

Central Administrative Tribunal, Mumbai Bench

O.A. 235 of 1997

Mumbai this the 14th day of September, 2001

Hon'ble Mr. B.N. Bahadur, Member (A)
Hon'ble Mr. Kuldip Singh, Member (J)

1. Shri Swades Sarkar
residing at Quarter No.H/59/6,
Ordnance Estate, Ambarnath,
District Thane-421 502.
2. Shri Shambhunath Jha,
residing at Quarter No.E-20,
Ordnance Estate, Ambarnath,
District Thane-421 502.
3. Shri Kalicharan Mondal
residing at Quarter No.J/17/6,
Ordnance Estate, Ambarnath,
District Thane-421 502.
4. Shri Gobind N. Bagul
residing at Quarter No.J.88/4,
Ordnance Estate, Ambarnath,
District Thane-421 502.

....Applicants

By Advocate: Shri U.M. Joshi.

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta.
3. The General Manager,
Machine Tool Prototype,
Factory, Ambarnath.

..Respondents

By Advocate: Shri R.K. Shetty.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

This is a joint application filed under Section 19 of the

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Administrative Tribunal's Act, 1985 by 4 applicants as they claim to be aggrieved by an order dated 5.5.1993 (Exhibit A-1) issued by respondents in respect of transfer and promotion of one Shri P. Raju from High Skilled Grade-I to Chargemen Grade-II at Kirkee. They also claim to be aggrieved by another order dated 12.4.1995 annexed as Exhibit AA passed by respondent No.2 whereby the claim of the applicants seeking parity with said Shri P. Raju, had been rejected.

2. The grievance of the applicants are that they had joined the services under the respondents for completion of training from Skilled Craftsman Training (hereinafter referred to as "SCT") in the 4th batch and after successfully completing the training, the applicants were given specialised training in various ordnance factories training institute followed by journeyship training in any ordnance factory. The candidates who had passed these training, were further given training in different trades, such as, Fitter, Turner, Miller, Grinder, Borer, Moulder, Welder, Electrician, Mill-Wright Machinist etc.

3. It is further stated that after the successful training, the candidates are appointed either as Skilled Craftsman Grade-I-A or Skilled Craftsman Grade-II-B based on their overall performance and all the applicants were appointed as Skilled Craftsman Grade-I-A, which used to carry the pay scale of

for

Rs.330-480.

4. It is further stated that the department had appointed an Expert Classification Committee (hereinafter referred to as 'ECC') to submit their report with regard to pay scales of different trades and as per the report of ECC, the pay scale of trade of Jig-Borer was revised and one of the colleague of the applicants, Shri P. Raju, who was also from the 4th batch, was allocated Jig-Borer trade and his pay scale was also revised and was given the pay scale of Rs.380-560, which scale falls in the High Skilled Grade-I which is higher grade from the grade given to the applicants, namely, Rs.330-480. The applicants claim that since all the applicants and Shri Raju were given equal training under the same prospectus and had passed in the same batch and initially all of them were appointed as Skilled Craftsman Grade-I-A carrying the pay scale of Rs.330-480, so just because of ECC's report Raju had been given a higher pay scale whereas the applicants are still stranded in the same scale whereas Raju had been given further promotion though the qualification are same, as given to the applicants. Hence, they claim parity of pay scales as given to the Jig-Borer and also seek that a similar promotional avenue be given to them as given to Shri Raju, a Jig-Borer.

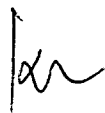
5. The applicants also allege that as per the Recruitment



Rules a person working in the High Skilled Grade-II-A cannot be promoted to High Skilled Grade-I without undergoing the trade test followed by a DPC but in the case of Raju, these norms were not followed and thus there is a gross violation of rules and principles of natural justice when promotion was given to Shri P. Raju, whereas the applicants had been ignored.

6. It is further submitted that subsequent revision of pay by way of amendment or otherwise, is illegal as it is given only to Jig-Borers and not to the other trades and the same has been given only on the basis of executive instructions without amending the Recruitment Rules and thus the trades which were equal with the applicants trade had not been considered for higher grades by revision of only pay scale and only Jig-Borers had been given higher grade and further promotion as Chargeman Grade-II, thus the applicants pray that the Tribunal should issue a writ of mandamus by directing the respondents to declare that the applicants working in the various trades of Skilled Craftsman Grade-I-A are entitled to get revision of pay scales at par with their counter-parts in the trade of Jig-Borer and applicants are, therefore, entitled for further promotion as Chargeman Grade-II on the basis of length of service.

7. The respondents are contesting the OA. The main plea of the respondents is that the applicants are claiming relief w.e.f.



the year 1982 so the claim had become time barred as such the application should be rejected as being time barred.

8. Besides that the respondents submitted that the applicants want that this Tribunal to revise their existing pay scales to that of Rs.380-560 w.e.f. 1.7.1982 at par with the scale of Jig-Borer High Skilled Grade-I and also seek promotion as Chargeman Grade-II. The substance of the claim is only revision of pay and since it is a well settled law that the pay revision is the function of Expert Bodies like the Central Pay Commission and not like the Courts of Law such as Central Administrative Tribunal so the pay revision can be recommended only by Expert Bodies. The Tribunal should not direct the upgradation of the pay scales on the basis of the allegations made by the applicants in their OA.

9. The learned counsel for the respondents has also relied upon various judgments, which are as follows:-

- (i) 1984 cases (LS) 329 in the case of Delhi Veterinary Doctors Association.
- (ii) AISLG 1990(3) 124 in the case of Vasudevan Nair Vs. UOI.
- (iii) AIR 1990(SC) 1251 Mallikarjuna Rao Vs. State of A.P.

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(iv) 1989 (1) SC cases 121 in the case of State of U.P. Vs. J.P. Chourasia.

(v) 1989 (2LLJ) 579 in the case of M.R. Kaneja Vs. All India Institute of Medical Sciences.

10. The respondents further pleaded that if at all the applicants have any grievance with regard to pay scales, they should have prayed to the 4th and 5th Central Pay Commissions to ventilate their grievances as they had not raised their demands before the Pay Commissions, which means that they have no grievance at all.

11. On merits, the respondents submitted, that as per the ECC report the ECC had dealt with parity of pay scales of Jig-Borer as well as that in the trade of Miller and Millwright and after in-depth study, they had recommended the pay scale of Rs.380-560 even for Miller and Millwright but the recommendations of the ECC was not acceptable to the two Federations of the Central Government employees, so matter was referred to the Anomalies Committee and after that the scales were recommended. The Anomalies Committee had also given detailed reasons as to why they were unable to upgrade the categories of Miller and Millwright with Jig-Borer to High Skilled Grade-I and since the categories of Miller and Millwright were not viable grades, so they could not be given the H.S. Grade-I and thus the denial of

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upgradation of Miller and Millwright was done by the experts who are the members of the Anomalies Committee and since the scales have been finalised by the ECC and Anomalies Committee, the same should not be interefered with.

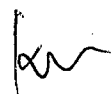
12. The respondents have also annexed the report of the Anomalies Committee as Annexure R-3 and on the basis of the same, they submitted that the OA has no merit and the same should be dismissed.

13. We have heard the learned counsel for the parties and gone through the records of the case.

14. As far the plea of limitation taken by respondents is concerned, we find the representation of the applicants was lastly rejected in 1995 and it was entertained on merits. The applicants have also challenged the same. Thus the OA is within time. Plea of limitation is not available to respondents.

15. At the outset we may mention that at the time of filing of the OA, the applicants have prayed for the following reliefs:-

(i) Call for the records from the Respondents, and after examining the same issue a writ of mandamus directing the Respondents to declare that the Applicants working in the various



trades of skilled craftsman Gr.A/I Grd. (HS-II) in the respective grades are entitled to get revision of pay scales w.e.f. 7.1.1982 at par with their colleagues in the trade of Jig-Borer and are thereby entitled for further promotions to Chargeman Grade-II on the basis of length of service.

(ii) To hold and declare that the Applicants be granted the Scale of Rs.380-560 w.e.f. 1.7.1982 and grant the High Skilled Grade-I Grade from that day and record the seniority with the seniority with other colleagues who were already upgraded in the scale and grade.

(iii) To grant the revision of pay scale in the pay scale of Rs.380-560 to the Applicants w.e.f. 1.1.1982, i.e., on par with other colleagues and subordinates of the Applicants.

(iv) To grant equal status and opportunity of promotion according to recruitment and promotion rules along with different trades like Jig-Borer in HS-II who were already upgraded by the Respondents.

16. However, during the course of arguments, the counsel for the applicants had given up reliefs as given in paras (iii) and (iv) so they were treated to be as deleted.



17. The learned counsel for the applicants submitted that since the applicants and Shri R. Raju had undergone training in the 4th batch of SCT and thereafter they had undergone similar training in the Ordnance Factory and thereafter all of them were appointed in the grade of Rs.330-480.

18. Though the department had upgraded the trade of Jig-Borer and had granted them the higher pay scales, but that has been done in violation of the Recruitment Rules since higher pay scales could be granted only after promotion after undergoing trade test and after recommendation by the DPC and since that has not been done in the case of Shri P. Raju, so similarly the applicants should also be given higher pay scales and they should also be further promoted to the grade of Chargeman Grade-II on the basis of length of their service. Thus the main grievance of the applicants is that why Shri P. Raju, who belongs to Jog-Borer^{Trade test} had been given higher grade.

19. But to our mind, this contention of the learned counsel for the applicants has no merits because the applicants themselves admit in para 4.3 of the OA that the Government had appointed ECC Committee to study and scrutiny and revision of pay scales of various categories and trades and the said ECC after studying and scrutynising of the duty list, responsibility and liabilities of the industrial workers working in the various

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trade jobs recommended the revision of pay scale for various trades and submitted the same for its approval, but the Ministry of Defence accepted only certain scales.

20. However, the respondents have submitted that the recommendations made by the ECC were further scrutinised by Anomalies Committee and the members of the Anomalies Committee who were expert in the field after scrutinising the recommendations of the ECC and after going through ~~in~~ⁱⁿ minute details with respect to various trades, had recommended different pay scales for Jig-Borers than that of Miller and Millwrights.

21. Thus the pleadings of the rival parties will itself show that the pay scales granted to different grades such as Jig-Borers, Miller, Millwrights etc. ^{here granted to} only after the Expert Bodies like the ECC and Anomalies Committee constituted thereupon had examined the duties, responsibilities, liabilities of workers belonging to different trades in minute details and thereafter the pay scales had been recommended. So now the question arises whether the Tribunal should exercise the power of judicial review to recommend and direct the respondents to grant higher pay scales to Millers and Millwrights at par with Jig-Borer. ~~So~~ For this purpose we shall go through the law laid down in the case reported in 1997 (1) GCSLJ at page 598 entitled as Union of India and Another Vs. P.V. Hariharan and Another wherein the Hon'ble

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Supreme Court has held as follows, which has now become final:-

" Pay Scales - Unless a clear case of hostile discrimination is made out, Tribunal should not interfere in the matter relating to fixation of pay scales."

22. On going through the above judgment, we find that of and ^{to exercise} on the superior courts had advised the Courts to refrain the powers of judicial review in the matter of pay scales as it should be left to the Expert Bodies like the Pay Commission etc. to recommend the pay scales for various posts. Following this dictum, we also refrain ourselves to interfere into this controversy and particularly in this case no interference is required since it is a case of parties that the pay scale of Millers and Millwrights had been revised after the recommendations of the ECC and Anomalies Committee ^{which} had been constituted ^{for this purpose} ~~thereupon~~, nor there is any case of hostile discrimination among different grades.

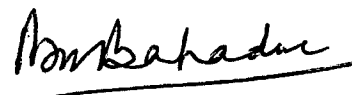
23. During the course of the arguments, the counsel for the applicant has also submitted that Shri P. Raju has been given one after another promotion which is a matter of policy pertaining to the department ~~and~~ about the availability of vacancies in a particular trade. The applicants have to seek promotion in their own trade and they cannot compare themselves to another employee belonging to a different trade. The applicants have not been able to make out a case that anyone

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junior in their own trade have been given any promotion stealing march over them, thus we find that the applicants have no case at all.

24. In view of our detailed discussion above, we find that the OA does not call for any interference and the same is dismissed. No costs.


(Kuldip Singh)
Member (J)


(B.N. Bahadur)
Member (A)

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