

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 72/99

Date of Decision: 6.04.2004

B.e. Yadav.

Applicants

Shri S.P. Saxena.

Advocate for applicant

Versus

Union of India & Ors. .

Respondents

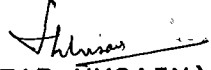
Shri R.K. Shetty.

Advocate for respondents

CORAM: HON'BLE SHRI A.K. AGARWAL.
HON'BLE SHRI MUZAFFAR HUSAIN

VICE CHAIRMAN
MEMBER (J)

1. To be referred to the reporter or not? x
2. Whether it needs to be circulated to other Benches of the Tribunal? x
3. Library. x


(MUZAFFAR HUSAIN)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.72/99

THIS THE 6th DAY OF APRIL, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL.
HON'BLE SHRI MUZAFFAR HUSAIN.

VICE CHAIRMAN
MEMBER (J)

Babasaheb Eknath Yadav,
Electrician (MV) (T.No.293)
Station Workshop EME,
Range Hills, Kirkee,
Poona-411 020.

.. Applicant

By Advocate Shri S.P. Saxena.

Versus

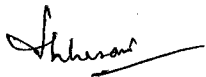
1. Union of India through
the Secretary,
Ministry of Defence,
New delhi-11.
2. The Director General,
Directorate General of EME,
M.G.O. Branch,
Army Headquarters,
New Delhi-11.
3. The Commanding Officer,
Station Workshop, EME,
Kirkee, Pune-411 020.

... Respondents

By Advocate Shri R.K. Shetty.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

Aggrieved by the order dated 11.01.1999 and apprehending that Respondent No.3 would start recovery of alleged over-payment and would also place the applicant in lower scale of pay of Rs.950-1500 with effect from 05.02.1988 the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985.



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2. The facts of the case as narrated in the OA are that the applicant had passed Auto Electrician Course from I.T.I. Sangli. He registered his name with the Employment Exchange at Pimpri, Pune for multiple job. The employment Exchange sponsored his name to the office of respondent No.3 for the post of Electrician (MV) in the scale of pay of Rs.1200-1800 as can be seen from the letter dated 12.8.1987 issued by the Employment Exchange (Exhibit A2). Thereafter he was selected for the post of Electrician (MV) and he was issued an appointment letter dated 27.01.1988 (Ex. A3). The scale of pay in the appointment letter for the post of Electrician (MV) is also shown as Rs.1200-1800. Applicant joined the services on 05.02.1988 in the office of Respondent No.3. His probation was completed and he was confirmed and he continued to work as Electrician (MV) continuously and getting annual increment every year. The applicant has not been promoted to higher post in this period. Thereafter, Respondent No.2 issued a letter to Respondent No.3 stating that the fixation of pay of applicant in the scale of Rs.1200-1800 is incorrect and the individual's pay scale be reduced to Rs.950-1500. On the basis of this letter and other correspondence, the Respondent No.3 has issued the impugned letter dated 11.01.1999 to the applicant. It is further stated by the applicant that in other 512 Army Base Workshop, Kirkee, 140 tradesmen were recruited in 1985-87 period and they were placed in the then pre-revised scale of



pay of Rs.330-480 (Revised scale Rs.1200-1800 with effect from 01.01.1986) instead of the pay scale of Rs.260-400 (Revised scale Rs.950-1500). However, a clarification was given by the Ministry of Defence vide letter dated 25.6.96 and neither their pay scale was reduced nor any recovery was made from the individuals, in view of the clarification. The applicant's case is similar to those tradesmen of 512 Army Base Workshop under the same Respondent No.1 and 2. The applicant had never misrepresented the respondents about pay scale, and he was placed in the scale of Rs.1200-1800 by Respondent No.3 like many others and no fault is with him.

3. The respondents are opposing the OA and have filed written statement. They have stated that the applicant was appointed in the post of Electrician/MV/Electrician Skilled. The respondents state that the appointment of the applicant is governed by the statutory rules and order No.1 of 1988 which clearly states that there cannot be any direct recruitment in the scale of pay of Rs.1200-1800 but that all recruitment has to be essentially done in the post of Electrician MV/Electician Skilled in the scale of pay of Rs.950-1500. The respondents have further stated that the original appointment order issued to the applicant in the post of Electrician MV with effect from 05.02.1988 in the scale of pay of Rs.1200-1800 is




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erroneous and needs immediate correction. Accordingly an order has been passed by the respondents to the effect that the appointment of the applicant with effect from 05.02.1988 is shown to be in the scale of Rs.950-1500. Therefore, the original appointment of the applicant in the scale of pay of Rs.1200-1800 is clearly dehorse the rules and is illegal. The applicant cannot equate his case with the 140 Tradesmen working in the 512 Army Base Workshop as the said Tradesman have been recruited between 1985 and 1987 whereas the applicant has been recruited on 05.02.1988. The appointment of the applicant is governed by SRO-1/88 whereas the case of these 140 persons referred to by the applicant is governed by SRO 233/82. Hence the applicant cannot get the benefit as has been given to the 140 Tradesmen to whom the applicant is referring in his OA. The respondents have prayed that the OA be dismissed with costs.

4. We have heard learned counsel for the parties and gone through the material placed on record.

5. Learned counsel for the applicant has raised the contention that as per earlier recruitment rules, the applicant was recruited as Electrician (Motor Vehicle) in the grade Rs.1200-1800 as exhibited from Employment Exchange letter dated 12.8.87 (A2) and appointment letter dated 27.01.1988 (Exhibit A3). The



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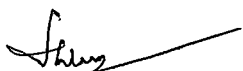
applicant was sponsored for the above post in the above scale and was selected. The respondents continued the applicant in scale of Rs.1200-1800 from 05.02.1988 till the impugned order was passed on 11.01.1999 and at no point of time the respondents informed that his scale of pay of Rs.1200-1800 was erroneously given. The applicant was also given annual increments every year. The respondents cannot reduce the scale of pay of the applicant retrospectively from 05.02.1988 as it leads to civil consequences adversely affecting the applicant.

6. Learned counsel for the respondents on the other hand has contended that the applicant's initial appointment in scale of Rs.1200-1800 with effect from 05.02.1988 clearly erroneous. The applicant was not granted annual increment of Rs.30/- in the scale of Rs.1200-1800 in March, 1997 as the respondents were not sure of scale of pay to be given to the applicant. The applicant was verbally told about the stoppage of increment. However, the applicant gave in writing that he should be granted annual increment in the same pay scale and has no objection for recovery of the over payment on receipt of Government order. The applicant is now therefore, estopped from going back on his word.

7. On the basis of the averments made by the parties in their respective pleadings, the short controversy which needs to be resolved is, whether the



applicant is entitled for scale of pay of Rs.1200-1800 from the date of his recruitment. The applicant has challenged the denial of pay scale with basic pay of Rs.1200/- when the selection process was completed before the notification of SRO - 1/88 was issued on 30.01.1988. Therefore, he will be governed by the rule existing prior to 30.01.1988. The contention of the applicant is that as per earlier recruitment rule, the recruitment of the applicant for the post of Electrician (MV) was to be done in grade Rs.1200-1800. Therefore, the applicant is entitled to be appointed in this grade. The respondents on the other hand contended that the applicant has been appointed on 05.02.1988 after 30th January, 1988. Therefore, he will be governed by recruitment rule of 1988, which clearly states that there cannot be any direct recruitment in scale of Rs.1200-1800, but all recruitment has to be essentially done in the post of Electrician (MV) in the scale of Rs.950-1500. Learned counsel has argued that the original appointment order is clearly dehorse the rule and thus-illegal. He has also placed reliance on a decision of Division Bench of Mumbai Bench dated 15.9.1998 in OA No.791/91 and 771/91. It is noticed that employment exchange letter issued to the applicant (Exhibit A2) indicates that the call letter was issued to the applicant on 12.8.1987 and the appointment letter is dated 27.01.1988 (Exhibit A3) wherein the scale of pay of Rs.1200-1800 has been mentioned. It has also

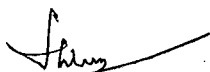


been mentioned that the appointment will take effect from the date of reporting for duty on or before 06.02.1988. It is an undisputed position that that the applicant joined on 05.02.1988. It can be inferred that the recruitment process has started before the implementation of recruitment rules 1998 issued on 30.01.1988. The Division Bench of CAT Mumbai Bench in OA 791/91 and 771/91 was dealing with the controversy of recruitment of Electrician (MV) in pay scale of Rs.1200-1800 i.e. similarly placed person. The Bench after considering the Supreme Court decision and held as under:

Keeping in view what is held in these judgements, we are inclined to conclude that the recruitment of the applicants in both the OAs, was to be governed by the old rules and not by the rules which were notified in January, 1988.

In the referred cases, the applicants were appointed on 16.3.1988 but the Tribunal held that the applicant will be governed by the old rules. similarly, the applicant in the present case also will be governed by the old rules.

8. Learned counsel for the respondents has also relied upon the circular of Government of India, Ministry of Defence dated 07.6.1985 (R2) regarding fitment of industrial workers of EME in pay scale recommended by third pay commission. This letter has



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reference of Army HQ letter No. 6607/XVI/EME Civ-2 dated 06th November, 1984 and Government of India, Ministry of Defence letter No.3811/DS/(C&M)/Civ-I/84 dated 15.10.1984 which provides three scales as under:

As far as the trades of Precision Grinder, Machinist, Electrician (MV) and Millwright are concerned, creation of 3 grade structure is also applicable to them as per Govt. letter referred to paragraph 2 above. In view of the same, at present 15% of tradesmen of these trades who have completed 3 years in Highly skilled Gde II will be elevated to Highly Skilled Gde I by non-selection method. In order to create 3 grade structure in these categories all future tradesmen for these categories against wastage vacancies will be introduced in the skilled level till the same bench-mark percentage as applicable to other common category trades are obtained in those trades as well:

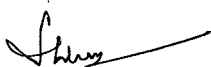
- 1) Skilled Grade Rs.950-20-1150-EB-25-1500.
- 2) Highly Skilled II Rs.1200-30-1440-EB-30-1800
- 3) Highly Skilled I Rs.1320-30-1560-EB-40-2040.

This letter deals with the fitment with the industrial workers of EME in pay scales recommended by the 3rd Pay Commission.

9. The Tribunal while dealing with the matter of similarly placed persons observed as follows:

"As already brought out earlier, an Expert Classification Committee was appointed to go into the fitment of the pay scales of the Industrial employees after job evaluation. This committee recommended compression of 9 pay scales into 5 pay scales. This resulted into a number of anomalies. Some of the pay scales become non-operative for some categories which included the categories of the applicants under reference. This also resulted the promotion for some categories from the scale of

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Rs.210-290 directly to the scale of pay of Rs.330-480. Keeping these anomalies in view, an Anomalies Committee was set up. The recommendations of the Anomalies Committee have been notified for implementation as per order dated 15.10.1984 brought on record by the respondents at Annexure 'R3'. On going through this letter, it is noted that in respect of the skilled grade in the common categories, the minimum grade is Rs.260-400 and the higher grades have been provided as highly skilled Grade II and Grade I on percentage basis. As per this, the recruitment is required to be made in the scale of Rs.260-400, i.e. Rs.950-1500. With the implementation of these recommendations, the grade of the Precision Grinder as well as the Electrician Motor Vehicle for recruitment purpose is the initial grade of Rs.260-400, i.e. Rs.950-1500. Therefore, as per the Recruitment Rules of 1982 the recruitment for the category of Precision Grinder, Electrician Motor Vehicle was required to be done in the grade of Rs.950-1500. Although, the respondents have taken a plea that the recruitment of the applicants in both the OAs. will be governed by the Recruitment Rules 1988, but on examination of the issue with reference to the 1981 rules, which we have already held would be applicable to the case of the applicants, the recruitment of the applicants in the grade of Rs.950-1500 is in order. In view of this, the claim made by the applicants in both the OAs. is not sustainable."

10. The case of the applicant is clearly covered by the judgment of the CAT Mumbai Bench in OA 797/91 and 771/91 decided on 15.9.98. The applicant was appointed on 05.02.1988, but the process of selection was started before the recruitment rules 1988 were notified. Therefore, the applicant will be governed by the 1982 rules as in the referred case. 1982 rules have not been challenged by the applicant. We, as a co-ordinate Bench of the Tribunal, are bound by the above judgment, which still holds good and has not been challenged before any higher court.



11. It has also been argued on behalf of applicant that the Ministry of Defence letter dated 25.6.1996 has also given clarification in a similar case of 140 Tradesmen working in 512 Army Base Workshop under Respondents 1 and 2 and accordingly their scale of pay was not reduced and no arrears was recovered from them. Even if it is admitted that the recruitment has been done in the scale of Rs.1200-1800 in isolation of the recruitment rules, it does not give any right to the applicant claim that the same mistake be made in their case on the plea of discrimination. The doctrine of discrimination is founded upon existence of enforceable right. A wrong decision by the Government does not give right to enforce the wrong action and claim parity or equality. Therefore, we, following the judgment of the CAT Mumbai Bench, hold that the applicant is not entitled to the pay scale of Rs.1200-1800.

12. In the light of the above discussion we do not find any merit in the OA and the same is dismissed accordingly with no order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN.

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