

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.505/2001

Date of Decision: 15.02.2002

MES Employees Union, Mumbai & anr. Applicant(s)

Shri P.A. Prabhakaran. Advocate for Applicants

Versus

Union of India & others .. Respondents

Shri R.K. Shetty. Advocate for Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

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(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 505/2001

THIS THE 15TH DAY OF FEBRUARY, 2002

CORAM:

HON'BLE SHRI JUSTICIE BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry MEMBER (A)

1. MES Employees' Union Mumbai through the General Secretary, Near Dhobi Ghat, Navy Nagar, Colaba, Mumbai-400 005.
2. Shri R.B. Pachpute, Electrician (Sk) C/o Garrison Engineer (West), Colaba, Mumbai-400 005. ... Applicants

By Advocate Shri P.A. Prabhakaran,

Versus

1. The Union of India through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110 001.
2. The Engineer-in-Chief, Kashmir House, Army HQ, DHQ PO, New Delhi-110 011.
3. Commander Works Engineer (Army) Mumbai, 24, Assaye Buildings, Colaba, Mumbai-5.
4. Commander Works Engineers (Naval Works) Mumbai, Dr. Homi Bhabha Road, Navy Nagar, Colaba, Mumbai-400 005.
5. Commander Works Engineers (Subs) (NW), Bhandup, Mumbai-400 078.
6. Commander Works Engineers, Onslow Road, Deolali-422 401.
7. Commander Works Engineers, AFI Buildings, Nehru Marg, Nagpur-440 001. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R

Hon'ble Smt. Shanta Shastry, Member (A)

The main prayer of the applicants in this case is to grant them skilled grade pay scale of Rs.260-400 (Rs.950-1500 RPR 1986) from the date of initial appointment. The applicants have prayed also for arrears as may be admissible within three months from the date of judgment. Some additional reliefs have also been sought in that the applicants want that upon granting of the skilled pay scale of Rs.260-400, those who have been promoted to higher grade carrying higher pay scale should be allowed the benefit of FR 22 for the purpose of refixation of their pay in the promoted higher grades. They also want benefit of the financial initial upgradation from the date of completion of 12 years of regular service from 19th August, 1999 whichever is later under the Assured Career Progression scheme of the Government of India.

2. The applicant No.1 is the Military Engineering Service Employees' Union officer bearer and applicant No.2 is the skilled workman and a member of the Union. The applicant No.2 was appointed as Lineman with effect from 16.9.1987 by Respondent No.3. The post of Lineman was re-designated as Electrician and presently he is employed as Electrician (skilled) in the office of the Garrison Engineer (West), Colaba, Mumbai under Respondent NO.3. There are in all 206 affected individuals, 187 were recruited in various skilled trades namely Wireman, Lineman, SBAs Electrician, Fitter

posts between 1985 and 1993 and they were recruited in the pay scale of Rs.260-400 or the revised pay scale of Rs.950-1500, but they were actually granted the lower/semi skilled pay scale of Rs.210-290 corresponding to Rs.800-1150 revised scale as per IV Pay Commission.

5. It is further submitted that the applicants at Sl.No.1 to 42 and 52 to 187 were granted skilled pay scale of Rs.260-400 after completion of two years of service from the date of their appointment on regular basis. Applicants at Sl.No.43 to 49 were granted the skilled pay scale after completion of three years. According to the applicants, they were appointed on the basis of recruitment rules of 1971 in which there was no provision for candidates being initially appointed in the skilled category with the lower pay scale. The post to which they were appointed carried the pay scale of Rs.260-400 meant for the skilled grade and therefore the action of the respondents in denying them the scale of Rs.260-400 and granting them the lower pay scale applicable to semi skilled grade is illegal and not supported by any statutory provision.

6. Some similarly situated counterparts of the applicants had represented to grant the skilled pay scale from the date of their initial appointment. However, the request was turned down by the respondents. Being aggrieved they approached various benches of this Tribunal and the various Benches allowed their request as follows:

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Pipe, Fitter, Refrigerator Mechanics, Motor Pump Attendant, Pump House Operator, Driver Engine Statics, Vehicle Mechanic, Carpenters, Engine Fitter, Blacksmith Upholsters and Plumber. Some of the applicants were transferred.

3. On the basis of the recommendations of the Third Pay Commission respondent No.1 had appointed an Expert Classification Committee besides a Committee of Common Cadre Jobs, for Evaluation of various trades. These Committees suggested upgradation of many grades from semi-skilled grade (Rs.210-290) to skilled grade i.e. Rs.260-400 based on job evaluation. Accordingly, many trades which were earlier in the semi-skilled category came to be upgraded to the skilled grade in the pay scale of Rs.260-400. The effect was given from 16th October, 1981. However, some semi-skilled categories of trades were not included for purpose of upgradation. As there was wide spread discontent an Anomalies Committee was appointed, which recommended the upgradation of some more trades like Carpenter, Fitter-Pipe examiner etc. These recommendations were implemented initially with effect from 15th October, 1984 and subsequently in the light of judgment of the Supreme Court in Writ Petition No.12259-66/94 it was antedated to 16.10.1981 by letter dated 19.3.93 to bring in parity and uniformity.

4. The applicants were recruited on the skilled

posts between 1985 and 1993 and they were recruited in the pay scale of Rs.260-400 or the revised pay scale of Rs.950-1500, but they were actually granted the lower/semi skilled pay scale of Rs.210-290 corresponding to Rs.800-1150 revised scale as per IV Pay Commission.

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1. OA No.79/92 decided on 08th August, 1994 by Jodhpur Bench - the direction was implemented by Respondent No.1 on 17th November, 1995.
2. OA No. 950/95 decided on 02nd December, 1997 by Madras Bench - the direction of the Tribunal was implemented vide order dated 02nd February, 2000
3. OA No.279/96 of Jodhpur Bench decided on 14th May, 1999, the same was implemented.
4. OA No.166/91 decided on 21st May, 1999 by Jabalpur Bench - the order was implemented vide letter dated 28th July, 2000.
5. OA No.217/PB/97 decided on 07th June, 2000 by Chandigarh Bench also implemented.
6. OA Nos. 858/93, 1065/94, 365/95, 64/99 and 82/99 decided on 20th July, 2000 by the Mumbai Bench of the Tribunal.
7. In all these OAs it was directed to give the applicants the higher pay scale of Rs.950-1500 applicable to the skilled category from the date of their appointment with consequent refixation of pay etc. and the main reason for allowing the OA was that the appointment was on the basis of the recruitment rules of 1971 according to which the recruitment was to be made in the post carrying pay scale of skilled category.
8. The applicants submit that after securing the copies of the judgments of the various Benches they also submitted a representation on 09th October, 2000 to respondent No.1 to grant them also the skilled pay scale of Rs.260-400 (Rs.950-1500) to all similarly placed persons and to pay arrears as admissible upon refixation of their pay. As no action has been taken by the

respondents, the applicants have approached this Tribunal. According to the applicants, the various judgments cited of the different Benches of the Tribunal have all allowed the pay scale of skilled grade from the date of appointment of the applicants therein and since the applicants are similarly placed, they should also be granted the same benefit.

9. The respondents contest the OA. According to the respondents, the OA deserves to fail as the applicants have sought multiple reliefs which is prohibited under Rule 10 of the CAT (Procedure) rules. Further, the alleged cause of action has arisen on the date of their appointment in the semi-skilled grade. This was much before the formation of the Tribunal and the applicants cannot now agitate at this belated stage by filing the OA in the year 2001. Therefore, the application deserves to be dismissed being hit by limitation and on the ground of lack of jurisdiction.

10. According to the respondents, the question of granting skilled grade to the applicants right from the date of appointment simply does not arise as the semi-skilled grade has been granted to the applicants as per the recommendations of the Anomalies Committee's report accepted by the Government of India vide letter dated 15.10.1984 of the Ministry of Defence. The learned counsel for the respondents states that

similarly placed employees like the applicants had filed Writ Petition No.40/91 before the Apex Court in the case of Association of Examiner, Muradnagar Vs. Ordnance Factory, Muradnagar and the Supreme Court rejected the same. In this judgment, it was clearly held that all those persons, who are engaged after 16.10.1981 have to be engaged in the semi-skilled category as per clause (a) to (c) of clause (4) of the recommendation of the Anomalies Committee in Chapter 10 of the report. Since all these applicants have been appointed after 16.10.1981 the question of granting them the skilled grade directly from the date of appointment does not arise. The respondents have further relied on another judgment of the Calcutta Bench of the Tribunal in the case of S.C. Roy Vs. Union of India decided on 13.12.93 wherein the Bench clearly held that persons appointed after 15.10.1981 have to be first appointed in the semi skilled grade, thereafter, they would be promoted to skilled grade subject to their completing three years of service. A similar OA was also filed by one Shri B.R. Lokhande & Others ~~by~~ OA 88/95 in Mumbai Bench. The Tribunal rejected the demand for granting the skilled grade pay scale from the date of appointment. The respondents have further brought to our notice that a similar case was filed by persons identically placed like the applicants i.e., Switch Board Attendants before Bangalore Bench of the Tribunal, it was allowed. However, the same was carried in appeal

to the Supreme Court in the case of S. Yoganand Vs. Union of India and the Supreme Court while allowing the SLP set aside the judgment of the Bangalore Bench granting skilled grade right from the date of appointment and therefore, the granting of the skilled grade right from the date of appointment after 16.10.1981 is no longer res integra. The applicants have to be essentially appointed in the semi-skilled grade first. The respondents submit that though the OAs referred to by the applicants were allowed by the Tribunal, some of the judgments are under challenge before the Bombay High Court. According to the respondents, the judgment of the Jodhpur Bench in OA No.79/92 is directly contradictory to the decision of the Supreme Court in the case of Association of Examiner, Muradnagar Vs. Ordnance Factory, Muradnagar. Merely because an erroneous judgment has been implemented, the same cannot be perpetuated. The respondents are relying on a judgment of Supreme Court in the matter of State of Bihar Vs. K.P. Singh in this connection. The respondents, therefore, have opposed the prayer of the applicants.

11. We have heard the learned counsel for both the sides and have given careful consideration to the arguments advanced. We have also perused the various judgments relied upon by the applicants as well as by the respondents. It is very clear that several Benches of this Tribunal have given judgments in favour

of similarly placed persons like the applicants. As already pointed out the main ground on which the OAs were allowed is that one has to go by the recruitment rules and since in the recruitment rules of 1971 there is a provision for direct recruitment to the skilled grade in the grade of Rs.260-400 and since the applicants were appointed on that basis they must get the pay scale prescribed for the post in the recruitment rules. They cannot be given a lower scale which was not the intention in the recruitment rules. The respondents have referred to the quashing and setting aside of the judgment of the Bangalore Bench of the Tribunal in OA No.88/95 in the case of Yogananda Vs. Union of India. In the judgment of the Mumbai Bench of the Tribunal in OA Nos. 85/93, 1065/96 etc., the judgment in Yoganand (supra) was taken into consideration and was distinguished. It was also pointed out that Hon'ble Supreme Court did not hold that it is permissible to place a person selected and appointed to a post in the skilled grade ^{to} be placed in a pay scale applicable to the semi-skilled grade even if there is no provision in the rule permitting such a placement. The Apex court only held that the court or Tribunal should not fix the pay scale on the principle of equal pay for equal work alone. It is for the competent authority to take a decision. In this case we are not called upon to decide whether the applicants are entitled to a particular pay scale or not so observed the Tribunal. The Tribunal

held that what was required for consideration was whether the employee specifically selected and appointed to a post of skilled grade in a pay scale attached to his grade can be validly placed in a lower pay scale attached to the semi-skilled grade without provision in that regard in the recruitment rules. The Tribunal, therefore, took a view that the decision in Yogananda's case (supra) does not apply to the applicants' case. It was also recorded that the learned counsel for the respondents had made a statement that the SLP against the judgment of the Full Bench of the Tribunal in G.Narayana's case was dismissed and the directions in this judgment have been complied with. In the light of this and in view of the fact that different Benches of the Tribunal have held the same view namely that the applicants who were appointed directly in the skilled grade of Rs.260-400 in terms of the recruitment rules of 1971 will not be placed in a lower pay scale to their detriment, we are not persuaded to differ from the aforesaid judgments. In our considered view the applicants' case is squarely covered by the aforesaid judgments of the different Benches of the Tribunal. the applicants are entitled to the pay scale of the skilled grade of Rs.260-400 from the date of their appointment. Recruitment rules were amended only in 1991. The respondents are directed to place the applicants in the skilled grade of Rs.260-400 from the date of their appointment. As far as the arrears are concerned, we

...11.

find that the applicants have approached this Tribunal only in the year 2001. Certainly as pointed out by the respondents, the application is barred by limitation. Since the applicants were appointed between 1985 and 1993 it cannot be said that the Tribunal has no jurisdiction. This is a matter of pay fixation and therefore, limitation would not apply according to us. However, since the applicants have approached belatedly, they shall be entitled to arrears on account of difference in pay fixation only from one year prior to the filing of the application. This exercise shall be carried out within a period of three months from the date of receipt of copy of the order.

12. In the facts and circumstances of the case, the OA is allowed. No costs.

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B. Dikshit

(SMT. SHANTA SHAstry) (BIRENDRA DIKSHIT)
MEMBER (A) VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITION NO. 12/2002
IN
ORIGINAL APPLICATION NO. 505/2001

THIS THE TH DAY OF APRIL, 2002

CORAM:

HON'BLE SHRI JUSTICIE BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry MEMBER (A)

Date of Decision: 24.04.2002

MES Employees Union, Mumbai & anr.

Applicant(s)

Shri P.A. Prabhakaran.

Advocate for applicant

Versus

Union of India & others

.. Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry .. MEMBER (A)

- (1) To be referred to the Reporter or not?
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Shanta ✓
(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITION NO. 12/2002
IN
ORIGINAL APPLICATION NO. 505/2001

THIS THE 24TH DAY OF APRIL, 2002

CORAM:

HON'BLE SHRI JUSTICIE BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry MEMBER (A)

MES Employees Union, Mumbai
through its General Secretary & Anr. .. Applicants

By Advocate Shri P.A. Prabhakaran.

Versus

Union of India (M/s Defence) & Ors. .. Respondents

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

This review petition has been filed in respect of the order dated 15.02.2002 in OA No.505/2001. The OA was allowed holding the applicants as entitled to the pay scales of the skilled grade of Rs.260-400 from the date of their appointment. In regard to the arrears however, they were restricted to from one year prior to filing of the OA. The review is sought in regard to the later relief regarding payment of arrears. The applicants are praying for full arrears.

2. The main ground taken is that earlier in similar judgments decided by the various Benches of the Tribunal, namely Madras, Jodhpur, Jabalpur, Chandigarh and Mumbai Benches, full arrears were allowed on actual basis. The applicants have referred to several judgments including full bench decision in OA No.525/98

reported in AT Full Bench judgments and the consequential orders in Division Bench in which arrears on actual basis were ordered with effect from 01.01.1973 under similar circumstances based on orders of Single Bench at calcutta. Alternatively, the applicants have prayed to refer the matter to the Full Bench.

3. We have perused the grounds. Review petition is normally maintainable if it comes within four corners of Order XXXXVII Rule-1 and Section 114 of the Code of Civil Procedure. Accordingly review is permissible if there is discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the applicant concerned or could not be produced by the applicant at the time when the order was made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The scope of the review petition is narrower than that of an appeal and cannot be asked for merely for fresh hearing of arguments or correction of allegedly erroneous view taken earlier. It can be only for correction of patent error of fact or law which stares one in the face without any elaborate arguments being made for establishing the case. What the applicants are seeking in the present review petition is a modification of the relief granted. In our considered view the applicants have only tried to reargue the case. There are no new facts or no error apparent on the face

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

M.P.No.916/2002
in
C.P.NO.96/02 IN OA 505/2001

Friday this the 13th day of December, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, ADMINISTRATIVE MEMBER

MES Employees Union, Mumbai
through its General Secretary
Near Dhobi Ghat, Navy Nagar,
Colaba, Mumbai & anotherPetitioners

(By Advocate Mr. Prabhakaran through Suresh G. Pillai)

v.

1. Shri Subir Datta,
Secretary to the Govt. of India,
Ministry of Defence,
South Block, New Delhi.
2. Lt. General Hari Uniyal
Engineer in Chief
Kashmir House, Army HQ, DHQ PO
New Delhi.
3. Col Ravinder Singh
Commander Works Engineer (Army)
24 Assaye Bldgs, Colaba
Mumbai.5.
4. Sri A.K.Ray
Commander Works Engineers (NW)
Navy Nagar, Colaba, Mumbai.5.
5. Sri V.K>Maini,
Commander Works Engineers (Subs)
Bhandup, Mumbai.78.
6. Sri Arvind Arora,
Commander Works Engineers,
Onslow Road, Deonali.422 401.
7. Col. Raji Sawhney
Commander Works Engineers,
AFI Buildings, Nehru Marg,
Nagpur.1.Respondents

(By Advocate Mr. R.K. Shetty for R.1)

The contempt petition (civil) having been heard on 13.12.2002, the Tribunal on the same day delivered the following:

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O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

MP No.916/2002.

The respondents in the OA have filed this Miscellaneous Application. It has been stated in the Miscellaneous Application that the order containing presidential sanction for fixing the pay of the applicants in the Original Application in scale Rs. 260-400 and revised Rs.950-1500 had been issued. They further states that for making payment of the resultant arrears it may take some time and therefore six months time may be granted.

CP No.96/02:

This Contempt Petition (Civil) 96/02 has been filed in OA 505/01 alleging that by not complying with the directions contained in the orders the respondents have become liable for action under the Contempt of Courts Act. Today the learned counsel appearing for the respondents in the Original Application filed a Miscellaneous Petition for extention of time alongwith an order dated 15.11.2002 containing presidential sanction for grant of the pay scale of Rs.260-400 revised 950-1500 to the applicants in this case with effect from the date of their initial engagement. We find that the order of the Tribunal has since been substantially complied with though the petitioners are yet to receive the resultant arrears.

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2. Since the order has been substantially complied, we do not find any need to proceed further with the contempt Petition and therefore, we close the same with a direction to the respondents in the Original Application to carry out their undertaking to make payment of arrears within a period of six months at the latest.

Contempt Petition is closed. No costs.

MP also stands disposed of.

Dated the 13th day of December, 2002

Shanta Shastri

SHANTA SHASTRY
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

(s)

03-13/14/02
Order/Judgment despatched
to APD _____ Sent (s)
on 21/10/03
N