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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 800/88, 801/88, 802/88
 XXXXXX
 XXXXXX 198

DATE OF DECISION 5.9.1991

Shri Tingre H.B. and ors in OA No.800/88
 Shri P.B.Patekar and 4 ors in OA No.801/88
 Shri M.S.Kharat, and 5 ors in OA
No.802/89 Petitioner

Shri Y.G.Waknis Advocate for the Petitioner(s)

Versus

The Union of India Respondent

Mr. M.I.Sethna, Sr.Counsel Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

The Hon'ble Mr. T.C.REDDY, MEMBER (J)

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

Y

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

ORIGINAL APPLICATION NO. 800/88.

Shri Tingre H.B. and ors.

....Applicants

Vs

The Union of India
and ors.

....Respondents

ORIGINAL APPLICATION NO. 801/88

Shri P.B.Patekar and 4 others

.... Applicants

Vs

Union of India and ors.

.... Respondents

ORIGINAL APPLICATION NO. 802/88

Shri M.S.Kharat, and 5 others

... Applicants

Vs/

Union of India and ors.

CORAM : HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER (A)

HON'BLE MEMBER SHRI T.C.REDDY, MEMBER (J)

Appearance:

Mr.Y.G.Waknis, Advocate
for the applicants.

MR. M.I.Sethna, Sr.Counsel
for the respondents

ORAL JUDGEMENT

(PER : M.Y.PRIOLKAR, M/A)

Dated : 5.9.1991

In all these three cases, the applicants were all originally appointed as Mazdoors. After 10 to 20 years of service as Mazdoor and after passing trade test, they were promoted as Motor Pump attendents in the Military Engineering Services in the pay scale

of Rs.260-400 corresponding to the revised pay of Rs.950-1500 However, subsequently, in the year 1988 the competent authority ordered that the applicants are entitled only to pay scale of Rs. 210-290 corresponding to revised pay scale of Rs.800-1150/- and that the excess amount drawn by them in the higher pay scale should be recovered from the applicants. Aggrieved by this order, the applicants have come up in this application with the prayer that the order contained in Engineer-in-Chief's letter dated 9.5.1988 ordering their redesignation as Mate Motor Pump attendant instead of the post of Motor Pump Attendant which they were holding should be declared as ab initio void and quashed and also that the respondents should be restrained from effecting the recoveries of about Rs.5000/- alleged overpayment from each of the applicants.

2. According to the respondents, the Ministry of Defence had appointed an Expert Classification Committee to go into the qualifications and grade structure of various posts in different establishments. After studying the job content, the committee recommended the fitment of Industrial posts in the various pay scales as recommended by the committee. The report of this committee was accepted by the Government with certain modifications and finally Government ordered that all the industrial posts in Military Engineering Service and other Defence Organisations were fitted in five pay scales, ~~and~~ viz. Unskilled, Semi-skilled, Skilled, Highly skilled Grade II and Highly Skilled Grade I. It is not in dispute that prior to this Government order the post of Motor Pump Attendant was categorised

as semi-skilled in class IV scale. And Mazdoors who were in the still lower Class IV scale as Unskilled category were eligible to be promoted as Motor Pump Attendant which carried higher class IV scale applicable to semi-skilled category. It was only by letter dated 20th December, 1983, that orders were issued for fitment of Industrial workers of MES in pay scale recommended by the 3rd pay Commission and Appendix A of this order contains a statement showing the posts upgraded from semiskilled to skilled Grade and proposed Feeder Grade. It is clear from this statement that the post of Motor Pump attendant, which was in the old scale of Rs.210-290 was revised to Rs.260-400 and instead of the then existing feeder grades of Mazdoor/Choukidar/Safaiwala in the scale of Rs.196-232, the new feeder Grade prescribed was Mate in the Scale of Rs.210-290.

3. According to the learned counsel for the applicants, the Ministry of Defence letter dated 11th May 1983 while conveying the sanction for these 5 scales of pay for industrial workers had also indicated that in respect of jobs which carried semi-skilled Grades before the present fitment, but have been allotted the scale of Rs.260-400 on the basis of the evaluation, Feeder Grade/ Trades in the semiskilled Grade of Rs.210-290 may be identified by the Chief of the Army Staff, if this has not already been done by the present recruitment rules. It was also stated in that letter that in exceptional cases where such identification of feeder Grades/Trades was not feasible from functional point of view, direct recruitment at the skilled level could be made to such jobs. The contention of the learned counsel for the applicant was that it was, therefore, not necessary nor obligatory for the Army

establishments to introduce any Feeder Grade for promotion to upgraded posts of Motor Pump attendant. It is not possible for us to accept this contention of the learned counsel. Whether there should be a Feeder Grade or not for promotion to higher post is entirely within the domain of the executive and we can not interfere in this matter only on the basis of the averments of the interested parties. The only ground in support of their contention raised on behalf of the applicants was that since right from 1961 it was not felt necessary to have any intermediary grade between Mazdoor and Motor Pump attendant, it was not necessary to have such Feeder Grade even in 1983. This argument has to be rejected as it completely ignores the fact that the necessity for the intermediary grade has arisen because the post of Motor Pump Attendant has now been upgraded from Semi-skilled to skilled category.

4. The respondents have also produced before us a copy of the judgment of our Cuttack Bench in OA No.382/87 decided on 7th November 1988 in the case of Jogendra Samal V Union of India and others, in an identical case where also mazdoors already promoted as Motor Pump Attendant were subsequently held to be entitled only to a lower pay scale of Rs.210-290 instead of Rs.260-400 and recoveries were enforced. In that case also as in the present case before us, it is the contention of the Respondents that it was only through inadvertence that the applicants were given higher pay scale of Rs.260-290 as unskilled or semiskilled labour. According to the respondents it is only when semi-skilled labourers are further promoted to the post of Motor Pump attendents that they will be entitled to the pay scale of Rs. 260-400.

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5. Evidently, once a bonafide mistake has been discovered by the competent authority, it will have no option but to rectify the mistake and regulate the entitlement in accordance with the rules. The only relief that was given in the above judgment of the Cuttack Bench for persons similarly placed as the present applicants were that they should be entitled to the pay scale applicable to Motor Pump Attendant for the period they have actually worked as Motor Pump Attendants. We are in respectful agreement with this judgment of the Cuttack Bench. Accordingly, we direct that the period for which the applicants have actually worked as Motor Pump Attendants till their redesignation as Mate Motor Pump Attendant, the applicants should be given pay scale of Rs.260-400 and the corresponding revised pay scale of Rs.950-1500 and no further recoveries should be made from them on this ground. However, from the date the applicants were redesignated as Mate they would be entitled only to the pay scale in the pre-revised scale of Rs.210-290 on the corresponding revised scale.

6. The application is accordingly disposed of with these directions with no order as to costs.

T. C. Reddy
(T.C.REDDY)
M(J)

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(M.Y.PRIOLKAR)
M(A)