date of their appointment in the category of Valve man with all the consequential benefits including arrears of difference of pay.

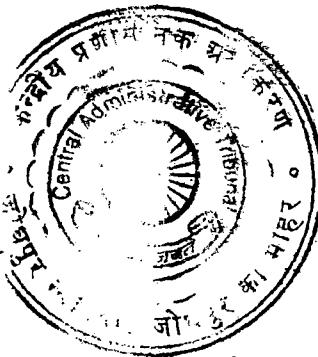


2. We have heard the learned counsel for the parties and have perused the pleadings and records of this case. The factual aspects of this case are in a very narrow compass. All the applicants were initially appointed to the post of Mazdoors/ Chowkidar on various dates as mentioned in Schedule 'A' of the application at page 70 of the paper book. All of them were trade tested for the post of Valveman on dated 8.8.1991. They successfully passed the trade and enjoyed their appointment by way of promotion as Valveman. Applicants No. 1 to 3, 5, 6 and 8 got their promotion from November 1991 and the other applicants got such promotion from November 1995. They were given pay fixation in the pay scale of Rs.800-1150, which was revised, to Rs.2650-3150. They were actually entitled to grant of their pay in the skilled grade as per the recruitment rules in force. The pay of the skilled grade, Rs.950-1500 that has been subsequently revised to Rs.3050-4590 (sic 3350-4000). They have been discharging the duties of the higher post but were deprived of the said pay scale and

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they got the information from the respondents that the higher pay scale of Rs.950-1500, would be granted only to the personnel who have approached the court and in whose favour judgments have been delivered.

3. The Original Application has been preferred on numerous grounds inter-mixed with facts. It has also been averred that case of the Applicants is fully covered by the decision of this Tribunal dated 10.1.1005 in the case of **Devi Lal & Others Vs. Union of India & Others**, in O.A.No.8/2004 (Annexure A-6) and the Applicants are entitled to the pay scale of Rs.950-1500 in accordance with law from the date of their promotion to the post of Valve man.



4. The respondents have controverted the facts and grounds raised in the Original Application and have taken a preliminary objection regarding maintainability of the O.A. on the ground of delay. The defence version of the respondents as set out in the reply is that the post of Valve man is in semi skilled category and not in the skilled category, therefore, the applicants are not entitled to the pay scale of Rs.950-1500. The grounds raised in the Original Application have been generally denied. However, there is no rebuttal regarding decision of this Bench of the Tribunal at Annexure A-6, despite a specific mention of the same in Ground No.5 (5) of the O.A.

5. A Miscellaneous Application No.47/2005 has also been filed seeking condonation of delay in filing of the Original Application, wherein, it has been stated that the pay fixation case is a continuous cause of action and as such law of limitation is not attracted. Contents of the M.A. have been denied in the reply filed on behalf of the respondents.

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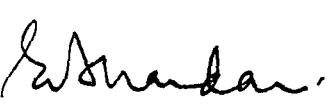
6. Both the learned counsel for the parties have reiterated the facts and grounds as mentioned in their respective pleadings. The learned counsel for the Applicants has taken us through the judgment dated 10.1.2005 in the case of **Devi Lal** (supra) and has submitted that this Bench of the Tribunal has elaborately discussed and examined identical controversy therein, as involved in the present case. The controversy has been set at rest, holding that date of trade test is crucial to ascertain as to under which recruitment rules one is to be appointed to a particular post. It has been further held that if one was trade tested under the old rules, his promotion from a subsequent date would not make any difference and the revised rules would not be an obstruction in grant of due scale of pay to such appointee/promotee. Therefore, the issue does not remain res integra and this Original Application deserves to be accepted. Thus, the issues involved in this case are to be decided on similar lines. Per contra, respondents have laid stress on the defence version of the respondents as noticed above.

7. As regards the question of limitation, we are in agreement with the version of the applicant that the subject matter of this Original Application relates to fixation of pay which is a recurring cause of action, therefore, law of limitation is not attracted and we are fortified in this view from the verdict of the Apex court in the case of **M.R. Gupta Vs. UOI etc.** AIR 1996 SC Page 559. The Miscellaneous Application is, therefore, accepted. However, certain restrictions shall have to be imposed for grant of actual benefits.

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8. Now adverting to the merits of the case, we have waded through the judgment in **Devi Lal's** case (supra) and find that the identical controversy was involved in that case also and it has been fully settled at rest. At this juncture, we can only assert that independent of the aforesaid decision, even if we were to decide the matter afresh, we would have reached to the same conclusion. In this view of the matter, we have absolutely no hesitation in following the ratio of law laid down in the aforesaid case and it fully applies to the controversy involved in this case and decide the O.A. on similar lines.

9. The offshoot of the aforesaid discussion leaves us to inescapable conclusion that there is force in this original Application and the same deserves to be accepted. It stands allowed accordingly. Impugned order, Annexure A-1 is quashed and set aside in regard to the claim of the applicants. Respondents are directed to fix the pay of the applicants in the pay scale of Rs.950-1500 from their date of promotion as a Valveman on notional basis, with all 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. 17.3.2002, the date of filing of this O.A. being 17.3.2005. These directions shall be complied with within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.


(R.R.BHANDARI)
Administrative Member


(J.K. KAUSHIK)
Judicial Member

HC*



R/C
22/11/06

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today
for
R. Bhamali
24/11/02