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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.263 of 1995

DATE OF JUDGMENT: (7th) JUNE, 1998

BETWEEN:

1. D.VISWANADHA RAO,
2. P.A.SRINIVAS,
3. B.RAMAIAH,
4. N.SRINIVASA RAO,
5. P.SURYA BHAGAVAN.

.. APPLICANTS

AND

1. Ministry of Defence, New Delhi
represented by its Secretary,
2. The Scientific Advisor to Raksha
Mantri and Director General,
Defence Research and Development
Organisation, New Delhi,
3. The Director,
Naval Science & Technological Laboratory,
Visakhapatnam 530 027.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr. S.LAKSHMA REDDY

COUNSEL FOR THE RESPONDENTS: Mr.NV RAGHAVA REDDY, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.S.Lakshma Reddy, learned counsel for the applicants and Mr.N.V.Raghava Reddy, learned standing counsel for the respondents.

2. The applicants in this OA were appointed as Radio Mechanics by R-3 in the scale of pay of Rs.950-1500 i.e., Trademan-C category. The applicants submit that as the posts were filled earlier in the scale of pay of Rs.380-560 as per the recommendations of the Expert Classification Committee, appointing them in the scale of pay of Rs.950-1500 as Radio Mechanics under R-3 organisation is irregular. They also submit that they possess the necessary qualifications and experience for appointing them in the scale of pay of Rs.380-560 itself at the first instance. The applicants have also enclosed the initial appointment order appointing them as Radio Mechanics in the scale of pay of Rs.950-1500 as Annexure (at page 12 to this OA). The applicants had submitted representations for upgradation of the Radio Mechanic trade to Highly Skilled Grade-I i.e., Tradesman-A grade by their representation dated 19.5.94 at page 36 to the OA. It is also stated that their case has been recommended by R-3 organisation to R-2 for consideration, vide letter No.NSTL/EST/023/C dated 6.9.94 (page 16 to the OA) and also letter No.NSTL/EST/023/C dated 6.9.94 (Page 17 to the OA). But so far no decision has been taken. Aggrieved by the above, the five applicants in this OA have filed this OA for declaration that the action of the respondents in treating them as Trademan-C Radio Mechanics in the scale of pay of Rs.950-1500 is contrary to the prescribed scales of pay as recommended by the Expert Classification Committee and contrary to the rules provided under SRO 221/81 and for consequential direction to grant them the scale of pay of Tradesman-A i.e., Rs.1320-2040/380-560 (Pre-revised Scale) with consequential arrears of pay, seniority etc.



3. The main contention of the applicants in this OA is that the Expert Classification Committee in the year 1981 had recommended the scale of pay of Rs.380-560 for Radio Mechanics and that was accepted. For this, the applicants rely on the letter No.1(2)/80/D(ECC/IC) dated 11.5.83 (Annexure R-III to the reply) accepting the recommendations of the Expert Classification Committee. Para 1(i) and (ii) of that letter, which shows the scale of pay of Rs.330-480 or Rs.380-560. Hence they submit that the recommendations of the Expert Classification Committee cannot be reversed without proper reasons. They also submit that the higher scale of pay of Rs.380-560 was given to the Radio Mechanics appointed earlier to the applicants. Hence reducing the scale of pay for the applicants herein is unwarranted and it is a case of discrimination. They also submit that R-3 had favourably recommended their case for upgradation but that was not accepted without any proper reason. The letter bearing No.NSTL/EST/023/C dated 12.7.94 (Page 38 to the OA) has been issued without going into the case fully and just because an indent was placed in the Employment Exchange for Tradesman-C in the trade of Radio Mechanics and the applicants were appointed on that basis, it does not mean that they should be paid in the pay scale of Rs.950-1500 instead of Rs.1320-2040/Rs.380-560. It is also stated that the upgradation is not in the reign of NSTL to decide. But if it is so, then it ~~should~~ have been referred to a proper authority and the matter is decided in accordance with law. But that was not done. The applicants have accepted the grade of Rs.950-1500 initially as they were new to the organisation and were not aware of the position. Hence on that score, the case

cannot be dismissed as having filed belatedly.

4. The respondents have filed reply. The main contentions raised by the respondents in the reply are as follows:-

(i) The applicants were recruited vide SRO No.221/81 dated 7.8.81. This SRO gives details of the posts with reference to a particular grade and without any reference to a specific trade i.e, the recruitment is now made against the grades of Tradesman ranging from 'A' grade to 'E' grade. The applicants are eligible for promotion to higher grade even though they are recruited in the lower grade of Rs.950-1500.

(ii) The applicants were appointed as Tradesman-C among 75 trades in the Recruitment Rules of SRO 221/81. At the fag end of SRO, it is clearly stated that the posts of Tradesman A to E and Helper will be in any of the 75 trades mentioned therein. Also, vide column 8 of the SRO, it is clearly mentioned that for the post of Trademan-C, besides Matriculation. a certificate from ITI in the required trade should be possessed by the prospective applicants with the required experience in that trade. It is reiterated that the posts of Tradesman-C also, besides others, can be filled in, in any one required trades chosen out of the 75 trades given at the fag of the SRO 221/81 and, therefore, at that given time, the requirement of having employees, at the level of Tradesman-C, inducted by direct recruitment, according to the quota fixed was necessitated, in public interest/exigency, and action was taken and induction of

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the applicants was as a result of such action. They further state that it is not suggested that the employees possessing the trade of Radio Mechanic should be inducted only at the level of Tradesman-A according to SRO 221/81.

(iii) They also submit that as the posts of Tradesman A to E and Helper are in the existing SRO 221/81, the question of pleading made by the counsel for the applicants that the post of Radio Mechanic was once operated ~~only~~ by Tradesman-A and in the present case of the applicants only it was down graded to Tradesman-C is incorrect and not based on any factual position.

(iv) In SRO 221/81 (Annexure R-II to the reply) at Sl.No.113 the scale of pay of Rs.260-400 is also provided. Hence there is nothing irregular in appointing the applicants in the lower scale of pay of Rs.260-400. It was further stated that the job titles etc. vide Annexure I to the letter dated 11.5.83 are not meant only in respect of R&D organisation but in respect of the whole Ministry of Defence. As per the above information, there is no question of treating the Radio Mechanics classified as only Tradesman-A and the action of operating it in the Tradesman-C category cannot, therefore, be challenged by the applicants as incorrect.

(v) The respondents relied on the judgment of the Madras Bench of this Tribunal in OA 990/95 decided on 9.1.98 for dismissing this OA. That OA does not cover this case as the facts in that OA are different from the facts in this OA.

JL *D*

5. The case was heard on a number of days. On 4.3.98, we ~~have~~ asked the respondents to produce any correspondence or office noting to operate the post of Radio Mechanic in the lower grade of Tradesman-C in the year when the applicants were appointed. It is stated that earlier those posts were operated by the Tradesman-A. It was also observed in the order dated 4.3.98 that mere submission of a requisition to the Employment Exchange will not mean that the grade has been down graded. There must be sufficient material available before submission of the requisition to the Employment Exchange for sponsoring the candidates for the post of Radio Mechanic in Tradesman-C category. In the reply it is stated that ~~we~~ at that time the requirement of having employees at the level of Tradesman-C was necessitated in public interest/exigency and as a result of that the applicants were inducted in the Trademan-C category by placing indent to the Employment Exchange for the post of Radio Mechanic in the Tradesman-C category. The reply dated 16.3.98 issued by R-3 does not indicate the reason for operating the posts of Radio Mechanic in the Tradesman-C category when the posts of Radio Mechanic were operated in the category of Tradesman-A earlier. ~~and the recruitment was also meant in the category of Tradesman-A~~ Merely saying that it was necessitated to appoint the applicants as Radio Mechanics in the Tradesman-C category in public interest/exigency cannot be treated as an appropriate answer to the issue raised by us in the order dated 4.3.98. The applicants also submit that there is need for operating the posts of Radio Mechanics in the Tradesman-A category and the respondents have no reason to

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appoint them in the Tradesman-C category without any rhyme of reason. This point has not been clearly discussed in the reply dated 16.3.98.

6. No doubt, the SRO 221/81 provides for appointment in the scale of pay of Rs.260-400 also. But the Radio Mechanics earlier to the appointment of the applicants were stated to have been placed in the higher scale of pay of Rs.380-560. Government, no doubt, reserve right to appoint the candidates in the grade in which they feel is to be posted but that does not mean that a post which requires higher skill and capability is to be down graded at the whims and fancies of the respondents.

7. There must be enough reason for down gradation of the posts from higher grade to the lower grade. Down gradation of the posts could have been done due to alteration of the duty list when the appointees join and that duty list does not require higher skill, expertise and experience and then the posts could have been operated in the lower scale subsequently. In our order dated 4.3.98, we have asked to produce if any such ^{duty} list is available. With the reply dated 16.3.98, the respondents did not produce the duty list, old as well as new duty list. It may also be possible that the work load could have been come down due to introduction of sophisticated communication equipments and those equipments may not require frequent attention and hence on that score also the scale of pay could have been reduced. The learned counsel for the applicants submits that the sophistication introduced need higher skills and expertise and hence

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operation of the posts in the lower grade may not be appropriate. But this point has to be examined by the Department. When the posts were operated in the higher grade earlier to the appointment of the applicants in the lower grade, reason for operating the posts in the lower grade has to be explained. If the duty list has been revised or work load has come down, there may be possibility to operate the posts in the lower grade. But specific mention of this is necessary. We have no doubt in our mind that the Government reserves right to operate the posts in a particular grade depending upon the work load, expertise required to man the equipments and similar related reasons. These reasons should be readily available with the respondents. On that basis, the respondents could have placed indent for Tradesman-C to the Employment Exchange for sponsoring candidates on the basis of which the applicants were appointed. But those details were not brought out in the reply and also when we asked for the same, such details were not produced.

8. Hence we are of the opinion that the whole question needs a fresh review at the hands of the respondents by appointing an expert in this field to see whether operation of the posts in the grade of Rs.950-1500/Rs.260-400 is sufficient to man the posts. To give confidence to the applicants that assessment has been made by the expert without any bias, the respondents should take assistance of an expert outside the organisation to examine the above issue.

9. The applicants submit that they are entitled for the higher scale of pay i.e., Rs.1320-2040/Rs.380-560 from

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the date of their appointment. The reason for not approaching the judicial forum immediately after they joined is that they were fresh recruits and they were not aware of the details when they joined. As they were fresh recruits, they were also not aware of the higher grade being granted to their seniors when they were appointed. Hence in good faith, they applied for the post in the scale of pay of Rs.950-1500 in response to the advertisement. However, when they realised subsequently that the higher scale was granted to their seniors when appointed, they approached the authorities for upgradation of their scale of pay. But as that was not agreed to by the respondents, they approached this Tribunal by filing this OA.

10. There appears to be some reason when they applied in response to the advertisement and joined in the lower scale. When they joined, within a short period, they should be aware of the fact that their seniors were given higher scale even at the time of joining. Hence they should have approached the judicial forum if their representations are not disposed of to their satisfaction. Filing this OA on 20.2.95 has to be considered as ~~a belated~~ application. Hence the applicants cannot get higher scale if the expert decides that they should be placed in the ~~from their initial date of appointment~~ higher scale of pay of Rs.1320-2040/Rs.380-560/on the basis of the examination conducted by him. If at all the applicants are entitled for higher scale of pay, it is only from the date of filing of this OA viz. 20.2.95.

11. In the result, following direction is given:-

R-3 should appoint an expert from outside the Department to examine whether the appointment of the

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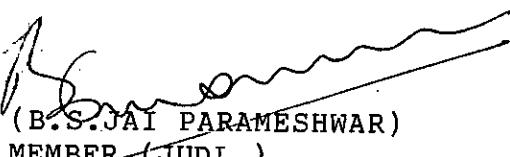
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applicants in the scale of pay of Rs.950-1500 is in accordance with the requirement of the organisation. He should go into the duty list, work load involved, expertise required and other related considerations. On the basis of the above examination, R-3 should get the recommendation of the expert within a period of four months from the date of receipt of a copy of this Judgment.

(ii) If the expert is of the opinion that the posts should have been operated in the scale of pay of Rs.1320-2040/Rs.380-560, then a firm decision should be taken in regard to the fixation of pay of the applicants within a period of three months from the date of receipt of the recommendation from the expert to be appointed.

(iii) In case the applicants have to be given the scale of pay of Rs.1320-2040/Rs.380-560, then they are entitled for the same only from the date of filing of this OA i.e, only from 20.2.95.

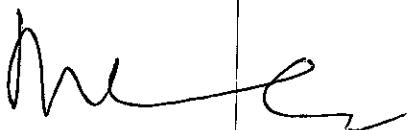
12. With the above directions, the OA is disposed of.
No order as to costs.

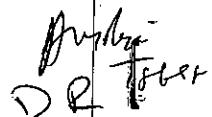

(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

17.6.98

DATED: 17th June, 1998

vsn


(R.RANGARAJAN)
MEMBER (ADMN.)


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Copy to:

1. The Secretary, Min.of Defence, New Delhi.
2. The Scientific Adviser to Raksha Mantri and Director General, Defence Research and Development Organisation, New Delhi.
3. The Director, Naval Science & Technological Laboratories, Visakhapatnam.
4. One copy to Mr.S.Lakshma Reddy, Advocate,CAT,Hyderabad.
5. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC,CAT,Hyderabad.
6. One copy to D.R(A),CAT,Hyderabad.
7. One duplicate copy.

YLKR

15/7/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 17/6/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

D.A.NO. 263/95

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~DISMISSED FOR DEFAULT~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS~~

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