

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No: 433/2006
This, the 1st day of April, 2013

HON'BLE SRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)
HON'BLE SRI D.C. LAKHA, MEMBER (A)

1. Pramath Chandra Ojha, aged about 41 years, son of Sri Laxman Chandra Ojha, at present working in the office of AGE E/M (WS & MT) Lucknow Cantt. Lucknow.
2. Suresh Kamla son of late M.L. Kamla at present working in the office of AGE E/M (WS & MT) Lucknow Cantt, Lucknow.
3. Lalit Kumar son of Sri Virendra Kumar at present working in the office of Addl. AGE E/M (External) Lucknow Cantt, Lucknow.
4. Meva Lai Verma son of late Mangli Prasad at present working in the office of Garrison Engineer, Air Force, Bakshi Ka Talab, Lucknow.

Applicant.

By Advocate: Sri Surendran P

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief Engineer, (Head Quarters), Central Command, Military Engineering Service, Lucknow.
3. Commander Works Engineer, Military Engineering Services, Mahatma Gandhi Marg, Lucknow.
4. Garrison Engineer (E/M) Military Engineering Services, 36, Lalbahadur Shastri Marg, Lucknow.
5. Garrison Engineer, Military Engineering Service, Air Force, Bakshi Ka Talab, Lucknow.

Respondents.

By Advocate: Sri K.K.Shukla

ORDER (Dictated in open court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

In this O.A., the following relief has been sought in the following manner:-

"Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the orders dated 24.9.2005, 31.12.2005 and 31.1.2003 contained in Annexure No 1 to 3 and a direction be issued to the respondents to give the applicants the pay scale of Rs. 950-1500 with effect from the date of their initial appointment and pay arrears of salaries as well as further consequential benefits to them,

AS

which were given to other similar employees in pursuance of judgment and order dated 21.5.99 passed by the CAT Jabalpur Bench and order dated 27.7.2004 and 13.9.2004 passed by Hon'ble CAT, Allahabad."

2. The case of the applicants in brief is that in pursuant to a requisition issued in the year 1987 and after due interview/ test, the applicants were directly recruited in the year 1987-88 for Skilled Grade of R. 950-1500. But in the appointment letters, they were initially given pay scale of Rs. 800-1150 for 2 years and thereafter, the skilled grade of Rs. 950-1500 was allowed to them. The scale of Rs. 950-1500 is the revised scale of Rs.260-400. As the applicants were directly recruited in skilled grade, they were entitled to get the above revised scale from the beginning. Some of the similarly situated employees working in the Military Engineering Services were also aggrieved by the similar action of the respondents. Therefore, they filed O.A. No. 166/1991 before CAT, Jabalpur Bench, which was allowed on 21.5.99 (Annexure -8) with a direction to the respondents to grant the pay scale of Rs. 950-1150 to all those skilled persons, who have been recruited to the skilled grade. The respondents were also directed to fix pay scale accordingly and disburse them to all such similar skilled officials. The opposite parties however, went for judicial review by filing Writ Petition No. 4510 of 1999 which was dismissed by Hon'ble High Court, Jabalpur vide order dated 5.7.2000. The respondents challenged the above order by filing a Special Leave Petition before the Hon'ble Apex Court. In the meanwhile, vide order dated 10.8.2000 (Annexure No.9), the Chief Engineer (HQ), Jabalpur zone directed the concerned Commandant Works Engineer to implement the order dated 21.5.99 of CAT, Jabalpur and as such all the similarly situated employees of Jabalpur Zone were given the correct pay scale of Rs. 950-1500. Further contention of the

AR

applicants is that, Military Engineering Service Department is an instrumentality of Union of India having several zones through out the country. Therefore, other similarly situated employees including the applicants are entitled to get the same benefit. Some of the similarly situated employees posted in the office of Garrison Engineer, Babina, Jhansi also filed an O.A. No.516/2003 claiming the same direction. During the pendency of that O.A, the Union of India vide its order dated 31.1.2003 however refused to extend the said benefit to similarly situated employees. Ultimately, the aforesaid OA was finally allowed in favour of the applicants and the above order dated 31.1.2003 was set aside vide judgment and order dated 27.4.2004 of CAT Allahabad (Annexure 10). In the above back drop, the applicants of the present O.A. moved representations claiming themselves to be similarly situated officials but their representations were returned back vide order dated 24.9.2005 and 31.12.2005 along with a copy of above order dated 31.1.2003 (Annexure 1,2 and 3). Thus, the action of the respondents are illegal and arbitrary which has been taken without application of mind. Thereafter, another O.A. No. 1034/2004 Kailash Prasad Gupta and others Vs. Union of India and others was filed before CAT, Allahabad which too was allowed on 13.9.2004 and those directions were also implemented vide order dated 3.1.2006 (Annexure No. 11 and 12). Since the aforesaid order dated 31.1.2003 has already been quashed in April, 2004, therefore, there was no justification to return back the representations of the applicants in September and December 2005 (Annexure No. 1 and 2). Hence this O.A.

3. The O.A. has been however, contested by filing a detailed Counter Affidavit saying that all the applicants have accepted all the terms and conditions including the pay scale of Rs. 800-15-1010-EB-20 -1150 + allowances as admissible to the Central Govt.

AR

employees at the time of joining the service and they had been working with the Department from 1987 till date without raising any objection regarding pay and allowances. Therefore, the representation of some of the similarly situated persons were rejected on 31.1.2003. The applicants were appointed on the post of Pipe Fitter in the scale of Rs. 800-1150 and terms and conditions of appointment were accepted by them and now therefore, they cannot raise such grievance.

4. The applicants have also filed a Rejoinder Reply denying the contents of the Counter Affidavit and reiterated their own pleadings contained in the O.A.

5. We have heard the learned counsel for the parties at length and perused the entire material on record.

6. At the out set, we do not find even a whisper in the entire C.A. that the case of the present applicants are not squarely covered by the cases of the applicants of all the above three OAs which have been decided in favour of the applicants and have also attained finality. The only contention about the judgment of the Jabalpur CAT is that the matter is sub-judice. It has not been elaborated as to how it is sub-judice. This order of CAT, Jabalpur was though challenged before the Hon'ble High Court but the writ petition has been dismissed. The respondents have not said it clearly as to whether or not they have actually filed any SLP against the order of Hon'ble High Court. Be that as it may. But concededly, after dismissal of their writ petition, the respondents themselves have taken a decision to implement the aforesaid order rendered by CAT, Jabalpur Bench vide their office order dated 10.8.2000 (Annexure No.9) subject to review and recovery based on the out come of the SLP being filed. But the respondents have probably not filed any SLP and that is the reason for not giving any particulars of the SLP and its latest status. Though, the entire

AR

Military Engineering Service Department is an instrumentality of Union of India having several zones in the whole country and in view of the aforesaid decision taken by them, they ought to have implemented it in other zones also redressing the grievance of the similarly situated employees but they did not do so. As a consequence of this, some of the similarly situated employees had to file O.A. No. 516/2003 and another O.A. No.1034/2004 before CAT, Allahabad. While the O.A. No. 516/2003 was allowed on 27.4.2004 in favour of the applicant (Annexure 10), the subsequent O.A. No.1034/2004 was finally disposed of on 13.9.2004 (Annexure 11) giving liberty to the applicants to make representation to be decided by the respondents in the light of the order passed in O.A. No. 516/2003 by the CAT, Allahabad Bench and O.A. No. 166/91 by the CAT, Jabalpur Bench respectively. Both these judgments have been brought on record. There are specific pleadings that both the above orders have also attained finality and have been implemented vide order dated 3.1.2006 (Annexure 12) and relevant order dated 31.1.2003 by means of which the representations were rejected. This order, however, has already been set aside by Hon'ble Tribunal at Allahabad vide order dated 27.4.2004 (Annexure 10). But we are astonished to note that when the applicants of the subsequent OAs moved a similar representation claiming similar benefits on the ground of being similarly situated employees, their representations were not even entertained. Rather the same were rejected vide order dated 29.4.2005 and 31.12.2005 and was conveyed along with copy of the aforesaid order dated 31.1.2003 which itself was a nonest having been already set aside in the month of April, 2004 as mentioned above. This shows a pedantic approach adhered by the respondents though they are supposed to have a pragmatic approach in such matters being model employers. They should

AP

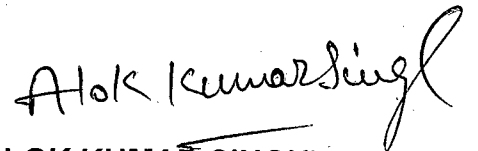
not have denied the similar benefits to similarly situated employees. It amounts to infringement of Article 14 and 16 also.

The law is settled on the point that similarly situated persons cannot be treated differently, lest it would amount to discrimination.

7. Finally, therefore, in view of the above, we come to the conclusion that applicants of this OA being similarly situated employees are also entitled to get similar benefits which have been given in favour of the applicants of above OAs No. 166/1991, 516/2003 and 1034/2004. The O.A. is therefore, allowed with a direction to the respondents to redress the grievance of the applicants of this O.A. by giving them the same benefits as discussed above and this exercise, we hope would be concluded expeditiously say within a period of 3 months from the date of this order. No order as to costs.



(D.C. LAKHA)
MEMBER (A)



(ALOK KUMAR SINGH)
MEMBER (J)

1.4.13

HLS/-