

CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

Original Application No. 255 and 256 /2012 With
Miscellaneous Applications No. 132 & 133 /2012

Jodhpur, this the 31st January, 2013

[Reserved on 29.1.2013]

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

1. Jammaludeen S/o Shri Hakim Khan, Aged 59 years, Pipe Fitter in the Office of Assistant Garrison Engineer, (B&R) MES, (Army) Pokran, District Jaisalmer: Resident of Ward No. 1, Tajiyion Ka Chowk, Pokran, District Jaisalmer
.....Applicant in OA 255 and MA 132/2012.
2. Akhey Raj S/o Shri Narain Das, Aged 55 years, FGM in the Office of Garrison Engineer, MES (Army), Jaisalmer: Resident of 179, Ganesh Marg, Gandhi Colony, Jaisalmer
.....Applicants in OA 256 and MA 133/2012

(Through Adv. Vijay Mehta)

Versus

1. Union of India through the Secretary to Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES, Army (P), Banar, Jodhpur.
3. Garrison Engineer, MES (Army), Jaisalmer.

.....Respondents

(Through Adv. Mr.Vineet Mathur)

ORDER

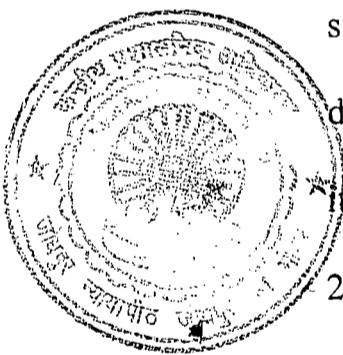
Per: Justice K.C.Joshi :

Since the applicants in the aforesaid OAs have prayed for the similar relief arising out of the same facts, therefore, both these applications are being disposed of by this common order.

2. The applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, for the following reliefs :-

"That in view of the facts and grounds mentioned herein above the applicant prays that the respondents may kindly be directed to pay the applicants salary in pay scale of Rs. 260-400 / 900 – 1500 and as further revised from time to time from the date of his promotion to the post of Valvemen and consequently to revise their fixation with all consequential benefits. Any other relief, deemed fit by this Hon'ble Tribunal may also be granted to the applicants. Costs may also be awarded to the applicants."

3. Applicant No.1 was appointed as Valveman on 01.08.1983 and applicant No. 2 was initially appointed on the post of Mazdoor in the year 1979 and passed the trade test for the post of Valvemen on 1.6.1988 and his result was declared on 22.5.1989. However, he was promoted on the post of Valveman on 1.5.1995. It is claimed that they have not been allowed the salary in the pay scale of skilled post to which, they were entitled. It has been brought to our notice that several similarly situated incumbents have challenged the same issue by filing different Original Applications before this Bench of the Tribunal and it, in **Zahoor Mohammed Vs. Union of India and Ors.** (OA No. 291/2012) which was decided on the basis of **Gepa Ram and Ors. Vs. Union of India and Ors.** (OA No. 258/2001), directed the respondents that the applicants should be fixed in the pay scale of Rs. 950-1500 from the date of their initial appointment with all consequential benefits. Hon'ble the Supreme Court also dismissed the appeal [S.L.P. No. 1475/2004 filed by the **Union of India and Anr. Vs. Gepa Ram Valveman & Ors.**] vide its order dated 16th June, 2011, therefore, Mr. Vijay Mehta, counsel for applicants, prays that in view



of the pronouncement by the Apex Court in *Gepa Ram's* (supra) case, the instant OAs be allowed with costs.

4. It is gathered from the facts that the recruitment of the applicants were governed by the Military Engineering (Industrial Class III & IV Posts) Recruitment Rules, 1971 and after promotion, they had been discharging the duties of skilled post, whereas, they were being paid the pay scale of semi skilled. The respondents were required to suo moto extend the similar benefits to all other Valvemen in view of the order of this Tribunal passed in OA No. 170/2002 on 9.12.2002 as the respondents challenged that order before the Rajasthan High Court and the Hon'ble Supreme Court as well, which was rejected.

5. The learned counsel for respondents primarily opposed the applications on the ground of delay and prays that the OAs be dismissed as the applicants have approached this Tribunal beyond the prescribed period of limitation under the Act. However, seeing the decisions of this Tribunal on the issue which have been maintained up to the level of Apex Court and rather it appears that it was the duty of the respondents to grant such benefits at the thresh-hold to these applicants too, automatically in view of the verdict given on the issue, and only due to abandon precaution, these MAs have been moved. The learned counsel for applicants has vehemently argued on the point of limitation and we are convinced of the same based on the grounds raised in the respective M.As particularly when the matter does not res integra after the preposition of Hon'ble Supreme Court rendered in



2011 itself. The MAs No. 132 and 133 are, therefore, accepted and delay in filing these applications is condoned.

6. The respondents have pleaded in their reply that the applicants were granted financial upgradations at the appropriate time as per rules. As regards the claim to the post of Valvemen, it is contended that the Recruitment Rules of Valvemen are yet to be revised by the Government of India and no promotion in the category of Valvemen has been made so far by the respondent department and as and when the Recruitment Rules are finalized, the case of the instant applicants will also be considered. The applicants were promoted to the post of Valvemen from the post of Chowkidar and Mazdoor respectively and as per Recruitment Rules of 1971, the post of Valvemen was a class IV industrial post and they have rightly been granted the pay scale and it was so because they were never recruited in the skilled-category, as claimed. It has been argued by the counsel for respondent – department that the respondents have already sought clarification / instructions for making payment to the applicants equal to the similarly situated persons wherein, the applicants were not party but, the same is still awaited.

7. The applicants have also filed a rejoinder to the reply merely reiterating the facts pleaded in their O.As and pray that the OAs be allowed.

8. We have heard the learned counsel representing for both the parties and perused the records. It appears that the controversy involved in this matter has already been set at rest and no further scrutiny is required in view of the decision in *Gepa Ram's* case.

9. It appears that similarly situated persons, who were Skilled Trades Electrician, F.G.M., Plumber etc. have been granted promotion to the post of Highly Skilled and M.C.M. whereas, the applicants have not been granted any promotion although they are working on the post from 1983 and 1995 respectively. The contention of the counsel for the respondents that the Rules which are under consideration, is no ground to deprive the applicants for unlimited period from the same promotion which they have provided to similarly situated other persons. In the absence of any Rules, the Department can promote them even on ad hoc basis or by way of other means but, by simply saying that framing of Rules is under consideration, is no ground to deprive them from getting their legitimate pay.

10. In view of the facts discussed above, both the above OAs are allowed and the respondents are directed to take the required steps for promoting the applicants in the pay scale of Rs. 950-1500 from the date of their appointment as 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 filing of the present O.As by the respective applicants. This order shall be complied with within a period of four months from the date of receipt of a copy of this order. No order as to costs.

COMPARED &
CHECKED
A. S. D.

sd/-

(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

sd/-
(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

mehta

CERTIFIED TRUE COPY
Dated 31.1.2013...

D.K. Shroff

संघीय नियम (संघ.)
Section : judl.
संघीय नियम अधिकार
Central Admin. Tribunals
संघीय नियम नियम
Delhi Bench, India