CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1109/98, 1110/98, 1111/98, 1112/98, 1113/98, 1114/98 and 1115/98.

FRIDAY the 17th day of JANUARY 2003

CORAM: Hon'ble Shri B.N. Bahadur - Member (A)

Hon'ble Shri S.L. Jain - Member (J)

1. Subhash Vishwanath Yevalkar
R/o No. N/8/E/2/26/3
Near Sindheshwar Temple,
New CIDCO, Nasik. ...Applicant in OA 1109/98

2. Sharad Pundalik Shevare
R/o Amit Housing Society
Vijaynagar, Dvelali Camp. ...Applicant in OA 1110/98

3. Mukund Vishvanath Thorat]
R/o Renuka Nagar,
Vadala Naka, A/1/14,Nashik ...Applicant in OA 1111/98

4. Madhukar Ramasu Mahale
R/o 476, Deshmukh Niwas
Ram Mandir Road, Bhagur
Dist. Nashik. ...Applicant in OA 1112/98

5. Manohar Kashinath Kharwante
R/o 823, Ibrahim Colony
Devlali Camp, Dist. Nashik. ...Applicant in OA 1113/98

6. Sahebrao Bhaskar Salve
R/o - C/o D.V. Mande
At Post - Shigve Bahule
Siddarth Nagar, Dhondy Road
Devlali Camp, Dist. Nashik. ...Applicant in OA 1114/98

7. Venkatesh Krishna Rao
R/o 455/1, Miltons Block
Near Bhori Masjid,
Devlali Camp, Dist. Nashik. ...Applicant in OA 1115/98

By Advocate Smt. S.H. Jadhav.

V/s

1. Union of India
Ministry of Defence
Govt. of India,
New Delhi.

2. Accounts Officer - CDA
Southern Command
Pune. Maharashtra.

3. The Commandant
School of Artillery
Devlali, Tal. & Dist.
Nashik.

4. Director General of
Artillery,
General Staff Branch (ARY.3)
Arty. Head Quarters, DHQ
P.O. New Delhi.

5. Defence Secretary
Government of India
New Delhi.

...Respondents.

By Advocate Shri R.R. Shetty for Shri R.K. Shetty.

ORDER (ORAL)

{Per B.N. Bahadur, Member (A)}

We have heard the above 7 OAs, together, and are disposing them of through a common order as the basic issues involved in them are similar. We have heard Smt. S.H.Jadhav, counsel for the applicant in all the cases, as also Shri R.R. Shetty with Shri R.K. Shetty counsel for the respondents. For the sake of convenience we are taking up the facts in the case of Subhash Vishwanath Yevalkar (OA 1109/98).

2. The applicant was recruited as Draughtsman Mechanic Grade II on 18.10.1977. He further submits that as per Recommendation of Third Pay Commission, his pay scale should be fixed from the date of appointment as per Exhibit 2, and that he is required to be placed in the scale of Rs. 425 - 700 with effect from 1.1.1973 or from the date of appointment whichever is later as per the Government of India, Ministry of Finance, Deptt. of Expenditure O.M. No. 5(13)E.III/87, dt. 11.9.1987 (Exhibit 3).

3. In fact the cruicial point that has been raised in the OA is reflected in the prayer and argued that in terms of the Rules, the applicants are entitled to the scale of Rs. 425 - 700 from the date of joining or with effect from 1.1.1973, whichever is later. The relief sought by the applicant in this case are substantially as follows:

> 8.(b) To direct the respondents to extned the benefits of pay from the date of the appointment of the applicant.
>
> (c) To direct the Respondent to calculate the difference of arrears of pay arising out of above re-fixation from the date of the appointment and pay the same to the applicant.
>
> (e) To grant all other consequential benefits arising out of above along with the interest at the rate of 18 % p.a.
>
> (g) To award the cost of the application.

4. The respondents have filed written statement resisting the claim of the applicant, stating, at the out set, that the applicant is working as Draughtsman Grade II and has been provided Draugahtsman Grade II scale i.e. Rs. 425 - 700 with effect from 12.6.1984 and such benefits has been accorded as per O.M. dated 15.9.1995 (Exhibit 5). In fact, the respondents stated that effective date of provisional benefits has now been advanced and the higher scale has been given with effect from 18.10.1982 notionally and from 1.11.1983 actually. At this stage it must be mentioned that in different cases i.e. in different OAs before us the respective effective dates are given namely the date of which different applicant has been provided the beenfit of being placed in the grade of Rs. 425 -700 notionaly and from 1.11.1983 actually. The respondents contended that there is no

question of grant of scale of pay of Rs. 425 700 from the date of appointment of the applicant concerned as there is no such provisions under Recruitment Rules. The Recruitment Rules for Draughtsman Grade II in CPWD and Dreaughtsman Grade II in respondent's organisation are not the same, it is contended; and hence the benefit of upgradation as given to CPWD Draughtsman Grade II cannot be extended to the applicant. Copy of Recruitment Rules are provided in annexures R-1 (Page 25). Importantly, the stand is also taken to the effect that the Recruitment qualification of the two Recruitment Rules are different. Such benefit cannot be provided to applcant unless they possess the Recruitment qualification of CPWD Rules. This crucial point was argued by both the learned counsel and will be taken up ahead.

5. The learned counsel for the applicant argued that the benefit should be provied as per Appendix to CPRO 79/81 copy of which is annexed as Exhibit 2 (page 10) of the paper book. It was also argued that the educational qualification prescribed in 1995 were not applicable to pre-1980 entrants. The learned counsel for the respondent, Shri R.R. Shetty relied on the Recruitment Rules copy of which is annexed at page 28 of the paper book. Shri Shetty made the point that the Recruitment Rules clearly stipulate the requirement of Diploma in Draughtsmanship (Mech.). None of the applicants had a Diploma. Shri Shetty also stated that some of the applicants had provided the benefit but date was different. He also sought support from

the judgement of Hon'ble Supreme Court in the matter of Shri Singh Bhakuni & Ors. V/s Union of India and others reported at 1998 (2) AISLJ 168. He aruged that even if nature of work was same but entry qualifications were different no parity can be granted in terms of ratio decidendi, in this case.

6. We have seen all the papers including the information provided to us on last hearing date and have considered the arguments advanced by both sides. The first point we have examined is regarding the qualifications. It is true and settled by Hon'ble Apex Court that parity can be claimed only if there is parity in Recruitment Rules also. On this point we have carefully read the Recruitment Rules 1977 page 28 and find that "Certificate of Diploma" in Draughtsman ship in col. 8 under (ii) is required. The last line states that practical experience of at least one year after getting diploma". This clearly shows that diploma qualification is essential. Admittedly none of the applicant are diploma holders. Hence at this ground the contention that they are equally qualified is not justifiable from the facts. Therefore the claim of the applicant that they deserves to be provided with higher grade from the date of entry cannot be sustained on this ground.

7. Now we come to the argument of the learned counsel for the applicant that the benefit should be provided under CPRO 79/81 (page 10). Here the issue is that 50% of the post be placed in the higher grade. Now there are no pleadings for the benefits on the basis of the 50% condition, which is important.

In the absence of the pleadings on behalf of the applicant and the facts in this regard, we are unable to come to a conclusion that applicants can claim the relief. In fact Shri Yewalkar was perhaps first provided the benefit of 50% as envisaged in CPRO 79/81 and later given the benefit by way of grant of earlier date because of the O.M. 1995. We are not able to come to any conclusion in this regard since as already stated having not pleaded by the applicants and the CPRO 79/81 depending on the facts in each case. Therefore on this basis we cannot draw any conclusion. Now it would be seen from the date of entries of the various applicants in the earlier OAs and those applicants in OA 1109/98, 1110/98 and 1111/98 namely S.V. Yevalkar, S.P. Shevare, M.V. Thorat are pre 1982 and the case of Shevare and Thorat need to be decided at par with the case of Yevalkar. Then, we come to the case of M.R. Mahale, M.K. Kharote, S.B. Salve and V.K. Rao applicants in OAs 1112/98, 1113/98, 1114/98 and 1115/98 respectively.

8. These four applicants fall in one set except that M.R. Mahale had not come up before this Tribunal in earlier case. In the case of Mahale he is challenging the order dated 10.9.1998 and 12.10.1998 available in paper book in Mahale's case (page 7 and 8). What has happened in this case is that certain benefits in the higher scale were provided. It would be seen from the fact (page 24 of Mahale's case) that the applicant was placed in the higher pay scale of Rs. 1600 - 2660 which is higher pay scale than the scale of Rs. 425 - 700 of 3rd Pay Commission and that was found to be wrong on the ground no such post carrying

the pay scale of Rs.1600 2660 exists. Now the point is that this applicant, M.R. Mahale and the other three are agrieved and they are being reverted and recovery is ordered. The issue of possessing diploma as discussed above in the first category of 3 applicants would be relevant here too. These applicants are also not holding diplomae, and there is absence of the pleadings in this regard. No orders or case law to this effect have been brought to our notice, as would entitle the applicant for being placed in the higher pay scale, even if no post in MES exists. As regards the aspect of providing relief to these applicats regarding recovery we are informed that all recovery dues to them have already been made. We therefore need not provide any relief on this account. However if any recovery has yet remained to be made as on date of this judgement such recovery will not be made in terms of judgement of Sahib Ram V/s State of Hariyana and others 1995 SCC (L&S) 248.

9. In view of the above discussion all the 7 OAs deserves to be dismissed and are hereby dismissed. There will be no order as to costs.

(S.L.Jain)
Member(J)

(B.N. Bahadur)
Member(A)

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