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

O.A.No.89 of 2005 &
M.A.No.48/2005

November 15, 2006

CORAM:

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

Smt. Ramwati W/o Late Shri Jagbir Multan, aged about 58 years, by caste Multan, resident of C/o Ram Pal, House No.F-20, Ras Nagar, in front of Subhash Petrol Pump Sagar Road, Bikaner (MES No.2896) Husband was working as a Valveman under Respondent No.2.

... Applicant

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

... Respondents

By: Ms. K. Parveen, Advocate

ORDER

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

Smt. Ramwati is the widow of late Shri Jagbir Multan, who was initially appointed in the respondent department on 25.10.1968 as Safaiwala. He was promoted to the post of Valve man on 28.10.1991, after passing the trade test held on

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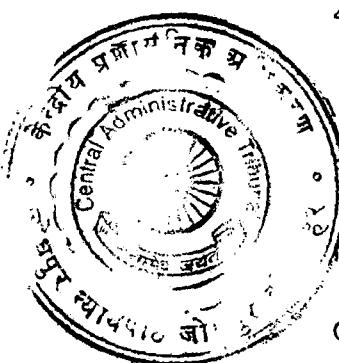
8.8.1991. The said trade test for the post of Valve man was organised in the office of Garrison Engineer, Bikaner. A PTO No.44 of 1981 was issued to this effect. The husband of the applicant was granted pay scale of Rs.800-1150 with subsequent revision to Rs.2650-3010. He was infact entitled to the skilled grade as per the recruitment rules in force. Similarly situated persons were granted the higher scale of pay of Rs.950-1500 on the post of Valve man but from the side of the respondent it was said that such a scale has been conferred only on the persons who had approached the Courts and have obtained judicial orders in their favour. The rules of recruitment for the post of Valve man came to be amended in September, 1991 and the post was placed in semi skilled category in the scale of Rs.800-1150. It has been averred that the applicant's husband passed the trade test for the post of Valve man under old recruitment rules dated 8.9.1991 and was promoted to the skilled category w.e.f. 28.9.1991. The Original Application has been preferred on numerous grounds inter-mixed with facts.

2. It has also been averred that case of the applicant 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 husband of the applicant was entitled to the pay scale of Rs.950-1500 in accordance with law from the date of his promotion to the post of Valve man. She has prayed for quashing the order dated 16.4.2004 (Annexure

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A-1) which is minutes of meeting held between the Works Committee and the Respondent No.5, indicating that the benefit of pay scale of Rs.950-1500 is to be given to those persons who have won the cases from the Central Administrative Tribunal. She has also prayed for issuance of directions to the respondents to confer benefits to her late husband and fix him accordingly from the date of his appointment on the post of Valve man and to calculate the family pension in accordance with the re-fixation done in the case of her husband in pursuance of the revised pay scale of Rs.950-1500 (Revised to Rs.3050-4590 (sic 3350-4000).



3. 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 respondent 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, deceased husband of applicant was 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.

4. A Miscellaneous Application No.48/2005 has also been filed seeking condonation of delay in filing of the Original Application,

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wherein, it has been stated that the pay fixation case is a continuous wrong and therefore law of limitation is not attracted. Contents of the same have been refuted in the reply filed on behalf of the respondents.

5. Both the learned counsel for the parties have reiterated the facts and grounds as mentioned in their respective pleadings. The learned counsel for the applicant has made us to traverse 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 instant 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 granting 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, learned counsel for the respondents has laid stress on the defence version of the respondents as noticed above.

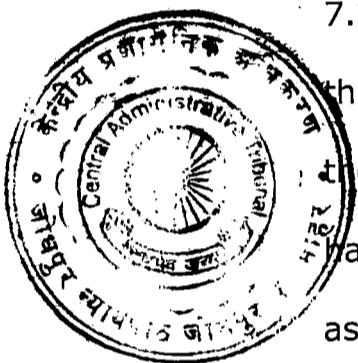


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6. As regards the question of limitation, we are in agreement with the version of the applicant that the subject matter of this Original Application relates to fixation of pay which is a recurring cause of action, therefore, law of limitation is not 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.



7. 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.

8. The offshoot of the aforesaid discussion leaves us to inescapable conclusion that there is ample force in this original Application and the same deserves to be accepted. OA stands allowed accordingly. Respondents are directed to refix the pay of the applicant's husband on the post of Valve man in the pay

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scale of Rs.950-1500 from the date of his promotion on notional basis and consequently revise the family pension/pensionary benefits on the basis of such notional fixation. The applicant shall, however, be entitled to the actual arrears of family pension / pensionary benefits, calculated on the basis of revised pay and allowances of the deceased government servant, less what has been paid to her. 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.

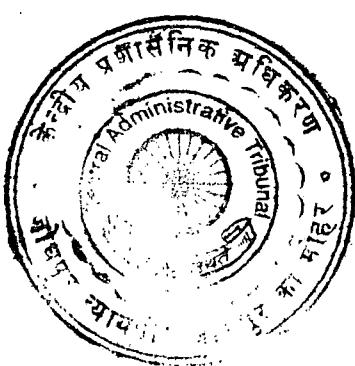


(R.R.BHANDARI)
Administrative Member



(J.K. KAUSHIK)
Judicial Member

HC*



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