

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.504/2001

Date of Decision: 27.02.2002

Shri 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

Sh. Shanta S.
(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 504/2001

THIS THE 27TH DAY OF FEBRUARY, 2002

CORAM:
HON'BLE SHRI JUSTICE 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.

...2.

O R D E R

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

In this OA the applicants are seeking grant of the pay scale of Rs.260-400 given to the skilled grade vide letter dated 11th May, 1983 by the Government of India with effect from 16.10.1981 or from the date of their appointment as Valveman. They have also sought arrears admissible upon such grant of skilled grade within three months from the date of the judgment. They have further asked for pay fixation upon grant of the skilled pay scale by allowing the benefit of FR 22 (1) (a) (i).

2. The case in brief is, as follows: As per the recommendations of the Third Pay Commission an Expert Classification Committee was set up to go into the study the duties and responsibilities involved in each and every job and to make recommendations after making time motion study in respect of tradesman. There was also a committee on common category job for job evaluation of various scales. These committees suggested upgradation of many trades from semi-skilled grade in the scale of Rs.210-290 to skilled grade of Rs.260-400 based on job evaluation. In pursuance of these recommendations, trades like Driver Engine Statics, Motor Pump Attendant, Lineman, Switch Board Attendant and Wireman which were in the earlier semi skilled category in the scale of Rs.210-290 were upgraded to the skilled grade in the scale of Rs.260-400 vide order dated 11.5.1983 of the

Govt. of India, Ministry of Defence. These recommendations were given effect from 16th October, 1981. Certain other semi-skilled categories which were not included for upgradation to the skilled grade were aggrieved. Therefore, the Respondent No.1 appointed an Anomalies Committee. This committee again recommended the upgradation of trades like Carpenter, Fitter Pipe, Mason, Plumber, Painter and Upholster for upgradation from the semi-skilled grade of Rs.210-290 to Rs.260-400. These recommendations were initially implemented with effect from 15th October, 1984 vide order of the same date. Thereafter, due to difference in the date of giving effect to the orders, some aggrieved persons had approached the Supreme Court in Writ Petition NO. 12259-66/1994 and the Supreme Court directed that upgradation would become effective from 16.10.1981 for all to bring in parity and uniformity. However, these orders which were implemented did not cover some other trades including the trade of Valveman i.e. the trade of the applicants.

3. Some similarly placed counterpart valveman serving in Jammu & Kashmir had filed WP No.1393/94 in the High Court of Jammu & Kashmir seeking granting of the skilled grade in the pay scale of Rs.260-400 with effect from 16th October, 1981. Initially a Single Bench of the High Court of Jammu & Kashmir vide judgment dated 12th March, 1997 directed the respondents to grant

skilled grade in the pay scale of Rs.260-400 to valveman with effect from 16th October, 1981. The single Bench of the High Court relied on the decision dated 31.7.1991 of the Apex Court in W.P. No.40/1991. The respondents filed an appeal against the aforesaid judgment of the single Bench of the High Court. However, the Division Bench of the High Court of Jammu & Kashmir dismissed the appeal on 12th March, 1999 directing the respondents to implement the judgment dated 12.3.1997. The Division Bench also referred to the decision of the Supreme Court given in W.P. No.40/91 decided on 31st July, 1991 in the case of Baghavan Sahai Vs. Union of India on which the single Bench of the High court had relied upon. The respondents, thereafter implemented the judgment of the High Court of Jammu & Kashmir vide their letter dated 5th May, 1999 and all the petitioners therein were paid the consequential benefits including the pay and allowances for the period from 16th October, 1981 onwards.

4. The applicants submit that they have already been performing the same duties and responsibilities as those of their counterparts i.e. the petitioners before the High Court of Jammu & Kashmir in whose favour the High Court passed the orders on 12.3.97 and therefore, the benefit of the skilled grade of Rs.260-400 given to the valveman petitioners in Writ Petition before Jammu & Kashmir should be extended to the applicants in this OA.

This matter was represented to Respondent No.2 vide letter dated 13.12.1999 placing reliance on the judgment of the High Court of Jammu & Kashmir. But the same was denied vide letter dated 05th January, 2000. This was on the representation given by the MES Employees Union, Mumbai on 13.12.1999. The respondents stated therein that the judgment in SLP No.1393/94 had been passed for applicants only and no orders for its general applicability had been received from higher authorities and therefore, the issue may be taken up at the appropriate level/authority if considered necessary.

5. The applicants on receipt of the judgments of Jammu & High Court High Court and the letter dated 05th January, 2000 of Respondent No.2 submitted a representation on 13th March, 2000 to Respondent No.1 seeking the relief as given to the valveman in Jammu & Kashmir. But they did not get any favourable response.

6. The applicants are placing reliance on the judgment of the Jammu & Kashmir High Court which according to them has become final and which had already been implemented by the respondents. According to them the judgment squarely applies to them as well. Not extending the benefit of the same would be against Article 14 and 16 of the Constitution of India.

7. The respondents have opposed the same. They submit that the applicants have not produced any Government order or the decision of the President of India regarding upgrading the scales of valveman from the semi skilled grade to skilled grade. Only certain trades were upgraded with effect from 16.10.1981 as per the recommendations of the Expert Classification Committee report and the Anomalies Committee report. A perusal of the circular dated 11.5.1983 of the Government of India makes it crystal clear that the trade of valveman was never upgraded from Rs.210-290 to Rs.260-400. Therefore, the question of granting the members of the applicant's union working as valveman the scale of Rs.260-400 does not arise. In support of their stand, the respondents have produced the extract of relevant portion of the Expert classification Committee report and the Anomalies Committee report showing that the grade of valveman was never recommended for upgradation from Rs.210-290 to Rs.260-400. Further, the respondents have referred to a judgment of the Full Bench in OAs No.739/99, 740/99, 981/99, 971/99 122/2000 and 252/2000 in respect of Tailors working under the Ministry of Defence. The Tribunal had dismissed the OAs. According to the respondents, the present OA is covered on all fours by the OA disposed of by the Full Bench. The learned counsel for the respondents has also stated that the reliance of the applicants on the decision of the Apex Court in W.P. No.40/91 in the

matter of Association of Examiners, Muradnagar Vs. Ordnance Factory, Muradnagar is absolutely not applicable as the examiners working in the Ordnance Factory had been upgraded from Rs.210-290 to Rs.260-400 whereas no such upgradation has been recommended in the case of Valveman by the Expert Classification Committee. According to the respondents, the judgement of the High Court of Jammu & Kashmir is erroneous as the fact that the grade of valve man had never been upgraded or even recommended for upgradation by the Expert Classification Committee or Anomalies Committee does not seem to have been taken into consideration while delivering the aforesaid judgment. Further, the respondents submit that even in the case of those categories which have been granted the skilled grade the benefit is given to them only if they were in position as on 16.10.1981. Those appointed thereafter have to complete two years of service if they are ITI certificate holder or three years service and have passed the trade test if they are holders of ITI certificate. This was the position confirmed in the case of Association of Examiners, Muradnagar (supra). The applicants in the present OA have been appointed after 16.10.1981 and therefore, they have to wait for two years before their grade can be considered for upgradation. The pay scale of unskilled given at the time of promotion to the applicants is as per the recruitment rules framed by the competent authority, they cannot be changed as a matter of fact.

8. The respondents have also taken the objection regarding limitation. According to them the pay scales of the semi skilled grade are upgraded to that of the skilled grade with effect from 15.10.1981. Whereas the applicants have approached this Tribunal in 2001. Thus, it is hopelessly barred by limitation and the OA deserves to be dismissed on this ground alone. The respondents further submit that the respondents have approached the Supreme Court against the judgment of the High Court of Jammu & Kashmir by way of SLP and the Supreme Court had stayed the operation of the order of the High Court of Jammu & Kashmir.

9. The learned counsel for the applicants once again harped on the fact that being similarly situated to the petitioners in the Writ Petition decided by the High Court of Jammu & Kashmir, they are entitled to the upgradation of their pay scale to Rs.260-400. In the rejoinder filed by the applicants, the applicants have enclosed an order of the Full Bench of Bangalore Bench in OA No.111/91. The Full Bench held that the applicants therein were entitled to the upgradation of their pay scale with effect from 15.10.1984. The Full Bench was persuaded to come to the conclusion on the basis of the judgment of the Hyderabad Bench of the Tribunal in O.A. No.360/88. That apart the Full Bench also discussed the merits of the case and was of the view that the Hyderabad Bench, was right in relying upon

the principle laid down by the Supreme Court in Bhagavan Sahai Carpenter's case, wherein it was held "according different dates for upgradation to different trades when all of them belong to the same grade and are treated on par, would be discriminatory and violative of Articles 14 and 16 of the Constitution. Thereafter, the respondents had filed an appeal against the judgment of the Hyderabad Bench of the Tribunal in OA No.363/88. The SLP 12716/1989 filed by the respondents was dismissed by Division Bench of the Supreme Court on 15.11.1989. The decision of the Hyderabad Bench was implemented in respect of the applicants therein. Therefore, the applicants have a strong case.

10. The learned counsel for the respondents have again drawn our attention to OA No.50/92 decided by the Bangalore Bench of the Tribunal in the case of S.Yoganand & Others Vs. Union of India, which was allowed by the Bangalore Bench. The same was carried in appeal to the Supreme Court of India. The Supreme Court of India quashed and set aside the order of the Tribunal directing that the same scale of pay should be given to the petitioner/respondent which was given to skilled grade employees. The Supreme Court had repeatedly pointed out that the courts and Tribunals normally should not try to fix the pay scales of different categories of employees only on the principle of equal pay for equal work. The Supreme Court had examined this

aspecpct of the case in State of Madhya Pradesh & Others Vs. Pramod Bhartiya & Others reported in 1993 (1) SCC 539. The Supreme Court quashed the order of the Tribunal and directed the appellants to examine the grievance of the respondents therein. Accordingly, the respondents examined the grievance and rejected the demand of the respondents therein for upgradation of the pay scale from Rs.210-290 to Rs.260-400 and rejected the same. Therefore, the applicants are also not entitled to the upgradation of their scale in view of the ratio laid down by the Supreme Court.

11. The respondents have also argued that just because the High Court of Jammu & Kashmir has given an erroneous decision, it need not be implemented in respect of others who were not parties to that judgment. The respondents are relying on the judgment in the case of State of Bihar & Others Vs. Kameshwar Prasad 2000 SCC (L&S) 845. The head note (c) i.e. in para 30 of the judgment reads: it has been held that equality is a positive concept and it cannot be enforced in a negative manner. The benefit extended in illegal and irregular manner, cannot be claimed by others on the plea of equality. Wrong order or judgment in favour of one person would not entitle others to claim similar benefits. According to the respondents, the judgment of the High Court of Jammu & Kashmir having been challenged in the supreme Court and the stay having been granted it

cannot be made applicable in the case of present applicants.

12. We have heard the learned counsel for both the parties and have given careful consideration to the rival pleadings. No doubt, the High Court of Jammu & Kashmir allowed the granting of skilled grade pay scale of Rs.260-400 to the valveman applicants therein and the same has also been implemented by the respondents. However, in view of the fact that the Supreme Court has granted stay of the judgment, it cannot be said to be final as yet though Supreme Court has not quashed or set aside the order of the High Court. The judgment has only a persuasive value. We note further that it is a fact that the trade of valveman was not recommended for upgradation from the semi skilled to skilled grade. This is seen from the report of the Anomalies Committee for the valveman in MES, the pay scale recommended is Rs.210-290 only, no upgradation has been shown against the valveman. We have to therefore, accept the stand of the respondents that this trade was not included for purpose of upgradation. Therefore when it was not the intention to extend the upgradation, it could not have been given to the valveman. Apparently, this particular fact perhaps was not brought to the notice of the High Court of Jammu & Kashmir.

13. Another judgment on which the applicants have

relied upon is the judgment of the Full Bench of Bangalore in OA No.111/91 given on 18th June, 1993. The Full Bench while agreeing with the judgment of the Hyderabad Bench in OA No.363/88 also examined the issue on merit and allowed the upgradation to skilled grade to all the applicants therein. This judgment of the Hyderabad Bench was tested in Supreme Court. The Supreme Court dismissed the appeal. Thus, the judgment of Hyderabad Bench became final. So also the Full Bench judgment. These OAs viz 663/91, 50/92 and 80/92 were decided by Bangalore Bench in terms of the judgment of the Full Bench of Bangalore on 29.6.1993. The respondents had appealed against the judgments in two OAs one of them being OA No.50/92 in the case of S. Yoganand & Ors. And as pointed out by the respondents, the judgments in these cases was quashed observing that it is not for courts or the Tribunals to try to fix the pay scales.

14. The judgments of Hyderabad bench and Full Bench were in respect of the employees of different units under the DRDO having common seniority. The Supreme Court's direction in the case of S. Yogananda and Ors (supra) is also clear. In our considered view, it would not be proper for us to interfere in this matter. This is especially in view of the fact that the Supreme Court has stayed the judgment of the J & K High Court in respect of valveman to which specific trade the

applicants belong and which judgment would apply in applicant's case, We cannot ignore the stay given by the Supreme Court.

15. In the result the OA is dismissed without any order as to costs.

Shanta F

(SMT. SHANTA SHAstry)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan